

1 **REVISOR'S STATUTE**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Susan J. Koehn**

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6 REPEALING CERTAIN OUTDATED SECTIONS.

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

8 AMENDS:

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

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

11 **10-2-416**, as repealed and reenacted by Chapter 389, Laws of Utah 1997

12 **10-3-106**, as last amended by Chapter 17, Laws of Utah 1999

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

14 **17A-1-301**, as last amended by Chapter 30, Laws of Utah 1992

15 **17A-1-437**, as last amended by Chapter 285, Laws of Utah 1992

16 **17A-2-215**, as last amended by Chapter 227, Laws of Utah 1993

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

18 **17A-2-331**, as renumbered and amended by Chapter 186, Laws of Utah 1990

19 **17A-2-422**, as renumbered and amended by Chapter 186, Laws of Utah 1990

20 **17A-2-534**, as renumbered and amended by Chapter 186, Laws of Utah 1990

21 **17A-2-535**, as last amended by Chapter 227, Laws of Utah 1993

22 **17A-2-544**, as renumbered and amended by Chapter 186, Laws of Utah 1990

23 **17A-2-553**, as renumbered and amended by Chapter 186, Laws of Utah 1990

24 **17A-2-605**, as last amended by Chapter 146, Laws of Utah 1994

25 **17A-2-812**, as renumbered and amended by Chapter 186, Laws of Utah 1990

26 **17A-2-818**, as last amended by Chapters 199 and 299, Laws of Utah 1995

27 **17A-2-824**, as renumbered and amended by Chapter 186, Laws of Utah 1990

28       **17A-2-1023**, as renumbered and amended by Chapter 186, Laws of Utah 1990  
29       **17A-2-1024**, as renumbered and amended by Chapter 186, Laws of Utah 1990  
30       **17A-2-1030**, as renumbered and amended by Chapter 186, Laws of Utah 1990  
31       **17A-2-1202**, as last amended by Chapter 320, Laws of Utah 1995  
32       **17A-2-1210**, as last amended by Chapter 50, Laws of Utah 1993  
33       **17A-2-1302**, as renumbered and amended by Chapter 186, Laws of Utah 1990  
34       **17A-2-1411**, as renumbered and amended by Chapter 186, Laws of Utah 1990  
35       **17A-2-1425**, as renumbered and amended by Chapter 186, Laws of Utah 1990  
36       **17A-2-1437**, as last amended by Chapter 152, Laws of Utah 1996  
37       **17A-2-1444**, as renumbered and amended by Chapter 186, Laws of Utah 1990  
38       **17A-2-1512**, as renumbered and amended by Chapter 186, Laws of Utah 1990  
39       **17A-2-1704**, as last amended by Chapter 212, Laws of Utah 1993  
40       **17A-2-1709**, as renumbered and amended by Chapter 186, Laws of Utah 1990  
41       **17A-2-1803**, as last amended by Chapter 19, Laws of Utah 1998  
42       **17A-2-1805**, as enacted by Chapter 216, Laws of Utah 1995  
43       **17A-3-209**, as last amended by Chapter 365, Laws of Utah 1999  
44       **17A-3-210**, as last amended by Chapter 30, Laws of Utah 1992  
45       **17A-3-303**, as last amended by Chapter 47, Laws of Utah 1991  
46       **17A-3-412**, as renumbered and amended by Chapter 186, Laws of Utah 1990  
47       **17A-3-701**, as last amended by Chapter 106, Laws of Utah 1999  
48       **17B-2-201**, as enacted by Chapter 368, Laws of Utah 1998  
49       **19-6-703**, as enacted by Chapter 283, Laws of Utah 1993  
50       **26-8a-402**, as enacted by Chapter 141, Laws of Utah 1999  
51       **26-8a-502**, as enacted by Chapter 141, Laws of Utah 1999  
52       **26-18-2**, as last amended by Chapter 61, Laws of Utah 1999  
53       **26-18-3.7**, as last amended by Chapter 209, Laws of Utah 1997  
54       **26-21-2**, as last amended by Chapters 13 and 192, Laws of Utah 1998  
55       **26-40-102**, as enacted by Chapter 360, Laws of Utah 1998  
56       **26-44-101**, as enacted by Chapter 344, Laws of Utah 1999  
57       **26-44-202**, as enacted by Chapter 344, Laws of Utah 1999  
58       **30-1-9**, as last amended by Chapter 15, Laws of Utah 1999

- 59           **30-3-38**, as last amended by Chapters 235 and 329, Laws of Utah 1997
- 60           **31A-5-103**, as enacted by Chapter 242, Laws of Utah 1985
- 61           **31A-16-103**, as last amended by Chapter 131, Laws of Utah 1999
- 62           **31A-22-302**, as last amended by Chapter 132, Laws of Utah 1992
- 63           **31A-22-604**, as last amended by Chapter 102, Laws of Utah 1995
- 64           **31A-23-102**, as last amended by Chapter 131, Laws of Utah 1999
- 65           **31A-23-503**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 66           **31A-23-601**, as last amended by Chapter 9, Laws of Utah 1996, Second Special Session
- 67           **31A-25-205**, as enacted by Chapter 242, Laws of Utah 1985
- 68           **32A-1-105**, as last amended by Chapter 141, Laws of Utah 1998
- 69           **32A-1-113**, as last amended by Chapter 169, Laws of Utah 1997
- 70           **32A-1-117**, as renumbered and amended by Chapter 23, Laws of Utah 1990
- 71           **32A-1-118**, as renumbered and amended by Chapter 23, Laws of Utah 1990
- 72           **32A-1-121**, as renumbered and amended by Chapter 23, Laws of Utah 1990
- 73           **32A-1-504**, as enacted by Chapter 20, Laws of Utah 1993
- 74           **32A-3-102**, as last amended by Chapter 132, Laws of Utah 1991
- 75           **32A-4-102**, as last amended by Chapter 132, Laws of Utah 1991
- 76           **32A-4-106**, as last amended by Chapter 127, Laws of Utah 1998
- 77           **32A-4-202**, as last amended by Chapter 132, Laws of Utah 1991
- 78           **32A-4-206**, as last amended by Chapter 127, Laws of Utah 1998
- 79           **32A-5-102**, as last amended by Chapter 132, Laws of Utah 1991
- 80           **32A-5-107**, as last amended by Chapter 127, Laws of Utah 1998
- 81           **32A-7-102**, as last amended by Chapter 132, Laws of Utah 1991
- 82           **32A-8-102**, as last amended by Chapter 132, Laws of Utah 1991
- 83           **32A-8-106**, as last amended by Chapters 77 and 88, Laws of Utah 1994
- 84           **32A-8-502**, as enacted by Chapter 20, Laws of Utah 1993
- 85           **32A-8-505**, as last amended by Chapter 141, Laws of Utah 1998
- 86           **32A-9-102**, as last amended by Chapter 132, Laws of Utah 1991
- 87           **32A-9-106**, as last amended by Chapter 270, Laws of Utah 1998
- 88           **32A-10-202**, as last amended by Chapter 282, Laws of Utah 1998
- 89           **32A-10-206**, as last amended by Chapter 127, Laws of Utah 1998

90           **32A-11-102**, as last amended by Chapter 282, Laws of Utah 1998  
91           **32A-11-106**, as last amended by Chapter 88, Laws of Utah 1994  
92           **32A-11a-102**, as enacted by Chapter 328, Laws of Utah 1998  
93           **32A-12-303**, as last amended by Chapter 132, Laws of Utah 1991  
94           **32A-12-304**, as last amended by Chapter 132, Laws of Utah 1991  
95           **32A-12-305**, as last amended by Chapter 132, Laws of Utah 1991  
96           **32A-12-306**, as renumbered and amended by Chapter 23, Laws of Utah 1990  
97           **32A-12-307**, as last amended by Chapter 20, Laws of Utah 1993  
98           **32A-12-308**, as last amended by Chapter 132, Laws of Utah 1991  
99           **32A-12-310**, as enacted by Chapter 132, Laws of Utah 1991  
100          **32A-13-109**, as renumbered and amended by Chapter 23, Laws of Utah 1990  
101          **53-10-102**, as renumbered and amended by Chapter 263, Laws of Utah 1998  
102          **53-10-304**, as renumbered and amended by Chapter 263, Laws of Utah 1998  
103          **53-10-305**, as renumbered and amended by Chapter 263, Laws of Utah 1998  
104          **53A-15-205**, as enacted by Chapter 246, Laws of Utah 1994  
105          **58-37c-19**, as enacted by Chapter 100, Laws of Utah 1998  
106          **58-37c-20**, as enacted by Chapter 100, Laws of Utah 1998  
107          **58-56-3**, as last amended by Chapter 42, Laws of Utah 1999  
108          **58-59-303**, as repealed and reenacted by Chapter 247, Laws of Utah 1994  
109          **58-67-102**, as last amended by Chapter 4, Laws of Utah 1999  
110          **58-68-102**, as last amended by Chapter 4, Laws of Utah 1999  
111          **59-2-601**, as last amended by Chapter 264, Laws of Utah 1998  
112          **62A-7-109**, as last amended by Chapter 10, Laws of Utah 1999  
113          **62A-12-282.1**, as last amended by Chapters 10, 329 and 365, Laws of Utah 1997  
114          **63-25a-501**, as enacted by Chapter 346, Laws of Utah 1999  
115          **63-55-209**, as last amended by Chapters 21, 76 and 156, Laws of Utah 1999  
116          **63-55-254**, as last amended by Chapter 189, Laws of Utah 1999  
117          **63-55-262**, as last amended by Chapters 15 and 134, Laws of Utah 1997  
118          **63-55-263**, as last amended by Chapters 13, 122 and 270, Laws of Utah 1998  
119          **63-55b-163**, as renumbered and amended by Chapter 21, Laws of Utah 1999  
120          **63-75-7**, as last amended by Chapter 136, Laws of Utah 1996

121           **63A-9-801**, as renumbered and amended by Chapter 252 and last amended by Chapter 375,  
122 Laws of Utah 1997

123           **63C-8-101**, as enacted by Chapter 202, Laws of Utah 1997

124           **76-8-508**, as last amended by Chapter 175, Laws of Utah 1988

125           **76-9-704**, as last amended by Chapter 51, Laws of Utah 1999

126           **76-10-105.1**, as last amended by Chapter 412, Laws of Utah 1998

127           **76-10-803**, as last amended by Chapter 141, Laws of Utah 1992

128           **76-10-1305**, as last amended by Chapter 79, Laws of Utah 1996

129           **76-10-1902**, as last amended by Chapter 97, Laws of Utah 1999

130           **77-19-11**, as last amended by Chapter 113, Laws of Utah 1996

131           **77-20-8.5**, as last amended by Chapter 257, Laws of Utah 1998

132           **77-32-401**, as enacted by Chapter 354, Laws of Utah 1997

133           **77-37-3**, as last amended by Chapter 40, Laws of Utah 1993

134           **78-3a-905**, as last amended by Chapter 260, Laws of Utah 1999

135           **78-3c-4**, as last amended by Chapter 30, Laws of Utah 1992

136           **78-3g-102**, as last amended by Chapter 68, Laws of Utah 1998

137 REPEALS:

138           **26-8-15**, as last amended by Chapter 241, Laws of Utah 1991

139           **78-32-12.3**, as enacted by Chapter 152, Laws of Utah 1993

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

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

142           **9-2-1610. Recycling market development zones credit.**

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

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

146           **10-2-115. Notice of number of commission or council members to be elected and of**  
147 **district boundaries -- Declaration of candidacy for city office.**

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

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

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

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

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

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

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

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

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

168 (2) Notwithstanding Subsection [~~20A-2-203~~] 20A-9-203(2)(a), each person seeking to  
169 become a candidate for mayor or city commission or council of a city incorporating under this part  
170 shall, within 45 days of the incorporation election under Section 10-2-111, file a declaration of  
171 candidacy with the clerk of the county in which the future city is located.

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

173 **10-2-416. Commission decision -- Written decision -- Limitation.**

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

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

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

179 (c) disapprove the proposed annexation.

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

- 183 (a) the legislative body of the county in which the area proposed for annexation is located;  
184 (b) the legislative body of the proposed annexing municipality;  
185 (c) the contact person on the annexation petition;  
186 (d) each entity that filed a protest; and  
187 (e) if a protest was filed under Subsection 10-2-407(1)[(d)](a)(iv), the contact person.

188 (3) The commission may not approve a proposed annexation unless the results of the  
189 feasibility study under Section 10-2-413 show that the average annual amount under Subsection  
190 10-2-413(3)(a)(ix) does not exceed the average annual amount under Subsection  
191 10-2-413(3)(a)(viii) by more than 5%.

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

193 **10-3-106. Governing body in towns.**

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

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

198 **13-30-106. Bond, certificate of deposit, or letter of credit.**

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

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

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

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

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

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

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

213 (4) The division may:

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

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

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

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

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

227 **17A-1-301. Exemptions.**

228 This part does not apply to:

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

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

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

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

237 (5) metropolitan water districts established under authority of Title 17A, Chapter 2, Part  
238 8, Metropolitan Water District Act;

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

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

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

244 **17A-1-437. District treasurer -- Duties generally.**



- 245 (1) (a) The governing body of the district shall appoint a district treasurer.
- 246 (b) (i) Where required, the treasurer may be chosen from among the members of the  
247 governing board, except that the chairman of the board may not be district treasurer.
- 248 (ii) The district clerk may not also be the district treasurer.
- 249 (2) The district treasurer is custodian of all money, bonds, or other securities of the district.
- 250 (3) The district treasurer shall:
- 251 (a) determine the cash requirements of the district and provide for the deposit and  
252 investment of all monies by following the procedures and requirements of Title 51, Chapter 7,  
253 State Money Management Act;
- 254 (b) receive all public funds and money payable to the district within three business days  
255 after collection, including all taxes, licenses, fines, and intergovernmental revenue;
- 256 (c) keep an accurate detailed account of all monies received under Subsection [(2)] (3)(b)  
257 in the manner provided in this part and as directed by the governing body of the district by  
258 resolution; and
- 259 (d) collect all special taxes and assessments as provided by law and ordinance.

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

261 **17A-2-215. Board of cemetery maintenance commissioners -- Organization --**  
262 **Vacancies -- Officers -- Certified copies of appointments -- Regular and special meetings --**  
263 **Bills payable -- Oath of office and bond.**

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

272 As soon as practicable after the organization of the first board of cemetery maintenance  
273 commissioners and thereafter when deemed expedient or necessary such board shall designate a  
274 day and hour on which regular meetings shall be held and a place for the holding thereof which  
275 shall be within the district. Regular meetings must show what bills are submitted, considered,

276 allowed or rejected. The secretary shall make a list of all bills presented, showing to whom  
277 payable, for what service or material, when and where used, amount claimed, allowed or  
278 disallowed. Such list shall be signed by the chairman and attested by the secretary; provided, that  
279 all special meetings must be ordered by the president or a majority of the board, the order must be  
280 entered of record, and the secretary must give each member not joining in the order[,] five days  
281 notice of special meetings; provided further, that whenever all members of the board are present  
282 the same shall be deemed a legal meeting and any lawful business may be transacted. All meetings  
283 of the board must be public and a majority shall constitute a quorum for the transaction of  
284 business. All records shall be open to the inspection of any elector during business hours.

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

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

291 **17A-2-219. Acquisition and possession of property -- Legal title -- Actions by and**  
292 **against board.**

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

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

303 **17A-2-331. Annexation of areas.**

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

307 provided.

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

309 **17A-2-422. Proposal to incur indebtedness -- Resolution -- Notice -- Hearing --**  
310 **Calling of bond election -- Written protests.**

311 (1) (a) A proposal to incur indebtedness which would cause the total county debt to exceed  
312 the county taxes for the current year or which would not be payable within one year, as the case  
313 may be, may be originated by a majority vote of the board of trustees or by petition of not less than  
314 100 property owners or 10% of all the property owners, whichever is less, who own property  
315 within the county service area or by petition of not less than 10% of all the qualified voters residing  
316 in the county service area.

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

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

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

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

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

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

337 (5) At the time and place set for the hearing of the petition, or upon a subsequent date fixed

338 at the original hearing the board of trustees shall proceed to hear the proposal and all matters in  
339 respect to a bond election.

340 (6) If, upon the hearing of the proposal, the board of trustees finds that due notice has been  
341 given and that the services under discussion would be for the benefit of all taxable property or the  
342 real property owners situated in the service area, then the board shall make and cause to be entered  
343 of record upon its minutes an order so finding, and shall proceed to call the bond election and, if  
344 a majority of those voting, vote in the affirmative, to issue the bonds in the manner provided.

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

346 (8) (a) If written protests are filed prior to the date fixed for the original hearing, signed  
347 by property owners owning taxable property in the service area with a taxable value in excess of  
348 40% of the taxable value of all the taxable property within the service area, according to the last  
349 assessment roll for county taxes completed prior to the holding of the election or by 40% of all the  
350 qualified voters residing in the county service area or by 40% of all the qualified voters residing  
351 in the county, the board does not have authority to proceed with the calling of the election, and no  
352 new petition for a bond election in the service area may be entertained for a period of 12 months  
353 from that time.

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

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

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

360 **17A-2-534. Public uses -- Right of entry on lands -- Penalty for interference.**

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

363 (2) The supervisors or their representatives from the time of their appointment may go  
364 upon the lands lying within [said] the district for the purpose of examining the same, and making  
365 surveys, and after the organization of [said] the district and payment or tender of compensation  
366 allowed, may go upon [said] those lands with their servants, teams, tools, instruments, or other  
367 equipment, for the purpose of constructing such proposed work, and may forever thereafter enter  
368 upon [said] those lands, as aforesaid, for the purpose of maintaining or repairing such proposed

369 work, doing no more damage than the necessity of the occasion may require[~~any~~].

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

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

375 **17A-2-535. Validation of organization proceedings -- Notice of proposed corrections,**  
376 **amendments or changes in assessment of benefits -- Hearing by county legislative body of**  
377 **report of board of supervisors -- Board of equalization -- Increase of drainage benefits and**  
378 **taxes -- Lien.**

379 Whenever it shall appear to the board of supervisors that any proceedings for the  
380 organization of a drainage district have not been strictly in compliance with law, or if any lands  
381 within the district have been erroneously assessed for benefits or taxes, or inequitably assessed for  
382 benefits or taxes, or that any assessment of damages or benefits under this part has been made in  
383 error as to description, ownership, or acreage intended to be assessed, or if it shall appear to such  
384 board of supervisors that the assessment of benefits has been inequitably distributed among the  
385 various parcels of land, or unjustly equalized as between the various parcels of land within the  
386 district, or that any tract of land, easement or interest in land, public[~~ly~~] or private road, railroad or  
387 railroad right-of-way, has been included in, or omitted from, any assessment roll of benefits or  
388 taxes by reason of clerical error or otherwise, or that proper notice or notices as required by law  
389 has not or have not been given, such noncompliance, error, omission or want of notice shall not  
390 invalidate such organization, neither shall any such assessments of benefits or taxes be lost to the  
391 district in case of any omission, nor shall the board of supervisors and the county legislative body  
392 be held to have lost jurisdiction to correct such error or omission, or to readjust such assessments  
393 of benefits or to redistribute such assessment of benefits upon the various parcels of land and  
394 interest in lands within such district, and to justly equalize the same as between various parcels of  
395 land and interest in lands within the district, but the board of supervisors of such district may report  
396 any such conditions and recommend such corrections and changes as such board of supervisors  
397 may deem necessary to remedy the same; and upon receiving such report and recommendation the  
398 said county legislative body may make such corrections, amendments or changes in the assessment  
399 rolls of benefits and taxes, or correct any error, omission, mistake, inequality or want of sufficient

400 notice, as may be just; provided, that when any correction, amendment or change is sought to be  
401 made, notice of such proposed correction, amendment or change in the assessment of benefits and  
402 taxes shall be given to all persons affected thereby, in the following manner:

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

417         The county legislative body at the time and place fixed in the notice shall sit as a board of  
418 equalization and it shall make and finally determine such corrections, amendments and changes  
419 in the roll of assessment of benefits and taxes, as it shall determine after such hearing, and  
420 thereafter all such lands, easements or interest in lands shall be assessed in accordance with the  
421 assessment roll as thus corrected, amended, or changed; and such changed assessment roll of  
422 benefits and taxes shall be the basis of lien upon the parcels of land or interest in land, as corrected,  
423 amended or changed, for all district indebtedness. Whenever it shall be made to appear to the board  
424 of supervisors of the drainage district that any owner or operator of any land within the drainage  
425 district has so changed the use of such land so as to increase the benefits received by such land by  
426 reason of the construction, maintenance, and operation of the drainage system, the board of  
427 supervisors of the drainage district shall view each tract of such land and shall carefully consider  
428 the increased benefits such tract of land is receiving from the construction, maintenance and  
429 operation of the drainage system and shall assess such tract of land in accordance with the  
430 increased benefits received by it. After such assessment is made, the secretary of the board of

431 supervisors shall transmit the same to the county legislative body and the county legislative body  
432 shall within 15 days after receipt thereof, cause not less than 15 days notice to be sent by mail to  
433 each landowner in the district whose benefits have thus been increased, showing the amount of the  
434 benefits as thus increased on the land owned by the landowner within the district; and stating  
435 therein the time and place where the county legislative body shall meet as a board of equalization  
436 to hear and determine complaints made against such increased assessments. At such hearing any  
437 landowner upon whose lands the benefits are thus increased may appear and oppose such increase  
438 or any part thereof. The county legislative body shall sit as a board of equalization of the increased  
439 drainage benefits and taxes, and shall equalize and determine the assessment of benefits and taxes  
440 to be made and levied upon such tract of land within the district. Such increased assessment of  
441 benefits shall be the basis of a lien upon such lands within the district for all district indebtedness  
442 and taxes.

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

444 **17A-2-544. Bonds -- Lien on land and improvements.**

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

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

457 **17A-2-553. Taxes considered lien -- Sale of property -- Time of redemption -- Notice**  
458 **-- Penalty -- Record.**

459 All drainage taxes levied and assessed under the provisions of this title shall attach to and  
460 become a lien on the real property assessed from and after the second Monday in March. Drainage  
461 taxes shall become due and delinquent at the same time, and shall be collected by the same officers

462 and in the same manner and at the same time as state and county taxes, and when collected shall  
463 be paid to the treasurer of the board of supervisors. The revenue laws of this state for the  
464 assessment, levying, and collecting of taxes on real estate for county purposes, except as herein  
465 modified, shall be applicable for the purposes of this part, including the enforcement of penalties  
466 and forfeiture for delinquent taxes; provided, that lands sold for delinquent district taxes shall be  
467 sold separately for such tax and a separate certificate of sale shall issue therefor, and provided  
468 further that the period of redemption from sale for taxes under this part[,] shall be four years. At  
469 the same time and in the same manner as the county treasurer publishes the delinquent tax list for  
470 state and county taxes in each year, the county treasurer must publish a delinquent drainage tax list,  
471 which must contain the names of the owners, when known and a description of the property  
472 delinquent or subject to lien of drainage district taxes with the amount of taxes due exclusive of  
473 penalty. The county treasurer must publish with such list a notice, each year, that unless the  
474 delinquent drainage taxes, together with the penalty, are paid before the date for tax sales for state  
475 and county taxes the real property upon which such taxes are a lien will be sold for taxes, penalty  
476 and costs, beginning on said date, at the front door of the county courthouse. The delinquent list  
477 shall be published three times if in a daily newspaper, twice if in a semiweekly and once if in a  
478 weekly newspaper. On the date for tax sales for state and county taxes each year, the county  
479 treasurer shall expose for sale, between the hours of ten a.m. and three p.m. sufficient of all  
480 delinquent real estate to pay the drainage district taxes, penalty and costs for which such real estate  
481 is liable, at public auction, at the front door of the county courthouse, and sell the same to the  
482 highest responsible bidder for cash, and the county treasurer shall continue to sell from day to day  
483 between such hours until the property of all delinquents is exhausted or the taxes, penalty and costs  
484 are paid. In offering such real estate for sale the treasurer shall offer the entire tract assessed, and  
485 the first bid received in an amount sufficient to pay the taxes and costs shall be accepted unless a  
486 further bid in the same amount for less than the entire tract shall be received; and the highest and  
487 best bid shall be construed to mean the bid of that bidder who will pay the full amount of the taxes  
488 and costs for the smallest undivided portion of said real estate. After receiving a bid for the full  
489 amount of the taxes and costs it shall not be the duty of the treasurer to attempt to secure a higher  
490 bid, but he shall accept it if made. The treasurer shall make a record of all sales of real property  
491 in a book to be kept by him for that purpose therein describing the several parcels of real property  
492 on which the taxes and costs were paid by the purchasers, in the same order as the published list



493 of delinquent sales contained in the list of advertisements on file in his office. Separate columns  
494 shall also be provided in said record in which the treasurer shall enter the description of any tract  
495 sold that is less than the entire tract on which the taxes are due, the date of sale, to whom sold, the  
496 penalty, and costs, and the date of redemption. The purchaser shall be required to pay the penalty  
497 to the county treasurer, which penalty shall in all cases accrue to the benefit of the drainage district.  
498 When all sales have been made the county treasurer shall file the record in his office, in looseleaf  
499 bound form. It shall be the duty of the county treasurer to issue a receipt to any person paying  
500 drainage district taxes on an undivided interest in real estate, showing the interest on which taxes  
501 are paid, and in case any portion of the drainage district taxes on such real estate remains unpaid,  
502 it shall be the duty of the treasurer to sell only such undivided interest in said real estate as belongs  
503 to the co-owners who have not paid their portion of the taxes. In absence or default of purchaser  
504 at any such public sale of drainage district taxes, the drainage district in which taxes are delinquent  
505 shall become the purchaser and shall receive from the county treasurer the tax sale certificate of  
506 the real property on which drainage district taxes are delinquent upon the same terms upon which  
507 the county receives tax sales certificates on sales for delinquent state and county taxes and shall  
508 hold the same in the same manner as an individual may hold real property upon which state or  
509 county taxes are delinquent, subject to the same rights of redemption. In all respects, a drainage  
510 district shall be the beneficiary of taxes assessed and levied by it, provided, however, that county  
511 treasurer shall retain the costs and expense provided by law for the advertisement, sale and  
512 redemption of drainage district taxes.

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

514 **17A-2-605. Organization of proposed district -- Adoption of ordinance -- Election**  
515 **-- Qualification of voters.**

516 After the county legislative body has made its order finally fixing and determining the  
517 boundaries of the proposed district, the district can be created by either (1) the county legislative  
518 body adopting an ordinance creating the [said] district, which ordinance shall give the name  
519 thereof, the county in which it is located and a description of the proposed area and boundaries of  
520 the district. The [said] district shall become legally existent, provided no appeal is taken [as set  
521 forth in Section 17A-2-607], 30 days from the date of first publication of the ordinance creating  
522 the [said] fire district or (2) the county legislative body shall give notice of an election to be held  
523 within the proposed district for the purpose of determining whether or not the same shall be

524 organized under the provisions of this part. Such notice shall give the name of the proposed fire  
 525 protection district, describe the boundaries thereof, name the precinct or precincts therein with a  
 526 description of the boundaries of each, together with a designation of the polling places. The notice  
 527 shall be published, previous to the time of such election, in the same manner as provided in Section  
 528 17A-2-603 [~~above~~]. Such notice shall require the electors to cast ballots which shall contain the  
 529 words " \_\_\_\_ fire protection district, yes," or " \_\_\_\_ fire protection district, no" or words equivalent  
 530 thereto. Qualified electors, under the general laws of the state, living within such district shall be  
 531 entitled to vote on the question of whether the district shall or shall not be created.

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

533 **17A-2-812. Ballot.**

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

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

541 **17A-2-818. Powers of incorporated districts -- Preferential right of city to purchase**  
 542 **water.**

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

544 (i) have perpetual succession;

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

547 (iii) adopt a corporate seal and alter it;

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

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

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

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

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

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

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

566 (ii) construct works and establish and maintain facilities across any stream of water or  
567 watercourse if the district promptly restores the street or highway to its former state of usefulness  
568 as nearly as may be and does not use the street or highway in a manner that completely or  
569 unnecessarily impairs the usefulness of it.

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

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

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

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

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

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

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

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

593 (b) As to the costs of all water, water rights, reservoirs, canals, conduits, and other works  
594 for which the district as a whole receives the benefit, and because of which the district is indebted  
595 or because of which the district has made payment without any previous apportionment and charge  
596 having been made, and the charges made against the district because of its ownership of stock in  
597 any water users' association, in the same proportion as the water and water rights set apart or  
598 allotted to each area bear to the total water and water rights owned or held by the district.

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

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

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

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

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

611 (ii) Taxes levied to pay principal of and interest on the bonds of the district, to pay  
612 indebtedness and interest owed to the United States of America, or to pay assessments or other  
613 amounts due any water users' association or other public cooperative[;] or private entity from  
614 which the district procures water are not subject to the limitation established by this Subsection  
615 [~~(5)~~] (6)(b).

616 (c) (i) The district shall:

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

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

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

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

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

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

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

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

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

634 (B) officers and positions as necessary; and

635 (C) employees.

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

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

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

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

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

645 (b) The contracts may provide for:

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

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

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

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

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

653 (d) The contract may contain further covenants and agreements as necessary and  
654 convenient to accomplish its purposes.

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

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

657 (b) develop, store, and transport water;

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

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

663 (e) fix the rates;

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

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

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

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

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

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

678 (c) The treasurer and controller, with the approval of the attorney, shall perform the

679 functions and duties authorized by this subsection under rules adopted by the board of directors  
680 of the district.

681 (10) Each city, the area of which is a part or all of any district incorporated under this part,  
682 has a preferential right to purchase from the district, at rates determined by the board of directors  
683 of the district, for distribution by the city, or any public utility empowered by the city for the  
684 purpose, for domestic, municipal, and other beneficial uses within the city, a portion of the water  
685 served by the district which shall bear the same ratio to all of the water supply of the district as the  
686 total accumulation of amounts levied as taxes by the district against the property of the city which  
687 is within the area of the district shall bear to the total of all taxes levied by the district against the  
688 property in all of the cities in the areas of which are within the area of the district.

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

690 **17A-2-824. Revenue indebtedness or general obligation indebtedness -- Procedure**  
691 **for incurring -- Terms.**

692 (1) Any district which has determined to issue bonds shall issue its bonds under Title 11,  
693 Chapter 14, the Utah Municipal Bond Act, for the acquisition through construction, purchase, or  
694 otherwise and for the improvement or extension of any properties necessary or desirable in the  
695 obtaining, treatment, and distribution of water and any other properties which the district is  
696 authorized to own under this part. Bonds may be issued or a contract indebtedness or obligation  
697 may be created (a) payable solely from the revenues of the district other than the proceeds of taxes,  
698 in which case they shall be known for purposes of this section as "revenue indebtedness", or (b)  
699 payable solely from the proceeds of taxes, in which case they shall be known for purposes of this  
700 section as "general obligation indebtedness", or (c) payable from both operating revenues and the  
701 proceeds of taxes, in which case they shall be known for purposes of this section as "general  
702 obligation revenue indebtedness." The full faith and credit of the district shall be pledged to the  
703 payment of its general obligation and general obligation revenue indebtedness, and taxes shall be  
704 levied fully sufficient to pay that part of the principal of and interest on general obligation revenue  
705 indebtedness as the revenues of the district pledged for this purpose may not be sufficient to meet.  
706 General obligation indebtedness and general obligation revenue indebtedness may be issued only  
707 after approval at an election as provided in Section 17A-2-821. Revenue indebtedness may be  
708 similarly submitted at an election as provided in Section 17A-2-821 if considered desirable by the  
709 board of directors, but nothing in this part shall be construed to require such submission.

710 Refunding bonds may be issued without approval at an election.

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

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

739 **17A-2-1023. Technical rules of evidence not to apply.**

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



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

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

747 **17A-2-1024. Record of hearing -- Review.**

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

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

756 **17A-2-1030. Employee rights and benefits extended under federal law to apply.**

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

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

770 **17A-2-1202. Definitions.**

771 As used in this part:

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

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

779 (a) ordinance approving the plan for projects for which a preliminary plan has been  
780 prepared prior to April 1, 1993, and for which all of the following have occurred prior to July 1,  
781 1993: the agency blight study has been completed, and a hearing under Section 17A-2-1221 has  
782 in good faith been commenced by the agency; or

783 (b) the first approved project area budget for projects for which a preliminary plan has  
784 been prepared after April 1, 1993, and for which any of the following have occurred after July 1,  
785 1993: the completion of the agency blight study, and the good faith commencement of the hearing  
786 by the agency under Section 17A-2-1221; and

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

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

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

795 (i) defective design and character of physical construction;

796 (ii) faulty interior arrangement and exterior spacing;

797 (iii) high density of population and overcrowding;

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

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

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

802 (vii) subdividing and sale of lots of irregular form and shape and inadequate size for proper

803 usefulness and development;

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

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

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

808 (b) For projects for which a preliminary plan has been prepared after April 1, 1993, and  
809 for which any of the following have occurred after July 1, 1993: the completion of the agency  
810 blight study, and the good faith commencement of the hearing by the agency under Section  
811 17A-2-1221, when a finding of blight is required, an area with buildings or improvements, used  
812 or intended to be used for residential, commercial, industrial, or other urban purposes or any  
813 combination of these uses, which:

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

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

819 (A) defective character of physical construction;

820 (B) high density of population and overcrowding;

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

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

824 (E) economic deterioration or continued disuse;

825 (F) lots of irregular form and shape and inadequate size for proper usefulness and  
826 development, or laying out of lots in disregard of the contours and other physical characteristics  
827 of the ground and surrounding conditions;

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

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

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

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

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

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

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

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

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

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

855 (10) "Project area" or "redevelopment project area" means an area of a community within  
856 a designated redevelopment survey area, the redevelopment of which is necessary to eliminate  
857 blight or provide economic development and which is selected by the redevelopment agency  
858 pursuant to this part.

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

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

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

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

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

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

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

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

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

881 (13) (a) "Redevelopment" means the planning, development, replanning, redesign,  
882 clearance, reconstruction, or rehabilitation, or any combination of these, of all or part of a project  
883 area, and the provision of residential, commercial, industrial, public, or other structures or spaces  
884 that are appropriate or necessary to eliminate blight in the interest of the general welfare, including  
885 recreational and other facilities incidental or appurtenant to them.

886 (b) "Redevelopment" includes:

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

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

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

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

896 or

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

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

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

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

908 [~~(18)~~] (17) "Tax increment" means that portion of the levied taxes each year in excess of  
909 the base tax amount which excess amount is to be paid into a special fund of an agency.

910 [~~(17)~~] (18) "Taxing agencies" mean the public entities, including the state, any city, county,  
911 city and county, any school district, special district, or other public corporation, which levy  
912 property taxes within the project area.

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

914 **17A-2-1210. Limits on value and size of project areas using tax increment financing**  
915 **without consent of local taxing agencies -- Time limits.**

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

927 project area consents to the redevelopment project area plan in writing.

928 (b) An agency may not obtain approval of a project area budget pursuant to Section  
929 17A-2-1247.5 if the allocated incremental value of all existing project areas exceeds 10% of the  
930 total taxable value of the community, or if the projected allocated incremental value of the project  
931 area as described in the proposed project area budget, when added to the allocated incremental  
932 value of all existing project areas, exceeds 12% of the total taxable value of the community unless  
933 the agency obtains the majority consent of the taxing agency committee. The taxable value of the  
934 community shall be the total taxable value for the community as shown on the last equalized  
935 assessment roles as certified by the county assessor. The allocated incremental value shall be  
936 calculated as follows:

937 (i) for projects for which a preliminary plan has been prepared prior to April 1, 1993, and  
938 for which all of the following have occurred prior to July 1, 1993: the agency blight study has been  
939 completed, and a hearing under Section 17A-2-1221 has in good faith been commenced by the  
940 agency, the allocated incremental value shall be the taxable value in excess of the adjusted  
941 base-year taxable value in the tax increment collection area, multiplied by the applicable  
942 percentage of tax increment to be paid to the agency pursuant to Subsection 17A-2-1247(2)(f); and

943 (ii) for projects for which a preliminary plan has been prepared after April 1, 1993, and  
944 for which any of the following have occurred after July 1, 1993: the completion of the agency  
945 blight study, and the good faith commencement of the hearing by the agency under Section  
946 17A-2-1221, the allocated incremental value shall be the taxable value in excess of the adjusted  
947 base value in the tax increment collection area, multiplied by the applicable percentage of tax  
948 increment to be paid to the agency in accordance with the approved and proposed project area  
949 budgets pursuant to Subsections 17A-2-1247.5(3), (4), and (5).

950 (c) "Tax increment collection area" means that area of a project area from which an agency  
951 may receive an allocation of tax increment pursuant to a plan incorporating provisions of Section  
952 17A-2-1247 or an approved or a proposed project area budget incorporating the provisions of  
953 Section 17A-2-1247.5.

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

956 (2) If the county assessor fails to report the value of the locally assessed property within  
957 the proposed redevelopment project area within 90 days after notice as provided in Section

958 17A-2-1222, the 15% limitation does not apply.

959 (3) A redevelopment plan adopted before April 1, 1983, incorporating the provisions of  
960 tax increment financing under Section 17A-2-1247 may not be amended after April 1, 1983, to add  
961 area containing additional taxable value unless the governing body of each local taxing agency that  
962 levies taxes upon the property within the area proposed to be added consents in writing to a higher  
963 percentage of taxable value if the additional taxable value, when added to the taxable value in the  
964 project area as the taxable value existed immediately before the adoption of the amendment, would  
965 exceed the limits established in this subsection for a redevelopment plan adopted after April 1,  
966 1983.

967 (4) (a) A project area with a redevelopment plan adopted after April 1, 1983, incorporating  
968 the provisions of tax increment financing under Sections 17A-2-1247 and 17A-2-1247.5 may not  
969 exceed 100 acres of privately owned property unless the governing body of each local taxing  
970 agency that levies taxes upon property within the proposed redevelopment project area consents  
971 in writing to exceeding the limit of [~~100-acre~~] 100 acres of privately owned property in the  
972 redevelopment plan.

973 (b) A redevelopment plan adopted before April 1, 1983, may not be amended after April  
974 1, 1983, to add any additional area if the project area exceeds 100 acres of privately owned  
975 property, or the project area is less than 100 acres of privately owned property but would exceed  
976 100 acres of privately owned property with the additional area, unless the governing body of each  
977 local taxing agency that levies taxes upon property within the area proposed to be added consents  
978 in writing to the adding of the additional area to the project area.

979 (5) (a) For purposes of computing under Section 17A-2-1247 the amount to be allocated  
980 to and when collected to be paid into a special fund of a redevelopment agency to pay the principal  
981 of and interest on loans, moneys advanced to, or indebtedness (whether funded, refunded,  
982 assumed, or otherwise) incurred by the redevelopment agency after April 1, 1983, from a project  
983 area with a redevelopment plan adopted before April 1, 1983, incorporating the provisions of  
984 Section 17A-2-1247 and containing more than 100 acres of privately owned property, the  
985 redevelopment agency may be paid only that portion of that amount levied each year from 100  
986 acres selected by the redevelopment agency from the entire project area. The amount allocated to  
987 and when collected to be paid into a special fund of a redevelopment agency under Subsections  
988 17A-2-1247 (2)(c) and (2)(e) from the 100 acres of privately owned property shall be that portion



989 of the levied taxes each year in excess of the amount from the 100 acres allocated to and when  
990 collected paid to the taxing agencies under Subsection 17A-2-1247 (2)(a). The 100 acres of  
991 privately owned property shall be contiguous.

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

999 (c) Each agency shall establish by resolution adopted on or before August 1, 1983, which  
1000 areas in the project area shall be included in the 100 acres of privately owned property to be used  
1001 for the purposes of computing the amount of tax increment to be paid to the agency. The  
1002 resolution shall also contain a legal description of the areas included in the 100 acres. A copy of  
1003 the resolution shall be filed with the county auditor and the State Tax Commission within 30 days  
1004 of adoption of the resolution. After the resolution has been adopted no person, entity, or public  
1005 body may contest the regularity, formality, or legality of the establishment of the 100 acres or of  
1006 the resolution for any cause.

1007 (6) Each project area with a redevelopment plan adopted before April 1, 1983, that exceeds  
1008 590 acres of privately owned property shall be reduced to 590 acres of privately owned property  
1009 unless the governing body of each local taxing agency that levies taxes upon property within the  
1010 project area consents in writing to the project area not being reduced. Each agency shall establish  
1011 by resolution adopted on or before August 1, 1983, which areas in the project area shall be  
1012 included in the 590 acres of privately owned property to be used for the purposes of reducing to  
1013 the 590 acre limit of privately owned property. The resolution shall also contain a legal description  
1014 of the areas included in the 590 acres of privately owned property. A copy of the resolution shall  
1015 be filed with the county auditor and the State Tax Commission within 30 days of adoption of the  
1016 resolution. After the resolution has been adopted no person, entity, or public body may contest the  
1017 regularity, formality, or legality of the reduction to the 590 acre limit of privately owned property  
1018 or of the resolution for any cause.

1019 (7) A redevelopment plan adopted after April 1, 1983, and redevelopment projects for

1020 which a preliminary plan has been prepared prior to April 1, 1993, and for which all of the  
1021 following have occurred prior to July 1, 1993: the agency blight study has been completed, and a  
1022 hearing under Section 17A-2-1221 has in good faith been commenced by the agency, shall contain:

1023 (a) a time limit not to exceed seven years from the date of the approval of the plan after  
1024 which the agency may not commence acquisition of property through eminent domain;

1025 (b) a time limit not to exceed 15 years from the date of the approval of the plan after which  
1026 no bonds may be issued for redevelopment projects; and

1027 (c) a time limit not to exceed 32 years from the date of the approval of the plan after which  
1028 no tax increment from the project area may be allocated to or used by the agency.

1029 (8) The time limits established in Subsections (5)(a), (b), and (c) shall apply to  
1030 redevelopment plans adopted before April 1, 1983, but shall be measured from April 1, 1983.

1031 (9) Notwithstanding the provisions of Subsections (7) and (8) or of any corresponding  
1032 provisions of a redevelopment plan, an agency may issue bonds for the purpose of refunding bonds  
1033 previously issued for redevelopment projects (or to refund bonds issued for redevelopment  
1034 projects) without regard to the 15-year limit provided therein.

1035 Section 25. Section **17A-2-1302** is amended to read:

1036 **17A-2-1302. Definitions.**

1037 As used in this part:

1038 (1) "County" means a county of this state and includes any such county regardless of the  
1039 form of government under which it is operating.

1040 [(7)] (2) "Facility" or "facilities" means any structure, building, system, land, water right,  
1041 and other real and personal property required to provide any service authorized by Section  
1042 17A-2-1304, including, without limitation, all related and appurtenant easements and  
1043 rights-of-way, improvements, utilities, landscaping, sidewalks, roads, curbs and gutters, and  
1044 equipment and furnishings.

1045 (3) "Governing authority" means the board or body, however designated, in which the  
1046 general legislative powers of a county, municipality, or improvement district are vested and  
1047 includes the board of commissioners of a county or a city of the first or second class, the city  
1048 council of a city of the third class, the town council of a town, and the board of trustees of an  
1049 improvement district.

1050 [(6)] (4) "Guaranteed bonds" mean bonds the annual debt service on which is or will be

1051 guaranteed by one or more taxpayers owning property within the boundaries of the service district.

1052        ~~[(2)]~~ (5) "Improvement district" means an improvement district established under Chapter  
1053 2, Part 3.

1054        ~~[(4)]~~ (6) "Municipality" means a city or town of this state.

1055        ~~[(5)]~~ (7) "Service district" means a special service district established in the manner  
1056 provided by this part under Article XIV, Section 8 of the Constitution of Utah.

1057        Section 26. Section **17A-2-1411** is amended to read:

1058        **17A-2-1411. Quorum.**

1059        A majority of the directors shall constitute a quorum, and a concurrence of a majority of  
1060 those in attendance, in any matter, within their duties, shall be sufficient for its determination,  
1061 except as otherwise herein provided.

1062        Section 27. Section **17A-2-1425** is amended to read:

1063        **17A-2-1425. Board may sell or lease water to irrigation districts -- Levy and**  
1064 **collection of special assessments under class C.**

1065        To levy and collect special assessments upon lands under class C as herein provided, the  
1066 board shall make an allotment of water to each of the petitioning irrigation districts within the  
1067 district in the manner as hereinafter provided in such quantity as will in the judgment of the board,  
1068 when added to the present supply of water of such irrigation district, make an adequate supply of  
1069 water for such irrigation district, and shall fix and determine the rates per acre-foot or other unit  
1070 of measurement, the service, turnout, connection, distribution system charges or other charges and  
1071 terms at and upon which water shall be sold, leased or otherwise disposed of to such irrigation  
1072 district; provided, however, that such rates and charges shall be equitable although not necessarily  
1073 equal or uniform for like classes of services throughout the district. In the event any irrigation  
1074 district shall desire to purchase, lease, or otherwise obtain the beneficial use of waters of the  
1075 district, the board of such irrigation district shall by resolution authorize and direct its president  
1076 and secretary to petition the board for an allotment of water, upon terms prescribed by the board,  
1077 which petition shall contain, inter alia, the following:

1078        (1) Name of irrigation district.

1079        (2) Quantity of water to be purchased or otherwise acquired.

1080        (3) Price per acre-foot or other unit of measurement and the amount of any service,  
1081 connection, distribution system charge or other charges to be paid.

1082 (4) Whether payments are to be made in cash or annual installments.

1083 (5) Agreement by such irrigation district to make payments for the beneficial use of such  
1084 water, together with annual maintenance and operating charges, and to be bound by the provision  
1085 of this part and the rules and regulations of the board.

1086 The secretary of the board shall cause notice of the filing of such petition to be given and  
1087 published, which notice shall state the filing of such petition and giving notice to all persons  
1088 interested to appear at the office of the board at a time named in said notice and show cause in  
1089 writing, if any they have, why the petition should not be granted. The board at the time and place  
1090 mentioned in said notice, or at such time or times at which the hearing of said petition may be  
1091 adjourned, shall proceed to hear the petition and objections thereto, presented, in writing, by any  
1092 person showing cause as aforesaid why said petition should not be granted. The failure of any  
1093 person interested to show cause in writing, as aforesaid, shall be deemed and taken as an assent  
1094 on his part to the granting of said petition. The board may, at its discretion, accept or reject the  
1095 said petition, but if it deems it for the best interest of the district that the said petition shall be  
1096 granted, shall enter an order to that effect granting the said petition, and from and after such order,  
1097 the irrigation district, and/or persons therein shall be deemed to have purchased, leased, or  
1098 otherwise acquired the beneficial use of water as set forth in said order. If said petition is granted,  
1099 the board shall, in each year, determine the amount of money necessary to be raised by special  
1100 assessment on lands within such irrigation district and shall determine whether such special  
1101 assessment shall be levied by the district or by the irrigation district. If the board determines that  
1102 such assessments shall be levied by the district, it shall certify to the county auditor of the county  
1103 in which the lands of such irrigation district are located the amount of the assessment, plus a fair  
1104 proportionate amount of the estimated operating and maintenance charges for the next succeeding  
1105 year on each tract of land on or before the 1st day of July of each year, and such county auditor  
1106 shall extend the amount of such special assessment, plus said operating and maintenance charges  
1107 on the tax roll as a special assessment against the lands on which said special assessment is made.  
1108 If the board determines that such assessments shall be levied by the irrigation district, the district  
1109 shall make a contract with the irrigation district which shall provide among other things for the  
1110 annual payment to the district of an amount to be obtained from the levy by the irrigation district  
1111 of annual assessments in accordance with the irrigation district law. If a subdistrict or subdistricts  
1112 are organized as herein provided, assessments of special benefits shall be made, spread on the tax

1113 rolls, and collected in the same manner as herein provided in the case of irrigation districts.

1114 Section 28. Section **17A-2-1437** is amended to read:

1115 **17A-2-1437. Change of boundaries -- Petitions for and against inclusion within**  
1116 **district -- Hearing -- Petition protesting inclusion -- Hearing -- Appeal -- Annexation --**  
1117 **Hearings -- Objections -- Order of inclusion -- Findings and decrees -- Appeal.**

1118 (1) The boundaries of any district organized under this part may be changed as provided  
1119 by this section, but the change of boundaries of the district shall not impair or affect:

1120 (a) its organization;

1121 (b) its rights in or to property;

1122 (c) any of its other rights or privileges; or

1123 (d) any contract, obligation, lien, or charge for or upon which it might be liable or  
1124 chargeable had the change of boundaries not been made.

1125 (2) (a) (i) The owners of lands which are either contiguous or noncontiguous to the district  
1126 and to each other may file a written petition with the board requesting that their lands be included  
1127 in the district. The petition shall contain:

1128 (A) a description of the tracts or body of land sought to be included; and

1129 (B) the signatures, acknowledged in the same form as conveyances of real estate, of the  
1130 owners of the lands.

1131 (ii) A petition filed in this form will be considered to give assent of the petitioners to the  
1132 inclusion within the district of the lands described in the petition.

1133 (b) The board shall, within 90 days after the filing of the petition, set and convene a  
1134 hearing to consider the petition and all objections.

1135 (c) The secretary of the board shall cause notice of the filing of the petition to be given and  
1136 published in the county in which the lands are situated. This notice shall state:

1137 (i) the names of petitioners;

1138 (ii) a description of lands mentioned;

1139 (iii) the request of the petitioners; and

1140 (iv) that all persons interested must appear at the office of the board at the time named in  
1141 the notice and state in writing why the petition should not be granted.

1142 (d) The board shall, at the appropriate time, proceed to hear the petition and review the  
1143 written objections to the petition. The failure of any person to show cause, in writing, shall be

1144 considered to be his assent to the inclusion of these lands within the district.

1145 (e) If any of the lands proposed for inclusion in the district are located within a  
1146 municipality, the petitioners shall, before the date of the hearing set by the board, obtain from the  
1147 municipality's governing body its written consent to the inclusion of the land located within the  
1148 municipality.

1149 (f) (i) If any of the lands proposed for inclusion in the district are located within a  
1150 municipality's proposed municipal expansion area established by the municipality's annexation  
1151 policy declaration adopted under Title 10, Chapter 2, Part 4, [~~Extension of Corporate Limits =~~  
1152 ~~Local Boundary Commissions~~] Annexation, the petitioners shall, before the date of the hearing set  
1153 by the board, obtain from that municipality's governing body its written consent to the inclusion  
1154 of the land located within the area proposed for municipal expansion.

1155 (ii) Subsection (2)(f)(i) does not apply if the land proposed for inclusion in the district is  
1156 located within the proposed municipal expansion area of more than one municipality in a county  
1157 of the first class.

1158 (g) If any of the lands proposed for inclusion in the district are located within a county not  
1159 previously containing any part of the district, the petitioners shall, before the date of the hearing  
1160 set by the board, obtain from the county's legislative body its written consent to the inclusion of  
1161 the land located within that county.

1162 (h) If any of the lands proposed for inclusion in the district are located within the  
1163 unincorporated portion of a county, the petitioners shall, before the date of the hearing set by the  
1164 board, obtain from the county's legislative body its written consent to the inclusion of that land.

1165 (i) If the petition is granted, the board shall make an order to that effect and file the petition  
1166 with the clerk of the court and upon order of the court the lands shall be included in the district.

1167 (3) (a) In addition to the method provided in Subsection (2), additional areas may be  
1168 included in a district by petition as described in this subsection. A written petition may be filed to  
1169 include:

1170 (i) irrigated lands;

1171 (ii) nonirrigated lands;

1172 (iii) land in towns and cities;

1173 (iv) other lands; or

1174 (v) any combination of lands under this subsection. These lands may be contiguous or

1175 noncontiguous to the district and to each other.

1176 (b) The petition must:

1177 (i) be filed in the district court of the county in which the petition for organization of the  
1178 original district was filed;

1179 (ii) include the signatures, acknowledged in the same form as conveyances of real estate,  
1180 of not fewer than 20% or 500, whichever is the lesser, of the owners of irrigated lands in the area,  
1181 but outside the corporate limits of a city or town;

1182 (iii) include the signatures, acknowledged in the same form as conveyances of real estate,  
1183 of not fewer than 5% or 100, whichever is the lesser, of the owners of nonirrigated lands and lands  
1184 within the incorporated limits of a city or town, which are within the area specified in the petition;

1185 (iv) list a description of each tract of land owned by the signer opposite the name of the  
1186 signer, with an indication that each tract, together with its improvements, has a taxable value of  
1187 not less than \$300; and

1188 (v) set forth:

1189 (A) a general description of the territory in the area sought to be included in the district;

1190 (B) the name of the district in which it is sought to be included;

1191 (C) the terms and conditions upon which inclusion is sought;

1192 (D) a statement that the property sought to be included will be benefited by the  
1193 accomplishment of the purposes for which the original district was formed; and

1194 (E) a request for inclusion of the area in the district.

1195 (c) No petition with the requisite signatures shall be declared null and void because of  
1196 alleged defects, but the court may permit the petition to be amended to conform to the facts by  
1197 correcting any errors. However, similar petitions or duplicate copies of the petition for the  
1198 inclusion of the same area may be filed and shall together be regarded as one petition. All petitions  
1199 filed prior to the hearing on the first petition shall be considered by the court the same as though  
1200 filed with the first petition. In determining whether the requisite number of landowners has signed  
1201 the petition, the names as they appear upon the tax roll shall be prima facie evidence of their  
1202 ownership.

1203 (d) At the time of filing the petition or at any time before, and prior to the time of hearing  
1204 on the petition, a bond shall be filed, with security approved by the court sufficient to pay all  
1205 expenses connected with the proceedings in the case. If at any time during the proceeding the court

1206 determines that the first bond is insufficient, the court may require that an additional bond be  
1207 obtained within ten days following the court's request. If the petitioner fails to obtain a bond, the  
1208 petition shall be dismissed.

1209 (e) Immediately after the filing of the petition, the district court of the county where the  
1210 petition is filed shall fix a place and time between 60 and 90 days after the petition is filed for a  
1211 hearing. The clerk of the court shall then publish notice of the pendency of the petition and of the  
1212 time and place of hearing. The clerk of the court shall also mail a copy of the notice by registered  
1213 mail to:

1214 (i) the board of directors of the district;

1215 (ii) the county legislative body of each of the counties with land within the area proposed  
1216 to be included in the district; and

1217 (iii) the governing body of each of the cities or towns having territory within the area  
1218 proposed to be included within the district.

1219 (f) If any of the lands proposed for inclusion in the district are located within a  
1220 municipality, the petitioners shall, before the date of the hearing set by the district court, obtain  
1221 from the municipality's governing body its written consent to the inclusion of the land located  
1222 within the municipality.

1223 (g) (i) If any of the lands proposed for inclusion in the district are located within a  
1224 municipality's proposed municipal expansion area established by the municipality's annexation  
1225 policy declaration adopted under Title 10, Chapter 2, Part 4, [~~Extension of Corporate Limits =~~  
1226 ~~Local Boundary Commissions~~] Annexation, the petitioners shall, before the date of the hearing set  
1227 by the board, obtain from that municipality's governing body its written consent to the inclusion  
1228 of the land located within the area proposed for municipal expansion.

1229 (ii) Subsection (3)(g)(i) does not apply if the land proposed for inclusion in the district is  
1230 located within the proposed municipal expansion area of more than one municipality in a county  
1231 of the first class.

1232 (h) If any of the lands proposed for inclusion in the district are located within a county not  
1233 previously containing any part of the district, the petitioners shall, before the date of the hearing  
1234 set by the district court, obtain from the county's legislative body its written consent to the  
1235 inclusion of the land located within that county.

1236 (i) If any of the lands proposed for inclusion in the district are located within the



1237 unincorporated portion of a county, the petitioners shall, before the date of the hearing set by the  
1238 district court, obtain from the county's legislative body its written consent to the inclusion of that  
1239 land.

1240 (j) After the filing of a petition for inclusion of an additional area and at least 30 days prior  
1241 to the time fixed by the court for the hearing on the petition, a petition protesting the inclusion of  
1242 the lands within the district may be filed in the clerk's office of the court where the proceeding for  
1243 inclusion is pending. The protest petition must contain:

1244 (i) the signatures, acknowledged in the same form as conveyances of real estate, of at least:

1245 (A) 35% of the owners of irrigated lands in the area sought to be included, but not within  
1246 the incorporated limits of a city or town; and

1247 (B) 20% of the owners of nonirrigated lands and lands within the incorporated limits of  
1248 a city or town within the area proposed to be included within the district; and

1249 (ii) a description of each tract of land opposite the name of the signer, with an indication  
1250 that each tract, together with its improvements, has an assessed value of at least \$300.

1251 (k) A landowner may protest if he:

1252 (i) did not sign the petition for inclusion; and

1253 (ii) owns land, including improvements thereon, which had a taxable value of at least \$300  
1254 as shown by the last preceding assessment.

1255 (l) If a petitioner signs the petition both as owner of irrigated and nonirrigated land, his  
1256 name counts only as an owner of irrigated lands.

1257 (m) On the day set for the hearing on the original petition, if it appears to the court that the  
1258 protesting petition does not meet the requirements of Subsection (3)(j), the court shall dismiss the  
1259 protesting petition and proceed with the original hearing as provided in this section. If the court  
1260 finds from the evidence that the protesting petition does qualify, the court shall dismiss the original  
1261 petition for inclusion. The finding of the court upon the question of valuation, the genuineness of  
1262 the signatures, and all matters of law and fact incident to this determination shall be final and  
1263 conclusive on all parties in interest whether appearing or not, unless within 30 days from entry of  
1264 the order of dismissal an appeal is taken to the Supreme Court.

1265 (n) (i) Any owner of real property in the proposed area who did not individually sign a  
1266 petition for the inclusion, but who desires to object to the inclusion, may, on or before ten days  
1267 prior to the date set for the cause to be heard, file an objection to the inclusion. This objection shall

1268 be heard by the court as an advanced case without unnecessary delay.

1269 (ii) An owner of irrigated lands may file a petition asking to have his irrigated lands  
1270 excluded from the inclusion pursuant to the requirements of Subsection (3)(n)(i). This petition  
1271 shall be heard by the district court on the date set for the hearing of the petition for inclusion of the  
1272 area and the district court shall exclude these irrigated lands from the area proposed for inclusion  
1273 within the district.

1274 (o) If it appears at the hearing that a petition for the inclusion has been signed and  
1275 presented as provided in Subsections (a) and (b), that each written consent required by Subsections  
1276 (3)(f), (g),(h), and (i) has been obtained, that the allegations of the petition are true, and that no  
1277 protesting petition has been filed, or if filed has been dismissed as provided in Subsection (3)(m),  
1278 the court shall:

1279 (i) adjudicate all questions of jurisdiction;

1280 (ii) find that the property described in the petition will, if included, be benefited by the  
1281 accomplishment of the purposes for which the original district was formed;

1282 (iii) declare the area included in the district;

1283 (iv) declare whether the area is annexed to an existing division, or constitutes a separate  
1284 division; and

1285 (v) declare whether the area can be properly represented by existing directors or whether  
1286 the number of directors shall be increased to provide for representation of the area annexed.

1287 However, prior to the entry of its decree including such area within the district, the court shall  
1288 obtain the verified consent of the board of directors of the district to the inclusion of such area.

1289 (p) If the court finds that the petition for inclusion has not been signed and presented  
1290 pursuant to this section, that any written consent required by Subsections (3)(f), (g), (h), and (i) has  
1291 not been obtained, or that the material facts are not as set forth in the petition filed, it shall dismiss  
1292 the proceedings and adjudge the costs against the signers of the petition in such proportion as it  
1293 considers just and equitable. An appeal to the Supreme Court shall lie from an order dismissing  
1294 the proceeding. Nothing in this part shall be construed to prevent the filing of a subsequent petition  
1295 or petitions for similar purposes, and the right to renew such proceeding is expressly granted.

1296 (4) (a) If lands are annexed into a public corporation which corporation is already part of  
1297 the district described in this part and these annexed lands are not located within the district's  
1298 boundaries, the board may make a finding that these lands are not part of the district, and that these

1299 lands are or may be benefited from the service provided by the district. Upon making this finding,  
1300 the board shall set a time and place for a public hearing to hear objections as to why these lands  
1301 should not be annexed and included within the district. The secretary of the board shall cause  
1302 notice of the time and place of the hearing to consider the inclusion of the lands within the district  
1303 to be given and published in the county in which the lands are situated. The notice shall:

1304 (i) state a general description of the lands;  
1305 (ii) state that the lands are being considered for inclusion within the district; and  
1306 (iii) give notice to all interested persons to appear at the time and place named in the notice  
1307 and show cause, in writing, as to why the lands should not be included within the district. The  
1308 secretary shall mail a copy of the notice by registered mail to the governing body of the public  
1309 corporation and to the landowners.

1310 (b) Before the date set for the hearing, the board shall obtain the written consent of the  
1311 public corporation's governing body to the inclusion of the lands into the district.

1312 (c) The board shall, at the time and place named in the notice or at any time at which the  
1313 hearing may be adjourned, proceed to hear all objections to the inclusion of the lands within the  
1314 district. The failure of any interested person to appear or show cause, in writing, shall be taken as  
1315 an assent on his part to the inclusion of the lands within the district. If, after hearing all objections  
1316 to the inclusion of the land within the district, the board has obtained the consent of the public  
1317 corporation's governing body as required in Subsection (4)(b) and determines that the lands will  
1318 be benefited by inclusion within the district, the board shall make an order to that effect. Upon  
1319 filing the order with the clerk of the court and upon order of the court, the lands shall be included  
1320 in the district.

1321 (d) A finding by the board that the lands will not be benefited by inclusion within the  
1322 district shall not preclude the board at any subsequent date from finding that changed conditions  
1323 or circumstances now benefit the lands. After making this finding the board may renew the  
1324 proceedings for inclusion of these lands in whole or in part and find that the lands will be benefited  
1325 by inclusion in the district and make an order to that effect. Upon filing the order with the clerk  
1326 of the court and upon order of the court, the lands shall be included in the district.

1327 (e) If the board finds that any portion of land to be annexed into the district is presently  
1328 receiving water from another public water system, the board shall exclude that portion of land from  
1329 the land to be annexed into the district.

1330 (5) Upon the entry of the decree, the clerk of the court shall transmit to the Division of  
1331 Corporations and Commercial Code and the county recorder in each of the counties having lands  
1332 in the area, copies of the findings and decrees of the court. The findings and decrees shall be filed  
1333 with the Division of Corporations and Commercial Code pursuant to the general laws concerning  
1334 corporations. Copies shall also be filed in the office of the county recorder in each county in which  
1335 the district is located where they will become permanent records. The recorder in each county shall  
1336 receive the fee designated by the county legislative body for filing and preservation. The Office  
1337 of the Lieutenant Governor shall receive fees as may be provided by law for like services in similar  
1338 cases.

1339 (6) If an order is entered establishing the inclusion of the area into the district, such order  
1340 shall be final unless within 30 days an appeal is taken to the Supreme Court. The entry of a final  
1341 order shall conclusively establish the inclusion of the area against all persons, except that the state  
1342 may attack the order in an action in the nature of a writ of quo warranto, commenced by the  
1343 attorney general within three months after the decree declaring the area included. The inclusion  
1344 of the area shall not be directly or collaterally questioned in any suit, action, or proceeding, except  
1345 as expressly authorized.

1346 (7) Any area included in a district pursuant to this part shall be subject to taxes and  
1347 assessments levied for the payment of indebtedness of the district which was outstanding at the  
1348 time of the entry of the order for inclusion, and for the payment of indebtedness thereafter incurred  
1349 as if the area were a part of the district as originally established.

1350 (8) The boundaries of any subdistrict may be changed in the manner provided in this part  
1351 for the change of the boundaries of districts.

1352 Section 29. Section **17A-2-1444** is amended to read:

1353 **17A-2-1444. Hearings to be advanced.**

1354 All cases in which there may arise a question of the validity of the organization of a water  
1355 conservancy district[;] or a question of the validity of any proceeding under this part, the question  
1356 shall be advanced as a matter of immediate public interest and concern, and heard at the earliest  
1357 practicable moment. The courts shall be open at all times for the purposes of this part.

1358 Section 30. Section **17A-2-1512** is amended to read:

1359 **17A-2-1512. Expense reimbursement.**

1360 A commissioner is entitled to the necessary expenses, including traveling expenses,

1361 incurred in the discharge of official duties.

1362 Section 31. Section **17A-2-1704** is amended to read:

1363 **17A-2-1704. Creation of authority -- Members.**

1364 (1) (a) The authority comprises ten members. If the requirements of Section 17A-2-1703  
1365 are met, the governor shall, with the advice and consent of the Senate, appoint six members of the  
1366 authority from the public-at-large.

1367 (b) The remaining four members of the authority are:

1368 (i) the executive director of the Department of Environmental Quality;

1369 (ii) the executive director of the Department of Community and Economic Development;

1370 (iii) the executive director of the Department of Natural Resources; and

1371 (iv) the executive director of the Department of Transportation.

1372 (2) Public-at-large members, no more than three of whom shall be from the same political  
1373 party, shall be appointed to six-year terms of office, subject to removal by the governor with or  
1374 without cause.

1375 (3) The governor shall name one public-at-large member as chairman of the authority  
1376 responsible for the call and conduct of authority meetings.

1377 (4) The authority may elect other officers as necessary.

1378 (5) Five members of the authority present at a properly noticed meeting constitute a  
1379 quorum for the transaction of official authority business.

1380 (6) Public-at-large members are entitled to per diem and expenses[;] for each day devoted  
1381 to authority business at the rates established by the director of the Division of Finance under  
1382 Sections 63A-3-106 and 63A-3-107.

1383 Section 32. Section **17A-2-1709** is amended to read:

1384 **17A-2-1709. Security for obligations -- Provisions of security instruments.**

1385 (1) The principal and interest on any obligation issued pursuant to this part shall be secured  
1386 by:

1387 (a) a pledge and assignment of the proceeds earned by the facility built and acquired with  
1388 the proceeds of the obligations;

1389 (b) a mortgage or trust deed on the facility built and acquired with the proceeds from the  
1390 obligations; and

1391 (c) such other security on the facility as is deemed most advantageous by the authority.

1392 (2) Obligations authorized for issuance under this part and any mortgage or other security  
1393 given to secure such obligations may contain any provisions customarily contained in security  
1394 instruments, including, but not limited to:

1395 (a) the fixing and collection of fees from the facility;

1396 (b) the maintenance of insurance on the facility;

1397 (c) the creation and maintenance of special funds to receive revenues earned by the facility;

1398 and

1399 (d) the rights and remedies available to obligation holders in the event of default.

1400 (3) All mortgages, trust deeds, security agreements, or trust indentures on a facility shall  
1401 provide, in the event of foreclosure, that no deficiency judgment may be entered against the  
1402 authority, the state, or any of the state's political subdivisions.

1403 (4) Any mortgage or other security instrument securing such obligations may provide that  
1404 in the event of a default in the payment of principal or interest or in the performance of any  
1405 agreement, that payment or performance may be enforced by the appointment of a receiver with  
1406 power to charge and collect fees and to apply the revenues from the facility in accordance with the  
1407 provisions of the security instrument.

1408 (5) Any mortgage or other security instrument made pursuant to this part may also provide  
1409 that in the event of default in payment or breach of a condition, that the mortgage may be  
1410 foreclosed or otherwise satisfied in any manner permitted by law, and that the trustee under the  
1411 mortgage or the holder of any obligation secured by such mortgage may, if the highest bidder,  
1412 purchase the security at foreclosure sale.

1413 Section 33. Section **17A-2-1803** is amended to read:

1414 **17A-2-1803. Area -- Procedures -- Appeals.**

1415 (1) A regional service area may consist of:

1416 (a) all or part of any county; and

1417 (b) areas that are not contiguous.

1418 (2) (a) Only one regional service area may be located in a county.

1419 (b) (i) A county service area may not reorganize as a regional service area on or after May  
1420 4, 1998.

1421 (ii) No regional service area may be created on or after May 4, 1998.

1422 (3) The adoption of this part does not affect the existence, operation, or establishment of

1423 any county service area operating under Title 17A, Chapter 2, Part 4, County Service Areas.

1424 (4) After it is reorganized, the county service area shall be a regional service area subject  
1425 to this part containing all of the territory of the county service area, and not subject to Chapter 2,  
1426 Part 4.

1427 (5) (a) Beginning on the effective date of the resolution reorganizing the county service  
1428 area as a regional service area, the regional service area is reorganized with all the rights,  
1429 privileges, [and] powers, and limitations under this part.

1430 (b) (i) Any outstanding bonds, notes, contracts, or other obligations of any former county  
1431 service area shall be the bonds, notes, contracts, and obligations of the new regional service area  
1432 which is taking its place with like effect as if issued or entered into by the regional service area.

1433 (ii) Any election authorizing the issuance of bonds of the former county service area shall  
1434 have the same effect as a bond election held under this part.

1435 (c) Taxes at the most recent rate levied by the former county service area may continue to  
1436 be levied by the regional service area.

1437 (d) All assets of the former county service area, including both real and personal property,  
1438 shall be the property of the regional service area with the same effect as if originally constructed,  
1439 purchased, leased, or otherwise acquired by the regional service area and the contracts of the  
1440 former county service area shall be the contracts of the regional service area.

1441 (e) The employees, officers, and agents of the former county service area shall be the  
1442 employees, officers, and agents of the regional service area and all employee benefits, including  
1443 pension plans shall carry forward to the regional service area.

1444 (f) Until amended, the bylaws, rules, regulations, policies, and procedures of the former  
1445 county service area shall be the bylaws, rules, regulations, policies, and procedures of the regional  
1446 service area.

1447 (6) The conversion of a county service area to a regional service area may not impair or  
1448 affect any existing contract, obligation, lien, charge, or bond for or upon which the county service  
1449 area might be liable or chargeable had the conversion not taken place.

1450 (7) (a) Any aggrieved person may appeal the decision of the governing authority of the  
1451 county service area to reorganize the county service area as a regional service area to the district  
1452 court in the county where the regional service area is located.

1453 (b) If that appeal is not filed within 30 days after the effective date of the resolution

1454 reorganizing the county service area as a regional service area, the reorganization shall be final and  
1455 conclusive.

1456 (c) In the appeal, the district court shall affirm the reorganization unless the person  
1457 challenging the reorganization establishes by clear and convincing evidence that:

1458 (i) the county service area did not qualify to reorganize as a regional service area under the  
1459 criteria specified in this section; or

1460 (ii) the board of trustees of the county service area substantially failed to follow the  
1461 procedural requirements of this section in reorganizing the county service area as a regional service  
1462 area.

1463 Section 34. Section **17A-2-1805** is amended to read:

1464 **17A-2-1805. Body corporate -- Authority.**

1465 (1) Beginning on the effective date of the resolution reorganizing a county service area as  
1466 a regional service area, the regional service area shall be a body corporate and politic and a quasi-  
1467 municipal public corporation.

1468 (2) The regional service area, acting through its board of trustees, shall, without in any way  
1469 limiting the powers granted to regional service areas by the provisions of this part, have the  
1470 following authority:

1471 (a) The right to sue and be sued.

1472 (b) The power to enter into contracts to carry out the functions of the regional service area,  
1473 including the power to enter into contracts with the United States of America and any of its  
1474 agencies, municipal corporations, counties, or other public corporations, county service areas or  
1475 districts, or any other political subdivision of the state, including any entity created under [the]  
1476 Title 11, Chapter 13, Interlocal Cooperation Act, (and any county, municipal or other public  
1477 corporation, or political subdivision shall have the power to enter into contracts with regional  
1478 service areas organized under this part).

1479 (c) The regional service area, the county, and any municipality lying in whole or in part  
1480 within the boundaries of the regional service area, are encouraged to coordinate and cooperate with  
1481 one another regarding such matters as traffic control and planning and zoning approvals in the  
1482 vicinity of facilities owned or operated by the regional service area, signs approaching or on  
1483 property owned or operated by the regional service area, approvals for mass gatherings for special  
1484 events, and security and crowd control at facilities owned or operated by the regional service area.



1485 This coordination and cooperation may take the form of one or more interlocal cooperation  
1486 agreements. Any bond obligations of a legal or administrative entity created under the Utah  
1487 Interlocal Cooperation Act with which a regional service area may contract as provided in this  
1488 section may not be counted as an obligation of the regional service area for purposes of this part.

1489 (d) The power to impose and collect charges or fees for any commodities, services, or  
1490 facilities afforded by the regional service area to its customers and to pledge all or any part of the  
1491 revenues so derived to the payment of any bonds of the regional service area, whether the bonds  
1492 are issued as revenue bonds or as general obligations of the regional service area. Where revenue  
1493 bonds are issued payable solely from the revenues of commodities, services, and facilities, the fees  
1494 and charges imposed shall always be sufficient to carry out the provisions of the resolution  
1495 authorizing the bonds. The board of trustees may act and adopt the regulations necessary to assure  
1496 the collection and enforcement of all fees and charges imposed. Any of the commodities, services,  
1497 and facilities furnished to a consumer by the regional service area may be suspended if any fees  
1498 and charges due the regional service area are not paid in full when due. Higher fees may be  
1499 charged for services provided to participants who reside outside the boundaries of the regional  
1500 service area.

1501 (e) The power to sell, lease, mortgage, encumber, or otherwise dispose of any properties  
1502 owned by the regional service area under the terms and conditions approved by the board of  
1503 trustees.

1504 (f) The power to own any property or property interests approved by the board of trustees  
1505 to carry out the purposes of the regional service area and the power to acquire the same by  
1506 purchase, lease, gift, devise, bequest, or any other lawful means.

1507 (g) The power to exercise all powers of eminent domain possessed by counties in the  
1508 manner provided by law for the exercise of eminent domain power by counties.

1509 (h) The right to employ officers, employees, consultants, and agents, including attorneys,  
1510 accountants, engineers, and fiscal agents, and to fix their compensation.

1511 (i) The power to cause to be levied taxes on all taxable property in the regional service area  
1512 as provided in this part.

1513 (j) The right to set meeting times.

1514 (k) The right to adopt an official seal.

1515 (l) The right to adopt bylaws and regulations for the conduct of its business.

- 1516 (m) The right to operate under a trade name or an assumed name.
- 1517 (n) The right to establish a fiscal year, beginning either on January 1 or July 1.
- 1518 (o) Other rights and powers as are reasonably necessary for the efficient operation of the
- 1519 regional service area or to undertake any lawful activity, including all the rights, powers, and
- 1520 authority of the former county service area, and the authority to provide all the services and
- 1521 facilities that were provided by the former county service area.

1522 Section 35. Section **17A-3-209** is amended to read:

1523 **17A-3-209. Payment of contracts -- Progress payments -- Retainage.**

1524 (1) (a) Any contract for work in any special improvement district and any contract for the

1525 purchase or exchange of property necessary to be acquired in order to make improvements in any

1526 special improvement district may provide that the contract price or property price shall be paid,

1527 or, at the option of the governing entity, may be paid, in whole or in part, by the issuance of special

1528 improvement bonds issued against the funds created by assessments levied to pay the costs and

1529 expenses of improvements in the special improvement district or by interim warrants issued as

1530 authorized by this part at the time the special improvement bonds or interim warrants, as the case

1531 may be, may be legally issued and delivered. If any contract is not paid from these sources in

1532 whole or in part, or if paid in part, to the extent not so paid from these sources, the governing entity

1533 shall be responsible for advancing funds for payment of the contract price or property price from

1534 the general funds of the governing entity or from other funds legally available for this purpose as

1535 provided in the contract.

1536 (b) From the proceeds of the sale of interim warrants or special improvement bonds, or

1537 from funds paid on assessments not pledged for the payment of the bonds or warrants, the

1538 governing entity may reimburse itself for the amount paid from its general funds or other funds,

1539 except that the governing entity may not reimburse itself for any of the costs of making the

1540 improvements properly chargeable to the governing entity for which assessments may not be

1541 levied.

1542 (2) Any contract for work in a special improvement district may provide for payments to

1543 the contractor as the work progresses. If the contract so provides, payments may be made from

1544 time to time [~~to the extent of~~] for an amount not to exceed 95% of the value of the work done to

1545 the date of payment, as determined by estimates of the project engineer, with final payment to be

1546 made only after completion of the work by the contractor and acceptance of the work by the

1547 governing entity. If moneys payable to the contractor as the work progresses are retained, they  
1548 shall be retained or withheld and released as provided in Section 13-8-5.

1549 Section 36. Section **17A-3-210** is amended to read:

1550 **17A-3-210. Interim warrants.**

1551 (1) (a) As work proceeds in a special improvement district, the governing body may issue  
1552 interim warrants against the district:

1553 (i) for an amount not to exceed 90% [in] of the value of the work previously done, upon  
1554 estimates of the project engineer;

1555 (ii) after completion of the work and acceptance of the work by the project engineer and  
1556 by the governing body, for 100% of the value of the work completed; and

1557 (iii) where improvements in the district require the acquisition of property, for not more  
1558 than the property price.

1559 (b) Subject to the provisions of Section 17A-3-209, the governing body may issue warrants  
1560 to:

1561 (i) a contractor, to apply at par value on the contract price for the improvements; or

1562 (ii) to the owner of the acquired property, to apply at par value on the property price.

1563 (c) The governing body may also issue and sell warrants at not less than par value in a  
1564 manner determined by the governing body and apply the proceeds of the sale towards payment of  
1565 the contract price and property price.

1566 (2) (a) Interim warrants shall bear interest from date of issue until paid.

1567 (b) The governing body shall fix the interest rate or rates.

1568 (c) The governing body may fix a maturity date for each interim warrant. If a warrant  
1569 matures before the governing body has available to it the sources of payment itemized in  
1570 Subsection (3)(a), (b), (c), or (d), it may authorize the issuance of a new interim warrant to pay the  
1571 principal and interest on the warrant falling due.

1572 (d) Interest accruing on interim warrants shall be included as a cost of the improvements.

1573 (3) The governing body shall pay interim warrants and interest on the warrants from one  
1574 or more of the following sources:

1575 (a) issuance of or proceeds from the sale of special improvement bonds issued against the  
1576 district;

1577 (b) cash received from the payment for improvements;

- 1578 (c) payment of assessments not pledged to the payment of the bonds;
- 1579 (d) the guaranty fund if appropriate; or
- 1580 (e) proceeds of an interim warrant.
- 1581 (4) With the authorization of the governing body, the governing entity may purchase any
- 1582 or all of the interim warrants issued against the district and may use the governing entity's general
- 1583 funds for this purchase.

1584 Section 37. Section **17A-3-303** is amended to read:

1585 **17A-3-303. Definitions.**

1586 As used in this part:

1587 (1) (a) "Assessment" means a special tax levied against property within a special

1588 improvement district to pay all or a portion of the costs of making improvements in the district.

1589 (b) "Assessment" or "assessments" in Subsection 17A-3-321 (3) and Sections 17A-3-322,

1590 17A-3-324, 17A-3-325, 17A-3-326, 17A-3-331, 17A-3-332, 17A-3-333, 17A-3-338, and

1591 17A-3-340, include any reduced payment obligations.

1592 (2) (a) "Bonds" or "special improvement bonds" means bonds issued under this part

1593 payable from assessments, improvement revenues, and from the special improvement guaranty

1594 fund, or reserve fund, as applicable, established as provided in this part.

1595 (b) "Bonds" or "special improvement bonds" in the following provisions include any

1596 special improvement refunding bonds:

1597 (i) Subsection 17A-3-304~~(2)~~(3)(d);

1598 (ii) Sections 17A-3-321, 17A-3-322, 17A-3-325, 17A-3-326, 17A-3-327, 17A-3-331,

1599 17A-3-332, and 17A-3-333;

1600 (iii) Section 17A-3-336, except the reference in that section to "bond fund"; and

1601 (iv) Sections 17A-3-337, 17A-3-339, and 17A-3-342.

1602 (3) (a) "Connection fee" means a fee:

1603 (i) charged by the governing body to connect onto the municipal sewer, water, gas, or

1604 electrical system; and

1605 (ii) used to finance special improvements in a special improvement district or to pay for

1606 the privilege of using existing improvements of the municipality.

1607 (b) "Connection fee" includes a fee charged by the governing body to pay for the costs of

1608 connecting onto the municipal sewer, water, gas, or electrical system even though the

1609 improvements are installed on the assessed owner's property.

1610 (4) "Contract price" means the amount payable to one or more contractors for the  
1611 designing, engineering, inspection, and making of improvements in a special improvement district.  
1612 The costs of improvements, other than designing, engineering, and inspection costs, shall be  
1613 incurred under any contract let to the lowest responsible bidder as required by this part, including  
1614 amounts payable for extra or additional work when authorized by the governing body or in  
1615 accordance with the terms of the contract, less appropriate credit for work deleted from the  
1616 contract when authorized by the governing body, or in accordance with the contract.

1617 (5) "Economic promotion activities" means promotion and developmental activities such  
1618 as sponsoring festivals and markets in the downtown area, promoting business investment in the  
1619 downtown area, helping to coordinate public and private actions in the downtown area, and  
1620 developing and issuing publications on the downtown area designed to improve the economic  
1621 well-being of the downtown area.

1622 (6) "Governing body" means the board of commissioners or city council of a city or the  
1623 town council of a town.

1624 (7) "Improvement revenues" means any charges, fees, or other revenues received by a  
1625 municipality from improvements described in Section 17A-3-304.

1626 (8) "Incidental refunding costs" means any costs of issuing special improvement refunding  
1627 bonds and of calling, retiring, or paying prior bonds, including legal fees, accounting fees, charges  
1628 of fiscal agents, escrow agents, and trustees, underwriting discount, printing costs, giving of  
1629 notices, any premium necessary in the calling or retiring of the prior bonds, any other costs that  
1630 the governing body determines are necessary or desirable in connection with the issuance of  
1631 special improvement refunding bonds, and any interest on the prior bonds that is required to be  
1632 paid in connection with the issuance of the special improvement refunding bonds.

1633 (9) "Installment payment date" means the date on which installment payments of  
1634 assessments are payable.

1635 (10) "Municipality" means a city or town of this state.

1636 (11) (a) "Net improvement revenues" means all improvement revenues received by a  
1637 municipality since the last installment payment date minus all amounts payable by the municipality  
1638 from those improvement revenues for items other than the payment of interim warrants and special  
1639 improvement bonds.

1640 (b) "Net improvement revenues" shall be calculated as of any installment payment date.

1641 (12) "Optional improvements" means improvements in a special improvement district that  
1642 may be conveniently installed at the same time as other improvements in the district and that the  
1643 governing body provides may be installed at the option of the property owner on whose property  
1644 or for whose particular benefit the improvements are made, including private driveways, irrigation  
1645 ditches, and water turnouts.

1646 (13) "Overhead costs" means the actual costs incurred by a municipality in connection with  
1647 a special improvement district for appraisals, legal fees, financial advisory charges, escrow and  
1648 trustee fees, publishing and mailing notices, levying assessments, and all other incidental costs  
1649 relating to the district.

1650 (14) "Prior bonds" means the outstanding special improvement bonds that are refunded  
1651 by an issue of special improvement refunding bonds.

1652 (15) "Prior ordinance" means the ordinance levying the assessments from which the prior  
1653 bonds and the interest on those bonds are payable.

1654 (16) "Property" means real property or any interest in real property.

1655 (17) "Property price" means the purchase or condemnation price of property acquired in  
1656 order to make improvements in a special improvement district.

1657 (18) "Reduced payment obligations" means the reduced amounts of the assessments levied,  
1658 the interest on assessments established in the prior ordinance, or both, as set forth in the amending  
1659 ordinance described in Section 17A-3-329.

1660 (19) "Special improvement district" or "district" means a district created for the purpose  
1661 of making improvements under this part.

1662 (20) "Special improvement fund" means the fund established under Section 17A-3-326.

1663 (21) "Special improvement refunding bonds" means any obligations issued to refund any  
1664 special improvement bonds.

1665 Section 38. Section **17A-3-412** is amended to read:

1666 **17A-3-412. Control of district by governing authority -- Administrative board of**  
1667 **directors -- Powers.**

1668 (1) After the adoption of the resolution establishing a district, the district so established  
1669 shall be under the control of the governing authority. However, the governing authority may  
1670 appoint an administrative board consisting of any number of directors as the governing authority

1671 shall determine. [~~Said director~~] The directors shall receive no pay for their services as directors,  
1672 but may be reimbursed for reasonable and authorized out-of-pocket expenses they may incur as  
1673 directors.

1674 (2) All actions taken by the board shall constitute recommendations to the governing  
1675 authority and shall not constitute official action. The board shall have the power, subject to  
1676 approval of the governing authority, to:

- 1677 (a) adopt and alter rules and regulations for the operation of the district;  
1678 (b) determine broad matters of policy regarding the operation of the district; and  
1679 (c) assist the governing authority in the operation of the district in any manner that the  
1680 governing authority may direct.

1681 Section 39. Section **17A-3-701** is amended to read:

1682 **17A-3-701. Local substance abuse authorities -- Responsibilities.**

1683 (1) All county governing bodies in this state are local substance abuse authorities. Within  
1684 legislative appropriations and county matching funds required by this section, and under the policy  
1685 direction of the state Board of Substance Abuse and the administrative direction of the Division  
1686 of Substance Abuse within the Department of Human Services, local substance abuse authorities  
1687 shall provide substance abuse services to residents of their respective counties. Two or more  
1688 county governing bodies may join to provide substance abuse prevention and treatment services.

1689 (2) The governing bodies may establish acceptable ways of apportioning the cost of  
1690 substance abuse services. Any agreement for joint substance abuse services may designate the  
1691 treasurer of one of the participating counties as the custodian of moneys available for those joint  
1692 services, and that the designated treasurer, or other disbursing officer, may make payments from  
1693 those moneys for such purposes upon audit of the appropriate auditing officer or officers  
1694 representing the participating counties. The agreement may provide for joint operation of services  
1695 and facilities or for operation of services and facilities under contract by one participating local  
1696 substance abuse authority for other participating local substance abuse authorities.

1697 (3) (a) All county governing bodies, as local substance abuse authorities, are accountable  
1698 to the Department of Human Services, the Department of Health, and the state with regard to the  
1699 use of state and federal funds received from those departments for substance abuse services,  
1700 regardless of whether the services are provided by a private contract provider.

1701 (b) A local substance abuse authority shall comply, and require compliance by its contract

1702 provider, with all directives issued by the Department of Human Services and the Department of  
1703 Health regarding the use and expenditure of state and federal funds received from those  
1704 departments for the purpose of providing substance abuse programs and services. The Department  
1705 of Human Services and Department of Health shall ensure that those directives are not duplicative  
1706 or conflicting, and shall consult and coordinate with local substance abuse authorities with regard  
1707 to programs and services.

1708 (4) Local substance abuse authorities shall:

1709 (a) review and evaluate substance abuse prevention and treatment needs and services;

1710 (b) annually prepare and submit a plan to the division for funding and service delivery; the  
1711 plan shall include, but is not limited to, primary prevention, targeted prevention, early intervention,  
1712 and treatment services;

1713 (c) establish and maintain, either directly or by contract, programs licensed under Title  
1714 62A, Chapter 2, Licensure of Programs and Facilities;

1715 (d) appoint directly or by contract[,] a full or part time director for substance abuse  
1716 programs, and prescribe his duties;

1717 (e) provide input and comment on new and revised policies established by the state Board  
1718 of Substance Abuse;

1719 (f) establish and require contract providers to establish administrative, clinical, personnel,  
1720 financial, and management policies regarding substance abuse services and facilities, in accordance  
1721 with the policies of the state Board of Substance Abuse, and state and federal law;

1722 (g) establish mechanisms allowing for direct citizen input;

1723 (h) annually contract with the Division of Substance Abuse to provide substance abuse  
1724 programs and services in accordance with the provisions of Title 62A, Chapter 8, Substance  
1725 Abuse;

1726 (i) comply with all applicable state and federal statutes, policies, audit requirements,  
1727 contract requirements, and any directives resulting from those audits and contract requirements;

1728 (j) promote or establish programs for the prevention of substance abuse within the  
1729 community setting through community-based prevention programs;

1730 (k) provide funding equal to at least 20% of the state funds that it receives to fund services  
1731 described in the plan; and

1732 (l) comply with the requirements and procedures of Title 11, Chapter 13, Interlocal



1733 Cooperation Act, Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations  
1734 and Other Local Entities, and Title 17A, Chapter 1, Part 4, Uniform Fiscal Procedures for Special  
1735 Districts Act.

1736 (5) Before disbursing any public funds, local substance abuse authorities shall require that  
1737 all entities that receive any public funds from a local substance abuse authority agree in writing  
1738 that:

1739 (a) the division may examine the entity's financial records;

1740 (b) the county auditor may examine and audit the entity's financial records; and

1741 (c) the entity will comply with the provisions of Subsection (3)(b).

1742 (6) Local substance abuse authorities may receive property, grants, gifts, supplies,  
1743 materials, contributions, and any benefit derived therefrom, for substance abuse services. If those  
1744 gifts are conditioned upon their use for a specified service or program, they shall be so used.

1745 (7) (a) For purposes of this section "public funds" means the same as that term is defined  
1746 in Section 17A-3-703.

1747 (b) Nothing in this section limits or prohibits an organization exempt under Section  
1748 501(c)(3), Internal Revenue Code, from using public funds for any business purpose or in any  
1749 financial arrangement that is otherwise lawful for that organization.

1750 Section 40. Section **17B-2-201** is amended to read:

1751 **17B-2-201. Definitions and general provisions.**

1752 (1) As used in this part:

1753 (a) "Applicable area" means:

1754 (i) for a county, the unincorporated area of the county that is included within the proposed  
1755 local district; or

1756 (ii) for a municipality, the area of the municipality that is included within the proposed  
1757 local district.

1758 (b) "Municipal" means of or relating to a municipality.

1759 (c) "Municipality" means a city or town.

1760 (d) "Petition" means a petition under Subsection 17B-2-203(1)(a) or (b).

1761 (e) "Political subdivision" means a county, city, town, local district under this chapter,  
1762 independent special district under Title 17A, Chapter 2, Independent Special Districts, or an entity  
1763 created by interlocal cooperation agreement under Title 11, Chapter 13, Interlocal Cooperation Act.

1764 (f) "Private," with respect to real property, means not owned by the United States or any  
1765 agency of the federal government, the state, a county, a municipality, a school district, an  
1766 independent special district under Title 17A, Chapter 2, Independent Special Districts, a local  
1767 district, or any other political subdivision of the state.

1768 (g) "Property owner petition" means a petition under Subsection 17B-2-203(1)(a).

1769 (h) "Property owner request" means a request under Section 17B-2-204 that is signed by  
1770 owners of real property as provided in Subsection 17B-2-204(2)(b)(i).

1771 [(j)] (i) "Registered owner request" means a request under Section 17B-2-204 that is  
1772 signed by registered voters as provided in Subsection 17B-2-204(2)(b)(ii).

1773 [(i)] (j) "Registered voter petition" means a petition under Subsection 17B-2-203(1)(b).

1774 (k) "Request" means a request as described in Section 17B-2-204.

1775 (l) "Responsible body" means the legislative body of:

1776 (i) the municipality in which the proposed local district is located, if the petition proposes  
1777 the creation of a local district located entirely within a single municipality;

1778 (ii) the county in which the proposed local district is located, if the petition proposes the  
1779 creation of a local district located entirely within a single county and all or part of the proposed  
1780 local district is located within:

1781 (A) the unincorporated part of the county; or

1782 (B) more than one municipality within the county; or

1783 (iii) if the petition proposes the creation of a local district located within more than one  
1784 county, the county whose boundaries include more of the area of the proposed local district than  
1785 is included within the boundaries of any other county.

1786 (m) "Responsible clerk" means the clerk of the county or the clerk or recorder of the  
1787 municipality whose legislative body is the responsible body.

1788 (n) "Unincorporated" means not included within a municipality.

1789 (2) For purposes of this part:

1790 (a) the owner of real property shall be the record title owner according to the records of  
1791 the county recorder on the date of the filing of the request or petition; and

1792 (b) the value of private real property shall be determined according to the last assessment  
1793 before the filing of the request or petition, as determined by:

1794 (i) the county under Title 59, Chapter 2, Part 3, County Assessment, for property subject

1795 to assessment by the county;

1796 (ii) the State Tax Commission under Title 59, Chapter 2, Part 2, Assessment of Property,  
1797 for property subject to assessment by the State Tax Commission; or

1798 (iii) the county, for all other property.

1799 (3) For purposes of each provision of this part that requires the owners of private real  
1800 property covering a percentage of the total private land area within the proposed local district to  
1801 sign a request, petition, or protest:

1802 (a) a parcel of real property may not be included in the calculation of the required  
1803 percentage unless the request or petition is signed by:

1804 (i) except as provided in Subsection (3)(a)(ii), owners representing a majority ownership  
1805 interest in that parcel; or

1806 (ii) if the parcel is owned by joint tenants or tenants by the entirety, 50% of the number  
1807 of owners of that parcel;

1808 (b) the signature of a person signing a request or petition in a representative capacity on  
1809 behalf of an owner is invalid unless:

1810 (i) the person's representative capacity and the name of the owner the person represents  
1811 are indicated on the request or petition with the person's signature; and

1812 (ii) the person provides documentation accompanying the request or petition that  
1813 reasonably substantiates the person's representative capacity; and

1814 (c) subject to Subsection (3)(b), a duly appointed personal representative may sign a  
1815 request or petition on behalf of a deceased owner.

1816 Section 41. Section **19-6-703** is amended to read:

1817 **19-6-703. Definitions.**

1818 (1) "Board" means the Solid and Hazardous Waste Control Board created in Section  
1819 19-1-106.

1820 (2) "Commission" means the State Tax Commission.

1821 (3) "Department" means the Department of Environmental Quality created in Title 19,  
1822 Chapter 1, General Provisions.

1823 (4) "Division" means the Division of Solid and Hazardous Waste as created in Section  
1824 19-1-105.

1825 (5) "DIY" means do it yourself.

1826 (6) "DIYer" means a person who generates used oil through household activities, including  
1827 maintenance of personal vehicles.

1828 (7) "DIYer used oil" means used oil a person generates through household activities,  
1829 including maintenance of personal vehicles.

1830 (8) "DIYer used oil collection center" means any site or facility that accepts or aggregates  
1831 and stores used oil collected only from DIYers.

1832 (9) "Executive secretary" means the executive secretary of the board.

1833 (10) "Hazardous waste" means any substance defined as hazardous waste under Title 19,  
1834 Chapter 6, Hazardous Substances.

1835 (11) "Lubricating oil" means the fraction of crude oil or synthetic oil used to reduce  
1836 friction in an industrial or mechanical device. Lubricating oil includes rerefined oil.

1837 (12) "Lubricating oil vendor" means the person making the first sale of a lubricating oil  
1838 in Utah.

1839 (13) "Manifest" means the form used for identifying the quantity and composition and the  
1840 origin, routing, and destination of used oil during its transportation from the point of collection to  
1841 the point of storage, processing, use, or disposal.

1842 (14) "Off-specification used oil" means used oil that exceeds levels of constituents and  
1843 properties as specified by board rule and consistent with 40 CFR 279, Standards for the  
1844 Management of Used Oil.

1845 (15) "On-specification used oil" means used oil that does not exceed levels of constituents  
1846 and properties as specified by board rule and consistent with 40 CFR 279, Standards for the  
1847 Management of Used Oil.

1848 (16) (a) "Processing" means chemical or physical operations under Subsection (b) designed  
1849 to produce from used oil, or to make used oil more amenable for production of:

1850 (i) gasoline, diesel, and other petroleum derived fuels;

1851 (ii) lubricants; or

1852 (iii) other products derived from used oil.

1853 (b) Processing includes:

1854 (i) blending used oil with virgin petroleum products;

1855 (ii) blending used oils to meet fuel specifications;

1856 (iii) filtration;

1857 (iv) simple distillation;

1858 (v) chemical or physical separation; and

1859 (vi) rerefining.

1860 (17) "Recycled oil" means oil reused for any purpose following its original use, including:

1861 (a) the purpose for which the oil was originally used; and

1862 (b) used oil processed or burned for energy recovery.

1863 (18) "Rerefining distillation bottoms" means the heavy fraction produced by vacuum  
1864 distillation of filtered and dehydrated used oil. The composition varies with column operation and  
1865 feedstock.

1866 (19) "Used oil" means any oil, refined from crude oil or a synthetic oil, that has been used  
1867 and as a result of that use is contaminated by physical or chemical impurities.

1868 (20) (a) "Used oil aggregation point" means any site or facility that accepts, aggregates,  
1869 or stores used oil collected only from other used oil generation sites owned or operated by the  
1870 owner or operator of the aggregation point, from which used oil is transported to the aggregation  
1871 point in shipments of no more than 55 gallons.

1872 (b) A used oil aggregation point may also accept oil from DIYers.

1873 (21) "Used oil burner" means a person who burns used oil for energy recovery.

1874 (22) "Used oil collection center" means any site or facility registered with the state to  
1875 manage used oil and that accepts or aggregates and stores used oil collected from used oil  
1876 generators, other than DIYers, who are regulated under this part and bring used oil to the collection  
1877 center in shipments of no more than 55 gallons and under the provisions of this part. Used oil  
1878 collection centers may accept DIYer used oil also.

1879 (23) "Used oil fuel marketer" means any person who:

1880 (a) directs a shipment of off-specification used oil from its facility to a used oil burner; or

1881 (b) first claims the used oil to be burned for energy recovery meets the used oil fuel  
1882 specifications of 40 CFR 279, Standards for the Management of Used Oil, except when the oil is  
1883 to be burned in accordance with rules for on-site burning in space heaters in accordance with 40  
1884 CFR 279.

1885 (24) "Used oil generator" means any person, by site, whose act or process produces used  
1886 oil or whose act first causes used oil to become subject to regulation.

1887 (25) "Used oil handler" means a person generating used oil, collecting used oil,

1888 transporting used oil, operating a transfer facility or aggregation point, processing or rerefining  
1889 used oil, or marketing used oil.

1890 (26) "Used oil processor or rerefiner" means a facility that processes used oil.

1891 (27) "Used oil transfer facility" means any transportation-related facility, including loading  
1892 docks, parking areas, storage areas, and other areas where shipments of used oil are held for more  
1893 than 24 hours during the normal course of transportation and not longer than 35 days.

1894 (28) (a) "Used oil transporter" means the following persons unless they are exempted  
1895 under Subsection (28)(b):

1896 (i) any person who transports used oil;

1897 (ii) any person who collects used oil from more than one generator and transports the  
1898 collected oil;

1899 (iii) except as exempted under Subsection (28)(b)(i), (ii), or (iii), any person who  
1900 transports collected DIYer used oil from used oil generators, collection centers, aggregation points,  
1901 or other facilities required to be permitted or registered under this part and where household DIYer  
1902 used oil is collected; and

1903 (iv) owners and operators of used oil transfer facilities.

1904 (b) "Used oil transporter" does not include:

1905 (i) persons who transport oil on site;

1906 (ii) generators who transport shipments of used oil totalling 55 gallons or less from the  
1907 generator to a used oil collection center as allowed under 40 CFR 279.24, Off-site Shipments;

1908 (iii) generators who transport shipments of used oil totalling 55 gallons or less from the  
1909 generator to a used oil aggregation point owned or operated by the same generator as allowed  
1910 under 40 CFR 279.24, Off-site Shipments;

1911 (iv) persons who transport used oil generated by DIYers from the initial generator to a used  
1912 oil generator, used oil collection center, used oil aggregation point, used oil processor or rerefiner,  
1913 or used oil burner subject to permitting or registration under this part; or

1914 (v) railroads that transport used oil and are regulated under [45] 49 U.S.C. [421 et seq.]  
1915 Subtitle V, Rail Programs, [federal Railroad Safety Act,] and 49 U.S.C. [1801] 5101 et seq.,  
1916 federal Hazardous Materials Transportation Uniform Safety Act.

1917 Section 42. Section **26-8a-402** is amended to read:

1918 **26-8a-402. Exclusive geographic service areas.**

1919 (1) Each ground ambulance provider license issued under this part shall be for an exclusive  
1920 geographic service area as described in the license. Only the licensed ground ambulance provider  
1921 may respond to an ambulance request that originates within the provider's exclusive geographic  
1922 service area, except as provided in Subsection (5) and Section 26-8a-416.

1923 (2) Each paramedic provider license issued under this part shall be for an exclusive  
1924 geographic service area as described in the license. Only the licensed paramedic provider may  
1925 respond to a paramedic request that originates within the exclusive geographic service area, except  
1926 as provided in Subsection (6) and Section 26-8a-416.

1927 (3) Nothing in this section may be construed as either requiring or prohibiting that the  
1928 formation of boundaries in a given location be the same for a licensed paramedic provider as it is  
1929 for a licensed ambulance provider.

1930 (4) (a) A licensed ground ambulance or paramedic provider may, as necessary, enter into  
1931 a mutual aid agreement to allow another licensed provider to give assistance in times of unusual  
1932 demand, as that term is defined by the committee in rule.

1933 (b) A mutual aid agreement shall include a formal written plan detailing the type of  
1934 assistance and the circumstances under which it would be given.

1935 (c) The parties to a mutual aid agreement shall submit a copy of the agreement to the  
1936 department.

1937 (d) Notwithstanding this Subsection (4), a licensed provider may not subcontract with  
1938 another entity to provide services in the licensed provider's exclusive geographic service area.

1939 (5) Notwithstanding Subsection (1), a licensed ground ambulance provider may respond  
1940 to an ambulance request that originates from the exclusive geographic area of another provider:

1941 (a) pursuant to a mutual aid agreement;

1942 (b) to render assistance on a case-by-case basis to that provider; and

1943 (c) as necessary to meet needs in time of disaster or other major emergency.

1944 (6) Notwithstanding Subsection (2), a licensed paramedic provider may respond to a  
1945 paramedic request that originates from the exclusive geographic area of another provider:

1946 (a) pursuant to a mutual aid agreement;

1947 (b) to render assistance on a case-by-case basis to that provider; and

1948 (c) as necessary to meet needs in time of disaster or other major emergency.

1949 Section 43. Section **26-8a-502** is amended to read:

1950           **26-8a-502. Illegal activity.**

1951           (1) Except as provided in Section 26-8a-308, a person may not:

1952           (a) practice or engage in the practice, represent himself to be practicing or engaging in the  
1953 practice, or [~~attempting~~] attempt to practice or engage in the practice of any activity that requires  
1954 a license, certification, or designation under this chapter unless that person is so licensed, certified,  
1955 or designated; or

1956           (b) offer an emergency medical service that requires a license, certificate, or designation  
1957 unless the person is so licensed, certified, or designated.

1958           (2) A person may not advertise or hold himself out as one holding a license, certification,  
1959 or designation required under this chapter, unless that person holds the license, certification, or  
1960 designation.

1961           (3) A person may not employ or permit any employee to perform any service for which  
1962 a license or certificate is required by this chapter, unless the person performing the service  
1963 possesses the required license or certificate.

1964           (4) A person may not wear, display, sell, reproduce, or otherwise use any Utah Emergency  
1965 Medical Services insignia without authorization from the department.

1966           (5) A person may not reproduce or otherwise use materials developed by the department  
1967 for certification or recertification testing or examination without authorization from the  
1968 department.

1969           (6) A person may not willfully summon an ambulance or emergency response vehicle or  
1970 report that one is needed when such person knows that the ambulance or emergency response  
1971 vehicle is not needed.

1972           (7) A person who violates this section is subject to Section 26-23-6.

1973           Section 44. Section **26-18-2** is amended to read:

1974           **26-18-2. Definitions.**

1975           As used in this chapter:

1976           (1) "Applicant" means any person who requests assistance under the medical programs of  
1977 the state.

1978           ~~[(3)]~~ (2) "Client" means a person who the department has determined to be eligible for  
1979 assistance under the Medicaid program or the Utah Medical Assistance Program established under  
1980 Section 26-18-10.



1981            [(2)] (3) "Division" means the Division of Health Care Financing within the department,  
1982 established under Section 26-18-2.1.

1983            (4) "Medicaid program" means the state program for medical assistance for persons who  
1984 are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act.

1985            (5) "Medical or hospital assistance" means services furnished or payments made to or on  
1986 behalf of recipients of medical or hospital assistance under state medical programs.

1987            (6) (a) "Passenger vehicle" means a self-propelled, two-axle vehicle intended primarily for  
1988 operation on highways and used by an applicant or recipient to meet basic transportation needs and  
1989 has a fair market value below 40% of the applicable amount of the federal luxury passenger  
1990 automobile tax established in 26 U.S.C. Sec. 4001 and adjusted annually for inflation.

1991            (b) "Passenger vehicle" does not include:

1992            (i) a commercial vehicle, as defined in Section 41-1a-102;

1993            (ii) an off-highway vehicle, as defined in Section 41-1a-102; or

1994            (iii) a motor home, as defined in Section 13-14-102.

1995            (7) "Recipient" means a person who has received medical or hospital assistance under the  
1996 Medicaid program or the Utah Medical Assistance Program established under Section 26-18-10.

1997            Section 45. Section **26-18-3.7** is amended to read:

1998            **26-18-3.7. Prepaid health care delivery systems.**

1999            (1) (a) Before July 1, 1996, the division shall submit to the Health Care Financing  
2000 Administration within the United States Department of Health and Human Services, an  
2001 amendment to the state's freedom of choice waiver. That amendment shall provide that the  
2002 following persons who are eligible for services under the state plan for medical assistance, who  
2003 reside in Salt Lake, Utah, Davis, or Weber counties, shall enroll in the recipient's choice of a health  
2004 care delivery system that meets the requirements of Subsection (2):

2005            (i) by July 1, 1994, 40% of eligible persons;

2006            (ii) by July 1, 1995, 65% of eligible persons; and

2007            (iii) by July 1, 1996, 100% of eligible persons.

2008            (b) The division may not enter into any agreements with mental health providers that  
2009 establish a prepaid capitated delivery system for mental health services that were not in existence  
2010 prior to July 1, 1993, until the application of the Utah Medicaid Hospital Provider Temporary  
2011 Assessment Act with regard to a specialty hospital as defined in Section 26-21-2 that may be

2012 engaged exclusively in rendering psychiatric or other mental health treatment is repealed.

2013 (c) The following are exempt from the requirements of Subsection (1)(a):

2014 (i) persons who:

2015 (A) receive medical assistance for the first time after July 1, 1996;

2016 (B) have a mental illness, as that term is defined in Section 62A-12-202; and

2017 (C) are receiving treatment for that mental illness. The division, when appropriate, shall  
2018 enroll these persons in a health care delivery system that meets the requirements of this section;

2019 (ii) persons who are institutionalized in a facility designated by the division as a nursing  
2020 facility or an intermediate care facility for the mentally retarded; or

2021 (iii) persons with a health condition that requires specialized medical treatment that is not  
2022 available from a health care delivery system that meets the requirements of this section.

2023 (2) In submitting the amendment to the state's freedom of choice waiver under Subsection  
2024 (1), the division shall ensure that the proposed health care delivery systems have at least the  
2025 following characteristics, so that the system:

2026 (a) is financially at risk, for a specified continuum of health care services, for a defined  
2027 population, and has incentives to balance the patient's need for care against the need for cost  
2028 control;

2029 (b) follows utilization and quality controls developed by the department;

2030 (c) is encouraged to promote the health of patients through primary and preventive care;

2031 (d) coordinates care to avoid unnecessary duplication and services;

2032 (e) conserves health care resources; and

2033 (f) if permissible under the waiver, utilizes private insurance plans including health  
2034 maintenance organizations and other private health care delivery organizations.

2035 (3) Subsection (2) does not prevent the division from contracting with other health care  
2036 delivery organizations if the division determines that it is advantageous to do so.

2037 (4) Health care delivery systems that meet the requirements of this section may provide  
2038 all services otherwise available under the state plan for medical assistance, except prescribed  
2039 drugs.

2040 (5) The division shall periodically report to the [~~Legislative~~] Health and [~~Environment~~  
2041 and] Human Services Interim [~~Committees~~] Committee regarding the development and  
2042 implementation of the amendment to the state's freedom of choice waiver required under this

2043 section.

2044 Section 46. Section **26-21-2** is amended to read:

2045 **26-21-2. Definitions.**

2046 As used in this chapter:

2047 (1) "Abortion clinic" means a facility, other than a general acute or specialty hospital, that  
2048 performs abortions and provides abortion services during the second trimester of pregnancy.

2049 (2) "Activities of daily living" means essential activities including:

2050 (a) dressing;

2051 (b) eating;

2052 (c) grooming;

2053 (d) bathing;

2054 (e) toileting;

2055 (f) ambulation;

2056 (g) transferring; and

2057 (h) self-administration of medication.

2058 (3) "Ambulatory surgical facility" means a freestanding facility, which provides surgical  
2059 services to patients not requiring hospitalization.

2060 (4) "Assistance with activities of daily living" means providing of or arranging for the  
2061 provision of assistance with activities of daily living.

2062 (5) (a) "Assisted living facility" means:

2063 (i) a type I assisted living facility, which is a residential facility that provides assistance  
2064 with activities of daily living and social care to two or more residents who:

2065 (A) require protected living arrangements; and

2066 (B) are capable of achieving mobility sufficient to exit the facility without the assistance  
2067 of another person; and

2068 (ii) a type II assisted living facility, which is a residential facility with a home-like setting  
2069 that provides an array of coordinated supportive personal and health care services available 24  
2070 hours per day to residents who have been assessed under department rule to need any of these  
2071 services.

2072 (b) Each resident in a type I or type II assisted living facility shall have a service plan based  
2073 on the assessment, which may include:

- 2074            [~~(a)~~] (i) specified services of intermittent nursing care;
- 2075            [~~(b)~~] (ii) administration of medication; and
- 2076            [~~(c)~~] (iii) support services promoting residents' independence and self sufficiency.
- 2077            (6) "Birthing center" means a freestanding facility, receiving maternal clients and
- 2078 providing care during pregnancy, delivery, and immediately after delivery.
- 2079            (7) "Committee" means the Health Facility Committee created in Section 26-1-7.
- 2080            (8) "Consumer" means any person not primarily engaged in the provision of health care
- 2081 to individuals or in the administration of facilities or institutions in which such care is provided
- 2082 and who does not hold a fiduciary position, or have a fiduciary interest in any entity involved in
- 2083 the provision of health care, and does not receive, either directly or through his spouse, more than
- 2084 1/10 of his gross income from any entity or activity relating to health care.
- 2085            (9) "End stage renal disease facility" means a facility which furnishes staff-assisted kidney
- 2086 dialysis services, self-dialysis services, or home-dialysis services on an outpatient basis.
- 2087            (10) "Freestanding" means existing independently or physically separated from another
- 2088 health care facility by fire walls and doors and administrated by separate staff with separate
- 2089 records.
- 2090            (11) "General acute hospital" means a facility which provides diagnostic, therapeutic, and
- 2091 rehabilitative services to both inpatients and outpatients by or under the supervision of physicians.
- 2092            (12) "Governmental unit" means the state, or any county, municipality, or other political
- 2093 subdivision or any department, division, board, or agency of the state, a county, municipality, or
- 2094 other political subdivision.
- 2095            (13) (a) "Health care facility" means general acute hospitals, specialty hospitals, home
- 2096 health agencies, hospices, nursing care facilities, residential-assisted living facilities, birthing
- 2097 centers, ambulatory surgical facilities, small health care facilities, abortion clinics, facilities owned
- 2098 or operated by health maintenance organizations, end stage renal disease facilities, and any other
- 2099 health care facility which the committee designates by rule.
- 2100            (b) "Health care facility" does not include the offices of private physicians or dentists,
- 2101 whether for individual or group practice.
- 2102            (14) "Health maintenance organization" means an organization, organized under the laws
- 2103 of any state which:
- 2104            (a) is a qualified health maintenance organization under 42 U.S.C. Sec. 300e-9; or

2105 (b) (i) provides or otherwise makes available to enrolled participants at least the following  
2106 basic health care services: usual physician services, hospitalization, laboratory, x-ray, emergency,  
2107 and preventive services and out-of-area coverage;

2108 (ii) is compensated, except for copayments, for the provision of the basic health services  
2109 listed in Subsection (14)(b)(i) to enrolled participants by a payment which is paid on a periodic  
2110 basis without regard to the date the health services are provided and which is fixed without regard  
2111 to the frequency, extent, or kind of health services actually provided; and

2112 (iii) provides physicians' services primarily directly through physicians who are either  
2113 employees or partners of such organizations, or through arrangements with individual physicians  
2114 or one or more groups of physicians organized on a group practice or individual practice basis.

2115 (15) (a) "Home health agency" means an agency, organization, or facility or a subdivision  
2116 of an agency, organization, or facility which employs two or more direct care staff persons who  
2117 provide licensed nursing services, therapeutic services of physical therapy, speech therapy,  
2118 occupational therapy, medical social services, or home health aide services on a visiting basis.

2119 (b) "Home health agency" does not mean an individual who provides services under the  
2120 authority of a private license.

2121 (16) "Hospice" means a program of care for the terminally ill and their families which  
2122 occurs in a home or in a health care facility and which provides medical, palliative, psychological,  
2123 spiritual, and supportive care and treatment.

2124 (17) "Nursing care facility" means a health care facility, other than a general acute or  
2125 specialty hospital, constructed, licensed, and operated to provide patient living accommodations,  
2126 24-hour staff availability, and at least two of the following patient services:

2127 (a) a selection of patient care services, under the direction and supervision of a registered  
2128 nurse, ranging from continuous medical, skilled nursing, psychological, or other professional  
2129 therapies to intermittent health-related or paraprofessional personal care services;

2130 (b) a structured, supportive social living environment based on a professionally designed  
2131 and supervised treatment plan, oriented to the individual's habilitation or rehabilitation needs; or

2132 (c) a supervised living environment that provides support, training, or assistance with  
2133 individual activities of daily living.

2134 (18) "Person" means any individual, firm, partnership, corporation, company, association,  
2135 or joint stock association, and the legal successor thereof.

2136 (19) "Resident" means a person 21 years of age or older who:

2137 (a) as a result of physical or mental limitations or age requires or requests services  
2138 provided in an assisted living facility; and

2139 (b) does not require intensive medical or nursing services as provided in a hospital or  
2140 nursing care facility.

2141 (20) "Small health care facility" means a four to sixteen bed facility that provides licensed  
2142 health care programs and services to residents who generally do not need continuous nursing care  
2143 or supervision.

2144 (21) "Specialty hospital" means a facility which provides specialized diagnostic,  
2145 therapeutic, or rehabilitative services in the recognized specialty or specialties for which the  
2146 hospital is licensed.

2147 (22) "Substantial compliance" means in a department survey of a licensee, the department  
2148 determines there is an absence of deficiencies which would harm the physical health, mental  
2149 health, safety, or welfare of patients or residents of a licensee.

2150 Section 47. Section **26-40-102** is amended to read:

2151 **26-40-102. Definitions.**

2152 As used in this chapter:

2153 (1) "Assessment" means the hospital provider assessment established in Section  
2154 26-40-111.

2155 (2) "Child" means a person who is under 19 years of age.

2156 (3) "Eligible child" means a child who qualifies for enrollment in the program as provided  
2157 in Section 26-40-105.

2158 (4) "Enrollee" means any child enrolled in the program.

2159 (5) "Freestanding ambulatory surgical facility" means an urban or rural nonhospital-based  
2160 or nonhospital-affiliated licensed facility, as defined in Section 26-21-2, as an ambulatory surgical  
2161 facility, with an organized professional staff that provides surgical services to patients who do not  
2162 require an inpatient bed.

2163 (6) (a) "Hospital" means any general acute hospital, as defined in Section 26-21-2,  
2164 operating in this state.

2165 (b) "Hospital" does not include:

2166 (i) a residential care or treatment facility, as defined in Subsections 62A-2-101[(16)] (14),

2167 [~~(17)~~] (15), and [~~(19)~~] (18);

2168 (ii) the Utah State Hospital;

2169 (iii) any rural hospital that operates outside of a metropolitan statistical area, a  
2170 metropolitan area, or an urbanized area as designated by the U.S. Bureau of Census; or

2171 (iv) any specialty hospital operating in this state, as defined in Section 26-21-2, that is  
2172 engaged exclusively in rendering psychiatric or other mental health treatment.

2173 (7) "Hospital-based ambulatory surgical facility" means an urban or rural on-hospital  
2174 campus or hospital-affiliated licensed facility with an organized professional staff that provides  
2175 surgical services to patients who do not require an inpatient bed.

2176 (8) "Plan" means the department's plan submitted to the United States Department of  
2177 Health and Human Services pursuant to 42 U.S.C. Sec. 1397ff.

2178 (9) "Program" means the Utah Children's Health Insurance Program created by this  
2179 chapter.

2180 Section 48. Section **26-44-101** is amended to read:

2181 **26-44-101. Title.**

2182 [~~The~~] This chapter is known as the "Tobacco Manufacturers Responsibility Act."

2183 Section 49. Section **26-44-202** is amended to read:

2184 **26-44-202. Definitions.**

2185 As used in this part:

2186 (1) "Adjusted for inflation" means increased in accordance with the formula for inflation  
2187 adjustment set forth in Exhibit C to the Master Settlement Agreement.

2188 (2) "Affiliate" means a person who directly or indirectly owns or controls, is owned or  
2189 controlled by, or is under common ownership or control with, another person. Solely for purposes  
2190 of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity  
2191 interest, or the equivalent thereof, of 10% or more, and the term "person" means an individual,  
2192 partnership, committee, association, corporation or any other organization or group of persons.

2193 (3) "Allocable share" means Allocable Share as that term is defined in the Master  
2194 Settlement Agreement.

2195 (4) "Cigarette" means any product that contains nicotine, is intended to be burned or heated  
2196 under ordinary conditions of use, and consists of or contains (a) any roll of tobacco wrapped in  
2197 paper or in any substance not containing tobacco; or (b) tobacco, in any form, that is functional in

2198 the product, which, because of its appearance, the type of tobacco used in the filler, or its  
2199 packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (c)  
2200 any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance,  
2201 the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or  
2202 purchased by, consumers as a cigarette described in clause (a) of this definition. The term  
2203 "cigarette" includes "roll-your-own[;]" (i.e., any tobacco which, because of its appearance, type,  
2204 packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers  
2205 as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of  
2206 "roll-your-own" tobacco shall constitute one individual "cigarette."

2207 (5) "Master Settlement Agreement" means the settlement agreement (and related  
2208 documents) entered into on November 23, 1998, by the State and leading United States tobacco  
2209 product manufacturers.

2210 (6) "Qualified escrow fund" means an escrow arrangement with a federally or State  
2211 chartered financial institution having no affiliation with any tobacco product manufacturer and  
2212 having assets of at least \$1,000,000,000 where such arrangement requires that such financial  
2213 institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the  
2214 tobacco product manufacturer placing the funds into escrow from using, accessing, or directing  
2215 the use of the funds' principal except as consistent with Subsection 26-44-203(2).

2216 (7) "Released claims" means Released Claims as that term is defined in the Master  
2217 Settlement Agreement.

2218 (8) "Releasing parties" means Releasing Parties as that term is defined in the Master  
2219 Settlement Agreement.

2220 (9) (a) "Tobacco product manufacturer" means an entity that after the date of enactment  
2221 of this Act directly (and not exclusively through any affiliate):

2222 (i) manufactures cigarettes anywhere that such manufacturer intends to be sold in the  
2223 United States, including cigarettes intended to be sold in the United States through an importer  
2224 (except where such importer is an original participating manufacturer (as that term is defined in  
2225 the Master Settlement Agreement) that will be responsible for the payments under the Master  
2226 Settlement Agreement with respect to such cigarettes as a result of the provisions of Subsection  
2227 II(mm) of the Master Settlement Agreement and that pays the taxes specified in Subsection II(z)  
2228 of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does



2229 not market or advertise such cigarettes in the United States);

2230 (ii) is the first purchaser anywhere for resale in the United States of cigarettes  
2231 manufactured anywhere that the manufacturer does not intend to be sold in the United States; or  
2232 (iii) becomes a successor of an entity described in Subsection (9)(a)(i) or (ii).

2233 (b) "Tobacco product manufacturer" shall not include an affiliate of a tobacco product  
2234 manufacturer unless such affiliate itself falls within any Subsection (9)(a)(i) through (iii).

2235 (10) "Units sold" means the number of individual cigarettes sold in the State by the  
2236 applicable tobacco product manufacturer (whether directly or through a distributor, retailer or  
2237 similar intermediary or intermediaries) during the year in question, as measured by excise taxes  
2238 collected by the State on packs (or "roll-your-own" tobacco containers) bearing the excise tax  
2239 stamp of the State. The State Tax Commission shall promulgate such regulations as are necessary  
2240 to ascertain the amount of State excise tax paid on the cigarettes of such tobacco product  
2241 manufacturer for each year.

2242 Section 50. Section **30-1-9** is amended to read:

2243 **30-1-9. Marriage by minors -- Consent of parent or guardian -- Juvenile court**  
2244 **authorization.**

2245 (1) For purposes of this section, "minor" means a male or female under 18 years of age.

2246 (2) (a) If at the time of applying for a license the applicant is a minor, and not before  
2247 married, a license may not be issued without the signed consent of the minor's father, mother, or  
2248 guardian given in person to the clerk; however:

2249 (i) if the parents of the minor are divorced, consent shall be given by the parent having  
2250 legal custody of the minor as evidenced by an oath of affirmation to the clerk;

2251 (ii) if the parents of the minor are divorced and have been awarded joint custody of the  
2252 minor, consent shall be given by the parent having physical custody of the minor the majority of  
2253 the time as evidenced by an oath of affirmation to the clerk; or

2254 (iii) if the minor is not in the custody of a parent, the legal guardian shall provide the  
2255 consent and provide proof of guardianship by court order as well as an oath of affirmation.

2256 (b) If the male or female is 15 years of age, the minor and ~~[their]~~ the parent or guardian of  
2257 the minor shall obtain a written authorization to marry from:

2258 (i) a judge of the court exercising juvenile jurisdiction in the county where either party to  
2259 the marriage resides; or

2260 (ii) a court commissioner as permitted by rule of the Judicial Council.

2261 (3) (a) Before issuing written authorization for a minor to marry, the judge or court  
2262 commissioner shall determine:

2263 (i) that the minor is entering into the marriage voluntarily; and

2264 (ii) the marriage is in the best interests of the minor under the circumstances.

2265 (b) The judge or court commissioner shall require that both parties to the marriage  
2266 complete premarital counseling. This requirement may be waived if premarital counseling is not  
2267 reasonably available.

2268 (c) The judge or court commissioner may require:

2269 (i) that the person continue to attend school, unless excused under Section 53A-11-102;

2270 and

2271 (ii) any other conditions that the court deems reasonable under the circumstances.

2272 (4) The determination required in Subsection (3) shall be made on the record. Any inquiry  
2273 conducted by the judge or commissioner may be conducted in chambers.

2274 Section 51. Section **30-3-38** is amended to read:

2275 **30-3-38. Pilot Program for Expedited Visitation Enforcement.**

2276 (1) There is established an Expedited Visitation Enforcement Pilot Program in the third  
2277 judicial district to be administered by the Administrative Office of the Courts from July 1, 1996,  
2278 to July 1, 2000.

2279 (2) As used in this section:

2280 (a) "Mediator" means a person who:

2281 (i) is qualified to mediate visitation disputes under criteria established by the  
2282 Administrative Office of the Courts; and

2283 (ii) agrees to follow billing guidelines established by the Administrative Office of the  
2284 Courts and this section.

2285 (b) "Services to facilitate visitation" or "services" means services designed to assist  
2286 families in resolving visitation problems through:

2287 (i) counseling;

2288 (ii) supervised visitation;

2289 (iii) neutral drop-off and pick-up;

2290 (iv) educational classes; and

2291 (v) other related activities.

2292 (3) (a) Under this pilot program, if a parent files a motion in the third district court alleging  
2293 that court-ordered visitation rights are being violated, the clerk of the court, after assigning the case  
2294 to a judge, shall refer the case to the administrator of this pilot program for assignment to a  
2295 mediator.

2296 (b) Upon receipt of a case, the mediator shall:

2297 (i) meet with the parents to address visitation issues within 15 days of the motion being  
2298 filed;

2299 (ii) assess the situation;

2300 (iii) facilitate an agreement on visitation between the parents; and

2301 (iv) determine whether a referral to a service provider under Subsection (3)(c) is  
2302 warranted.

2303 (c) While a case is in mediation, a mediator may refer the parents to a service provider  
2304 designated by the Department of Human Services for services to facilitate visitation if:

2305 (i) the services may be of significant benefit to the parents; or

2306 (ii) (A) a mediated agreement between the parents is unlikely; and

2307 (B) the services may facilitate an agreement.

2308 (d) At anytime during mediation, a mediator shall terminate mediation and transfer the  
2309 case to the administrator of the pilot program for referral to the judge to whom the case was  
2310 assigned under Subsection (2) if:

2311 (i) a written agreement between the parents is reached; or

2312 (ii) the parents are unable to reach an agreement through mediation; and

2313 (A) the parents have received services to facilitate visitation;

2314 (B) both parents object to receiving services to facilitate visitation; or

2315 (C) the parents are unlikely to benefit from receiving services to facilitate visitation.

2316 (e) Upon receiving a case from the administrator of the pilot program, a judge may:

2317 (i) review the agreement of the parents and, if acceptable, sign it as an order;

2318 (ii) order the parents to receive services to facilitate visitation;

2319 (iii) proceed with the case; or

2320 (iv) take other appropriate action.

2321 (4) (a) If a parent makes a particularized allegation of physical or sexual abuse of a child

2322 who is the subject of a visitation order against the other parent or a member of the other parent's  
2323 household to a mediator or service provider, the mediator or service provider shall immediately  
2324 report that information to:

2325 (i) the judge assigned to the case who may immediately issue orders and take other  
2326 appropriate action to resolve the allegation and protect the child; and

2327 (ii) the Division of Child and Family Services within the Department of Human Services  
2328 in the manner required by Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting  
2329 Requirements.

2330 (b) If an allegation under Subsection (4)(a) is made against a parent with visitation rights  
2331 or a member of that parent's household, visitation by that parent shall be supervised until:

2332 (i) the allegation has been resolved; or

2333 (ii) a court orders otherwise.

2334 (c) Notwithstanding an allegation under Subsection (4)(a), a mediator may continue to  
2335 mediate visitation problems and a service provider may continue to provide services to facilitate  
2336 visitation unless otherwise ordered by a court.

2337 (5) (a) The Department of Human Services may contract with one or more entities in  
2338 accordance with Title 63, Chapter 56, Utah Procurement Code, to provide:

2339 (i) services to facilitate visitation;

2340 (ii) case management services; and

2341 (iii) administrative services.

2342 (b) An entity who contracts with the Department of Human Services under Subsection  
2343 (5)(a) shall:

2344 (i) be qualified to provide one or more of the services listed in Subsection (5)(a); and

2345 (ii) agree to follow billing guidelines established by the Department of Human Services  
2346 and this section.

2347 (6) (a) Except as provided in Subsection (6)(b), the cost of mediation and the cost of  
2348 services to facilitate visitation shall be:

2349 (i) reduced to a sum certain;

2350 (ii) divided equally between the parents; and

2351 (iii) charged against each parent taking into account the ability of that parent to pay under  
2352 billing guidelines adopted in accordance with this section.

2353 (b) (i) A judge may order a parent to pay an amount in excess of that provided for in  
2354 Subsection (6)(a) if the parent:

2355 (A) failed to participate in good faith in mediation or services to facilitate visitation; or

2356 (B) made an unfounded assertion or claim of physical or sexual abuse of a child.

2357 (c) (i) The cost of mediation and services to facilitate visitation may be charged to parents  
2358 at periodic intervals.

2359 (ii) Mediation and services to facilitate visitation may only be terminated on the ground  
2360 of nonpayment if both parents are delinquent.

2361 (7) If a parent fails to cooperate in good faith in mediation or services to facilitate  
2362 visitation, a court may order, in subsequent proceedings, a temporary change in custody or  
2363 visitation.

2364 (8) (a) The Judicial Council may make rules to implement and administer the provisions  
2365 of this pilot program related to mediation.

2366 (b) The Department of Human Services may make rules to implement and administer the  
2367 provisions of this pilot program related to services to facilitate visitation.

2368 (9) (a) The Administrative Office of the Courts shall adopt outcome measures to evaluate  
2369 the effectiveness of the mediation component of this pilot program. Progress reports shall be  
2370 provided to the Judiciary Interim Committee by August 1998 and as requested thereafter by the  
2371 committee. At least once during this pilot program, the Administrative Office of the Courts shall  
2372 present to the committee the results of a survey that measures the effectiveness of the program in  
2373 terms of increased compliance with visitation orders and the responses of interested persons.

2374 (b) The Department of Human Services shall adopt outcome measures to evaluate the  
2375 effectiveness of the services component of this pilot program. Progress reports shall be provided  
2376 to the Judiciary Interim Committee by August 1998 and as requested thereafter by the committee.

2377 (c) The Administrative Office of the Courts and the Department of Human Services may  
2378 adopt joint outcome measures and file joint reports to satisfy the requirements of Subsections [8]  
2379 (8)(a) and (b).

2380 (10) (a) The Department of Human Services shall apply for federal funds designated for  
2381 visitation, if such funds are available.

2382 (b) This pilot program shall be funded through funds received under Subsection (10)(a),  
2383 the Children's Legal Defense Account as established in Section 63-63a-8, or other available

2384 funding. Without funding, the pilot program may not proceed.

2385 Section 52. Section **31A-5-103** is amended to read:

2386 **31A-5-103. Orders imposing and relaxing restrictions.**

2387 (1) The commissioner may by order subject an individual corporation not otherwise  
2388 subject to some or all of the restrictions of Subsections 31A-5-304[(5)](4), 31A-5-305(1)(a),  
2389 31A-5-305(2)(a)(i) and (ii), and 31A-5-410(1)(b) if he finds after a hearing that the individual  
2390 corporation's financial condition, management, and other circumstances require additional  
2391 regulation for the protection of the interests of insureds or the public. The commissioner shall  
2392 detail in writing the grounds for his order.

2393 (2) The commissioner may by order free a new corporation from any or all of the  
2394 restrictions generally applicable to new corporations under the provisions listed in Subsection (1),  
2395 if he is satisfied that the corporation's financial condition, management, and other circumstances  
2396 give assurance that the interests of insureds and the public will not be endangered by doing so.

2397 Section 53. Section **31A-16-103** is amended to read:

2398 **31A-16-103. Acquisition of control of or merger with domestic insurer -- Required**  
2399 **filings -- Content of statement -- Alternative filing materials -- Criminal background**  
2400 **information -- Approval by commissioner -- Dissenting shareholders -- Violations --**  
2401 **Jurisdiction, consent to service of process.**

2402 (1) (a) A person may not take the actions described in Subsections (1)(b) or (c) unless, at  
2403 the time any offer, request, or invitation is made or any such agreement is entered into, or prior to  
2404 the acquisition of securities if no offer or agreement is involved:

2405 (i) the person files with the commissioner a statement containing the information required  
2406 by this section;

2407 (ii) the person provides a copy of the statement described in Subsection (1)(a)(i) to the  
2408 insurer; and

2409 (iii) the commissioner approves the offer, request, invitation, agreement or acquisition.

2410 (b) Unless the person complies with Subsection (1)(a), a person other than the issuer may  
2411 not make a tender offer for, a request or invitation for tenders of, or enter into any agreement to  
2412 exchange securities, or seek to acquire or acquire in the open market or otherwise, any voting  
2413 security of a domestic insurer if after the acquisition, the person would directly, indirectly, by  
2414 conversion, or by exercise of any right to acquire be in control of the insurer.

2415 (c) Unless the person complies with Subsection (1)(a), a person may not enter into an  
2416 agreement to merge with or otherwise to acquire control of a domestic insurer or any person  
2417 controlling a domestic insurer.

2418 (d) (i) For purposes of this section a domestic insurer includes any person controlling a  
2419 domestic insurer unless the person as determined by the commissioner is either directly or through  
2420 its affiliates primarily engaged in business other than the business of insurance.

2421 (ii) The controlling person described in Subsection (1)(d)(i) shall file with the  
2422 commissioner a preacquisition notification containing the information required in Subsection (2)  
2423 30 calendar days before the proposed effective date of the acquisition.

2424 (iii) For the purposes of this section, "person" does not include any securities broker  
2425 holding less than 20% of the voting securities of an insurance company or of any person that  
2426 controls an insurance company in the usual and customary brokers function.

2427 (iv) This section applies to all domestic insurers and other entities licensed under Chapters  
2428 5, 7, 8, 9, and 11.

2429 (e) (i) An agreement for acquisition of control or merger as contemplated by this  
2430 Subsection (1) is not valid or enforceable unless the agreement:

2431 (A) is in writing; and

2432 (B) includes a provision that the agreement is subject to the approval of the commissioner  
2433 upon the filing of any applicable statement required under this chapter.

2434 (ii) A written agreement for acquisition or control that includes the provision described  
2435 in Subsection (1)(e)(i) satisfies the requirements of this Subsection (1).

2436 (2) The statement to be filed with the commissioner under Subsection (1) shall be made  
2437 under oath or affirmation and shall contain the following information:

2438 (a) the name and address of the "acquiring party," which means each person by whom or  
2439 on whose behalf the merger or other acquisition of control referred to in Subsection (1) is to be  
2440 effected; and

2441 (i) if the person is an individual:

2442 (A) the person's principal occupation;

2443 (B) a listing of all offices and positions held by the person during the past five years; and

2444 (C) any conviction of crimes other than minor traffic violations during the past ten years;

2445 and

2446 (ii) if the person is not an individual:

2447 (A) a report of the nature of its business operations during the past five years or for any  
2448 lesser period as the person and any of its predecessors has been in existence;

2449 (B) an informative description of the business intended to be done by the person and the  
2450 person's subsidiaries;

2451 (C) a list of all individuals who are or who have been selected to become directors or  
2452 executive officers of the person, or individuals who perform, or who will perform functions  
2453 appropriate to such positions; and

2454 (D) for each individual described in Subsection (2)(a)(ii)(C), the information required by  
2455 Subsection (2)(a)(i)(A) for each individual;

2456 (b) (i) the source, nature, and amount of the consideration used or to be used in effecting  
2457 the merger or acquisition of control;

2458 (ii) a description of any transaction in which funds were or are to be obtained for that  
2459 purpose of effecting the merger or acquisition of control, including any pledge of the insurer's  
2460 stock or the stock of any of its subsidiaries or controlling affiliates; and

2461 (iii) the identity of persons furnishing the consideration;

2462 (c) fully audited financial information, or other financial information considered  
2463 acceptable by the commissioner, of the earnings and financial condition of each acquiring party  
2464 for the preceding five fiscal years of each acquiring party, or for any lesser period the acquiring  
2465 party and any of its predecessors shall have been in existence, and similar unaudited information  
2466 prepared within the 90 days prior to the filing of the statement;

2467 (d) any plans or proposals which each acquiring party may have to:

2468 (i) liquidate the insurer;

2469 (ii) sell its assets;

2470 (iii) merge or consolidate the insurer with any person; or

2471 (iv) make any other material change in the insurer's business, corporate structure, or  
2472 management;

2473 (e) (i) the number of shares of any security referred to in Subsection (1) that each acquiring  
2474 party proposes to acquire;

2475 (ii) the terms of the offer, request, invitation, agreement, or acquisition referred to in  
2476 Subsection (1); and



- 2477 (iii) a statement as to the method by which the fairness of the proposal was arrived at;
- 2478 (f) the amount of each class of any security referred to in Subsection (1) that:
- 2479 (i) is beneficially owned; or
- 2480 (ii) concerning which there is a right to acquire beneficial ownership by each acquiring
- 2481 party;
- 2482 (g) a full description of any contract, arrangement, or understanding with respect to any
- 2483 security referred to in Subsection (1) in which any acquiring party is involved, including:
- 2484 (i) the transfer of any of the securities;
- 2485 (ii) joint ventures;
- 2486 (iii) loan or option arrangements;
- 2487 (iv) puts or calls;
- 2488 (v) guarantees of loans;
- 2489 (vi) guarantees against loss or guarantees of profits;
- 2490 (vii) division of losses or profits; or
- 2491 (viii) the giving or withholding of proxies;
- 2492 (h) a description of the purchase by any acquiring party of any security referred to in
- 2493 Subsection (1) during the 12 calendar months preceding the filing of the statement including:
- 2494 (i) the dates of purchase;
- 2495 (ii) the names of the purchasers; and
- 2496 (iii) the consideration paid or agreed to be paid for the purchase;
- 2497 (i) a description of any recommendations to purchase by any acquiring party any security
- 2498 referred to in Subsection (1) made during the 12 calendar months preceding the filing of the
- 2499 statement or any recommendations made by anyone based upon interviews or at the suggestion of
- 2500 the acquiring party;
- 2501 (j) (i) copies of all tender offers for, requests for, or invitations for tenders of, exchange
- 2502 offers for, and agreements to acquire or exchange any securities referred to in Subsection (1); and
- 2503 (ii) if distributed, copies of additional soliciting material relating to the transactions
- 2504 described in Subsection (2)(j)(i);
- 2505 (k) (i) the term of any agreement, contract, or understanding made with, or proposed to be
- 2506 made with, any broker-dealer as to solicitation of securities referred to in Subsection (1) for tender;
- 2507 and

2508 (ii) the amount of any fees, commissions, or other compensation to be paid to  
2509 broker-dealers with regard to any agreement, contract, or understanding described in Subsection  
2510 (2)(k)(i); and

2511 (l) any additional information the commissioner requires by rule, which the commissioner  
2512 determines to be:

2513 (i) necessary or appropriate for the protection of policyholders of the insurer; or

2514 (ii) in the public interest.

2515 (3) The department may request:

2516 (a) (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part  
2517 2, from the Bureau of Criminal Identification; and

2518 (ii) complete Federal Bureau of Investigation criminal background checks through the  
2519 national criminal history system.

2520 (b) Information obtained by the department from the review of criminal history records  
2521 received under Subsection (3)(a) shall be used by the department for the purpose of:

2522 (i) verifying the information in Subsection (2)(a)(i);

2523 (ii) determining the integrity of persons who would control the operation of an insurer; and

2524 (iii) preventing persons who violate 18 U.S.C. Sections 1033 and 1034 from engaging in  
2525 the business of insurance in the state.

2526 (c) If the department requests the criminal background information, the department shall:

2527 (i) pay to the Department of Public Safety the costs incurred by the Department of Public  
2528 Safety in providing the department criminal background information under Subsection (3)(a)(i);

2529 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau of  
2530 Investigation in providing the department criminal background information under Subsection  
2531 (3)(a)(ii); and

2532 (iii) charge the person required to file the statement referred to in Subsection (1) a fee  
2533 equal to the aggregate of Subsections (3)(c)(i) and (ii).

2534 (4) (a) If the source of the consideration under Subsection (2)(b)(i) is a loan made in the  
2535 lender's ordinary course of business, the identity of the lender shall remain confidential, if the  
2536 person filing the statement so requests.

2537 (b) Under Subsection (2)(e), the commissioner may require a statement of the adjusted  
2538 book value assigned by the acquiring party to each security in arriving at the terms of the offer,

2539 with "adjusted book value" meaning each security's proportional interest in the capital and surplus  
2540 of the insurer with adjustments that reflect:

2541 (i) [reflect] market conditions;

2542 (ii) business in force; and

2543 (iii) other intangible assets or liabilities of the insurer.

2544 (c) The description required by Subsection (2)(g) shall identify the persons with whom the  
2545 contracts, arrangements, or understandings have been entered into.

2546 (5) (a) If the person required to file the statement referred to in Subsection (1) is a  
2547 partnership, limited partnership, syndicate, or other group, the commissioner may require that all  
2548 the information called for by Subsections (2), (3), or (4) shall be given with respect to each:

2549 (i) partner of the partnership or limited partnership;

2550 (ii) member of the syndicate or group; and

2551 (iii) person who controls the partner or member.

2552 (b) If any partner, member, or person referred to in Subsection (5)(a) is a corporation, or  
2553 if the person required to file the statement referred to in Subsection (1) is a corporation, the  
2554 commissioner may require that the information called for by Subsection (2) shall be given with  
2555 respect to:

2556 (i) the corporation;

2557 (ii) each officer and director of the corporation; and

2558 (iii) each person who is directly or indirectly the beneficial owner of more than 10% of the  
2559 outstanding voting securities of the corporation.

2560 (6) If any material change occurs in the facts set forth in the statement filed with the  
2561 commissioner and sent to the insurer pursuant to Subsection (2), an amendment setting forth the  
2562 change, together with copies of all documents and other material relevant to the change, shall be  
2563 filed with the commissioner and sent to the insurer within two business days after the filing person  
2564 learns of such change.

2565 (7) If any offer, request, invitation, agreement, or acquisition referred to in Subsection (1)  
2566 is proposed to be made by means of a registration statement under the Securities Act of 1933, or  
2567 under circumstances requiring the disclosure of similar information under the Securities Exchange  
2568 Act of 1934, or under a state law requiring similar registration or disclosure, a person required to  
2569 file the statement referred to in Subsection (1) may use copies of any registration or disclosure

2570 documents in furnishing the information called for by the statement.

2571 (8) (a) The commissioner shall approve any merger or other acquisition of control referred  
2572 to in Subsection (1) unless, after a public hearing on the merger or acquisition, the commissioner  
2573 finds that:

2574 (i) after the change of control, the domestic insurer referred to in Subsection (1) would not  
2575 be able to satisfy the requirements for the issuance of a license to write the line or lines of  
2576 insurance for which it is presently licensed;

2577 (ii) the effect of the merger or other acquisition of control would substantially lessen  
2578 competition in insurance in this state or tend to create a monopoly in insurance;

2579 (iii) the financial condition of any acquiring party might:

2580 (A) jeopardize the financial stability of the insurer; or

2581 (B) prejudice the interest of:

2582 (I) its policyholders; or

2583 (II) any remaining securityholders who are unaffiliated with the acquiring party;

2584 (iv) the terms of the offer, request, invitation, agreement, or acquisition referred to in  
2585 Subsection (1) are unfair and unreasonable to the securityholders of the insurer;

2586 (v) the plans or proposals which the acquiring party has to liquidate the insurer, sell its  
2587 assets, or consolidate or merge it with any person, or to make any other material change in its  
2588 business or corporate structure or management, are:

2589 (A) unfair and unreasonable to policyholders of the insurer; and

2590 (B) not in the public interest; or

2591 (vi) the competence, experience, and integrity of those persons who would control the  
2592 operation of the insurer are such that it would not be in the interest of the policyholders of the  
2593 insurer and the public to permit the merger or other acquisition of control.

2594 (b) For purposes of Subsection (8)(a)(iv), the offering price for each security may not be  
2595 considered unfair if the adjusted book values under Subsection (2)(e):

2596 (i) are disclosed to the securityholders; and

2597 (ii) determined by the commissioner to be reasonable.

2598 (9) (a) The public hearing referred to in Subsection (8) shall be held within 30 days after  
2599 the statement required by Subsection (1) is filed.

2600 (b) (i) At least 20 days notice of the hearing shall be given by the commissioner to the

2601 person filing the statement.

2602 (ii) Affected parties may waive the notice required by this Subsection (9)(b).

2603 (iii) Not less than seven days notice of the public hearing shall be given by the person  
2604 filing the statement to:

2605 (A) the insurer; and

2606 (B) any person designated by the commissioner.

2607 (c) The commissioner shall make a determination within 30 days after the conclusion of  
2608 the hearing.

2609 (d) At the hearing, the person filing the statement, the insurer, any person to whom notice  
2610 of hearing was sent, and any other person whose interest may be affected by the hearing may:

2611 (i) present evidence;

2612 (ii) examine and cross-examine witnesses; and

2613 (iii) offer oral and written arguments.

2614 (e) (i) A person or insurer described in Subsection (9)(d) may conduct discovery  
2615 proceedings in the same manner as is presently allowed in the district courts of this state.

2616 (ii) All discovery proceedings shall be concluded not later than three days before the  
2617 commencement of the public hearing.

2618 (10) At the acquiring person's expense and consent, the commissioner may retain any  
2619 attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff,  
2620 which are reasonably necessary to assist the commissioner in reviewing the proposed acquisition  
2621 of control.

2622 (11) (a) (i) If a domestic insurer proposes to merge into another insurer, any securityholder  
2623 electing to exercise a right of dissent may file with the insurer a written request for payment of the  
2624 adjusted book value given in the statement required by Subsection (1) and approved under  
2625 Subsection (8), in return for the surrender of the security holder's securities.

2626 (ii) The request described in Subsection (11)(a)(i) shall be filed not later than ten days after  
2627 the day of the securityholders' meeting where the corporate action is approved.

2628 (b) The dissenting securityholder is entitled to and the insurer is required to pay to the  
2629 dissenting securityholder the specified value within 60 days of receipt of the dissenting security  
2630 holder's security.

2631 (c) Persons electing under this Subsection (11) to receive cash for their securities waive

2632 the dissenting shareholder and appraisal rights otherwise applicable under Title 16, Chapter 10a,  
2633 Part 13, Dissenters' Rights.

2634 (d) (i) This Subsection (11) provides an elective procedure for dissenting securityholders  
2635 to resolve their objections to the plan of merger.

2636 (ii) This section does not restrict the rights of dissenting securityholders under Title 16,  
2637 Chapter 10a, Utah Revised Business Corporation Act, unless this election is made under this  
2638 Subsection (11).

2639 (12) (a) All statements, amendments, or other material filed under Subsection (1), and all  
2640 notices of public hearings held under Subsection (8), shall be mailed by the insurer to its  
2641 securityholders within five business days after the insurer has received the statements,  
2642 amendments, other material, or notices.

2643 (b) Mailing expenses shall be paid by the person making the filing. As security for the  
2644 payment of these expenses, that person shall file with the commissioner an acceptable bond or  
2645 other deposit in an amount determined by the commissioner.

2646 (13) This section does not apply to any offer, request, invitation, agreement, or acquisition  
2647 that the commissioner by order exempts from the requirements of this section as:

2648 (a) not having been made or entered into for the purpose of, and not having the effect of,  
2649 changing or influencing the control of a domestic insurer; or

2650 (b) as otherwise not comprehended within the purposes of this section.

2651 (14) The following are violations of this section:

2652 (a) the failure to file any statement, amendment, or other material required to be filed  
2653 pursuant to Subsections (1), (2), and (5); or

2654 (b) the effectuation, or any attempt to effectuate, an acquisition of control of or merger  
2655 with a domestic insurer unless the commissioner has given the commissioner's approval to the  
2656 acquisition or merger.

2657 (15) (a) The courts of this state are vested with jurisdiction over:

2658 (i) a person who:

2659 (A) files a statement with the commissioner under this section; and

2660 (B) is not resident, domiciled, or authorized to do business in this state; and

2661 (ii) overall actions involving persons described in Subsection (15)(a)(i) arising out of a  
2662 violation of this section.

2663 (b) A person described in Subsection (15)(a) is considered to have performed acts  
2664 equivalent to and constituting an appointment of the commissioner by that person, to be that  
2665 person's lawful attorney upon whom may be served all lawful process in any action, suit, or  
2666 proceeding arising out of a violation of this section.

2667 (c) A copy of a lawful process described in Subsection (15)(b) shall be:

2668 (i) served on the commissioner; and

2669 (ii) transmitted by registered or certified mail by the commissioner to the person at that  
2670 person's last-known address.

2671 Section 54. Section **31A-22-302** is amended to read:

2672 **31A-22-302. Required components of motor vehicle insurance policies -- Exceptions.**

2673 (1) Every policy of insurance or combination of policies purchased to satisfy the owner's  
2674 or operator's security requirement of Section 41-12a-301 shall include:

2675 (a) motor vehicle liability coverage under Sections 31A-22-303 and 31A-22-304;

2676 (b) uninsured motorist coverage under Section 31A-22-305, unless affirmatively waived  
2677 under Subsection 31A-22-305 (4); and

2678 (c) underinsured motorist coverage under Section 31A-22-305, unless affirmatively waived  
2679 under Subsection 31A-22-305 [(8)] (9)(c).

2680 (2) Every policy of insurance or combination of policies, purchased to satisfy the owner's  
2681 or operator's security requirement of Section 41-12a-301, except for motorcycles, trailers, and  
2682 semitrailers, shall also include personal injury protection under Sections 31A-22-306 through  
2683 31A-22-309.

2684 (3) First party medical coverages may be offered or included in policies issued to  
2685 motorcycle, trailer, and semitrailer owners or operators. Owners and operators of motorcycles,  
2686 trailers, and semitrailers are not covered by personal injury protection coverages in connection with  
2687 injuries incurred while operating any of these vehicles.

2688 Section 55. Section **31A-22-604** is amended to read:

2689 **31A-22-604. Reimbursement by insurers of Medicaid benefits.**

2690 (1) As used in this section, "Medicaid" means the program under [42 U.S.C. 1396a or  
2691 Section 1902,] Title XIX of the federal Social Security Act.

2692 (2) Any disability insurer, including a group disability insurance plan, as defined in Section  
2693 607(1), Federal Employee Retirement Income Security Act of 1974, or health maintenance

2694 organization as defined in Section 31A-8-101, is prohibited from considering the availability or  
2695 eligibility for medical assistance in this or any other state under Medicaid, when considering  
2696 eligibility for coverage or making payments under its plan for eligible enrollees, subscribers,  
2697 policyholders, or certificate holders.

2698 (3) To the extent that payment for covered expenses has been made under the state  
2699 Medicaid program for health care items or services furnished to an individual in any case when a  
2700 third party has a legal liability to make payments, the state is considered to have acquired the rights  
2701 of the individual to payment by any other party for those health care items or services.

2702 (4) Title 26, Chapter 19, Medical Benefits Recovery Act, applies to reimbursement of  
2703 insurers of Medicaid benefits.

2704 Section 56. Section **31A-23-102** is amended to read:

2705 **31A-23-102. Definitions.**

2706 As used in this chapter:

2707 (1) Except as provided in Subsection (2):

2708 (a) "Escrow" is a license category that allows a person to conduct escrows, settlements,  
2709 or closings on behalf of a title insurance agency or a title insurer.

2710 (b) "Limited license" means a license that is issued for a specific product of insurance and  
2711 limits an individual or agency to transact only for those products.

2712 (c) "Search" is a license category that allows a person to issue title insurance commitments  
2713 or policies on behalf of a title insurer.

2714 (d) "Title marketing representative" means a person who:

2715 (i) represents a title insurer in soliciting, requesting, or negotiating the placing of:

2716 (A) title insurance; or

2717 (B) escrow, settlement, or closing services; and

2718 (ii) does not have a search or escrow license.

2719 (2) The following persons are not acting as agents, brokers, title marketing representatives,  
2720 or consultants when acting in the following capacities:

2721 (a) any regular salaried officer, employee, or other representative of an insurer or licensee  
2722 under this chapter who devotes substantially all of the officer's, employee's, or representative's  
2723 working time to activities other than those described in Subsection (1) and Subsections 31A-1-301  
2724 (51), (52), and (54) including the clerical employees of persons required to be licensed under this



2725 chapter;

2726 (b) a regular salaried officer or employee of a person seeking to purchase insurance, who  
2727 receives no compensation that is directly dependent upon the amount of insurance coverage  
2728 purchased;

2729 (c) a person who gives incidental advice in the normal course of a business or professional  
2730 activity, other than insurance consulting, if neither that person nor that person's employer receives  
2731 direct or indirect compensation on account of any insurance transaction that results from that  
2732 advice;

2733 (d) a person who, without special compensation, performs incidental services for another  
2734 at the other's request, without providing advice or technical or professional services of a kind  
2735 normally provided by an agent, broker, or consultant;

2736 (e) (i) a holder of a group insurance policy, or any other person involved in mass  
2737 marketing, but only:

2738 (A) with respect to administrative activities in connection with that type of policy,  
2739 including the collection of premiums; and

2740 (B) if the person receives no compensation for the activities described in Subsection  
2741 (2)(e)(i) beyond reasonable expenses including a fair payment for the use of capital; and

2742 (f) a person who gives advice or assistance without direct or indirect compensation or any  
2743 expectation of direct or indirect compensation.

2744 (3) "Actuary" means a person who is a member in good standing of the American  
2745 Academy of Actuaries.

2746 (4) "Agency" means a person other than an individual, and includes a sole proprietorship  
2747 by which a natural person does business under an assumed name.

2748 (5) "Broker" means an insurance broker or any other person, firm, association, or  
2749 corporation that for any compensation, commission, or other thing of value acts or aids in any  
2750 manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of  
2751 an insured other than itself.

2752 (6) "Bail bond agent" means any individual:

2753 (a) appointed by an authorized bail bond surety insurer or appointed by a licensed bail  
2754 bond surety company to execute or countersign undertakings of bail in connection with judicial  
2755 proceedings; and

- 2756 (b) who receives or is promised money or other things of value for this service.
- 2757 (7) "Captive insurer" means:
- 2758 (a) an insurance company owned by another organization whose exclusive purpose is to
- 2759 insure risks of the parent organization and affiliated companies; or
- 2760 (b) in the case of groups and associations, an insurance organization owned by the insureds
- 2761 whose exclusive purpose is to insure risks of member organizations, group members, and their
- 2762 affiliates.
- 2763 (8) "Controlled insurer" means a licensed insurer that is either directly or indirectly
- 2764 controlled by a broker.
- 2765 (9) "Controlling broker" means a broker who either directly or indirectly controls an
- 2766 insurer.
- 2767 (10) "Controlling person" means any person, firm, association, or corporation that directly
- 2768 or indirectly has the power to direct or cause to be directed, the management, control, or activities
- 2769 of a reinsurance intermediary.
- 2770 (11) "Insurer" is as defined in [Subsection] Section 31A-1-301~~[(48)]~~, except the following
- 2771 persons or similar persons are not insurers for purposes of Part 6 ~~[of this chapter]~~, Broker
- 2772 Controlled Insurers:
- 2773 (a) all risk retention groups as defined in:
- 2774 (i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;
- 2775 (ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and
- 2776 (iii) Title 31A, Chapter 15, Part II, Risk Retention Groups Act;
- 2777 (b) all residual market pools and joint underwriting authorities or associations; and
- 2778 (c) all captive insurers.
- 2779 (12) (a) "Managing general agent" means any person, firm, association, or corporation that:
- 2780 (i) manages all or part of the insurance business of an insurer, including the management
- 2781 of a separate division, department, or underwriting office;
- 2782 (ii) acts as an agent for the insurer whether it is known as a managing general agent,
- 2783 manager, or other similar term;
- 2784 (iii) with or without the authority, either separately or together with affiliates, directly or
- 2785 indirectly produces and underwrites an amount of gross direct written premium equal to, or more
- 2786 than 5% of, the policyholder surplus as reported in the last annual statement of the insurer in any

2787 one quarter or year; and

2788 (iv) either adjusts or pays claims in excess of an amount determined by the commissioner,  
2789 or that negotiates reinsurance on behalf of the insurer.

2790 (b) Notwithstanding Subsection (12)(a), the following persons may not be considered as  
2791 managing general agent for the purposes of this chapter:

2792 (i) an employee of the insurer;

2793 (ii) a U.S. manager of the United States branch of an alien insurer;

2794 (iii) an underwriting manager that, pursuant to contract:

2795 (A) manages all the insurance operations of the insurer;

2796 (B) is under common control with the insurer;

2797 (C) is subject to Title 31A, Chapter 16, Insurance Holding Companies; and

2798 (D) is not compensated based on the volume of premiums written; and

2799 (iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer  
2800 or inter-insurance exchange under powers of attorney.

2801 (13) "Producer" is a person who arranges for insurance coverages between insureds and  
2802 insurers.

2803 (14) "Qualified U.S. financial institution" means an institution that:

2804 (a) is organized or, in the case of a U.S. office of a foreign banking organization licensed,  
2805 under the laws of the United States or any state;

2806 (b) is regulated, supervised, and examined by U.S. federal or state authorities having  
2807 regulatory authority over banks and trust companies; and

2808 (c) has been determined by either the commissioner, or the Securities Valuation Office of  
2809 the National Association of Insurance Commissioners, to meet the standards of financial condition  
2810 and standing that are considered necessary and appropriate to regulate the quality of financial  
2811 institutions whose letters of credit will be acceptable to the commissioner.

2812 (15) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance  
2813 intermediary-manager as these terms are defined in Subsections (16) and (17).

2814 (16) "Reinsurance intermediary-broker" means a person other than an officer or employee  
2815 of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places  
2816 reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power  
2817 to bind reinsurance on behalf of the insurer.

2818 (17) (a) "Reinsurance intermediary-manager" means a person, firm, association, or  
2819 corporation who:

2820 (i) has authority to bind or who manages all or part of the assumed reinsurance business  
2821 of a reinsurer, including the management of a separate division, department, or underwriting  
2822 office; and

2823 (ii) acts as an agent for the reinsurer whether the person, firm, association, or corporation  
2824 is known as a reinsurance intermediary-manager, manager, or other similar term.

2825 (b) Notwithstanding Subsection (17)(a), the following persons may not be considered  
2826 reinsurance intermediary-managers for the purpose of this chapter with respect to the reinsurer:

2827 (i) an employee of the reinsurer;

2828 (ii) a U.S. manager of the United States branch of an alien reinsurer;

2829 (iii) an underwriting manager that, pursuant to contract:

2830 (A) manages all the reinsurance operations of the reinsurer;

2831 (B) is under common control with the reinsurer;

2832 (C) is subject to Title 31A, Chapter 16, Insurance Holding Companies; and

2833 (D) is not compensated based on the volume of premiums written; and

2834 (iv) the manager of a group, association, pool, or organization of insurers that:

2835 (A) engage in joint underwriting or joint reinsurance; and

2836 (B) are subject to examination by the insurance commissioner of the state in which the  
2837 manager's principal business office is located.

2838 (18) "Reinsurer" means any person, firm, association, or corporation duly licensed in this  
2839 state as an insurer with the authority to assume reinsurance.

2840 (19) "Surplus lines broker" means a person licensed under Subsection 31A-23-204(5) to  
2841 place insurance with unauthorized insurers in accordance with Section 31A-15-103.

2842 (20) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

2843 Section 57. Section **31A-23-503** is amended to read:

2844 **31A-23-503. Duties of insurers.**

2845 (1) The insurer shall have on file an independent financial examination, in a form  
2846 acceptable to the commissioner, of each managing general agent with which it has done business.

2847 (2) If a managing general agent establishes loss reserves, the insurer shall annually obtain  
2848 the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred

2849 and outstanding on business produced by the managing general agent. This is in addition to any  
2850 other required loss reserve certification.

2851 (3) The insurer shall at least semiannually conduct an on-site review of the underwriting  
2852 and claims processing operations of the managing general agent.

2853 (4) Binding authority for all reinsurance contracts or participation in insurance or  
2854 reinsurance syndicates shall rest with an officer of the insurer, who may not be affiliated with the  
2855 managing general agent.

2856 (5) Within 30 days after entering into or terminating a contract with a managing general  
2857 agent, the insurer shall provide written notification of the appointment or termination to the  
2858 commissioner. A notice of appointment of a managing general agent shall include:

2859 (a) a statement of duties that the applicant is expected to perform on behalf of the insurer;

2860 (b) the lines of insurance for which the applicant is to be authorized to act; and

2861 (c) any other information the commissioner may request.

2862 (6) An insurer shall review its books and records each quarter to determine if any producer,  
2863 as defined by Subsection 31A-23-102[~~(+2)~~](13), has become a managing general agent as defined  
2864 in Subsection 31A-23-102[~~(+1)~~](12). If the insurer determines that a producer has become a  
2865 managing general agent, the insurer shall promptly notify the producer and the commissioner of  
2866 the determination. The insurer and producer shall fully comply with the provisions of this chapter  
2867 within 30 days.

2868 (7) An insurer may not appoint officers, directors, employees, subproducers, or controlling  
2869 shareholders of its managing general agents to its board of directors. This Subsection (7) does not  
2870 apply to relationships governed by Title 31A, Chapter 16, Insurance Holding Companies, or  
2871 Chapter 23, Part 6, Broker Controlled Insurers, if it applies.

2872 Section 58. Section **31A-23-601** is amended to read:

2873 **31A-23-601. Applicability.**

2874 This part applies to licensed insurers, as defined in Subsection 31A-23-102[~~(+0)~~](11),  
2875 which are either domiciled in this state or domiciled in a state that does not have a substantially  
2876 similar law. All provisions of Title 31A, Chapter 16, Insurance Holding Companies, to the extent  
2877 they are not superseded by this part, continue to apply to all parties within holding company  
2878 systems subject to this part.

2879 Section 59. Section **31A-25-205** is amended to read:

2880           **31A-25-205. Financial responsibility.**

2881           (1) Every person licensed under this chapter shall, while licensed and for one year after  
2882 that date, maintain an insurance policy or surety bond, issued by an authorized insurer, in an  
2883 amount specified under Subsection (2), on a policy or contract form which is acceptable under  
2884 Subsection (3).

2885           (2) (a) Insurance policies or surety bonds satisfying the requirement of Subsection (1) shall  
2886 be in a face amount equal to at least 10% of the total funds handled by the administrator.  
2887 However, no policy or bond under this subsection may be in a face amount of less than \$5,000 nor  
2888 more than \$500,000.

2889           (b) In fixing the policy or bond face amount under Subsection (2)(a), the total funds  
2890 handled is the greater of the premiums received or claims paid through the administrator during  
2891 the previous calendar year, or, if no funds were handled during the preceding year, the total funds  
2892 reasonably anticipated to be handled by the administrator during the current calendar year.

2893           (c) This section does not prohibit any person dealing with the administrator from requiring,  
2894 by contract, insurance coverage in amounts greater than required under this section.

2895           (3) Insurance policies or surety bonds issued to satisfy Subsection (1) shall be on forms  
2896 approved by the commissioner. The policies or bonds shall require the insurer to pay, up to the  
2897 policy or bond face amount, any judgment obtained by participants in or beneficiaries of plans  
2898 administered by the insured licensee which arise from the negligence or culpable acts of the  
2899 licensee or any employee or agent of the licensee in connection with the activities described under  
2900 the first paragraph of [~~Section 31A-25-101~~] Subsection 31A-1-301(90). The commissioner may  
2901 require that policies or bonds issued to satisfy the requirements of this section require the insurer  
2902 to give the commissioner 20 day prior notice of policy cancellation.

2903           (4) The commissioner shall establish annual reporting requirements and forms to monitor  
2904 compliance with this section.

2905           (5) This section may not be construed as limiting any cause of action an insured would  
2906 otherwise have against the insurer.

2907           Section 60. Section **32A-1-105** is amended to read:

2908           **32A-1-105. Definitions.**

2909           As used in this title:

2910           (1) "Airport lounge" means a place of business licensed to sell alcoholic beverages, at

2911 retail, for consumption on its premises located at an international airport with a United States  
2912 Customs office on its premises.

2913 (2) "Alcoholic beverages" means "beer" and "liquor" as the terms are defined in this  
2914 section.

2915 (3) (a) "Alcoholic products" means all products that contain at least 63/100 of 1% of  
2916 alcohol by volume or at least 1/2 of 1% by weight, and are obtained by fermentation, infusion,  
2917 decoction, brewing, distillation, or any other process that uses any liquid or combinations of  
2918 liquids, whether drinkable or not, to create alcohol in an amount greater than the amount  
2919 prescribed in this Subsection (3)(a).

2920 (b) "Alcoholic products" does not include common extracts, vinegars, ciders, essences,  
2921 tinctures, food preparations, or over-the-counter drugs and medicines that otherwise come within  
2922 this definition.

2923 (4) "Beer" means all products that contain 63/100 of 1% of alcohol by volume or 1/2 of  
2924 1% of alcohol by weight, but not more than 4% of alcohol by volume or 3.2% by weight, and are  
2925 obtained by fermentation, infusion, or decoction of any malted grain. Beer may or may not contain  
2926 hops or other vegetable products. Beer includes products referred to as malt liquor, malted  
2927 beverages, or malt coolers.

2928 (5) (a) "Beer retailer" means any business establishment engaged, primarily or incidentally,  
2929 in the retail sale or distribution of beer to public patrons, whether for consumption on or off the  
2930 establishment's premises, and that is licensed to sell beer by the commission, by a local authority,  
2931 or both.

2932 (b) (i) "On-premise beer retailer" means any beer retailer engaged, primarily or  
2933 incidentally, in the sale or distribution of beer to public patrons for consumption on the beer  
2934 retailer's premises.

2935 (ii) "On-premise beer retailer" includes taverns.

2936 (c) (i) "Tavern" means any business establishment engaged primarily in the retail sale or  
2937 distribution of beer to public patrons for consumption on the establishment's premises, and that  
2938 is licensed to sell beer under Chapter 10, Part 2, On-Premise Beer Retailer Licenses.

2939 (ii) "Tavern" includes a beer bar, parlor, lounge, cabaret, and night club where the revenue  
2940 from the sale of beer exceeds the revenue of the sale of food, although food need not be sold in the  
2941 establishment.

- 2942 (6) "Billboard" means any light device, painting, drawing, poster, sign, signboard,  
2943 scoreboard, or other similar public display used to advertise, but does not include:
- 2944 (a) displays on beer delivery vehicles if the displays do not overtly promote the  
2945 consumption of alcoholic beverages;
- 2946 (b) displays in taverns and private clubs, if the displays are not visible to persons  
2947 off-premises;
- 2948 (c) point-of-sale displays, other than light devices, in retail establishments that sell beer  
2949 for off-premise consumption, if the displays are not visible to persons off-premises;
- 2950 (d) private business signs on the premises of any business engaged primarily in the  
2951 distribution of beer;
- 2952 (e) newspapers, magazines, circulars, programs, or other similar printed materials, if the  
2953 materials are not directed primarily to minors;
- 2954 (f) menu boards in retail establishments that sell beer for on-premise consumption if the  
2955 menu boards also contain food items;
- 2956 (g) handles on alcoholic beverage dispensing equipment that identify brands of products  
2957 being dispensed; and
- 2958 (h) displays at the site of a temporary special event for which a single event liquor permit  
2959 has been obtained from the commission or a temporary special event beer permit has been obtained  
2960 from a local authority to inform attendees of the location where alcoholic beverages are being  
2961 dispensed.
- 2962 (7) "Brewer" means any person engaged in manufacturing beer, malt liquor, or malted  
2963 beverages.
- 2964 (8) "Chartered bus" means a passenger bus, coach, or other motor vehicle provided by a  
2965 bus company to a group of persons pursuant to a common purpose, under a single contract, and  
2966 at a fixed charge in accordance with the bus company's tariff, for the purpose of giving the group  
2967 of persons the exclusive use of the bus and a driver to travel together to a specified destination or  
2968 destinations.
- 2969 (9) "Church" means a building:
- 2970 (a) set apart primarily for the purpose of worship;
- 2971 (b) in which religious services are held;
- 2972 (c) with which clergy is associated;



2973 (d) the main body of which is kept for that use and not put to any other use inconsistent  
2974 with its primary purpose; and

2975 (e) which is tax exempt under the laws of this state.

2976 (10) "Club" and "private club" means any nonprofit corporation operating as a social club,  
2977 recreational, fraternal, or athletic association, or kindred association organized primarily for the  
2978 benefit of its stockholders or members.

2979 (11) "Commission" means the Alcoholic Beverage Control Commission.

2980 (12) "Cork-finished wine" means a container of wine stopped by a cork and finished by  
2981 foil, lead, or other substance by the manufacturer.

2982 [~~(13)~~] "Council" means the Citizen's Council on Alcoholic Beverage Control.]

2983 [~~(14)~~] (13) "Department" means the Department of Alcoholic Beverage Control.

2984 [~~(15)~~] (14) "Distressed merchandise" means any alcoholic beverage in the possession of  
2985 the department that is saleable, but for some reason is unappealing to the public.

2986 [~~(16)~~] (15) "General food store" means any business establishment primarily engaged in  
2987 selling food and grocery supplies to public patrons for off-premise consumption.

2988 [~~(17)~~] (16) "Governing body" means the board of not fewer than five shareholders or  
2989 voting members of a private club who have been elected and authorized to control or conduct the  
2990 business and affairs of that club.

2991 [~~(18)~~] (17) "Guest" means a person accompanied by an active member or visitor of a club  
2992 who enjoys only those privileges derived from the host for the duration of the visit to the club.

2993 [~~(19)~~] (18) "Heavy beer" means all products that contain more than 4% alcohol by volume  
2994 obtained by fermentation, infusion, or decoction of any malted grain. "Heavy beer" is considered  
2995 "liquor" for the purposes of this title.

2996 [~~(20)~~] (19) "Identification card" means the card issued by the commissioner of the  
2997 Department of Public Safety under Title 53, Chapter 3, Part 8, Identification Card Act.

2998 [~~(21)~~] (20) "Interdicted person" means a person to whom the sale, gift, or provision of an  
2999 alcoholic beverage is prohibited by law or court order.

3000 [~~(22)~~] (21) "Licensee" means any person issued a license by the commission to sell,  
3001 manufacture, store, or allow consumption of alcoholic beverages on premises owned or controlled  
3002 by the person.

3003 [~~(23)~~] (22) "Limousine" means any motor vehicle licensed by the state or a local authority,

3004 other than a bus or taxicab:

3005 (a) in which the driver and passengers are separated by a partition, glass, or other barrier;  
3006 and

3007 (b) that is provided by a company to an individual or individuals at a fixed charge in  
3008 accordance with the company's tariff for the purpose of giving the individual or individuals the  
3009 exclusive use of the limousine and a driver to travel to a specified destination or destinations.

3010 [~~24~~] (23) (a) "Liquor" means alcohol, or any alcoholic, spiritous, vinous, fermented, malt,  
3011 or other liquid, or combination of liquids, a part of which is spiritous, vinous, or fermented, and  
3012 all other drinks, or drinkable liquids that contain more than 1/2 of 1% of alcohol by volume and  
3013 is suitable to use for beverage purposes.

3014 (b) "Liquor" does not include any beverage defined as a beer, malt liquor, or malted  
3015 beverage that has an alcohol content of less than 4% alcohol by volume.

3016 [~~25~~] (24) "Local authority" means:

3017 (a) the county legislative body of the county if the premises are located in an  
3018 unincorporated area of a county; or

3019 (b) the governing body of the city or town if the premises are located in an incorporated  
3020 city or town.

3021 [~~26~~] (25) "Manufacture" means to distill, brew, rectify, mix, compound, process, ferment,  
3022 or otherwise make an alcoholic product for personal use or for sale or distribution to others.

3023 [~~27~~] (26) "Member" means a person who, after paying regular dues, has full privileges  
3024 of a club under this title.

3025 [~~28~~] (27) "Minor" means any person under the age of 21 years.

3026 [~~29~~] (28) "Outlet" means a location other than a state store or package agency where  
3027 alcoholic beverages are sold pursuant to a license issued by the commission.

3028 [~~30~~] (29) "Package" means any container, bottle, vessel, or other receptacle containing  
3029 liquor.

3030 [~~31~~] (30) "Package agency" means a retail liquor location operated under a contractual  
3031 agreement with the department, by a person other than the state, who is authorized by the  
3032 commission to sell package liquor for consumption off the premises of the agency.

3033 [~~32~~] (31) "Package agent" means any person permitted by the commission to operate a  
3034 package agency pursuant to a contractual agreement with the department to sell liquor from

3035 premises that the package agent shall provide and maintain.

3036           [(33)] (32) "Permittee" means any person issued a permit by the commission to perform  
3037 acts or exercise privileges as specifically granted in the permit.

3038           [(34)] (33) "Person" means any individual, partnership, firm, corporation, association,  
3039 business trust, or other form of business enterprise, including a receiver or trustee, and the plural  
3040 as well as the singular number, unless the intent to give a more limited meaning is disclosed by the  
3041 context.

3042           [(35)] (34) "Policy" means a statement of principles established by the commission to  
3043 guide the administration of this title and the management of the affairs of the department.

3044           [(36)] (35) "Premises" means any building, enclosure, room, or equipment used in  
3045 connection with the sale, storage, service, manufacture, distribution, or consumption of alcoholic  
3046 products, unless otherwise defined in this title or in the rules adopted by the commission.

3047           [(37)] (36) "Prescription" means a writing in legal form, signed by a physician or dentist  
3048 and given to a patient for obtaining an alcoholic beverage for medicinal purposes only.

3049           [(38)] (37) (a) "Privately hosted event" or "private social function" means a specific social,  
3050 business, or recreational event for which an entire room, area, or hall has been leased or rented,  
3051 in advance by an identified group, and the event or function is limited in attendance to people who  
3052 have been specifically designated and their guests.

3053           (b) "Privately hosted event" and "private social function" does not include events or  
3054 functions to which the general public is invited, whether for an admission fee or not.

3055           [(39)] (38) (a) "Public building" means any building or permanent structure owned or  
3056 leased by the state, a county, or local government entity that is used for:

3057           (i) public education;

3058           (ii) transacting public business; or

3059           (iii) regularly conducting government activities.

3060           (b) "Public building" does not mean or refer to any building owned by the state or a county  
3061 or local government entity when the building is used by anyone, in whole or in part, for proprietary  
3062 functions.

3063           [(40)] (39) "Representative" means an individual who is compensated by salary,  
3064 commission, or any other means for representing and selling the alcoholic beverage products of  
3065 a manufacturer, supplier, or importer of liquor, wine, or heavy beer.

3066            [(41)] (40) "Residence" means the person's principal place of abode within Utah.

3067            [(42)] (41) "Restaurant" means any business establishment:

3068            (a) where a variety of foods is prepared and complete meals are served to the general  
3069 public;

3070            (b) located on a premises having adequate culinary fixtures for food preparation and dining  
3071 accommodations; and

3072            (c) that is engaged primarily in serving meals to the general public.

3073            [(43)] (42) "Retailer" means any person engaged in the sale or distribution of alcoholic  
3074 beverages to the consumer.

3075            [(44)] (43) (a) "Rule" means a general statement adopted by the commission to guide the  
3076 activities of those regulated or employed by the department, to implement or interpret this title, or  
3077 to describe the organization, procedure, or practice requirements of the department in order to carry  
3078 out the intent of the law and ensure its uniform application. This definition includes any  
3079 amendment or repeal of a prior rule.

3080            (b) "Rule" does not include a rule concerning only the internal management of the  
3081 department that does not affect private rights or procedures available to the public, including  
3082 intradepartmental memoranda.

3083            [(45)] (44) (a) "Sample" includes:

3084            (i) department samples;

3085            (ii) industry representative samples; and

3086            (iii) department trade show samples.

3087            (b) "Department sample" means liquor, wine, and heavy beer that has been placed in the  
3088 possession of the department for testing, analysis, and sampling.

3089            (c) "Department trade show sample" means liquor, wine, and heavy beer that has been  
3090 placed in the possession of the department for use in a trade show conducted by the department.

3091            (d) "Industry representative sample" means liquor, wine, and heavy beer that has been  
3092 placed in the possession of the department for testing, analysis, and sampling by local industry  
3093 representatives on the premises of the department to educate themselves of the quality and  
3094 characteristics of the product.

3095            (e) "Retail licensee wine tasting" means cork-finished wine checked out under the  
3096 procedures provided in Section 32A-12-603:

3097 (i) to a local industry representative holding a license described in Section 32A-8-501;

3098 (ii) to conduct the tasting of cork-finished wines to a retail licensee licensed to sell wine  
3099 at retail for consumption on its premises; and

3100 (iii) for the purpose of disseminating information and educating the retail licensees  
3101 described in Subsection ~~[(45)]~~ (44)(e)(ii) as to the quality and characteristics of the cork-finished  
3102 wines.

3103 ~~[(46)]~~ (45) (a) "School" means any building used primarily for the general education of  
3104 minors.

3105 (b) "School" does not include nursery schools, infant day care centers, or trade or technical  
3106 schools.

3107 ~~[(47)]~~ (46) "Sell," "sale," and "to sell" means any transaction, exchange, or barter whereby,  
3108 for any consideration, an alcoholic beverage is either directly or indirectly transferred, solicited,  
3109 ordered, delivered for value, or by any means or under any pretext is promised or obtained,  
3110 whether done by a person as a principal, proprietor, or as an agent, servant, or employee, unless  
3111 otherwise defined in this title or the rules made by the commission.

3112 ~~[(48)]~~ (47) "Small brewer" means a brewer who manufactures less than 60,000 barrels of  
3113 beer and heavy beer per year.

3114 ~~[(49)]~~ (48) (a) "State label" means the official label designated by the commission affixed  
3115 to all liquor containers sold in the state.

3116 (b) "State label" includes the department identification mark and inventory control number.

3117 ~~[(50)]~~ (49) (a) "State store" means a facility for the sale of package liquor located on  
3118 premises owned or leased by the state and operated by state employees.

3119 (b) "State store" does not apply to any licensee, permittee, or to package agencies.

3120 ~~[(51)]~~ (50) "Supplier" means any person selling alcoholic beverages to the department.

3121 ~~[(52)]~~ (51) "Temporary domicile" means the principal place of abode within Utah of a  
3122 person who does not have a present intention to continue residency within Utah permanently or  
3123 indefinitely.

3124 ~~[(53)]~~ (52) "Unsaleable liquor merchandise" means merchandise that is unsaleable because  
3125 it is unlabeled, leaky, damaged, difficult to open, partly filled, or is in a container having faded  
3126 labels or defective caps or corks, or in which the contents are cloudy, spoiled, or chemically  
3127 determined to be impure, or that contains sediment, or any foreign substance, or is otherwise

3128 considered by the department as unfit for sale.

3129 [~~(54)~~] (53) "Visitor" means a person holding limited privileges in a club by virtue of a  
3130 visitor card purchased from the club and authorized by a sponsoring member of the club.

3131 [~~(55)~~] (54) "Warehouser" means any person, other than a licensed manufacturer, engaged  
3132 in the importation for sale, storage, or distribution of liquor regardless of amount.

3133 [~~(56)~~] (55) "Wholesaler" means any person engaged in the importation for sale, or in the  
3134 sale of beer in wholesale or jobbing quantities to retailers, other than a small brewer selling beer  
3135 manufactured by that brewer.

3136 [~~(57)~~] (56) (a) "Wine" means any alcoholic beverage obtained by the fermentation of the  
3137 natural sugar content of fruits, plants, honey, or milk, or any other like substance, whether or not  
3138 other ingredients are added.

3139 (b) "Wine" is considered "liquor" for purposes of this title.

3140 Section 61. Section **32A-1-113** is amended to read:

3141 **32A-1-113. Department expenditures and revenues -- Liquor Control Fund --**

3142 **Exempt from Division of Finance -- Annual audits.**

3143 (1) (a) All money received by the department in the administration of this title, except as  
3144 otherwise provided, together with all property acquired, administered, possessed, or received by  
3145 the department, is the property of the state. Money received in the administration of this title shall  
3146 be paid to the department and transferred into the state treasury to the credit of the Liquor Control  
3147 Fund.

3148 (b) All expenses, debts, and liabilities incurred by the department in connection with the  
3149 administration of this title shall be paid from the Liquor Control Fund.

3150 (c) The fiscal officers of the department shall transfer annually from the Liquor Control  
3151 Fund to the General Fund a sum equal to the amount of net profit earned from the sale of liquor  
3152 since the preceding transfer of funds. The transfer shall be made within 90 days of the end of the  
3153 department's fiscal year on June 30.

3154 (2) (a) Deposits made by the department shall be made to banks designated as state  
3155 depositories and reported to the state treasurer at the end of each day.

3156 (b) Any member of the commission and any employee of the department is not personally  
3157 liable for any loss caused by the default or failure of depositories.

3158 (c) All funds deposited in any bank or trust company are entitled to the same priority of

3159 payment as other public funds of the state.

3160 (3) All expenditures necessary for the administration of this title, including the payment  
3161 of all salaries, premiums, if any, on bonds of the commissioners, the director, and the department  
3162 staff in all cases where bonds are required, and all other expenditures incurred in establishing,  
3163 operating, and maintaining state stores and package agencies and in the administration of this title,  
3164 shall be paid by warrants drawn on the state treasurer paid out of the Liquor Control Fund.

3165 (4) If the cash balance of the Liquor Control Fund is not adequate to cover the warrants  
3166 drawn against it by the state treasurer, the cash resources of the General Fund may be utilized to  
3167 the extent necessary. However, at no time may the fund equity of the Liquor Control Fund fall  
3168 below zero.

3169 (5) When any check issued in payment of any fees or costs authorized or required by this  
3170 title is returned to the department as dishonored, the department may assess a service charge in an  
3171 amount set by commission rule against the person on whose behalf the check was tendered.

3172 (6) The laws that govern the Division of Finance and prescribe the general powers and  
3173 duties of the Division of Finance are not applicable to the Department of Alcoholic Beverage  
3174 Control in the purchase and sale of alcoholic products.

3175 (7) The accounts of the department shall be audited annually by the state auditor or by any  
3176 other person, firm, or corporation the state auditor appoints. The audit report shall be made to the  
3177 state auditor, and copies submitted to members of the Legislature [~~and the council~~] not later than  
3178 January 1 following the close of the fiscal year for which the report is made.

3179 Section 62. Section **32A-1-117** is amended to read:

3180 **32A-1-117. Department may sue and be sued.**

3181 The department may be sued and may institute or defend proceedings in any court of law  
3182 or otherwise in the name of the Department of Alcoholic Beverage Control as though the  
3183 department were incorporated under that name or title. Proceedings may not be taken against the  
3184 commission or in the names of the members of the commission[~~, or against the council or in the~~  
3185 ~~names of the members of the council~~].

3186 Section 63. Section **32A-1-118** is amended to read:

3187 **32A-1-118. Liability insurance -- Governmental immunity.**

3188 (1) The department shall maintain insurance against loss on each motor vehicle operated  
3189 by it on any public highway. Each motor vehicle shall be covered for:

3190 (a) any liability imposed by law upon the department for damages from bodily injuries  
3191 suffered by any person or persons by reason of the ownership, maintenance, or use of the motor  
3192 vehicle; and

3193 (b) any liability or loss from damage to or destruction of property of any description,  
3194 including liability of the department for the resultant loss of use of the property, which results from  
3195 accident due to the ownership, maintenance, or use of the motor vehicle.

3196 (2) The department is liable to respond in damages in all cases if a private corporation  
3197 under the same circumstances would be liable.

3198 (3) The provisions of Title 63, Chapter 30, Governmental Immunity Act, apply in all  
3199 actions commenced against the department in any action for damages sustained as a result of  
3200 department ownership, maintenance, or use of motor vehicles under Subsections (1) and (2).  
3201 Immunity from suit against ~~the council or~~ the commission or any member of the ~~council or~~  
3202 commission, is in all respects retained in any such action.

3203 Section 64. Section **32A-1-121** is amended to read:

3204 **32A-1-121. Reports.**

3205 (1) The department shall report to the governor on the administration of this title, as the  
3206 governor may require, and shall submit an annual report to the governor not later than November  
3207 30, for the fiscal year ending June 30 of the year in which the report is made. The report shall  
3208 contain:

3209 (a) a statement of the nature and amount of the business transacted by the department  
3210 during the year;

3211 (b) a statement of the department's assets and liabilities including a profit and loss account,  
3212 and other accounts and matters necessary to show the results of operations of the department for  
3213 the year;

3214 (c) general information and remarks on the application of this title in the state; and

3215 (d) any other information requested by the governor.

3216 (2) Copies of the report shall be submitted to the Legislature ~~and the council~~.

3217 Section 65. Section **32A-1-504** is amended to read:

3218 **32A-1-504. Operational restrictions.**

3219 (1) Department trade shows may not be open to the general public, and may be attended  
3220 only by industry members, retailers, personnel of any trade association, authorized representatives



3221 of the commission, the department, [~~the council,~~] and any law enforcement officer. Authorized  
3222 representatives of the commission, [~~the council,~~] and any law enforcement officer shall have  
3223 unrestricted right of access, ingress, and egress to and from all premises of a department trade  
3224 show.

3225 (2) No person under the age of 21 years may attend a department trade show.

3226 (3) No bottle or container of liquor, wine, or heavy beer may be used in a department trade  
3227 show unless it has been processed, labeled, and delivered to the show by the department in  
3228 accordance with Section 32A-12-602, and has affixed to it a department label clearly identifying  
3229 it as a "department trade show sample".

3230 (4) No department trade show sample may be removed from the premises of the trade  
3231 show except by the department in accordance with Section 32A-12-602.

3232 (5) No department trade show sample may be stored, used, served, or consumed in any  
3233 place other than the premises of the department trade show.

3234 (6) No department trade show sample may be served or otherwise furnished to any:

3235 (a) minor;

3236 (b) person actually, apparently, or obviously drunk;

3237 (c) known habitual drunkard; or

3238 (d) known interdicted person.

3239 (7) No attendees of the department trade show may bring any alcoholic beverage product  
3240 onto the premises of the department trade show.

3241 (8) A violation of this section is a class B misdemeanor.

3242 Section 66. Section **32A-3-102** is amended to read:

3243 **32A-3-102. Application requirements.**

3244 (1) A person seeking to operate a package agency as a package agent under this chapter  
3245 shall file a written application with the department in a form prescribed by the department.

3246 (2) The application shall be accompanied by:

3247 (a) a nonrefundable application fee of \$100;

3248 (b) written consent of the local authority;

3249 (c) evidence of proximity to any public or private school, church, public library, public  
3250 playground, or park, and if the proximity is within the 600 foot or 200 foot limitations of

3251 Subsections 32A-3-101 (3), (4), and (5), the application shall be processed in accordance with

3252 those subsections;

3253 (d) a bond as specified by Section 32A-3-105;

3254 (e) a floor plan of the premises, including a description and highlighting of that part of the  
3255 premises in which the applicant proposes that the package agency be established;

3256 (f) evidence that the package agency is carrying public liability insurance in an amount and  
3257 form satisfactory to the department;

3258 (g) a signed consent form stating that the package agent will permit any authorized  
3259 representative of the commission, department, [council,] or any law enforcement officer to have  
3260 unrestricted right to enter the package agency;

3261 (h) in the case of a corporate applicant, proper verification evidencing that the person or  
3262 persons signing the package agency application are authorized to so act on the corporation's behalf;  
3263 and

3264 (i) any other information as the commission or department may direct.

3265 Section 67. Section **32A-4-102** is amended to read:

3266 **32A-4-102. Application and renewal requirements.**

3267 (1) A person seeking a restaurant liquor license under this chapter shall file a written  
3268 application with the department, in a form prescribed by the department. It shall be accompanied  
3269 by:

3270 (a) a nonrefundable \$300 application fee;

3271 (b) an initial license fee of \$300, which is refundable if a license is not granted;

3272 (c) written consent of the local authority;

3273 (d) a copy of the applicant's current business license;

3274 (e) evidence of proximity to any public or private school, church, public library, public  
3275 playground, or park, and if the proximity is within the 600 foot or 200 foot limitation of  
3276 Subsections 32A-4-101 (4), (5), and (6), the application shall be processed in accordance with  
3277 those subsections;

3278 (f) a bond as specified by Section 32A-4-105;

3279 (g) a floor plan of the restaurant, including consumption areas and the area where the  
3280 applicant proposes to keep, store, and sell liquor;

3281 (h) evidence that the restaurant is carrying public liability insurance in an amount and form  
3282 satisfactory to the department;

3283 (i) evidence that the restaurant is carrying dramshop insurance coverage of at least  
3284 \$100,000 per occurrence and \$300,000 in the aggregate;

3285 (j) a signed consent form stating that the restaurant will permit any authorized  
3286 representative of the commission, department, [council,] or any law enforcement officer  
3287 unrestricted right to enter the restaurant;

3288 (k) in the case of a corporate applicant, proper verification evidencing that the person or  
3289 persons signing the restaurant application are authorized to so act on the corporation's behalf; and

3290 (l) any other information the commission or department may require.

3291 (2) All restaurant liquor licenses expire on October 31 of each year. Persons desiring to  
3292 renew their restaurant liquor license shall submit a renewal fee of \$300 and a completed renewal  
3293 application to the department no later than September 30. Failure to meet the renewal  
3294 requirements shall result in an automatic forfeiture of the license effective on the date the existing  
3295 license expires. Renewal applications shall be in a form as prescribed by the department.

3296 (3) If any restaurant liquor licensee does not immediately notify the department of any  
3297 change in ownership of the restaurant, or in the case of a Utah corporate owner of any change in  
3298 the corporate officers or directors, the commission may suspend or revoke that license.

3299 Section 68. Section **32A-4-106** is amended to read:

3300 **32A-4-106. Operational restrictions.**

3301 Each person granted a restaurant liquor license and the employees and management  
3302 personnel of the restaurant shall comply with the following conditions and requirements. Failure  
3303 to comply may result in a suspension or revocation of the license or other disciplinary action taken  
3304 against individual employees or management personnel.

3305 (1) (a) Liquor may not be purchased by a restaurant liquor licensee except from state stores  
3306 or package agencies.

3307 (b) Liquor purchased may be transported by the licensee from the place of purchase to the  
3308 licensed premises.

3309 (c) Payment for liquor shall be made in accordance with rules established by the  
3310 commission.

3311 (2) A restaurant liquor licensee may not sell or provide any primary liquor except in one  
3312 ounce quantities dispensed through a calibrated metered dispensing system approved by the  
3313 department in accordance with commission rules adopted under this title, except that:

3314 (a) liquor need not be dispensed through a calibrated metered dispensing system if used  
3315 as a secondary flavoring ingredient in a beverage subject to the following restrictions:

3316 (i) the secondary ingredient may be dispensed only in conjunction with the purchase of a  
3317 primary liquor;

3318 (ii) the secondary ingredient is not the only liquor in the beverage;

3319 (iii) the licensee shall designate a location where flavorings are stored on the floor plan  
3320 provided to the department; and

3321 (iv) all flavoring containers shall be plainly and conspicuously labeled "flavorings";

3322 (b) liquor need not be dispensed through a calibrated metered dispensing system if used  
3323 as a flavoring on desserts and in the preparation of flaming food dishes, drinks, and desserts;

3324 (c) wine may be served by the glass in quantities not exceeding five ounces per glass; and

3325 (d) heavy beer may be served in original containers not exceeding one liter.

3326 (3) (a) Restaurants licensed to sell liquor may sell beer in any size container not exceeding  
3327 two liters, and on draft for on-premise consumption without obtaining a separate on-premise beer  
3328 retailer license from the commission.

3329 (b) Restaurants licensed under this chapter that sell beer pursuant to Subsection (3)(a) shall  
3330 comply with all appropriate operational restrictions under Chapter 10, Beer Retailer Licenses, that  
3331 apply to on-premise beer retailers except when those restrictions are inconsistent with or less  
3332 restrictive than the operational restrictions under this chapter.

3333 (c) Failure to comply with the operational restrictions under Chapter 10, Beer Retailer  
3334 Licenses, required by Subsection (3)(b) may result in a suspension or revocation of the restaurant's:

3335 (i) state liquor license; and

3336 (ii) alcoholic beverage license issued by the local authority.

3337 (4) Wine may be served in accordance with commission rule in containers not exceeding  
3338 750 ml.

3339 (5) (a) Liquor may not be stored or sold in any place other than as designated in the  
3340 licensee's application, unless the licensee first applies for and receives approval from the  
3341 department for a change of location within the restaurant.

3342 (b) A patron may only make alcoholic beverage purchases in the restaurant from a server  
3343 designated and trained by the licensee.

3344 (c) Any alcoholic beverage may only be consumed at the patron's table.

- 3345 (d) Liquor may not be stored where it is visible to patrons of the restaurant.
- 3346 (6) (a) Alcoholic beverages may not be dispensed directly to a patron from the storage
- 3347 area.
- 3348 (b) Alcoholic beverages shall be delivered by a server to the patron.
- 3349 (7) The liquor storage area shall remain locked at all times other than those hours and days
- 3350 when liquor sales are authorized by law.
- 3351 (8) (a) Liquor may not be sold or offered for sale at a restaurant during the following days
- 3352 or hours:
- 3353 (i) on the day of any regular general election, regular primary election, or statewide special
- 3354 election until after the polls are closed;
- 3355 (ii) on the day of any municipal, special district, or school election, but only:
- 3356 (A) within the boundaries of the municipality, special district, or school district; and
- 3357 (B) if closure is required by local ordinance; and
- 3358 (iii) on any other day after 12 midnight and before 12 noon.
- 3359 (b) The hours of beer sales are those specified in Chapter 10, Beer Retailer Licenses, for
- 3360 on-premise beer licensees.
- 3361 (9) Alcoholic beverages may not be sold except in connection with an order for food
- 3362 prepared, sold, and served at the restaurant.
- 3363 (10) Alcoholic beverages may not be sold, delivered, or furnished to any:
- 3364 (a) minor;
- 3365 (b) person actually, apparently, or obviously drunk;
- 3366 (c) known habitual drunkard; or
- 3367 (d) known interdicted person.
- 3368 (11) (a) Liquor may not be sold except at prices fixed by the commission.
- 3369 (b) Mixed drinks and wine may not be sold at discount prices on any date or at any time.
- 3370 (12) Each restaurant patron may have only one alcoholic beverage at a time before the
- 3371 patron on the patron's table.
- 3372 (13) No more than one ounce of primary liquor may be served to a patron at a time, except:
- 3373 (a) wine as provided in Subsection (2)(c); and
- 3374 (b) heavy beer as provided in Subsection (2)(d).
- 3375 (14) Alcoholic beverages may not be purchased by the licensee, or any employee or agent

3376 of the licensee, for patrons of the restaurant.

3377 (15) Alcoholic beverages purchased in a restaurant may not be served or consumed at any  
3378 location where they are stored or dispensed.

3379 (16) (a) A wine service may be performed and a service charge assessed by the restaurant  
3380 as authorized by commission rule for wine purchased at the restaurant or carried in by a patron.

3381 (b) If wine is carried in by a patron, the patron shall deliver the wine to a server or other  
3382 representative of the licensee upon entering the licensee premises.

3383 (17) (a) A person may not bring onto the premises of a restaurant liquor licensee any  
3384 alcoholic beverage for on-premise consumption, except a person may bring, subject to the  
3385 discretion of the licensee, cork-finished wine onto the premises of any restaurant liquor licensee  
3386 and consume wine pursuant to Subsection (16).

3387 (b) A restaurant, whether licensed under this title or unlicensed, or its officers, managers,  
3388 employees, or agents may not allow:

3389 (i) a person to bring onto the restaurant premises any alcoholic beverage for on-premise  
3390 consumption; or

3391 (ii) consumption of any such alcoholic beverage on its premises, except cork-finished wine  
3392 under Subsection (17)(a).

3393 (c) If a restaurant licensee, or any of its officers, managers, employees, or agents violates  
3394 this Subsection (17):

3395 (i) the commission may immediately suspend or revoke the restaurant's liquor license and  
3396 the restaurant licensee is subject to possible criminal prosecution under Chapter 12, Criminal  
3397 Offenses; and

3398 (ii) the local authority may immediately suspend or revoke the restaurant's:

3399 (A) local liquor license;

3400 (B) local consent under Subsection 32A-4-102(1); or

3401 (C) local business license.

3402 (18) Alcoholic beverages purchased from the restaurant may not be removed from the  
3403 restaurant premises.

3404 (19) (a) Minors may not be employed by a restaurant licensee to sell or dispense alcoholic  
3405 beverages.

3406 (b) Notwithstanding Subsection (19)(a), a minor may be employed to enter the sale at a

3407 cash register or other sales recording device.

3408 (20) An employee of a restaurant liquor licensee, while on duty, may not:

3409 (a) consume an alcoholic beverage; or

3410 (b) be under the influence of alcoholic beverages.

3411 (21) (a) Advertising or other reference to the sale of liquor and wine is not allowed on a  
3412 food menu except that a statement of availability of a liquor and wine menu on request, the content  
3413 and form of which is approved by the department, may be attached to or carried on a food menu.  
3414 The context of both food and liquor and wine menus may not in any manner attempt to promote  
3415 or increase the sale of alcoholic beverages.

3416 (b) A server, employee, or agent of a licensee may not draw attention to the availability  
3417 of alcoholic beverages for sale, unless a patron or guest first inquires about it.

3418 (c) Any set-up charge, service charge, chilling fee, or any other charge or fee made in  
3419 connection with the sale, service, or consumption of liquor may be stated in food or alcoholic  
3420 beverage menus.

3421 (22) Each restaurant liquor licensee shall display in a prominent place in the restaurant:

3422 (a) the liquor license that is issued by the department;

3423 (b) a list of the types and brand names of liquor being served through its calibrated metered  
3424 dispensing system; and

3425 (c) a sign in large letters stating: "Warning: The consumption of alcoholic beverages  
3426 purchased in this establishment may be hazardous to your health and the safety of others."

3427 (23) The following acts or conduct in a restaurant licensed under this chapter are  
3428 considered contrary to the public welfare and morals, and are prohibited upon the premises:

3429 (a) employing or using any person in the sale or service of alcoholic beverages while the  
3430 person is unclothed or in attire, costume, or clothing that exposes to view any portion of the female  
3431 breast below the top of the areola or any portion of the pubic hair, anus, cleft of the buttocks,  
3432 vulva, or genitals;

3433 (b) employing or using the services of any person to mingle with the patrons while the  
3434 person is unclothed or in attire, costume, or clothing described in Subsection (23)(a);

3435 (c) encouraging or permitting any person to touch, caress, or fondle the breasts, buttocks,  
3436 anus, or genitals of any other person;

3437 (d) permitting any employee or person to wear or use any device or covering, exposed to

3438 view, that simulates the breast, genitals, anus, pubic hair, or any portion of these;

3439 (e) permitting any person to use artificial devices or inanimate objects to depict any of the  
3440 prohibited activities described in this Subsection (23);

3441 (f) permitting any person to remain in or upon the premises who exposes to public view  
3442 any portion of that person's genitals or anus; or

3443 (g) showing films, still pictures, electronic reproductions, or other visual reproductions  
3444 depicting:

3445 (i) acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral  
3446 copulation, flagellation, or any sexual acts prohibited by Utah law;

3447 (ii) any person being touched, caressed, or fondled on the breast, buttocks, anus, or  
3448 genitals;

3449 (iii) scenes wherein artificial devices or inanimate objects are used to depict, or drawings  
3450 are used to portray, any of the prohibited activities described in this Subsection (23); or

3451 (iv) scenes wherein a person displays the vulva or the anus or the genitals.

3452 (24) Nothing in Subsection (23) precludes a local authority from being more restrictive  
3453 of acts or conduct of the type prohibited in Subsection (23).

3454 (25) (a) Although live entertainment is permitted on the premises of a restaurant liquor  
3455 licensee, a licensee may not allow any person to perform or simulate sexual acts prohibited by Utah  
3456 law, including sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation,  
3457 the touching, caressing, or fondling of the breast, buttocks, anus, or genitals, or the displaying of  
3458 the pubic hair, anus, vulva, or genitals. Entertainers shall perform only upon a stage or at a  
3459 designated area approved by the commission.

3460 (b) Nothing in Subsection (25)(a) precludes a local authority from being more restrictive  
3461 of acts or conduct of the type prohibited in Subsection (25)(a).

3462 (26) A restaurant liquor licensee may not engage in or permit any form of gambling, or  
3463 have any video gaming device, as defined and proscribed by Title 76, Chapter 10, Part 11,  
3464 Gambling, on the premises of the restaurant liquor licensee.

3465 (27) (a) Each restaurant liquor licensee shall maintain an expense ledger or record showing  
3466 in detail:

3467 (i) quarterly expenditures made separately for:

3468 (A) malt or brewed beverages;



- 3469 (B) set-ups;  
3470 (C) liquor;  
3471 (D) food; and  
3472 (E) all other items required by the department; and  
3473 (ii) sales made separately for:  
3474 (A) malt or brewed beverages;  
3475 (B) set-ups;  
3476 (C) food; and  
3477 (D) all other items required by the department.
- 3478 (b) The record required by Subsection (27)(a) shall be kept:  
3479 (i) in a form approved by the department; and  
3480 (ii) current for each three-month period.
- 3481 (c) Each expenditure shall be supported by:  
3482 (i) delivery tickets;  
3483 (ii) invoices;  
3484 (iii) receipted bills;  
3485 (iv) canceled checks;  
3486 (v) petty cash vouchers; or  
3487 (vi) other sustaining data or memoranda.
- 3488 (28) (a) Each restaurant liquor licensee shall maintain accounting and other records and  
3489 documents as the department may require.
- 3490 (b) Any restaurant or person acting for the restaurant, who knowingly forges, falsifies,  
3491 alters, cancels, destroys, conceals, or removes the entries in any of the books of account or other  
3492 documents of the restaurant required to be made, maintained, or preserved by this title or the rules  
3493 of the commission for the purpose of deceiving the commission~~[, council,]~~ or the department, or  
3494 any of their officials or employees, is subject to the immediate suspension or revocation of the  
3495 restaurant's liquor license and possible criminal prosecution under Chapter 12, Criminal Offenses.
- 3496 (29) (a) A restaurant liquor licensee may not close or cease operation for a period longer  
3497 than 240 hours, unless:  
3498 (i) the restaurant liquor license notifies the department in writing at least seven days before  
3499 the closing; and

3500 (ii) the closure or cessation of operation is first approved by the department.

3501 (b) Notwithstanding Subsection (29)(a), in the case of emergency closure, immediate notice  
3502 of closure shall be made to the department by telephone.

3503 (c) The department may authorize a closure or cessation of operation for a period not to  
3504 exceed 60 days. The department may extend the initial period an additional 30 days upon written  
3505 request of the restaurant licensee and upon a showing of good cause. A closure or cessation of  
3506 operation may not exceed a total of 90 days without commission approval.

3507 (d) Any notice shall include:

3508 (i) the dates of closure or cessation of operation;

3509 (ii) the reason for the closure or cessation of operation; and

3510 (iii) the date on which the licensee will reopen or resume operation.

3511 (e) Failure of the licensee to provide notice and to obtain department authorization prior  
3512 to closure or cessation of operation shall result in an automatic forfeiture of:

3513 (i) the license; and

3514 (ii) the unused portion of the license fee for the remainder of the license year effective  
3515 immediately.

3516 (f) Failure of the licensee to reopen or resume operation by the approved date shall result  
3517 in an automatic forfeiture of:

3518 (i) the license; and

3519 (ii) the unused portion of the license fee for the remainder of the license year.

3520 (30) Each restaurant liquor licensee shall maintain at least 70% of its total restaurant  
3521 business from the sale of food, which does not include mix for alcoholic beverages or service  
3522 charges.

3523 (31) A person may not transfer a restaurant liquor license from one location to another,  
3524 without prior written approval of the commission.

3525 (32) (a) A person, having been granted a restaurant liquor license may not sell, exchange,  
3526 barter, give, or attempt in any way to dispose of the license whether for monetary gain or not.

3527 (b) A restaurant liquor license has no monetary value for the purpose of any type of  
3528 disposition.

3529 (33) Each server of alcoholic beverages in a licensee's establishment shall keep a written  
3530 beverage tab for each table or group that orders or consumes alcoholic beverages on the premises.

3531 The beverage tab shall list the type and amount of alcoholic beverages ordered or consumed.

3532 (34) A person's willingness to serve alcoholic beverages may not be made a condition of  
3533 employment as a server with a restaurant that has a restaurant liquor license.

3534 Section 69. Section **32A-4-202** is amended to read:

3535 **32A-4-202. Application and renewal requirements.**

3536 (1) A person seeking an airport lounge liquor license under this part shall file a written  
3537 application with the department, in a form prescribed by the department, accompanied by:

3538 (a) a nonrefundable \$1,000 application fee;

3539 (b) an initial license fee of \$1,000, which is refundable if a license is not granted;

3540 (c) written consent of the local and airport authority;

3541 (d) a copy of the applicant's current business license;

3542 (e) a bond as specified by Section 32A-4-205;

3543 (f) a floor plan of the airport lounge, including consumption areas and the area where the  
3544 applicant proposes to keep, store, and sell liquor;

3545 (g) a copy of the sign proposed to be used by the licensee on its premises to inform the  
3546 public that alcoholic beverages are sold and consumed there;

3547 (h) evidence that the airport lounge is carrying public liability insurance in an amount and  
3548 form satisfactory to the department;

3549 (i) evidence that the airport lounge is carrying dramshop insurance coverage of at least  
3550 \$100,000 per occurrence and \$300,000 in the aggregate;

3551 (j) a signed consent form stating that the airport lounge will permit any authorized  
3552 representative of the commission, department, [council,] or any law enforcement officer  
3553 unrestricted right to enter the airport lounge;

3554 (k) in the case of a corporate applicant, proper verification evidencing that the person or  
3555 persons signing the airport lounge application are authorized to so act on the corporation's behalf;  
3556 and

3557 (l) any other information the commission or department may require.

3558 (2) All airport lounge liquor licenses expire on October 31 of each year. Persons desiring  
3559 to renew their airport lounge liquor license shall submit a renewal fee of \$1,000 and a completed  
3560 renewal application to the department no later than September 30. Failure to meet the renewal  
3561 requirements shall result in an automatic forfeiture of the license, effective on the date the existing

3562 license expires. Renewal applications shall be in a form as prescribed by the department.

3563 (3) If any airport liquor licensee does not immediately notify the department of any change  
3564 in ownership of the licensee, or in the case of a Utah corporate owner of any change in the  
3565 corporate officers or directors, the commission may suspend or revoke that license.

3566 Section 70. Section **32A-4-206** is amended to read:

3567 **32A-4-206. Operational restrictions.**

3568 Each person granted an airport lounge liquor license and the employees and management  
3569 personnel of the airport lounge shall comply with the following conditions and requirements.

3570 Failure to comply may result in a suspension or revocation of the license or other disciplinary  
3571 action taken against individual employees or management personnel.

3572 (1) Liquor may not be purchased by an airport lounge liquor licensee except from state  
3573 stores or package agencies. Liquor purchased may be transported by the licensee from the place  
3574 of purchase to the licensed premises. Payment for liquor shall be made in accordance with the  
3575 rules established by the commission.

3576 (2) An airport lounge liquor licensee may not sell or provide any primary liquor except in  
3577 one ounce quantities dispensed through a calibrated metered dispensing system approved by the  
3578 department in accordance with commission rules adopted under this title, except that:

3579 (a) liquor need not be dispensed through a calibrated metered dispensing system if used  
3580 as a secondary flavoring ingredient in a beverage subject to the following restrictions:

3581 (i) the secondary ingredient may be dispensed only in conjunction with the purchase of a  
3582 primary liquor;

3583 (ii) the secondary ingredient is not the only liquor in the beverage;

3584 (iii) the licensee shall designate a location where flavorings are stored on the floor plan  
3585 provided to the department; and

3586 (iv) all flavoring containers shall be plainly and conspicuously labeled "flavorings";

3587 (b) wine may be served by the glass in quantities not exceeding five ounces per glass; and

3588 (c) heavy beer may be served in original containers not exceeding one liter.

3589 (3) (a) Airport lounges may sell beer in any size container not exceeding two liters, and  
3590 on draft without obtaining a separate on-premise beer retailer license from the commission.

3591 (b) Airport lounges that sell beer pursuant to Subsection (3)(a) shall comply with all  
3592 appropriate operational restrictions under Chapter 10 that apply to on-premise beer retailers except

3593 when those restrictions are inconsistent with or less restrictive than the operational restrictions  
3594 under this chapter that apply to airport lounges.

3595 (c) Failure to comply with the operational restrictions under Chapter 10, Beer Retailer  
3596 Licenses, as set forth in Subsection (3)(b) may result in a suspension or revocation of the airport  
3597 lounge's state liquor license and its alcoholic beverage license issued by the local authority.

3598 (4) Wine may be served in accordance with commission rule in containers not exceeding  
3599 750 ml.

3600 (5) (a) Liquor may not be stored or sold in any place other than as designated in the  
3601 licensee's application, unless the licensee first applies for and receives approval from the  
3602 department for a change of location within the airport lounge.

3603 (b) A patron or guest may only make purchases in the airport lounge from a server  
3604 designated and trained by the licensee.

3605 (c) Alcoholic beverages may not be stored where they are visible to persons outside the  
3606 airport lounge.

3607 (6) The liquor storage area shall remain locked at all times other than those hours and days  
3608 when liquor sales are authorized by law.

3609 (7) Alcoholic beverages may not be sold or offered for sale at an airport lounge during the  
3610 following days or hours:

3611 (a) on the day of any regular general election, regular primary election, or statewide special  
3612 election until after the polls are closed; and

3613 (b) on any other day after 12 midnight and before 8 a.m.

3614 (8) Alcoholic beverages may not be sold, delivered, or furnished to any:

3615 (a) minor;

3616 (b) person actually, apparently, or obviously drunk;

3617 (c) known habitual drunkard; or

3618 (d) known interdicted person.

3619 (9) Liquor may not be sold except at prices fixed by the commission. Mixed drinks and  
3620 wine may not be sold at discount prices on any day or at any time.

3621 (10) An airport lounge patron or guest may have only one alcoholic beverage at a time  
3622 before him.

3623 (11) No more than one ounce of primary liquor may be served to a patron or guest at a

3624 time, except wine as provided in Subsection (2)(b) and heavy beer as provided in Subsection  
3625 (2)(c).

3626 (12) Alcoholic beverages may not be purchased by the licensee, or any employee or agent  
3627 of the licensee, for patrons or guests of the airport lounge.

3628 (13) (a) Beginning January 1, 1991, a person may not bring onto the premises of an airport  
3629 lounge licensee any alcoholic beverage for on-premise consumption.

3630 (b) Beginning January 1, 1991, an airport lounge or its officers, managers, employees, or  
3631 agents may not allow a person to bring onto the airport lounge premises any alcoholic beverage  
3632 for on-premise consumption or allow consumption of any such alcoholic beverage on its premises.

3633 (c) Beginning January 1, 1991, if any airport lounge liquor licensee or any of its officers,  
3634 managers, employees, or agents violates Subsection (13):

3635 (i) the commission may immediately suspend or revoke the airport lounge's liquor license  
3636 and the airport lounge liquor licensee is subject to criminal prosecution under Chapter 12, Criminal  
3637 Offenses; and

3638 (ii) the local authority may immediately suspend or revoke the airport lounge's local liquor  
3639 license, local consent under Subsection 32A-4-202(1), or local business license.

3640 (14) Alcoholic beverages purchased from the airport lounge may not be removed from the  
3641 airport lounge premises.

3642 (15) Minors may not be employed by an airport lounge licensee to sell or dispense  
3643 alcoholic beverages.

3644 (16) An employee of a licensee, while on duty, may not consume an alcoholic beverage  
3645 or be under the influence of alcoholic beverages.

3646 (17) Each airport lounge liquor licensee shall display in a prominent place in the airport  
3647 lounge:

3648 (a) the liquor license that is issued by the department;

3649 (b) a list of the types and brand names of liquor being served through its calibrated metered  
3650 dispensing system; and

3651 (c) a sign in large letters stating: "Warning: The consumption of alcoholic beverages  
3652 purchased in this establishment may be hazardous to your health and the safety of others."

3653 (18) (a) Each airport lounge liquor licensee shall maintain an expense ledger or record  
3654 showing in detail:

3655 (i) quarterly expenditures made separately for malt or brewed beverages, liquor, and all  
3656 other items required by the department; and

3657 (ii) sales made separately for malt or brewed beverages, food, and all other items required  
3658 by the department.

3659 (b) This record shall be kept in a form approved by the department and shall be kept  
3660 current for each three-month period. Each expenditure shall be supported by delivery tickets,  
3661 invoices, receipted bills, canceled checks, petty cash vouchers, or other sustaining data or  
3662 memoranda.

3663 (19) Each airport lounge liquor licensee shall maintain accounting and other records and  
3664 documents as the department may require. Any airport lounge or person acting for the airport  
3665 lounge, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries  
3666 in any of the books of account or other documents of the airport lounge required to be made,  
3667 maintained, or preserved by this title or the rules of the commission for the purpose of deceiving  
3668 the commission[, council,] or the department, or any of their officials or employees, is subject to  
3669 the immediate suspension or revocation of the airport lounge's liquor license and possible criminal  
3670 prosecution under Chapter 12, Criminal Offenses.

3671 (20) There shall be no transfer of an airport lounge liquor license from one location to  
3672 another, without prior written approval of the commission.

3673 (21) (a) A person, having been granted an airport lounge liquor license, may not sell,  
3674 exchange, barter, give, or attempt in any way to dispose of the license whether for monetary gain  
3675 or not.

3676 (b) An airport lounge liquor license has no monetary value for the purpose of any type of  
3677 disposition.

3678 (22) Each server of alcoholic beverages in a licensee's establishment shall keep a written  
3679 beverage tab for each table or group that orders or consumes alcoholic beverages on the premises.  
3680 The beverage tab shall list the type and amount of alcoholic beverages ordered or consumed.

3681 (23) An airport lounge liquor licensee's premises may not be leased for private functions.

3682 (24) An airport lounge liquor licensee may not engage in or permit any form of gambling,  
3683 or have any video gaming device, as defined and proscribed by Title 76, Chapter 10, Part 11,  
3684 Gambling, on the premises of the airport lounge liquor licensee.

3685 Section 71. Section **32A-5-102** is amended to read:

3686           **32A-5-102. Application and renewal requirements.**

3687           (1) A person seeking a private club liquor license under this chapter shall file a written  
3688 application with the department, in the name of an officer or director of a corporation, in a form  
3689 prescribed by the department. It shall be accompanied by:

3690           (a) a nonrefundable \$1,000 application fee;

3691           (b) an initial license fee of \$750, which is refundable if a license is not granted;

3692           (c) written consent of the local authority;

3693           (d) a copy of the applicant's current business license;

3694           (e) evidence that the applicant is a corporation or association organized under the Utah  
3695 Nonprofit Corporation and Cooperative Association Act, and is in good standing;

3696           (f) evidence of proximity to any public or private school, church, public library, public  
3697 playground, or park, and if the proximity is within the 600 foot or 200 foot limitations of  
3698 Subsections 32A-5-101 (5), (6), and (7), the application shall be processed in accordance with  
3699 those subsections;

3700           (g) evidence that the applicant operates a club where a variety of food is prepared and  
3701 served in connection with dining accommodations;

3702           (h) a bond as specified by Section 32A-5-106;

3703           (i) a floor plan of the club premises, including consumption areas and the area where the  
3704 applicant proposes to keep and store liquor;

3705           (j) evidence that the club is carrying public liability insurance in an amount and form  
3706 satisfactory to the department;

3707           (k) evidence that the club is carrying dramshop insurance coverage of at least \$100,000  
3708 per occurrence and \$300,000 in the aggregate;

3709           (l) a copy of the club's articles, bylaws, house rules, and any amendments to those  
3710 documents, which shall be kept on file with the department at all times;

3711           (m) a signed consent form stating that the club and its management will permit any  
3712 authorized representative of the commission, department, [council,] or any law enforcement officer  
3713 unrestricted right to enter the club premises;

3714           (n) a signed consent form authorizing the department to obtain Internal Revenue Service  
3715 tax information on the club;

3716           (o) a signed consent form authorizing the department to obtain state and county real and



3717 personal property tax information on the club;

3718 (p) profit and loss statements for the previous fiscal year and pro forma statements for one  
3719 year if the applicant has not previously operated; and

3720 (q) any other information, documents, and evidence the department may require by rule  
3721 or policy to allow complete evaluation of the application.

3722 (2) (a) Each application shall be signed and verified by oath or affirmation by an executive  
3723 officer or any person specifically authorized by the corporation or association to sign the  
3724 application, to which shall be attached written evidence of said authority.

3725 (b) The applicant may attach to the application a verified copy of a letter of exemption  
3726 from federal tax, issued by the United States Treasury Department, Internal Revenue Service,  
3727 which the commission may consider as evidence of the applicant's nonprofit status. The  
3728 commission may also consider the fact that the licensee has lost its tax exemption from federal tax  
3729 as evidence that the licensee has ceased to operate as a nonprofit corporation.

3730 (3) (a) The commission may refuse to issue a license if it determines that any provisions  
3731 of the club's articles, bylaws, house rules, or amendments to any of those documents are not  
3732 reasonable and consistent with the declared nature and purpose of the applicant and the purposes  
3733 of this chapter.

3734 (b) Club bylaws shall include provisions respecting the following:

3735 (i) standards of eligibility for members;

3736 (ii) limitation of members, consistent with the nature and purpose of the corporation or  
3737 association;

3738 (iii) the period for which dues are paid, and the date upon which the period expires;

3739 (iv) provisions for dropping members for the nonpayment of dues or other cause; and

3740 (v) provisions for guests or visitors, if any, and for the issuance and use of visitor cards.

3741 (4) All private club liquor licenses expire on June 30 of each year. Persons desiring to  
3742 renew their private club liquor license shall submit a renewal fee of \$750 and a completed renewal  
3743 application to the department no later than May 31. Failure to meet the renewal requirements shall  
3744 result in an automatic forfeiture of the license effective on the date the existing license expires.

3745 Renewal applications shall be in a form as prescribed by the department.

3746 Section 72. Section **32A-5-107** is amended to read:

3747 **32A-5-107. Operational restrictions.**

3748 Each corporation or association granted a private club liquor license and its employees,  
3749 officers, managing agent, and members shall comply with the following conditions and  
3750 requirements. Failure to comply may result in a suspension or revocation of the license or other  
3751 disciplinary action taken against individual employees or management personnel.

3752 (1) Each private club shall hold regular meetings as required by its articles or bylaws and  
3753 conduct its business through regularly elected officers. Within ten days following the election of  
3754 any officer, the department shall be notified in writing of the officer's name, address, and office  
3755 to which the officer has been elected, and the term of that office.

3756 (2) Each private club may admit members only on written application signed by the  
3757 applicant, following investigation and approval of the governing body. Admissions shall be  
3758 recorded in the official minutes of a regular meeting of the governing body and the application,  
3759 whether approved or disapproved, shall be filed as a part of the official records of the licensee.  
3760 An applicant may not be accorded the privileges of a member until a quorum of the governing  
3761 body has formally voted upon and approved the applicant as a member. An applicant may not be  
3762 admitted to membership until seven days after the application is submitted.

3763 (3) Each private club shall maintain a current and complete membership record showing  
3764 the date of application of each proposed member, the member's address, the date of admission  
3765 following application, and the date initiation fees and dues were assessed and paid. The record  
3766 shall also show the serial number of the membership card issued to each member. A current record  
3767 shall also be kept indicating when members were dropped or resigned.

3768 (4) Each private club shall establish in the club bylaws initial fees and monthly dues, as  
3769 established by commission rules, which are collected from all members.

3770 (5) Each private club may allow guests or visitors to use the premises only when  
3771 previously authorized by a member. A member is responsible for all services extended to guests  
3772 and visitors. If the guest or visitor is a member of the same fraternal organization as the private  
3773 club liquor licensee, no previous authorization is required.

3774 (6) Each private club shall limit the issuance of visitor cards for a period not to exceed two  
3775 weeks and assess and collect a fee from each visitor of not less than \$5 for each two-week period  
3776 the visitor card is issued. One dollar of every visitor card fee shall be remitted quarterly to the  
3777 department for the administration of this title. A current record of the issuance of each card shall  
3778 be maintained and shall contain the name of the member sponsoring the visitor.

3779 (7) A private club may not sell alcoholic beverages to any person other than a member,  
3780 guest, or visitor who holds a valid visitor card issued under Subsection (6).

3781 (8) A person who is under 21 years of age may not be a member, officer, director, or  
3782 trustee of a private club.

3783 (9) An employee of a club, while on duty, may not consume an alcoholic beverage, be  
3784 under the influence of alcoholic beverages, sponsor a person for visitor privileges, or act as a host  
3785 for a guest.

3786 (10) A visitor to a club may not host more than five guests at one time.

3787 (11) Each private club shall maintain an expense ledger or record showing in detail all  
3788 expenditures separated by payments for malt or brewed beverages, liquor, food, detailed payroll,  
3789 entertainment, rent, utilities, supplies, and all other expenditures. This record shall be kept in a  
3790 form approved by the department and balanced each month. Each expenditure shall be supported  
3791 by delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers, or other  
3792 sustaining data or memoranda. All invoices and receipted bills for the current calendar or fiscal  
3793 year documenting purchases made by officers of the club for the benefit of the club shall also be  
3794 maintained.

3795 (12) Each private club shall maintain a bank account that shows all income and  
3796 expenditures as a control on the income and disbursements records. This account shall be balanced  
3797 each month under the direction of the treasurer or other officer of the licensee.

3798 (13) Each private club shall maintain a minute book that is posted currently by the  
3799 secretary. This record shall contain the minutes of all regular and special meetings of the  
3800 governing body and all committee meetings held to conduct club business. Membership lists shall  
3801 also be maintained.

3802 (14) Each private club shall maintain current copies of the club's articles of incorporation,  
3803 current bylaws, and current house rules. Changes in the bylaws are not effective unless submitted  
3804 to the department within ten days after adoption, and become effective 15 days after received by  
3805 the department unless rejected by the department before the expiration of the 15-day period.

3806 (15) Each private club shall maintain accounting and other records and documents as the  
3807 department may require.

3808 (16) Any club or person acting for the club, who knowingly forges, falsifies, alters,  
3809 cancels, destroys, conceals, or removes the entries in any of the books of account or other

3810 documents of the club required to be made, maintained, or preserved by this title or the rules of  
3811 the commission for the purpose of deceiving the commission~~[, council,]~~ or the department, or any  
3812 of their officials or employees, is subject to the immediate suspension or revocation of the club's  
3813 license and possible criminal prosecution under Chapter 12, Criminal Offenses.

3814 (17) Each private club shall maintain and keep all the records required by this section and  
3815 all other books, records, receipts, and disbursements maintained or utilized by the licensee, as the  
3816 department requires, for a minimum period of three years. All records, books, receipts, and  
3817 disbursements are subject to inspection by authorized representatives of the commission~~[,]~~ and the  
3818 department~~[, and council]~~. The club shall allow the department, through its auditors or examiners,  
3819 to audit all records of the club at times the department considers advisable. The department shall  
3820 audit the records of the licensee at least once annually.

3821 (18) Each private club shall make available to the department, upon request, verified  
3822 copies of any returns filed with the United States Treasury Department, Internal Revenue Service,  
3823 under the federal Internal Revenue Code. Failure to provide any returns and supporting documents  
3824 upon reasonable request by the department or, alternatively, to provide evidence of an extension  
3825 granted by the Internal Revenue Service, constitutes sufficient grounds for the commission to  
3826 suspend or revoke a license. Any return or copy of a return so filed with the department is  
3827 confidential and may not be used in any manner not directly connected with the enforcement of  
3828 this title, nor may it be disclosed to any person or any department or agency of government,  
3829 whether federal, state, or local.

3830 (19) Each private club shall own or lease premises suitable for its activities in its own  
3831 name. A copy of the lease shall be filed with the department.

3832 (20) Each private club shall operate the club under the supervision of a manager or house  
3833 committee, appointed by the governing body of the club.

3834 (21) A private club may not maintain facilities in any manner that barricades or conceals  
3835 the club operation. Any member of the commission, authorized department personnel, ~~[member~~  
3836 ~~of the council,]~~ or any peace officer shall, upon presentation of credentials, be admitted  
3837 immediately to the club and permitted without hindrance or delay to inspect completely the entire  
3838 club premises and all books and records of the licensee, at any time during which the same are  
3839 open for the transaction of business to its members.

3840 (22) A private club may not pay any person or entity any fee, salary, rent, or other payment

3841 of any kind in excess of the fair market value for the service rendered, goods furnished, or facilities  
3842 or equipment rented. It is the intention of this subsection to insure that no officer, managing agent,  
3843 employee, or other person derives a principal economic benefit from the operation of a club.

3844 (23) A private club may not engage in any public solicitation or public advertising  
3845 calculated to increase its membership.

3846 (24) Each private club shall comply with the following operational restrictions:

3847 (a) The liquor storage and sales area shall remain locked at all times when it is not open  
3848 for business.

3849 (b) Liquor may not be purchased by a private club liquor licensee except from state stores  
3850 or package agencies. Liquor so purchased may be transported by the licensee from the place of  
3851 purchase to the licensed premises. Payment for liquor shall be made in accordance with rules  
3852 established by the commission.

3853 (c) Beginning July 1, 1991, a private club liquor licensee may not sell or provide any  
3854 primary liquor except in one ounce quantities dispensed through a calibrated metered dispensing  
3855 system approved by the department in accordance with commission rules adopted under this title,  
3856 except that:

3857 (i) liquor need not be dispensed through a calibrated metered dispensing system if used  
3858 as a secondary flavoring ingredient in a beverage subject to the following restrictions:

3859 (A) the beverage shall contain liquor from a lawfully purchased container;

3860 (B) the secondary ingredient is not the only liquor in the beverage;

3861 (C) the licensee shall designate a location where flavorings are stored on the floor plan  
3862 provided to the department; and

3863 (D) all flavoring containers shall be plainly and conspicuously labeled "flavorings";

3864 (ii) liquor need not be dispensed through a calibrated metered dispensing system if used  
3865 as a flavoring on desserts and in the preparation of flaming food dishes, drinks, and desserts;

3866 (iii) wine may be served by the glass in quantities not exceeding five ounces per glass; and

3867 (iv) heavy beer may be served in standard containers not exceeding one liter.

3868 (d) (i) Private clubs licensed to sell liquor may sell beer in any size container not exceeding  
3869 two liters, and on draft without obtaining a separate on-premise beer retailer license from the  
3870 commission.

3871 (ii) Private clubs licensed under this chapter that sell beer pursuant to Subsection (24)(d)(i)

3872 shall comply with all appropriate operational restrictions under Title 32A, Chapter 10, Beer  
3873 Retailer Licenses, that apply to on-premise beer retailers except when those restrictions are  
3874 inconsistent with or less restrictive than the operational restrictions under this chapter.

3875 (iii) Failure to comply with the operational restrictions under Title 32A, Chapter 10, Beer  
3876 Retailer Licenses, as set forth in Subsection (24)(d)(ii) may result in a suspension or revocation  
3877 of the private club's state liquor license and its alcoholic beverage license issued by the local  
3878 authority.

3879 (e) Wine may be served in accordance with commission rule in containers not exceeding  
3880 750 ml.

3881 (f) A private club may not charge for the service or supply of glasses, ice, or mixers unless  
3882 the charges are fixed in the house rules of the club and a copy of the rules is kept on the club  
3883 premises and available at all times for examination by the members, guests, and visitors to the  
3884 club.

3885 (g) Minors may not be employed by any club to sell, dispense, or handle any alcoholic  
3886 beverage.

3887 (h) An officer, director, managing agent, employee, and any other person employed by or  
3888 acting for or in behalf of any licensee, may not sell, deliver, or furnish, or cause or permit to be  
3889 sold, delivered, or furnished any liquor to any:

3890 (i) minor;

3891 (ii) person actually, apparently, or obviously drunk;

3892 (iii) known habitual drunkard; or

3893 (iv) known interdicted person.

3894 (i) (i) Liquor may not be sold or offered for sale at any private club during the following  
3895 days or hours:

3896 (A) on the day of any regular general election, regular primary election, or statewide  
3897 special election until after the polls are closed;

3898 (B) on the day of any municipal, special district, or school election, but only within the  
3899 boundaries of the municipality, special district, or school district, and only if closure is required  
3900 by local ordinance; and

3901 (C) on Sunday and any state or federal legal holiday after 12 midnight and before 12 noon.

3902 (ii) The hours of beer sales are those specified in Chapter 10 for on-premise beer licensees.

3903 (j) On all other days the liquor storage and sales area in the club shall be closed from 1  
3904 a.m. until 10 a.m.

3905 (k) Liquor may not be sold except at prices fixed by the commission. Mixed drinks and  
3906 wine may not be sold at discount prices on any date or at any time.

3907 (l) Beginning July 1, 1991, no more than one ounce of primary liquor may be served to a  
3908 member, guest, or visitor at a time, except wine as provided in Subsection (24)(c)(iii) and heavy  
3909 beer as provided in Subsection (24)(c)(iv).

3910 (m) (i) Beginning January 1, 1991, a person may not bring onto the premises of a private  
3911 club liquor licensee any alcoholic beverage for on-premise consumption, except a person may  
3912 bring, subject to the discretion of the licensee, cork-finished wine onto the premises of any private  
3913 club liquor licensee and consume wine pursuant to Subsection (24)(n).

3914 (ii) Beginning January 1, 1991, a private club or its officers, managers, employees, or  
3915 agents may not allow a person to bring onto the private club premises any alcoholic beverage for  
3916 on-premise consumption, except cork-finished wine under Subsection (24)(m)(i).

3917 (iii) Beginning January 1, 1991, if any private club licensee or any of its officers,  
3918 managers, employees, or agents violates this Subsection (24):

3919 (A) the commission may immediately suspend or revoke the private club's liquor license  
3920 and the private club licensee is subject to criminal prosecution under Chapter 12, Criminal  
3921 Offenses; and

3922 (B) the local authority may immediately suspend or revoke the private club's local liquor  
3923 license, local consent under Subsection 32A-5-102(1), or local business license.

3924 (n) A wine service may be performed and a service charge assessed by the private club as  
3925 authorized by commission rule for wine purchased at the private club or carried in by a member,  
3926 guest, or visitor. If wine is carried in by a member, guest, or visitor, the member, guest, or visitor  
3927 shall deliver the wine to a server or other representative of the licensee upon entering the licensee  
3928 premises.

3929 (o) A member, guest, or visitor to a club may not carry from a club premises an open  
3930 container used primarily for drinking purposes containing any alcoholic beverage.

3931 (p) Each private club liquor licensee shall display in a prominent place in the private club:

3932 (i) the private club liquor license that is issued by the department;

3933 (ii) a list of the types and brand names of liquor being served through its calibrated

3934 metered dispensing system; and

3935 (iii) a sign in large letters stating: "Warning: The consumption of alcoholic beverages  
3936 purchased in this establishment may be hazardous to your health and the safety of others."

3937 (q) The following acts or conduct in a private club licensed under this chapter are  
3938 considered contrary to the public welfare and morals, and are prohibited upon the premises:

3939 (i) employing or using any person in the sale or service of alcoholic beverages while the  
3940 person is unclothed or in attire, costume, or clothing that exposes to view any portion of the female  
3941 breast below the top of the areola or any portion of the pubic hair, anus, cleft of the buttocks,  
3942 vulva, or genitals;

3943 (ii) employing or using the services of any person to mingle with the patrons while the  
3944 person is unclothed or in attire, costume, or clothing described in Subsection (24)(q)(i);

3945 (iii) encouraging or permitting any person to touch, caress, or fondle the breasts, buttocks,  
3946 anus, or genitals of any other person;

3947 (iv) permitting any employee or person to wear or use any device or covering, exposed to  
3948 view, that simulates the breast, genitals, anus, pubic hair, or any portion of these;

3949 (v) permitting any person to use artificial devices or inanimate objects to depict any of the  
3950 prohibited activities described in this Subsection (24);

3951 (vi) permitting any person to remain in or upon the premises who exposes to public view  
3952 any portion of his or her genitals or anus; or

3953 (vii) showing films, still pictures, electronic reproductions, or other visual reproductions  
3954 depicting:

3955 (A) acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral  
3956 copulation, flagellation, or any sexual acts prohibited by Utah law;

3957 (B) any person being touched, caressed, or fondled on the breast, buttocks, anus, or  
3958 genitals;

3959 (C) scenes wherein artificial devices or inanimate objects are used to depict, or drawings  
3960 are used to portray, any of the prohibited activities described in this Subsection (24); or

3961 (D) scenes wherein a person displays the vulva or the anus or the genitals.

3962 (r) Nothing in Subsection (24)(q) precludes a local authority from being more restrictive  
3963 of acts or conduct of the type prohibited in Subsection (24)(q).

3964 (s) (i) Although live entertainment is permitted on the premises of a club liquor licensee,



3965 a licensee may not allow any person to perform or simulate sexual acts prohibited by Utah law,  
3966 including sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or the  
3967 touching, caressing, or fondling of the breast, buttocks, anus, or genitals, or the displaying of the  
3968 pubic hair, anus, vulva, or genitals. Entertainers shall perform only upon a stage or at a designated  
3969 area approved by the commission.

3970 (ii) Nothing in Subsection (24)(s)(i) precludes a local authority from being more restrictive  
3971 of acts or conduct of the type prohibited in Subsection (24)(s)(i).

3972 (25) A private club may not engage in or permit any form of gambling, or have any video  
3973 gaming device, as defined and proscribed in Title 76, Chapter 10, Part 11, Gambling, on the  
3974 premises of the private club.

3975 (26) (a) A private club may not close or cease operation for a period longer than 240 hours,  
3976 unless written notice is given to the department at least seven days before the closing, and the  
3977 closure or cessation of operation is first approved by the department.

3978 (b) In the case of emergency closure, immediate notice of closure shall be made to the  
3979 department by telephone.

3980 (c) The department may authorize a closure or cessation of operation for a period not to  
3981 exceed 60 days. The department may extend the initial period an additional 30 days upon written  
3982 request of the private club and upon a showing of good cause. A closure or cessation of operation  
3983 may not exceed a total of 90 days without commission approval.

3984 (d) Any notice shall include the dates of closure or cessation of operation, the reason for  
3985 the closure or cessation of operation, and the date on which the licensee will reopen or resume  
3986 operation.

3987 (e) Failure of the licensee to provide notice and to obtain department authorization prior  
3988 to closure or cessation of operation shall result in an automatic forfeiture of the license and the  
3989 forfeiture of the unused portion of the license fee for the remainder of the license year effective  
3990 immediately.

3991 (f) Failure of the licensee to reopen or resume operation by the approved date shall result  
3992 in an automatic forfeiture of the license and the forfeiture of the unused portion of the club's  
3993 license fee for the remainder of the license year.

3994 (27) Each private club shall conduct its affairs so that it is not operated for a pecuniary  
3995 profit.

3996 (28) A private club may not transfer a private club liquor license from one location to  
3997 another, without prior written approval of the commission.

3998 (29) A person, having been granted a private club liquor license, may not sell, exchange,  
3999 barter, give, or attempt in any way to dispose of the license, whether for monetary gain or not. A  
4000 private club liquor license has no monetary value for the purpose of any type of disposition.

4001 Section 73. Section **32A-7-102** is amended to read:

4002 **32A-7-102. Application requirements.**

4003 (1) A qualified applicant for a single event permit shall file a written application with the  
4004 department in a form as the department shall prescribe.

4005 (2) The application shall be accompanied by:

4006 (a) a single event permit fee of \$100, which is refundable if a permit is not granted and  
4007 shall be returned to the applicant with the application;

4008 (b) written consent of the local authority;

4009 (c) a bond as specified by Section 32A-7-105;

4010 (d) the times, dates, location, nature, and purpose of the event;

4011 (e) a description or floor plan designating:

4012 (i) the area in which the applicant proposes that liquor be stored;

4013 (ii) the site from which the applicant proposes that liquor be sold or served; and

4014 (iii) the area in which the applicant proposes that liquor be allowed to be consumed;

4015 (f) a statement of the purpose of the association, corporation, church, or political  
4016 organization, or its local lodge, chapter, or other local unit;

4017 (g) a signed consent form stating that authorized representatives of the commission,  
4018 department, [council,] or any law enforcement officers will have unrestricted right to enter the  
4019 premises during the event;

4020 (h) proper verification evidencing that the person signing the application is authorized to  
4021 act on behalf of the association, corporation, church, or political organization; and

4022 (i) any other information as the commission or department may direct.

4023 Section 74. Section **32A-8-102** is amended to read:

4024 **32A-8-102. Application and renewal requirements.**

4025 (1) Each person seeking an alcoholic beverage manufacturing license of any kind under  
4026 this chapter shall file a written application with the department, in a form prescribed by the

4027 department. It shall be accompanied by:

4028 (a) a nonrefundable application fee of \$100;

4029 (b) an initial license fee of \$1,000 unless otherwise provided in this chapter, which is  
4030 refundable if a license is not granted;

4031 (c) a statement of the purpose for which the applicant has applied for the alcoholic  
4032 beverage manufacturing license;

4033 (d) written consent of the local authority;

4034 (e) a bond as specified by Section 32A-8-105;

4035 (f) evidence that the applicant is carrying public liability insurance in an amount and form  
4036 satisfactory to the department;

4037 (g) evidence that the applicant is authorized by the United States to manufacture alcoholic  
4038 beverages;

4039 (h) a signed consent form stating that the licensee will permit any authorized representative  
4040 of the commission, department, [council,] or any law enforcement officer to have unrestricted right  
4041 to enter the premises; and

4042 (i) any other documents and evidence the department may require by rule or policy to  
4043 allow complete evaluation of the application.

4044 (2) Each application shall be signed and verified by oath or affirmation by an executive  
4045 officer or any person specifically authorized by the corporation or association to sign the  
4046 application, to which shall be attached written evidence of said authority.

4047 (3) All alcoholic beverage manufacturing licenses expire on December 31 of each year.  
4048 Persons desiring to renew their license shall submit a renewal fee of \$1,000 and a completed  
4049 renewal application to the department no later than November 30 of the year the license expires.  
4050 Failure to meet the renewal requirements results in an automatic forfeiture of the license effective  
4051 on the date the existing license expires. Renewal applications shall be in a form prescribed by the  
4052 department.

4053 (4) If any manufacturing licensee does not immediately notify the department of any  
4054 change in ownership of the licensee, or in the case of a Utah corporate owner of any change in the  
4055 corporate officers or directors, the commission may suspend or revoke that license.

4056 Section 75. Section **32A-8-106** is amended to read:

4057 **32A-8-106. Operational restrictions.**

4058 (1) Each person granted an alcoholic beverage manufacturing license and the employees  
4059 and management of the licensee shall abide by the following conditions and requirements, and any  
4060 special conditions and restrictions otherwise provided in this chapter. Failure to comply may result  
4061 in a suspension or revocation of the license or other disciplinary action taken against individual  
4062 employees or management personnel:

4063 (a) A licensee may not sell any liquor within the state except to the department and to  
4064 military installations.

4065 (b) Each license issued under this chapter shall be conspicuously displayed on the licensed  
4066 premises.

4067 (c) A licensee may not advertise its product in violation of this title or any other federal  
4068 or state law, except that nothing in this title prohibits the advertising or solicitation of orders for  
4069 industrial alcohol from holders of special permits.

4070 (d) Each alcoholic beverage manufacturing licensee shall maintain accounting and other  
4071 records and documents as the department may require. Any manufacturing licensee or person  
4072 acting for the manufacturing licensee, who knowingly forges, falsifies, alters, cancels, destroys,  
4073 conceals, or removes the entries in any of the books of account or other documents of the licensee  
4074 required to be made, maintained, or preserved by this title or the rules of the commission for the  
4075 purpose of deceiving the commission, [council,] or the department, or any of their officials or  
4076 employees, is subject to the immediate suspension or revocation of the manufacturing license and  
4077 criminal prosecution under Chapter 12, Criminal Offenses.

4078 (e) There shall be no transfer of an alcoholic beverage manufacturing license from one  
4079 location to another, without prior written approval of the commission.

4080 (f) Each licensee shall from time to time, on request of the department, furnish for  
4081 analytical purposes samples of the alcoholic products that it has for sale or that it has in the course  
4082 of manufacture for sale in this state.

4083 (2) Nothing in this chapter prevents any manufacturer of, or dealer in, patent or proprietary  
4084 medicines containing alcohol from selling the medicines in the original and unbroken package if  
4085 the medicine contains sufficient medication to prevent its use as an alcoholic beverage. Each  
4086 manufacturer or dealer who keeps patent or proprietary medicines for sale shall, upon request by  
4087 the department, provide a sufficient sample of the medicine to enable the department to have the  
4088 medicine analyzed.

4089 (3) (a) Nothing in this chapter prevents any person from manufacturing vinegar or  
4090 preserved nonintoxicating cider for use or sale, or the manufacture or sale for lawful purposes of  
4091 any food preparation, or any United States Pharmacopoeia or national formulary preparation in  
4092 conformity with the Utah pharmacy laws, if the preparation conforms to standards established by  
4093 the state departments of agriculture and health, and contains no more alcohol than is absolutely  
4094 necessary to preserve or extract the medicinal, flavoring, or perfumed properties of the treated  
4095 substances.

4096 (b) Nothing in this chapter prevents the manufacture or sale of wood or denatured alcohol  
4097 under rules established by the department and in compliance with the formulas and rules  
4098 established by the United States.

4099 Section 76. Section **32A-8-502** is amended to read:

4100 **32A-8-502. Application and renewal requirements.**

4101 (1) An individual resident, partnership, or corporation seeking a local industry  
4102 representative license under this chapter shall file a written application with the department, in a  
4103 form prescribed by the department. It shall be accompanied by:

4104 (a) a nonrefundable \$100 application fee;

4105 (b) an initial license fee of \$50, which is refundable if a license is not granted;

4106 (c) verification that the applicant is a resident of Utah, or a Utah partnership or  
4107 corporation;

4108 (d) an affidavit stating the name and address of all manufacturers, suppliers, and importers  
4109 the applicant will represent;

4110 (e) a signed consent form stating that the local industry representative will permit any  
4111 authorized representative of the commission, department, [council,] or any law enforcement officer  
4112 the right to enter, during normal business hours, the specific premises where the representative  
4113 conducts business;

4114 (f) in the case of a partnership or corporate applicant, proper verification evidencing that  
4115 the person or persons signing the application are authorized to so act on the partnership's or  
4116 corporation's behalf; and

4117 (g) any other information the commission or department may require.

4118 (2) All local industry representative licenses expire on January 1 of each year. Licensees  
4119 desiring to renew their license shall submit a renewal fee of \$50 and a completed renewal

4120 application to the department no later than November 30. Failure to meet the renewal requirements  
4121 shall result in an automatic forfeiture of the license effective on the date the existing license  
4122 expires. Renewal applications shall be in a form as prescribed by the department, but shall require  
4123 the licensee to file an affidavit stating the name and address of all manufacturers, suppliers, and  
4124 importers the licensee currently represents.

4125 (3) A licensed local industry representative may represent more than one manufacturer,  
4126 supplier, or importer without paying additional license fees.

4127 Section 77. Section **32A-8-505** is amended to read:

4128 **32A-8-505. Operational restrictions.**

4129 (1) (a) A local industry representative licensee, employee or agent of the licensee, or  
4130 employee or agent of a manufacturer, supplier, or importer who is conducting business in the state,  
4131 shall abide by the conditions and requirements set forth in this section.

4132 (b) If any person listed in Subsection (1)(a) knowingly violates or fails to comply with the  
4133 conditions and requirements set forth in this section, such violation or failure to comply may result  
4134 in a suspension or revocation of the license or other disciplinary action taken against individual  
4135 employees or agents of the licensee, and the commission may order the removal of the  
4136 manufacturer's, supplier's, or importer's products from the department's sales list and a suspension  
4137 of the department's purchase of those products for a period determined by the commission if the  
4138 manufacturer, supplier, or importer directly committed the violation, or solicited, requested,  
4139 commanded, encouraged, or intentionally aided another to engage in the violation.

4140 (2) A local industry representative licensee, employee or agent of the licensee, or employee  
4141 or agent of a manufacturer, supplier, or importer who is conducting business in the state:

4142 (a) may assist the department in ordering, shipping, and delivering merchandise, new  
4143 product notification, listing and delisting information, price quotations, product sales analysis,  
4144 shelf management, and educational seminars, and may, for the purpose of acquiring new listings,  
4145 solicit orders from the department and submit to the department price lists and samples of their  
4146 products, but only to the extent authorized by Chapter 12, Criminal Offenses;

4147 (b) may not sell any liquor, wine, or heavy beer within the state except to the department  
4148 and military installations;

4149 (c) may not ship or transport, or cause to be shipped or transported, into this state or from  
4150 one place to another within this state any liquor, wine, or heavy beer;

4151 (d) may not sell or furnish, except as provided in Section 32A-12-603 for retail licensee  
4152 wine tasting, any liquor, wine, or heavy beer to any person within this state other than to the  
4153 department and military installations;

4154 (e) except as otherwise provided, may not advertise products it represents in violation of  
4155 this title or any other federal or state law;

4156 (f) shall comply with all trade practices provided in Chapter 12, Criminal Offenses; and

4157 (g) may only provide samples of their products for tasting and sampling purposes:

4158 (i) as provided in Section 32A-12-603;

4159 (ii) by the department; or

4160 (iii) by retail licensees or permittees at a department trade show.

4161 (3) (a) A local industry representative licensee shall maintain on file with the department  
4162 a current accounts list of the names and addresses of all manufacturers, suppliers, and importers  
4163 the licensee represents.

4164 (b) The licensee shall notify the department in writing of any changes to the accounts listed  
4165 within 14 days from the date the licensee either acquired or lost the account of a particular  
4166 manufacturer, supplier, or importer.

4167 (4) A local industry representative licensee shall maintain accounting and other records  
4168 and documents as the department may require for at least three years.

4169 (5) Any local industry representative licensee or person acting for the licensee, who  
4170 knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries in any of the  
4171 books of account or other documents of the licensee required to be made, maintained, or preserved  
4172 by this title or the rules of the commission for the purpose of deceiving the commission[~~, council,~~]  
4173 or the department, or any of their officials or employees, is subject to the immediate suspension  
4174 or revocation of the industry representative's license and possible criminal prosecution under  
4175 Chapter 12, Criminal Offenses.

4176 (6) A local industry representative licensee may, for the purpose of becoming educated as  
4177 to the quality and characteristics of a liquor, wine, or heavy beer product which the licensee  
4178 represents, taste and analyze industry representative samples under the following conditions:

4179 (a) The licensee may not receive more than two industry representative samples of a  
4180 particular type, vintage, and production lot of a particular branded product within a consecutive  
4181 120-day period.

- 4182 (b) (i) Each sample of liquor may not exceed 1 liter.
- 4183 (ii) Each sample of wine or heavy beer may not exceed 1.5 liters unless that exact product  
4184 is only commercially packaged in a larger size, not to exceed 5 liters.
- 4185 (c) Each industry representative sample may only be of a product not presently listed on  
4186 the department's sales list.
- 4187 (d) Industry representative samples shall be shipped prepaid by the manufacturer, supplier,  
4188 or importer by common carrier and not via United States mail directly to the department's central  
4189 administrative warehouse office. These samples may not be shipped to any other location within  
4190 the state.
- 4191 (e) Industry representative samples shall be accompanied by a letter from the manufacturer,  
4192 supplier, or importer:
- 4193 (i) clearly identifying the product as an "industry representative sample"; and  
4194 (ii) clearly stating:
- 4195 (A) the FOB case price of the product; and  
4196 (B) the name of the local industry representative for who it is intended.
- 4197 (f) The department shall assess a reasonable handling, labeling, and storage fee for each  
4198 industry representative sample received.
- 4199 (g) The department shall affix to each bottle or container a label clearly identifying the  
4200 product as an "industry representative sample".
- 4201 (h) The department shall:
- 4202 (i) account for and record each industry representative sample received;  
4203 (ii) account for the sample's disposition; and  
4204 (iii) maintain a record of the sample and its disposition for a two-year period.
- 4205 (i) Industry representative samples may not leave the premises of the department's central  
4206 administrative warehouse office.
- 4207 (j) Licensed industry representatives and their employees and agents may, at regularly  
4208 scheduled days and times established by the department, taste and analyze industry representative  
4209 samples on the premises of the department's central administrative warehouse office.
- 4210 (k) Any unused contents of an opened product remaining after the product has been  
4211 sampled shall be destroyed by the department under controlled and audited conditions established  
4212 by the department.



4213 (1) Industry representative samples that are not tasted within 30 days of receipt by the  
4214 department shall be disposed of at the discretion of the department in one of the following ways:

4215 (i) contents destroyed under controlled and audited conditions established by the  
4216 department; or

4217 (ii) added to the inventory of the department for sale to the public.

4218 (7) A local industry representative licensee may conduct retail licensee wine tasting as  
4219 provided in Section 32A-12-603.

4220 (8) A local representative licensee may not sell, exchange, barter, give, or attempt in any  
4221 way to dispose of the license whether for monetary gain or not. A local industry representative  
4222 license has no monetary value for the purpose of any type of disposition.

4223 Section 78. Section **32A-9-102** is amended to read:

4224 **32A-9-102. Application and renewal requirements.**

4225 (1) A person seeking a warehousing license under this chapter shall file a written  
4226 application with the department, in a form prescribed by the department. It shall be accompanied  
4227 by:

4228 (a) a nonrefundable \$100 application fee;

4229 (b) an initial license fee of \$250, which is refundable if a license is not granted;

4230 (c) written consent of the local authority;

4231 (d) a copy of the applicant's current business license;

4232 (e) a bond as specified by Section 32A-9-105;

4233 (f) evidence that the applicant is carrying public liability insurance in an amount and form  
4234 satisfactory to the department;

4235 (g) a floor plan of the applicant's warehouse, including the area in which the applicant  
4236 proposes that liquor be stored;

4237 (h) a signed consent form stating that the licensee will permit any authorized representative  
4238 of the commission, department, [council,] or any law enforcement officer unrestricted right to enter  
4239 the warehouse premises; and

4240 (i) any other documents and evidence the department may require by rule or policy to  
4241 allow complete evaluation of the application.

4242 (2) Each application shall be signed and verified by oath or affirmation by an executive  
4243 officer or any person specifically authorized by the corporation to sign the application, to which

4244 shall be attached written evidence of said authority.

4245 (3) All warehousing licenses expire on December 31 of each year. Persons desiring to  
4246 renew their license shall submit a renewal fee of \$250 and a completed renewal application to the  
4247 department no later than November 30 of the year the license expires. Failure to meet the renewal  
4248 requirements results in an automatic forfeiture of the license effective on the date the existing  
4249 license expires. Renewal applications shall be in a form prescribed by the department.

4250 (4) If any licensee does not immediately notify the department of any change in ownership  
4251 of the licensee, or in the case of a Utah corporate owner of any change in the corporate officers or  
4252 directors, the commission may suspend or revoke that license.

4253 Section 79. Section **32A-9-106** is amended to read:

4254 **32A-9-106. Operational restrictions.**

4255 Each person granted a warehousing license and the employees and management of the  
4256 licensee shall abide by the following conditions and requirements. Failure to comply may result  
4257 in a suspension or revocation of the license, or other disciplinary action taken against individual  
4258 employees or management personnel:

4259 (1) All liquor warehoused in this state and sold to out-of-state consignees, shall be  
4260 transported out of the state only by a motor carrier regulated under Title 72, Chapter 9, Motor  
4261 Carrier Safety Act.

4262 (2) All liquor warehoused in this state and sold to the department shall be transported by  
4263 motor carriers approved by the department.

4264 (3) All liquor transported to or from the licensee's premises shall be carried in sealed  
4265 conveyances that are made available for inspection by the department while en route within the  
4266 state.

4267 (4) A licensee may not ship, convey, distribute, or remove liquor from any warehouse in  
4268 less than full case lots.

4269 (5) A licensee may not ship, convey, distribute, or remove any liquor from a warehouse  
4270 to any consignee outside the state that is not licensed as a liquor wholesaler or retailer by the state  
4271 in which the consignee is domiciled.

4272 (6) A licensee may not receive, warehouse, ship, distribute, or convey any liquor that the  
4273 commission has not authorized the licensee to handle through its warehouse.

4274 (7) Each licensee shall maintain accounting and other records and documents as the

4275 department may require. Any licensee or person acting for the licensee, who knowingly forges,  
4276 falsifies, alters, cancels, destroys, conceals, or removes the entries in any of the books of account  
4277 or other documents of the licensee required to be made, maintained, or preserved by this title or  
4278 the rules of the commission for the purpose of deceiving the commission[, council,] or the  
4279 department, or any of their officials or employees, is subject to the immediate suspension or  
4280 revocation of the license and possible criminal prosecution under Chapter 12, Criminal Offenses.

4281 (8) There shall be no transfer of a liquor warehousing license from one location to another,  
4282 without prior written approval of the commission.

4283 Section 80. Section **32A-10-202** is amended to read:

4284 **32A-10-202. Application and renewal requirements.**

4285 (1) A person seeking an on-premise beer retailer license under this chapter shall file a  
4286 written application with the department, in a form prescribed by the department. It shall be  
4287 accompanied by:

4288 (a) a nonrefundable \$300 application fee;

4289 (b) an initial license fee of \$100, which is refundable if a license is not granted;

4290 (c) written consent of the local authority or a license to sell beer at retail for on-premise  
4291 consumption granted by the local authority under Section 32A-10-101;

4292 (d) a copy of the applicant's current business license;

4293 (e) for applications made on or after July 1, 1991, evidence of proximity to any public or  
4294 private school, church, public library, public playground, or park, and if the proximity is within  
4295 the 600 foot or 200 foot limitation of Subsections 32A-10-201 (3), (4), and (5), the application  
4296 shall be processed in accordance with those subsections;

4297 (f) a bond as specified by Section 32A-10-205;

4298 (g) a floor plan of the premises, including consumption areas and the area where the  
4299 applicant proposes to keep, store, and sell beer;

4300 (h) evidence that the on-premise beer retailer licensee is carrying public liability insurance  
4301 in an amount and form satisfactory to the department;

4302 (i) for those licensees that sell more than \$5,000 of beer annually, evidence that the  
4303 on-premise beer retailer licensee is carrying dramshop insurance coverage of at least \$100,000 per  
4304 occurrence and \$300,000 in the aggregate;

4305 (j) a signed consent form stating that the on-premise beer retailer licensee will permit any

4306 authorized representative of the commission, department, [council,] or any peace officer  
4307 unrestricted right to enter the licensee premises;

4308 (k) in the case of a corporate applicant, proper verification evidencing that the person or  
4309 persons signing the on-premise beer retailer licensee application are authorized to so act on the  
4310 corporation's behalf; and

4311 (1) any other information the department may require.

4312 (2) All on-premise beer retailer licenses expire on the last day of February of each year,  
4313 except that all on-premise beer retailer licenses obtained before the last day of February 1991  
4314 expire on the last day of February 1992. Persons desiring to renew their on-premise beer retailer  
4315 license shall submit a renewal fee of \$100 and a completed renewal application to the department  
4316 no later than January 31. Failure to meet the renewal requirements shall result in an automatic  
4317 forfeiture of the license, effective on the date the existing license expires. Renewal applications  
4318 shall be in a form as prescribed by the department.

4319 (3) If any beer retailer licensee does not immediately notify the department of any change  
4320 in ownership of the beer retailer, or in the case of a Utah corporate owner of any change in the  
4321 officers or directors, the commission may suspend or revoke that license.

4322 (4) If the applicant is a county, municipality, or other political subdivision, it need not meet  
4323 the requirements of Subsections (1)(a), (b), (c), (d), and (f).

4324 (5) Only one state on-premise beer retailer license is required for each building or resort  
4325 facility owned or leased by the same applicant. Separate licenses are not required for each retail  
4326 beer dispensing outlet located in the same building or on the same resort premises owned or  
4327 operated by the same applicant.

4328 Section 81. Section **32A-10-206** is amended to read:

4329 **32A-10-206. Operational restrictions.**

4330 Each person granted an on-premise beer retailer license and the employees and  
4331 management personnel of the on-premise beer retailer licensee shall comply with the following  
4332 conditions and requirements. Failure to comply may result in a suspension or revocation of the  
4333 license or other disciplinary action taken against individual employees or management personnel.

4334 (1) On-premise beer retailer licensees may sell beer in open containers, in any size not  
4335 exceeding two liters, and on draft.

4336 (2) Liquor may not be stored or sold on the premises of any on-premise beer retailer

4337 licensee.

4338 (3) A patron or guest may only make purchases in the on-premise beer retailer licensee  
4339 from a server designated and trained by the licensee.

4340 (4) (a) Beer may not be sold or offered for sale at any on-premise beer retailer licensee  
4341 after 1 a.m. and before 10 a.m.

4342 (b) Beer may not be sold, delivered, or furnished to any:

4343 (i) minor;

4344 (ii) person actually, apparently, or obviously drunk;

4345 (iii) known habitual drunkard; or

4346 (iv) known interdicted person.

4347 (5) Beer sold in sealed containers by the on-premise beer retailer licensee may be removed  
4348 from the on-premise beer retailer premises.

4349 (6) (a) Beginning January 1, 1991, a person may not bring onto the premises of an  
4350 on-premise beer retailer licensee any alcoholic beverage for on-premise consumption.

4351 (b) Beginning January 1, 1991, an on-premise beer retailer licensee or its officers,  
4352 managers, employees, or agents may not allow a person to bring onto the on-premise beer retailer  
4353 licensee premises any alcoholic beverage for on-premise consumption or allow consumption of  
4354 any such alcoholic beverage on its premises.

4355 (c) Beginning January 1, 1991, if any on-premise beer retailer licensee or any of its  
4356 officers, managers, employees, or agents violates this Subsection (6):

4357 (i) the commission may immediately suspend or revoke the on-premise beer retailer license  
4358 and the on-premise beer retailer licensee is subject to possible criminal prosecution under Chapter  
4359 12; and

4360 (ii) the local authority may immediately suspend or revoke the business license of the  
4361 on-premise beer retailer licensee.

4362 (7) Minors may not be employed by or be on the premises of an on-premise beer retailer  
4363 licensee to sell or dispense beer. Minors may not be employed by or be on the premises of any  
4364 tavern.

4365 (8) An employee of a licensee, while on duty, may not consume an alcoholic beverage or  
4366 be under the influence of alcoholic beverages.

4367 (9) Each on-premise beer retailer licensee shall display in a prominent place in the

4368 on-premise beer retailer licensee:

4369 (a) the on-premise beer retailer license that is issued by the department; and

4370 (b) a sign in large letters stating: "Warning: The consumption of alcoholic beverages  
4371 purchased in this establishment may be hazardous to your health and the safety of others."

4372 (10) The following acts or conduct in an on-premise beer retailer outlet licensed under this  
4373 part are considered contrary to the public welfare and morals, and are prohibited upon the  
4374 premises:

4375 (a) employing or using any person in the sale or service of alcoholic beverages while the  
4376 person is unclothed or in attire, costume, or clothing that exposes to view any portion of the female  
4377 breast below the top of the areola or any portion of the pubic hair, anus, cleft of the buttocks,  
4378 vulva, or genitals;

4379 (b) employing or using the services of any person to mingle with the patrons while the  
4380 person is unclothed or in attire, costume, or clothing as described in Subsection (10)(a);

4381 (c) encouraging or permitting any person to touch, caress, or fondle the breasts, buttocks,  
4382 anus, or genitals of any other person;

4383 (d) permitting any employee or person to wear or use any device or covering, exposed to  
4384 view, that simulates the breast, genitals, anus, pubic hair, or any portion of these;

4385 (e) permitting any person to use artificial devices or inanimate objects to depict any of the  
4386 prohibited activities described in this section;

4387 (f) permitting any person to remain in or upon the premises who exposes to public view  
4388 any portion of his or her genitals or anus; or

4389 (g) showing films, still pictures, electronic reproductions, or other visual reproductions  
4390 depicting:

4391 (i) acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral  
4392 copulation, flagellation, or any sexual acts that are prohibited by Utah law;

4393 (ii) any person being touched, caressed, or fondled on the breast, buttocks, anus, or  
4394 genitals;

4395 (iii) scenes wherein artificial devices or inanimate objects are employed to depict, or  
4396 drawings are employed to portray, any of the prohibited activities described in this section; or

4397 (iv) scenes wherein a person displays the vulva or the anus or the genitals.

4398 (11) Nothing in Subsection (10) precludes a local authority from being more restrictive

4399 of acts or conduct of the type prohibited in Subsection (10).

4400 (12) An on-premise beer retailer licensee may not engage in or permit any form of  
4401 gambling, or have any video gaming device, as defined and proscribed in Title 76, Chapter 10, Part  
4402 11, Gambling, on the premises of the on-premise beer retailer licensee.

4403 (13) (a) Although live entertainment is permitted on the premises of an on-premise beer  
4404 retailer licensee, a licensee may not permit any person to perform or simulate sexual acts  
4405 prohibited by Utah law, including sexual intercourse, masturbation, sodomy, bestiality, oral  
4406 copulation, flagellation, the touching, caressing, or fondling of the breast, buttocks, anus, or  
4407 genitals, or the displaying of the pubic hair, anus, vulva, or genitals. Entertainers shall perform  
4408 only upon a stage or at a designated area approved by the commission.

4409 (b) Nothing in Subsection (13)(a) precludes a local authority from being more restrictive  
4410 of acts or conduct of the type prohibited in Subsection (13)(a).

4411 (14) Each on-premise beer retailer licensee shall maintain accounting and other records  
4412 and documents as the department may require. Any on-premise beer retailer licensee or person  
4413 acting for the on-premise beer retailer licensee, who knowingly forges, falsifies, alters, cancels,  
4414 destroys, conceals, or removes the entries in any of the books of account or other documents of the  
4415 on-premise beer retailer licensee required to be made, maintained, or preserved by this title or the  
4416 rules of the commission for the purpose of deceiving the commission[, council,] or the department,  
4417 or any of their officials or employees, is subject to the immediate suspension or revocation of the  
4418 on-premise beer retailer license and possible criminal prosecution under Chapter 12, Criminal  
4419 Offenses.

4420 (15) There shall be no transfer of an on-premise beer retailer license from one location to  
4421 another, without prior written approval of the commission.

4422 (16) (a) A person having been granted an on-premise beer retailer license may not sell,  
4423 exchange, barter, give, or attempt in any way to dispose of the license whether for monetary gain  
4424 or not.

4425 (b) An on-premise beer retailer license has no monetary value for the purpose of any type  
4426 of disposition.

4427 Section 82. Section **32A-11-102** is amended to read:

4428 **32A-11-102. Application and renewal requirements.**

4429 (1) A person seeking a beer wholesaling license under this chapter shall file a written

4430 application with the department, in a form prescribed by the department. It shall be accompanied  
4431 by:

4432 (a) a nonrefundable \$100 application fee;

4433 (b) an initial license fee of \$300, which is refundable if a license is not granted;

4434 (c) written consent of the local authority;

4435 (d) a copy of the applicant's current business license;

4436 (e) a bond as specified in Section 32A-11-105;

4437 (f) evidence that the applicant is carrying public liability insurance in an amount and form  
4438 satisfactory to the department;

4439 (g) a signed consent form stating that the licensee will permit any authorized representative  
4440 of the commission, department, [council,] or any peace officer unrestricted right to enter the  
4441 licensed premises;

4442 (h) a statement of the brands of beer the applicant is authorized to sell and distribute;

4443 (i) a statement of all geographical areas in which the applicant is authorized to sell and  
4444 distribute beer; and

4445 (j) any other documents and evidence as the department may direct.

4446 (2) Each application shall be signed and verified by oath or affirmation by an executive  
4447 officer or any person specifically authorized by the corporation to sign the application, to which  
4448 shall be attached written evidence of said authority.

4449 (3) (a) All beer wholesaling licenses expire on December 31 of each year. Persons  
4450 desiring to renew their beer wholesaling license shall submit a renewal fee of \$300 and a  
4451 completed renewal application to the department no later than November 30 of the year the license  
4452 expires. Failure to meet the renewal requirements results in an automatic forfeiture of the license  
4453 effective on the date the existing license expires. Renewal applications shall be in a form  
4454 prescribed by the department.

4455 (b) The annual renewal fee prescribed in this Subsection (3) is independent of any like  
4456 license fee which may be assessed by the local authority of the city or county in which the  
4457 wholesaler's warehouse is located. Any local fees may not exceed \$300. Payment of local fees  
4458 shall be made directly to the local authority assessing them.

4459 (4) If any licensee does not immediately notify the department of any change in ownership  
4460 of the licensee, or in the case of a Utah corporate owner of any change in the corporate officers or



4461 directors, the commission may suspend or revoke that license.

4462 Section 83. Section **32A-11-106** is amended to read:

4463 **32A-11-106. Operational restrictions.**

4464 (1) Any person who is granted a beer wholesaling license, and the employees and  
4465 management personnel of the licensee, shall abide by the following conditions and requirements:

4466 (a) A licensee may not wholesale any beer manufactured within the state by a brewer who  
4467 is not licensed by the commission as a manufacturing licensee.

4468 (b) A licensee may not wholesale any beer manufactured out of state by a brewer who has  
4469 not obtained a certificate of approval from the department.

4470 (c) A licensee may not sell or distribute beer to any person within the state except licensed  
4471 beer retailers or holders of retail beer permits or licenses issued by a local authority for temporary  
4472 special events that do not last longer than 30 days.

4473 (d) A licensee may not sell or distribute any beer to any retailer outside of the geographic  
4474 area designated on its application, except that if a licensee is temporarily unable to supply retail  
4475 dealers within its authorized geographical area, the department may grant temporary authority to  
4476 another licensed wholesaler who distributes the same brand in another area to supply retailers.

4477 (e) (i) Every licensee shall own, lease, or otherwise control and maintain a warehouse  
4478 facility located in this state for the receipt, storage, and further distribution of all beer sold by the  
4479 licensee to any person within the state.

4480 (ii) A licensee may not sell beer to any person in this state, other than the department,  
4481 unless the beer has first been physically removed from the vehicle used to transport the beer from  
4482 the supplier to the licensee and delivered into the actual possession and control of the licensee in  
4483 its warehouse or other facility.

4484 (f) Each beer wholesaling licensee shall maintain accounting and other records and  
4485 documents as the department may require. Any licensee or person acting for the licensee, who  
4486 knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the entries in any of the  
4487 books of account or other documents of the licensee required to be made, maintained, or preserved  
4488 by this title or the rules of the commission for the purpose of deceiving the commission, [council,  
4489 or the department, or any of their officials or employees, is subject to the immediate suspension  
4490 or revocation of the beer wholesaling license and possible criminal prosecution under Chapter 12,  
4491 Criminal Offenses.

4492 (g) A licensee may not assign or transfer its license unless the assignment or transfer is  
4493 done in accordance with the commission rules and after written consent has been given by the  
4494 commission.

4495 (h) A licensee may not sell or distribute any alcoholic beverage that is not clearly labeled  
4496 in a manner reasonably calculated to put the public on notice that the beverage is an alcoholic  
4497 beverage. The beverage shall bear the label "alcoholic beverage" or a manufacturer's label which  
4498 in common usage apprises the general public that the beverage contains alcohol.

4499 (2) Failure to comply with the provisions of Subsection (1) may result in suspension or  
4500 revocation of the beer wholesaling license or other disciplinary action taken against individual  
4501 employees or management personnel of the licensee.

4502 Section 84. Section **32A-11a-102** is amended to read:

4503 **32A-11a-102. Definitions.**

4504 As used in this chapter:

4505 (1) "Affected party" means a supplier or wholesaler who is a party to a distributorship  
4506 agreement that a terminating party seeks to terminate or not renew.

4507 (2) (a) "Distributorship agreement" means any written contract, agreement, or arrangement  
4508 between a supplier and a wholesaler pursuant to which the wholesaler has the right to purchase,  
4509 resell, and distribute in a designated geographical area any brand of beer manufactured, imported,  
4510 or distributed by the supplier.

4511 (b) A separate agreement between a supplier and a wholesaler that relates to the  
4512 relationship between the supplier and the wholesaler or the duties of either of them under a  
4513 distributorship agreement is considered to be part of the distributorship agreement for purposes  
4514 of this chapter.

4515 (c) A distributorship agreement may be for a definite or indefinite period.

4516 (3) "Good cause" means the material failure by a supplier or a wholesaler to comply with  
4517 an essential, reasonable, and lawful requirement imposed by a distributorship agreement if the  
4518 failure occurs after the supplier or wholesaler acting in good faith provides notice of deficiency and  
4519 an opportunity to correct in accordance with Sections 32A-11a-103 and 32A-11a-104.

4520 (4) "Good faith" is as defined in Section 70A-2-103.

4521 (5) "Retailer" means a person subject to license under Chapter 10, Beer Retailer Licenses.

4522 (6) "Sales territory" means the geographic area of distribution and sale responsibility

4523 designated by a distributorship agreement.

4524 (7) "Supplier," notwithstanding Section [~~32A-1-107~~] 32A-1-105, means a brewer or other  
4525 person who sells beer to a wholesaler for resale in this state.

4526 (8) "Terminating party" means a supplier or wholesaler who:

4527 (a) is a party to a distributorship agreement; and

4528 (b) seeks to terminate or not renew the distributorship agreement.

4529 Section 85. Section **32A-12-303** is amended to read:

4530 **32A-12-303. Tampering with records.**

4531 (1) Any official or employee of the commission[~~, council,~~] or the department who has  
4532 custody of any writing or record required to be filed or deposited with the commission[~~, council,~~]  
4533 or the department under this title, and who steals, falsifies, alters, willfully destroys, mutilates,  
4534 defaces, removes, or conceals in whole or in part that writing or record, or who knowingly permits  
4535 any other person to do so, is guilty of a third degree felony.

4536 (2) Any person not an official or employee of the commission[~~, council,~~] or the department  
4537 who commits any of the acts specified in Subsection (1) is guilty of a class B misdemeanor.

4538 Section 86. Section **32A-12-304** is amended to read:

4539 **32A-12-304. Making false statements.**

4540 (1) (a) Any person who makes any false material statement under oath or affirmation in  
4541 any official proceeding before the commission[~~, council,~~] or the department is guilty of a second  
4542 degree felony.

4543 (b) As used in Subsection (1)(a), "material" statement is as defined in Section 76-8-501.

4544 (2) A person is guilty of a class B misdemeanor if that person knowingly:

4545 (a) makes a false statement under oath or affirmation in any official proceeding before the  
4546 commission[~~, council,~~] or the department;

4547 (b) makes a false statement with a purpose to mislead a public servant in performing that  
4548 servant's official functions under this title;

4549 (c) makes a false statement and the statement is required by this title to be sworn or  
4550 affirmed before a notary or other person authorized to administer oaths;

4551 (d) makes a false written statement on or pursuant to any application, form, affidavit, or  
4552 document required by this title;

4553 (e) creates a false impression in a written application, form, affidavit, or document

4554 required by this title by omitting information necessary to prevent statements in them from being  
4555 misleading;

4556 (f) makes a false written statement with intent to deceive a public servant in the  
4557 performance of that servant's official functions under this title; or

4558 (g) submits or invites reliance on any writing or document required under this title which  
4559 he knows to be lacking in authenticity.

4560 (3) A person is not guilty under Subsection (2) if that person retracts the falsification  
4561 before it becomes apparent that the falsification was or would be exposed.

4562 Section 87. Section **32A-12-305** is amended to read:

4563 **32A-12-305. Obstructing an officer making a search or an official proceeding or**  
4564 **investigation.**

4565 (1) A person in or having charge of any premises may not refuse or fail to admit to the  
4566 premises or obstruct the entry of any member of the commission, [~~council,~~] authorized  
4567 representative of the commission or department, or any law enforcement officer who demands  
4568 entry when acting under this title.

4569 (2) A person is guilty of a second degree felony if, believing that an official proceeding  
4570 or investigation is pending or about to be instituted under this title, that person:

4571 (a) alters, destroys, conceals, or removes any writing or record with a purpose to impair  
4572 its verity or availability in the proceeding or investigation; or

4573 (b) makes, presents, or uses anything that the person knows to be false with a purpose to  
4574 deceive any commissioner, [~~council member,~~] department official or employee, law enforcement  
4575 official, or other person who may be engaged in a proceeding or investigation under this title.

4576 Section 88. Section **32A-12-306** is amended to read:

4577 **32A-12-306. Conflicting interests.**

4578 (1) A member of the commission [~~or council,~~] or an employee of the department may not  
4579 be directly or indirectly interested or engaged in any other business or undertaking dealing in  
4580 alcoholic products, whether as owner, part owner, partner, member of syndicate, shareholder,  
4581 agent, or employee and whether for the member's own benefit or in a fiduciary capacity for some  
4582 other person or entity.

4583 (2) A member of the commission [~~or council,~~] or an employee of the department may not  
4584 enter into or participate in any business transaction as a partner, co-owner, joint venturer, or

4585 shareholder with any agent, representative, employee, or officer of any supplier of alcoholic  
4586 products to the department.

4587 (3) This section does not prevent the purchase of alcoholic products by any commission  
4588 [~~or council~~] member or employee of the department as authorized by this title.

4589 Section 89. Section **32A-12-307** is amended to read:

4590 **32A-12-307. Interfering with suppliers.**

4591 A member of the commission [~~or council,~~] or an employee of the department may not  
4592 directly or indirectly participate in any manner, by recommendation or otherwise, in the  
4593 appointment, employment, or termination of appointment or employment of any agent,  
4594 representative, employee, or officer of any manufacturer, supplier, or importer of liquor, wine, or  
4595 heavy beer to the department except to determine qualifications for licensing under Chapter 8, Part  
4596 5, Local Industry Representative Licenses, and to enforce compliance with this title.

4597 Section 90. Section **32A-12-308** is amended to read:

4598 **32A-12-308. Offering or soliciting bribes or gifts.**

4599 (1) A person, association, or corporation having sold, selling, or offering any alcoholic  
4600 product for sale to the commission or department may not offer, make, tender, or in any way  
4601 deliver or transfer any bribe, gift, or share of profits to any commissioner, the department director,  
4602 any department employee, officer, or agent, [~~any member of the council,~~] or any law enforcement  
4603 officer responsible for the enforcement of this title.

4604 (2) A commissioner, the department director, any department employee, officer, or agent,  
4605 [~~any member of the council,~~] or any law enforcement officer responsible for the enforcement of  
4606 this title may not knowingly solicit, receive, accept, take, or seek, directly or indirectly, any  
4607 commission, remuneration, gift, or loan whatsoever from any person, association, or corporation  
4608 having sold, selling, or offering any alcoholic product for sale.

4609 (3) A violation of this section is a third degree felony.

4610 (4) No other provision of law supersedes this section.

4611 Section 91. Section **32A-12-310** is amended to read:

4612 **32A-12-310. Forgery.**

4613 (1) (a) Any person, with a purpose to defraud the commission[~~, council,~~] or the department  
4614 or with knowledge that he is facilitating a fraud to be perpetrated by anyone, who forges any  
4615 writing required under this title, is guilty of forgery as provided under Section 76-6-501.

4616 (b) A violation of Subsection (1)(a) is a second degree felony.

4617 (2) Any person, with intent to defraud the commission~~[, council,]~~ or the department, who  
4618 knowingly possesses any writing that is a forgery as defined in Section 76-6-501, is guilty of a  
4619 third degree felony.

4620 Section 92. Section **32A-13-109** is amended to read:

4621 **32A-13-109. Authority to inspect.**

4622 (1) For purposes of enforcing this title and commission rules, all members of the  
4623 commission, ~~[council,]~~ authorized representatives of the commission or department, or any law  
4624 enforcement or peace officer shall be accorded access, ingress, and egress to and from all premises  
4625 or conveyances used in the manufacture, storage, transportation, service, or sale of any alcoholic  
4626 product. They also may open any package containing, or supposed to contain, any article  
4627 manufactured, sold, or exposed for sale, or held in possession with intent to sell in violation of this  
4628 title or commission rules, and may inspect its contents and take samples of the contents for  
4629 analysis.

4630 (2) All dealers, clerks, bookkeepers, express agents, railroad and airline officials, common  
4631 and other carriers, and their employees shall assist, when so requested by any authorized person  
4632 specified in Subsection (1), in tracing, finding, or discovering the presence of any article prohibited  
4633 by this title or commission rules to the extent assistance would not infringe upon the person's  
4634 federal and state constitutional rights.

4635 Section 93. Section **53-10-102** is amended to read:

4636 **53-10-102. Definitions.**

4637 As used in this chapter:

4638 (1) "Administration of criminal justice" means performance of any of the following:  
4639 detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication,  
4640 correctional supervision, or rehabilitation of accused persons or criminal offenders.

4641 (2) "Alcoholic beverages" has the same meaning as provided in Section 32A-1-105.

4642 (3) "Alcoholic products" has the same meaning as provided in Section 32A-1-105.

4643 (4) "Commission" means the Alcoholic Beverage Control Commission.

4644 (5) "Communications services" means the technology of reception, relay, and transmission  
4645 of information required by public safety agencies in the performance of their duty.

4646 (6) "Conviction record" means criminal history information indicating a record of a

4647 criminal charge which has led to a declaration of guilt of an offense.

4648 [~~(7)~~] "~~Council~~" means the ~~Citizen's Council on Alcoholic Beverage Control~~.]

4649 [~~(8)~~] (7) "Criminal history record information" means information on individuals  
4650 consisting of identifiable descriptions and notations of:

4651 (a) arrests, detentions, indictments, informations, or other formal criminal charges, and any  
4652 disposition arising from any of them; and

4653 (b) sentencing, correctional supervision, and release.

4654 [~~(9)~~] (8) "Criminalist" means the scientific discipline directed to the recognition,  
4655 identification, individualization, and evaluation of physical evidence by application of the natural  
4656 sciences in law-science matters.

4657 [~~(10)~~] (9) "Criminal justice agency" means courts or a government agency or subdivision  
4658 of a government agency that administers criminal justice under a statute, executive order, or local  
4659 ordinance and that allocates greater than 50% of its annual budget to the administration of criminal  
4660 justice.

4661 [~~(11)~~] (10) "Department" means the Department of Public Safety.

4662 [~~(12)~~] (11) "Director" means the division director appointed under Section 53-10-103.

4663 [~~(13)~~] (12) "Division" means the Criminal Investigations and Technical Services Division  
4664 created in Section 53-10-103.

4665 [~~(14)~~] (13) "Executive order" means an order of the president of the United States or the  
4666 chief executive of a state that has the force of law and that is published in a manner permitting  
4667 regular public access to it.

4668 [~~(15)~~] (14) "Forensic" means dealing with the application of scientific knowledge relating  
4669 to criminal evidence.

4670 [~~(16)~~] (15) "Missing child" means any person under the age of 18 years who is missing  
4671 from his or her home environment or a temporary placement facility for any reason and whose  
4672 location cannot be determined by the person responsible for the child's care.

4673 [~~(17)~~] (16) "Missing person" has the same meaning as provided in Section 26-2-27.

4674 [~~(18)~~] (17) "Pathogens" means disease-causing agents.

4675 [~~(19)~~] (18) "Physical evidence" means something submitted to the bureau to determine the  
4676 truth of a matter using scientific methods of analysis.

4677 [~~(20)~~] (19) "Qualifying entity" means a business, organization, or a governmental entity

4678 which employs persons who deal with:

- 4679 (a) national security interests;
- 4680 (b) care, custody, or control of children;
- 4681 (c) fiduciary trust over money; or
- 4682 (d) health care to children or vulnerable adults.

4683 Section 94. Section **53-10-304** is amended to read:

4684 **53-10-304. Narcotics and alcoholic beverage enforcement -- Responsibility and**  
4685 **jurisdiction.**

4686 The bureau shall:

- 4687 (1) have specific responsibility for the enforcement of all laws of the state pertaining to  
4688 alcoholic beverages and products;
- 4689 (2) have general law enforcement jurisdiction throughout the state;
- 4690 (3) have concurrent law enforcement jurisdiction with all local law enforcement agencies  
4691 and their officers;
- 4692 (4) cooperate and exchange information with any other state agency and with other law  
4693 enforcement agencies of government, both within and outside this state, to obtain information that  
4694 may achieve more effective results in the prevention, detection, and control of crime and  
4695 apprehension of criminals;

4696 [~~(5) cooperate with the council in all matters concerning Title 32A, Alcoholic Beverage~~  
4697 ~~Control Act;~~]

4698 [~~(6)~~ (5) sponsor or supervise programs or projects related to prevention, detection, and  
4699 control of violations of:

- 4700 (a) Title 32A, Alcoholic Beverage Control Act;
- 4701 (b) Title 58, Chapter 37, Utah Controlled Substance Act;
- 4702 (c) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 4703 (d) Title 58, Chapter 37b, Imitation Controlled Substances Act;
- 4704 (e) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; and
- 4705 (f) Title 58, Chapter 37d, Clandestine Drug Lab Act; and
- 4706 [~~(7)~~ (6) assist the governor in an emergency or as the governor may require.

4707 Section 95. Section **53-10-305** is amended to read:

4708 **53-10-305. Duties of bureau chief.**



4709 The bureau chief, with the consent of the commissioner, shall do the following:

4710 (1) conduct in conjunction with the state boards of education and higher education in state  
4711 schools, colleges, and universities, an educational program concerning alcoholic products, and  
4712 work in conjunction with civic organizations, churches, local units of government, and other  
4713 organizations in the prevention of alcoholic product and drug violations;

4714 (2) coordinate law enforcement programs throughout the state and accumulate and  
4715 disseminate information related to the prevention, detection, and control of violations of this  
4716 chapter and Title 32A, Alcoholic Beverage Control Act, as it relates to storage or consumption of  
4717 alcoholic beverages on premises maintained by social clubs, recreational, athletic, and kindred  
4718 associations;

4719 (3) make inspections and investigations as required by the commission and the Department  
4720 of Alcoholic Beverage Control;

4721 [~~(4) consult and cooperate with the council;~~]

4722 [~~(5)~~] (4) perform other acts as may be necessary or appropriate concerning control of the  
4723 use of alcoholic beverages and products and drugs; and

4724 [~~(6)~~] (5) make reports and recommendations to the Legislature, the governor, the  
4725 commissioner, the commission, and the Department of Alcoholic Beverage Control[ ~~and the~~  
4726 ~~council~~] as may be required or requested.

4727 Section 96. Section **53A-15-205** is amended to read:

4728 **53A-15-205. Disability Determination Services Advisory Council -- Membership --**  
4729 **Duties -- Requirements for DDDS.**

4730 (1) As used in this section "council" means the Disability Determination Services Advisory  
4731 Council to the State Board for Applied Technology Education, created in Subsection (2).

4732 (2) There is created the Disability Determination Services Advisory Council to act as an  
4733 advisory council to the State Board for Applied Technology Education regarding the Division of  
4734 Disability Determination Services (DDDS), established under Chapter 24, Part 5.

4735 (3) The council is composed of the following members:

4736 (a) the administrator of DDDS;

4737 (b) a representative of the United States Department of Health and Human Services, Social  
4738 Security Administration, appointed by the board; and

4739 (c) nine persons, appointed by the board in accordance with Subsections (5) and (6), who

4740 represent a cross section of:

- 4741 (i) persons with disabilities;
- 4742 (ii) advocates for persons with disabilities;
- 4743 (iii) health care providers;
- 4744 (iv) representatives of allied state and local agencies; and
- 4745 (v) representatives of the general public.

4746 (4) The members appointed under Subsections (3)(a) and (3)(b) serve as nonvoting  
4747 members of the council.

4748 (5) In appointing the members described in Subsection (3)(c), the board shall:

4749 (a) solicit nominations from organizations and agencies that represent the interests of  
4750 members described in that subsection; and

4751 (b) make every effort to create a balance in terms of geography, sex, race, ethnicity, and  
4752 type of both mental and physical disabilities.

4753 (6) In making initial appointments of members described in Subsection (3)(c), the board  
4754 shall appoint three members for two-year terms, three members for four-year terms, and three  
4755 members for six-year terms. All subsequent appointments are for four years. The board shall fill  
4756 any vacancy that occurs on the council for any reason by appointing a person for the unexpired  
4757 term of the vacated member. Council members are eligible for one reappointment and serve until  
4758 their successors are appointed.

4759 (7) Five voting members of the council constitute a quorum. The action of a majority of  
4760 a quorum represents the action of the council.

4761 (8) Members of the council serve without compensation but may be reimbursed for  
4762 expenses incurred in the performance of their official duties.

4763 (9) The council shall annually elect a chairperson from among the membership described,  
4764 and shall adopt bylaws governing its activities.

4765 (10) The council shall:

4766 (a) advise DDDS and the Social Security Administration regarding its practices and  
4767 policies on the determination of claims for social security disability benefits;

4768 (b) participate in the development of new internal practices and procedures of DDDS and  
4769 of the policies of the Social Security Administration regarding the evaluation of disability claims;

4770 (c) recommend changes to practices and policies to ensure that DDDS is responsive to

4771 disabled individuals;

4772 (d) review the DDDS budget to ensure that it is adequate to effectively evaluate disability  
4773 claims and to meet the needs of persons with disabilities who have claims pending with DDDS;  
4774 and

4775 (e) review and recommend changes to policies and practices of allied state and federal  
4776 agencies, health care providers, and private community organizations.

4777 (11) The council shall annually report to the board, the governor, and the Legislative  
4778 Education and Health and Human Services Interim Committees regarding its activities.

4779 (12) To assist the council in its duties, DDDS shall provide the necessary staff assistance  
4780 to enable the council to make timely and effective recommendations. That assistance may include,  
4781 but is not limited to, developing meeting agendas and minutes, advising the chairpersons of the  
4782 council regarding relevant items for council discussion, and providing reports, documents, budgets,  
4783 memorandums, statutes, and regulations regarding the management of DDDS.

4784 Section 97. Section **58-37c-19** is amended to read:

4785 **58-37c-19. Possession or sale of crystal iodine.**

4786 (1) Any person licensed to engage in a regulated transaction is guilty of a class B  
4787 misdemeanor who, under circumstances not amounting to a violation of Subsection  
4788 58-37d-4(1)(c), offers to sell, sells, or distributes more than two ounces of crystal iodine to another  
4789 person who is:

4790 (a) not licensed as a regulated purchaser of crystal iodine;

4791 (b) not excepted from licensure; or

4792 (c) not excepted under Subsection (3).

4793 (2) Any person who is not licensed to engage in regulated transactions and not excepted  
4794 from licensure is guilty of a class A misdemeanor who, under circumstances not amounting to a  
4795 violation of Subsection 58-37c-3[(10)](12)(k) or Subsection 58-37d-4(1)(a):

4796 (a) possesses more than two ounces of crystal iodine; or

4797 (b) offers to sell, sells, or distributes crystal iodine to another.

4798 (3) Subsection (2)(a) does not apply to:

4799 (a) a chemistry laboratory maintained by:

4800 (i) a public or private regularly established secondary school; or

4801 (ii) a public or private institution of higher education that is accredited by a regional or

4802 national accrediting agency recognized by the United States Department of Education;

4803 (b) a veterinarian licensed to practice under Title 58, Chapter 28, [Veterinarians]

4804 Veterinary Practice Act; or

4805 (c) a general acute hospital.

4806 Section 98. Section **58-37c-20** is amended to read:

4807 **58-37c-20. Possession of ephedrine or pseudoephedrine -- Penalties.**

4808 (1) Any person who is not licensed to engage in regulated transactions and not excepted  
4809 from licensure who, under circumstances not amounting to a violation of Subsection

4810 58-37c-3[(10)](12)(k) or Subsection 58-37d-4(1)(a), possesses more than 12 grams of ephedrine  
4811 or pseudoephedrine, their salts, isomers, or salts of isomers, or a combination of any of these  
4812 substances, is guilty of a class A misdemeanor.

4813 (2) (a) It is an affirmative defense to a charge under Subsection (1) that the person in  
4814 possession of ephedrine or pseudoephedrine, or a combination of these two substances:

4815 (i) is a physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman,  
4816 or common carrier, or an agent of any of these persons; and

4817 (ii) possesses the substances in the regular course of lawful business activities.

4818 (b) (i) The defendant shall provide written notice of intent to claim an affirmative defense  
4819 under this section as soon as practicable, but not later than ten days prior to trial. The court may  
4820 waive the notice requirement in the interest of justice for good cause shown, if the prosecutor is  
4821 not unfairly prejudiced by the lack of timely notice.

4822 (ii) The notice shall include the specifics of the asserted defense.

4823 (iii) The defendant shall establish the affirmative defense by a preponderance of the  
4824 evidence. If the defense is established, it is a complete defense to the charges.

4825 (3) This section does not apply to dietary supplements, herbs, or other natural products,  
4826 including concentrates or extracts, which:

4827 (a) are not otherwise prohibited by law; and

4828 (b) may contain naturally occurring ephedrine, ephedrine alkaloids, or pseudoephedrine,  
4829 or their salts, isomers, or salts of isomers, or a combination of these substances, that:

4830 (i) are contained in a matrix of organic material; and

4831 (ii) do not exceed 15% of the total weight of the natural product.

4832 Section 99. Section **58-56-3** is amended to read:

4833 **58-56-3. Definitions.**

4834 In addition to the definitions in Section 58-1-102, as used in this chapter:

4835 (1) "ANSI" means American National Standards Institute, Inc.

4836 (2) "Code(s)" means the NEC, building code, mechanical code, or plumbing code as  
4837 defined in this section and as applied in context.4838 (3) "Commission" means the Uniform Building Code Commission created under this  
4839 chapter.4840 (4) "Compliance agency" means an agency of the state or any of its political subdivisions  
4841 which issue permits for construction regulated under the codes, or any other agency of the state or  
4842 its political subdivisions specifically empowered to enforce compliance with the codes.

4843 (5) "Factory built housing" means manufactured homes or mobile homes.

4844 ~~[(10)]~~ (6) "Factory built housing set-up contractor" means an individual licensed by the  
4845 division to set up or install factory built housing on a temporary or permanent basis. The scope  
4846 of the work included under the license includes the placement and or securing of the factory built  
4847 housing on a permanent or temporary foundation, securing the units together if required, and  
4848 connection of the utilities to the factory built housing unit, but does not include site preparation,  
4849 construction of a permanent foundation, and construction of utility services to the near proximity  
4850 of the factory built housing unit. If a dealer is not licensed as a factory built housing set up  
4851 contractor, that individual must subcontract the connection services to individuals who are licensed  
4852 by the division to perform those specific functions under Title 58, Chapter 55, Utah Construction  
4853 Trades Licensing Act.4854 ~~[(6)]~~ (7) "HUD code" means the Federal Manufactured Housing Construction and Safety  
4855 Standards Act.4856 ~~[(7)]~~ (8) "Installation standard" means the standard adopted and published by the National  
4857 Conference of States on Building Codes and Standards (NCSBCS), for the installation of  
4858 manufactured homes titled "The Standard for Manufactured Home Installations," the  
4859 accompanying manufacturer's instructions for the installation of the manufactured home, or such  
4860 equivalent standard as adopted by rule.4861 ~~[(8)]~~ (9) "Local regulator" means each political subdivision of the state which is  
4862 empowered to engage in the regulation of construction, alteration, remodeling, building, repair,  
4863 and other activities subject to the codes adopted pursuant to this chapter.

4864            [~~(9)~~] (10) "Manufactured home" means a transportable factory built housing unit  
4865 constructed on or after June 15, 1976, according to the Federal Home Construction and Safety  
4866 Standards Act of 1974 (HUD Code), in one or more sections, which, in the traveling mode, is eight  
4867 body feet or more in width or 40 body feet or more in length, or when erected on site, is 400 or  
4868 more square feet, and which is built on a permanent chassis and designed to be used as a dwelling  
4869 with or without a permanent foundation when connected to the required utilities, and includes the  
4870 plumbing, heating, air-conditioning, and electrical systems. All manufactured homes constructed  
4871 on or after June 15, 1976, shall be identifiable by the manufacturer's data plate bearing the date the  
4872 unit was manufactured and a HUD label attached to the exterior of the home certifying the home  
4873 was manufactured to HUD standards.

4874            (11) "Mobile home" means a transportable factory built housing unit built prior to June  
4875 15, 1976, in accordance with a state mobile home code which existed prior to the Federal  
4876 Manufactured Housing and Safety Standards Act (HUD Code).

4877            (12) "Modular unit" means a structure built from sections which are manufactured in  
4878 accordance with the construction standards adopted pursuant to Section 58-56-4 and transported  
4879 to a building site, the purpose of which is for human habitation, occupancy, or use.

4880            (13) "NEC" means the National Electrical Code.

4881            (14) "Opinion" means a written, nonbinding, and advisory statement issued by the  
4882 commission concerning an interpretation of the meaning of the codes or the application of the  
4883 codes in a specific circumstance issued in response to a specific request by a party to the issue.

4884            (15) "State regulator" means an agency of the state which is empowered to engage in the  
4885 regulation of construction, alteration, remodeling, building, repair, and other activities subject to  
4886 the codes adopted pursuant to this chapter.

4887            (16) "Unlawful conduct" is as defined in Subsection 58-1-501(1) and includes:

4888            (a) engaging in the sale of factory built housing without being registered with the division  
4889 as a dealer, unless the sale is exempt under Section 58-56-16; and

4890            (b) selling factory built housing within the state as a dealer without collecting and  
4891 remitting to the division the fee required by Section 58-56-17.

4892            (17) "Unprofessional conduct" is as defined in Subsection 58-1-501(2) and includes:

4893            (a) any nondelivery of goods or services by a registered dealer which constitutes a breach  
4894 of contract by the dealer;

4895 (b) the failure of a registered dealer to pay a subcontractor or supplier any amounts to  
4896 which that subcontractor or supplier is legally entitled; and

4897 (c) any other activity which is defined as unprofessional conduct by division rule in  
4898 accordance with the provisions of Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

4899 Section 100. Section **58-59-303** is amended to read:

4900 **58-59-303. Term of license -- Expiration -- Renewal.**

4901 (1) The division shall issue each license under this chapter in accordance with a one-year  
4902 renewal cycle established by rule. The division may by rule extend or shorten a renewal period  
4903 by as much as six months to stagger the renewal cycles it administers.

4904 (2) At the time of renewal the licensee shall show satisfactory documentation in  
4905 accordance with Section [58-59-303] 58-59-306 of each of the following renewal requirements:

4906 (a) current evidence of financial responsibility; and

4907 (b) current evidence of financial responsibility in all self-funded insurance programs.

4908 (3) Each license automatically expires on the expiration date shown on the license unless  
4909 renewed by the licensee in accordance with Section 58-1-308.

4910 Section 101. Section **58-67-102** is amended to read:

4911 **58-67-102. Definitions.**

4912 In addition to the definitions in Section 58-1-102, as used in this chapter:

4913 [~~(2)~~] (1) "ACGME" means the Accreditation Council for Graduate Medical Education of  
4914 the American Medical Association.

4915 [~~(1)~~] (2) "Administrative penalty" means a monetary fine imposed by the division for acts  
4916 or omissions determined to constitute unprofessional or unlawful conduct, as a result of an  
4917 adjudicative proceeding conducted in accordance with Title 63, Chapter 46b, Administrative  
4918 Procedures Act.

4919 (3) "Board" means the Physicians Licensing Board created in Section 58-67-201.

4920 (4) "Diagnose" means:

4921 (a) to examine in any manner another person, parts of a person's body, substances, fluids,  
4922 or materials excreted, taken, or removed from a person's body, or produced by a person's body, to  
4923 determine the source, nature, kind, or extent of a disease or other physical or mental condition;

4924 (b) to attempt to conduct an examination or determination described under Subsection

4925 (4)(a);

4926 (c) to hold oneself out as making or to represent that one is making an examination or  
4927 determination as described in Subsection (4)(a); or

4928 (d) to make an examination or determination as described in Subsection (4)(a) upon or  
4929 from information supplied directly or indirectly by another person, whether or not in the presence  
4930 of the person making or attempting the diagnosis or examination.

4931 (5) "LCME" means the Liaison Committee on Medical Education of the American  
4932 Medical Association.

4933 (6) "Medical assistant" means an unlicensed individual working under the direct and  
4934 immediate supervision of a licensed physician and surgeon and engaged in specific tasks assigned  
4935 by the licensed physician and surgeon in accordance with the standards and ethics of the  
4936 profession.

4937 (7) "Physician" means both physicians and surgeons licensed under Section 58-67-301,  
4938 Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section  
4939 58-68-301, Utah Osteopathic Medical Practice Act.

4940 (8) "Practice of medicine" means:

4941 (a) to diagnose, treat, correct, administer anesthesia, or prescribe for any human disease,  
4942 ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or imaginary,  
4943 or to attempt to do so, by any means or instrumentality, and by an individual in Utah or outside the  
4944 state upon or for any human within the state, except that conduct described in this Subsection  
4945 (8)(a) that is performed by a person legally and in accordance with a license issued under another  
4946 chapter of this title does not constitute the practice of medicine;

4947 (b) when a person not licensed as a physician directs a licensee under this chapter to  
4948 withhold or alter the health care services that the licensee has ordered, but practice of medicine  
4949 does not include any conduct under Subsection 58-67-501(2);

4950 (c) to maintain an office or place of business for the purpose of doing any of the acts  
4951 described in Subsection (8)(a) whether or not for compensation; or

4952 (d) to use, in the conduct of any occupation or profession pertaining to the diagnosis or  
4953 treatment of human diseases or conditions in any printed material, stationery, letterhead, envelopes,  
4954 signs, or advertisements, the designation "doctor," "doctor of medicine," "physician," "surgeon,"  
4955 "physician and surgeon," "Dr.," "M.D.," or any combination of these designations in any manner  
4956 which might cause a reasonable person to believe the individual using the designation is a licensed



4957 physician and surgeon, and if the party using the designation is not a licensed physician and  
4958 surgeon, the designation must additionally contain the description of the branch of the healing arts  
4959 for which the person has a license.

4960 (9) "Prescription drug or device" means:

4961 (a) a drug or device which, under federal law, is required to be labeled with either of the  
4962 following statements or their equivalent:

4963 (i) "CAUTION: Federal law prohibits dispensing without prescription"; or

4964 (ii) "CAUTION: Federal law restricts this drug to use by or on the order of a licensed  
4965 veterinarian"; or

4966 (b) a drug or device that is required by any applicable federal or state law or rule to be  
4967 dispensed on prescription only or is restricted to use by practitioners only.

4968 (10) "SPEX" means the Special Purpose Examination of the Federation of State Medical  
4969 Boards.

4970 (11) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-67-501.

4971 (12) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-67-502, and as  
4972 may be further defined by division rule.

4973 Section 102. Section **58-68-102** is amended to read:

4974 **58-68-102. Definitions.**

4975 In addition to the definitions in Section 58-1-102, as used in this chapter:

4976 [~~(2)~~] (1) "ACGME" means the Accreditation Council for Graduate Medical Education of  
4977 the American Medical Association.

4978 [(+)] (2) "Administrative penalty" means a monetary fine imposed by the division for acts  
4979 or omissions determined to constitute unprofessional or unlawful conduct, as a result of an  
4980 adjudicative proceeding conducted in accordance with Title 63, Chapter 46b, Administrative  
4981 Procedures Act.

4982 (3) "AOA" means the American Osteopathic Association.

4983 (4) "Board" means the Osteopathic Physicians Licensing Board created in Section  
4984 58-68-201.

4985 (5) "Diagnose" means:

4986 (a) to examine in any manner another person, parts of a person's body, substances, fluids,  
4987 or materials excreted, taken, or removed from a person's body, or produced by a person's body, to

4988 determine the source, nature, kind, or extent of a disease or other physical or mental condition;

4989 (b) to attempt to conduct an examination or determination described under Subsection

4990 (5)(a);

4991 (c) to hold oneself out as making or to represent that one is making an examination or

4992 determination as described in Subsection (5)(a); or

4993 (d) to make an examination or determination as described in Subsection (5)(a) upon or

4994 from information supplied directly or indirectly by another person, whether or not in the presence

4995 of the person making or attempting the diagnosis or examination.

4996 (6) "Medical assistant" means an unlicensed individual working under the direct and

4997 immediate supervision of a licensed osteopathic physician and surgeon and engaged in specific

4998 tasks assigned by the licensed osteopathic physician and surgeon in accordance with the standards

4999 and ethics of the profession.

5000 (7) "Physician" means both physicians and surgeons licensed under Section 58-67-301,

5001 Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section

5002 58-68-301, Utah Osteopathic Medical Practice Act.

5003 (8) "Practice of osteopathic medicine" means:

5004 (a) to diagnose, treat, correct, administer anesthesia, or prescribe for any human disease,

5005 ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real or imaginary,

5006 or to attempt to do so, by any means or instrumentality, which in whole or in part is based upon

5007 emphasis of the importance of the musculoskeletal system and manipulative therapy in the

5008 maintenance and restoration of health, by an individual in Utah or outside of the state upon or for

5009 any human within the state, except that conduct described in this Subsection (8)(a) that is

5010 performed by a person legally and in accordance with a license issued under another chapter of this

5011 title does not constitute the practice of medicine;

5012 (b) when a person not licensed as a physician directs a licensee under this chapter to

5013 withhold or alter the health care services that the licensee has ordered, but practice of medicine

5014 does not include any conduct under Subsection 58-68-501(2);

5015 (c) to maintain an office or place of business for the purpose of doing any of the acts

5016 described in Subsection (8)(a) whether or not for compensation; or

5017 (d) to use, in the conduct of any occupation or profession pertaining to the diagnosis or

5018 treatment of human diseases or conditions, in any printed material, stationery, letterhead,

5019 envelopes, signs, or advertisements, the designation "doctor," "doctor of osteopathic medicine,"  
5020 "osteopathic physician," "osteopathic surgeon," "osteopathic physician and surgeon," "Dr.,"  
5021 "D.O.," or any combination of these designations in any manner which might cause a reasonable  
5022 person to believe the individual using the designation is a licensed osteopathic physician, and if  
5023 the party using the designation is not a licensed osteopathic physician, the designation must  
5024 additionally contain the description of the branch of the healing arts for which the person has a  
5025 license.

5026 (9) "Prescription drug or device" means:

5027 (a) a drug or device which, under federal law, is required to be labeled with either of the  
5028 following statements or their equivalent:

5029 (i) "CAUTION: Federal law prohibits dispensing without prescription"; or

5030 (ii) "CAUTION: Federal law restricts this drug to use by or on the order of a licensed  
5031 veterinarian"; or

5032 (b) a drug or device that is required by any applicable federal or state law or rule to be  
5033 dispensed on prescription only or is restricted to use by practitioners only.

5034 (10) "SPEX" means the Special Purpose Examination of the Federation of State Medical  
5035 Boards.

5036 (11) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-68-501.

5037 (12) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-68-502 and as  
5038 may be further defined by division rule.

5039 Section 103. Section **59-2-601** is amended to read:

5040 **59-2-601. Definitions.**

5041 As used in this part:

5042 (1) "Manufactured home" means a transportable factory built housing unit constructed on  
5043 or after June 15, 1976, according to the Federal Home Construction and Safety Standards Act of  
5044 1974 (HUD Code), in one or more sections, which, in the traveling mode, is eight body feet or  
5045 more in width or 40 body feet or more in length, or when erected on site, is 400 or more square  
5046 feet, and which is built on a permanent chassis and designed to be used as a dwelling with or  
5047 without a permanent foundation when connected to the required utilities, and includes the  
5048 plumbing, heating, air-conditioning, and electrical systems.

5049 (2) "Mobile home" means a transportable factory built housing unit built prior to June 15,

5050 1976, in accordance with a state mobile home code which existed prior to the Federal  
5051 Manufactured Housing and Safety Standards Act (HUD Code).

5052 (3) "Permanently affixed" means anchored to, and supported by, a permanent foundation  
5053 or installed in accordance with an installation standard as defined in Subsection 58-56-3[(7)](8).

5054 Section 104. Section **62A-7-109** is amended to read:

5055 **62A-7-109. Youth Parole Authority -- Expenses -- Responsibilities -- Procedures.**

5056 (1) There is created within the division a Youth Parole Authority.

5057 (2) The authority is composed of ten part-time members and five pro tempore members  
5058 who are residents of this state. No more than three pro tempore members may serve on the  
5059 authority at any one time. Throughout this section, the term "member" shall refer to both part-time  
5060 and pro tempore members of the Youth Parole Authority.

5061 (3) (a) Except as required by Subsection (3)(b), members shall be appointed to four-year  
5062 terms by the governor with the advice and consent of the Senate.

5063 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time  
5064 of appointment or reappointment, adjust the length of terms to ensure that the terms of authority  
5065 members are staggered so that approximately half of the authority is appointed every two years.

5066 (4) Each member shall have training or experience in social work, law, juvenile or criminal  
5067 justice, or related behavioral sciences.

5068 (5) When a vacancy occurs in the membership for any reason, the replacement shall be  
5069 appointed for the unexpired term.

5070 (6) During the tenure of his appointment, a member may not:

5071 (a) be an employee of the department, other than in his capacity as a member of the  
5072 authority;

5073 (b) hold any public office;

5074 (c) hold any position in the state's juvenile justice system; or

5075 (d) be an employee, officer, advisor, policy board member, or subcontractor of any juvenile  
5076 justice agency or its contractor.

5077 (7) In extraordinary circumstances or when a regular board member is absent or otherwise  
5078 unavailable, the chair may assign a pro tempore member to act in [their] the absent board member's  
5079 place.

5080 (8) (a) Members shall receive no compensation or benefits for their services, but may

5081 receive per diem and expenses incurred in the performance of the member's official duties at the  
5082 rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

5083 (b) Members may decline to receive per diem and expenses for their service.

5084 (9) The authority shall determine appropriate parole dates for youth offenders, based on  
5085 guidelines established by the board. The board shall review and update policy guidelines annually.

5086 (10) Youth offenders may be paroled to their own homes, to a residential  
5087 community-based program, to a nonresidential community-based treatment program, to an  
5088 approved independent living setting, or to other appropriate residences, but shall remain on parole  
5089 until parole is terminated by the authority.

5090 (11) The division's case management staff shall implement parole release plans and shall  
5091 supervise youth offenders while on parole.

5092 (12) The division shall permit the authority to have reasonable access to youth offenders  
5093 in secure facilities and shall furnish all pertinent data requested by the authority in matters of  
5094 parole, revocation, and termination.

5095 Section 105. Section **62A-12-282.1** is amended to read:

5096 **62A-12-282.1. Residential and inpatient settings -- Commitment proceeding -- Child**  
5097 **in physical custody of local mental health authority.**

5098 (1) A child may receive services from a local mental health authority in an inpatient or  
5099 residential setting only after a commitment proceeding, for the purpose of transferring physical  
5100 custody, has been conducted in accordance with the requirements of this section.

5101 (2) That commitment proceeding shall be initiated by a petition for commitment, and shall  
5102 be a careful, diagnostic inquiry, conducted by a neutral and detached fact finder, pursuant to the  
5103 procedures and requirements of this section. If the findings described in Subsection (4) exist, the  
5104 proceeding shall result in the transfer of physical custody to the appropriate local mental health  
5105 authority, and the child may be placed in an inpatient or residential setting.

5106 (3) The neutral and detached fact finder who conducts the inquiry:

5107 (a) shall be a designated examiner, as defined in Subsection 62A-12-202(3); and

5108 (b) may not profit, financially or otherwise, from the commitment or physical placement  
5109 of the child in that setting.

5110 (4) Upon determination by the fact finder that the following circumstances clearly exist,  
5111 he may order that the child be committed to the physical custody of a local mental health authority:

- 5112 (a) the child has a mental illness, as defined in Subsection 62A-12-202(8);
- 5113 (b) the child demonstrates a risk of harm to himself or others;
- 5114 (c) the child is experiencing significant impairment in his ability to perform socially;
- 5115 (d) the child will benefit from care and treatment by the local mental health authority; and
- 5116 (e) there is no appropriate less-restrictive alternative.

5117 (5) (a) The commitment proceeding before the neutral and detached fact finder shall be  
5118 conducted in as informal manner as possible, and in a physical setting that is not likely to have a  
5119 harmful effect on the child.

5120 (b) The child, the child’s parent or legal guardian, the person who submitted the petition  
5121 for commitment, and a representative of the appropriate local mental health authority shall all  
5122 receive informal notice of the date and time of the proceeding. Those parties shall also be afforded  
5123 an opportunity to appear and to address the petition for commitment.

5124 (c) The neutral and detached fact finder may, in his discretion, receive the testimony of any  
5125 other person.

5126 (d) The fact finder may allow the child to waive his right to be present at the commitment  
5127 proceeding, for good cause shown. If that right is waived, the purpose of the waiver shall be made  
5128 a matter of record at the proceeding.

5129 (e) At the time of the commitment proceeding, the appropriate local mental health  
5130 authority, its designee, or the psychiatrist who has been in charge of the child’s care prior to the  
5131 commitment proceeding, shall provide the neutral and detached fact finder with the following  
5132 information, as it relates to the period of current admission:

- 5133 (i) the petition for commitment;
- 5134 (ii) the admission notes;
- 5135 (iii) the child’s diagnosis;
- 5136 (iv) physicians’ orders;
- 5137 (v) progress notes;
- 5138 (vi) nursing notes; and
- 5139 (vii) medication records.

5140 (f) The information described in Subsection (5)(e) shall also be provided to the child’s  
5141 parent or legal guardian upon written request.

5142 (g) (i) The neutral and detached fact finder’s decision of commitment shall state the

5143 duration of the commitment. Any commitment to the physical custody of a local mental health  
5144 authority may not exceed 180 days. Prior to expiration of the commitment, and if further  
5145 commitment is sought, a hearing shall be conducted in the same manner as the initial commitment  
5146 proceeding, in accordance with the requirements of this section.

5147 (ii) When a decision for commitment is made, the neutral and detached fact finder shall  
5148 inform the child and his parent or legal guardian of that decision, and of the reasons for ordering  
5149 commitment at the conclusion of the hearing, and also in writing.

5150 (iii) The neutral and detached fact finder shall state in writing the basis of his decision,  
5151 with specific reference to each of the criteria described in Subsection (4), as a matter of record.

5152 (6) Absent the procedures and findings required by this section, a child may be temporarily  
5153 committed to the physical custody of a local mental health authority only in accordance with the  
5154 emergency procedures described in Subsection 62A-12-232(1) or (2). A child temporarily  
5155 committed in accordance with those emergency procedures may be held for a maximum of 72  
5156 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the  
5157 child shall be released unless the procedures and findings required by this section have been  
5158 satisfied.

5159 (7) A local mental health authority shall have physical custody of each child committed  
5160 to it under this section. The parent or legal guardian of a child committed to the physical custody  
5161 of a local mental health authority under this section, retains legal custody of the child, unless legal  
5162 custody has been otherwise modified by a court of competent jurisdiction. In cases when the  
5163 Division of Child and Family Services or the Division of Youth Corrections has legal custody of  
5164 a child, that division shall retain legal custody for purposes of this part.

5165 (8) The cost of caring for and maintaining a child in the physical custody of a local mental  
5166 health authority shall be assessed to and paid by the child's parents, according to their ability to  
5167 pay. For purposes of this section, the Division of Child and Family Services or the Division of  
5168 Youth Corrections shall be financially responsible, in addition to the child's parents, if the child  
5169 is in the legal custody of either of those divisions at the time the child is committed to the physical  
5170 custody of a local mental health authority under this section, unless Medicaid regulation or contract  
5171 provisions specify otherwise. The Office of Recovery Services shall assist those divisions in  
5172 collecting the costs assessed pursuant to this section.

5173 (9) Whenever application is made for commitment of a minor to a local mental health

5174 authority under any provision of this section by a person other than the child's parent or guardian,  
5175 the local mental health authority or its designee shall notify the child's parent or guardian. The  
5176 parents shall be provided sufficient time to prepare and appear at any scheduled proceeding.

5177 (10) (a) Each child committed pursuant to this section is entitled to an appeal within 30  
5178 days after any order for commitment. The appeal may be brought on the child's own petition, or  
5179 that of his parent or legal guardian, to the juvenile court in the district where the child resides or  
5180 is currently physically located. With regard to a child in the custody of the Division of Child and  
5181 Family Services or the Division of Youth Corrections, the attorney general's office shall handle  
5182 the appeal, otherwise the appropriate county attorney's office is responsible for appeals brought  
5183 pursuant to this Subsection (10)(a).

5184 (b) Upon receipt of the petition for appeal, the court shall appoint a designated examiner  
5185 previously unrelated to the case, to conduct an examination of the child in accordance with the  
5186 criteria described in Subsection (4), and file a written report with the court. The court shall then  
5187 conduct an appeal hearing to determine whether the findings described in Subsection (4) exist by  
5188 clear and convincing evidence.

5189 (c) Prior to the time of the appeal hearing, the appropriate local mental health authority,  
5190 its designee, or the mental health professional who has been in charge of the child's care prior to  
5191 commitment, shall provide the court and the designated examiner for the appeal hearing with the  
5192 following information, as it relates to the period of current admission:

- 5193 (i) the original petition for commitment;
- 5194 (ii) admission notes;
- 5195 (iii) diagnosis;
- 5196 (iv) physicians' orders;
- 5197 (v) progress notes;
- 5198 (vi) nursing notes; and
- 5199 (vii) medication records.

5200 (d) Both the neutral and detached fact finder and the designated examiner appointed for  
5201 the appeal hearing shall be provided with an opportunity to review the most current information  
5202 described in Subsection (10)(c) prior to the appeal hearing.

5203 (e) The child, his parent or legal guardian, the person who submitted the original petition  
5204 for commitment, and a representative of the appropriate local mental health authority shall be



5205 notified by the court of the date and time of the appeal hearing. Those persons shall be afforded  
5206 an opportunity to appear at the hearing. In reaching its decision, the court shall review the record  
5207 and findings of the neutral and detached fact finder, the report of the designated examiner  
5208 appointed pursuant to Subsection (10)(b), and may, in its discretion, allow or require the testimony  
5209 of the neutral and detached fact finder, the designated examiner, the child, the child's parent or  
5210 legal guardian, the person who brought the initial petition for commitment, or any other person  
5211 whose testimony the court deems relevant. The court may allow the child to waive his right to  
5212 appear at the appeal hearing, for good cause shown. If that waiver is granted, the purpose shall be  
5213 made a part of the court's record.

5214 (11) Each local mental health authority has an affirmative duty to conduct periodic  
5215 evaluations of the mental health and treatment progress of every child committed to its physical  
5216 custody under this section, and to release any child who has sufficiently improved so that the  
5217 criteria justifying commitment no longer exist.

5218 (12) (a) A local mental health authority or its designee, in conjunction with the child's  
5219 current treating mental health professional may release an improved child to a less restrictive  
5220 environment, as they determine appropriate. Whenever the local mental health authority or its  
5221 designee, and the child's current treating mental health professional, determine that the conditions  
5222 justifying commitment no longer exist, the child shall be discharged and released to his parent or  
5223 legal guardian. With regard to a child who is in the physical custody of the State Hospital, the  
5224 treating psychiatrist or clinical director of the State Hospital shall be the child's current treating  
5225 mental health professional.

5226 (b) A local mental health authority or its designee, in conjunction with the child's current  
5227 treating mental health professional, is authorized to issue a written order for the immediate  
5228 placement of a child not previously released from an order of commitment into a more restrictive  
5229 environment, if the local authority or its designee and the child's current treating mental health  
5230 professional has reason to believe that the less restrictive environment in which the child has been  
5231 placed is exacerbating his mental illness, or increasing the risk of harm to himself or others.

5232 (c) The written order described in Subsection (12)(b) shall include the reasons for  
5233 placement in a more restrictive environment and shall authorize any peace officer to take the child  
5234 into physical custody and transport him to a facility designated by the appropriate local mental  
5235 health authority in conjunction with the child's current treating mental health professional. Prior

5236 to admission to the more restrictive environment, copies of the order shall be personally delivered  
5237 to the child, his parent or legal guardian, the administrator of the more restrictive environment, or  
5238 his designee, and the child's former treatment provider or facility.

5239 (d) If the child has been in a less restrictive environment for more than 30 days and is  
5240 aggrieved by the change to a more restrictive environment, the child or his representative may  
5241 request a review within 30 days of the change, by a neutral and detached fact finder as described  
5242 in Subsection (3). The fact finder shall determine whether:

5243 (i) the less restrictive environment in which the child has been placed is exacerbating his  
5244 mental illness, or increasing the risk of harm to himself or others; or

5245 (ii) the less restrictive environment in which the child has been placed is not exacerbating  
5246 his mental illness, or increasing the risk of harm to himself or others, in which case the fact finder  
5247 shall designate that the child remain in the less restrictive environment.

5248 (e) Nothing in this section prevents a local mental health authority or its designee, in  
5249 conjunction with the child's current mental health professional, from discharging a child from  
5250 commitment or from placing a child in an environment that is less restrictive than that designated  
5251 by the neutral and detached fact finder.

5252 (13) Each local mental health authority or its designee, in conjunction with the child's  
5253 current treating mental health professional shall discharge any child who, in the opinion of that  
5254 local authority, or its designee, and the child's current treating mental health professional, no longer  
5255 meets the criteria specified in Subsection (4), except as provided by Section 78-3a-121. The local  
5256 authority and the mental health professional shall assure that any further supportive services  
5257 required to meet the child's needs upon release will be provided.

5258 (14) Even though a child has been committed to the physical custody of a local mental  
5259 health authority pursuant to this section, the child is still entitled to additional due process  
5260 proceedings, in accordance with Section 62A-12-283.1, before any treatment which may affect a  
5261 constitutionally protected liberty or privacy interest is administered. Those treatments include, but  
5262 are not limited to, antipsychotic medication, electroshock therapy, and psychosurgery.

5263 Section 106. Section **63-25a-501** is amended to read:

5264 **63-25a-501. Definitions.**

5265 As used in this part:

5266 (1) "Commission" means the Commission on Criminal and Juvenile Justice.

5267 (2) "Executive director" means the executive director of the Commission on Criminal and  
5268 Juvenile Justice.

5269 (3) "Local criminal justice agency" means each county and municipal law enforcement  
5270 agency.

5271 (4) "State criminal justice agency" means the Department of Public Safety, Department  
5272 of Corrections, the Division of Youth Corrections, [and] or the Administrative Office of the  
5273 Courts.

5274 Section 107. Section **63-55-209** is amended to read:

5275 **63-55-209. Repeal dates, Title 9.**

5276 (1) Title 9, Chapter 1, Part 8, Commission on National and Community Service Act, is  
5277 repealed July 1, 2004.

5278 [~~(2) Title 9, Chapter 2, Part 3, Small Business Advisory Council, is repealed July 1, 1999.~~]

5279 [~~(3)~~] (2) Title 9, Chapter 2, Part 4, Enterprise Zone Act, is repealed July 1, 2008.

5280 [~~(5)~~] (3) Section 9-2-1208 regarding waste tire recycling loans is repealed July 1, 2000.

5281 [~~(6)~~] (4) Title 9, Chapter 2, Part 16, Recycling Market Development Zone Act, is repealed  
5282 July 1, 2000, and Sections 59-7-610 and 59-10-108.7 are repealed for tax years beginning on or  
5283 after January 1, 2001.

5284 [~~(7)~~] (5) Title 9, Chapter 3, Part 3, Heber Valley Historic Railroad Authority, is repealed  
5285 July 1, 2009.

5286 [~~(8) Title 9, Chapter 4, Part 4, Disaster Relief, is repealed July 1, 1999.~~]

5287 [~~(9)~~] (6) Title 9, Chapter 4, Part 9, Utah Housing Finance Agency Act, is repealed July 1,  
5288 2006.

5289 [~~(4)~~] (7) Title 9, Chapter 13, Utah Technology and Small Business Finance Act, is repealed  
5290 July 1, 2002.

5291 Section 108. Section **63-55-254** is amended to read:

5292 **63-55-254. Repeal dates, Title 54.**

5293 [~~Section 54-3-8.1 is repealed December 31, 1999.~~]

5294 Section 109. Section **63-55-262** is amended to read:

5295 **63-55-262. Repeal dates, Title 62A.**

5296 [~~Title 62A, Chapter 3, Part 4, Reverse Mortgage Services, is repealed July 1, 1998.~~]

5297 Section 110. Section **63-55-263** is amended to read:

5298           **63-55-263. Repeal dates, Titles 63, 63A, and 63C.**

5299           (1) (a) Title 63, Chapter 25a, Part 1, Commission on Criminal and Juvenile Justice, is  
5300 repealed July 1, 2002.

5301           (b) Title 63, Chapter 25a, Part 3, Sentencing Commission, is repealed January 1, 2002.

5302           (2) The Crime Victims' Reparations Board, created in Section 63-25a-404, is repealed July  
5303 1, 2007.

5304           (3) The Resource Development Coordinating Committee, created in Section 63-28a-2, is  
5305 repealed July 1, 2004.

5306           (4) Title 63, Chapter 38c, State Appropriations and Tax Limitation Act, is repealed July  
5307 1, 2005.

5308           (5) Title 63, Chapter 75, Families, Agencies, and Communities Together for Children and  
5309 Youth At Risk Act, is repealed July 1, 2001.

5310           (6) Title 63, Chapter 88, Navajo Trust Fund, is repealed July 1, 2000.

5311           (7) Sections 63A-4-204 and 63A-4-205, authorizing the Risk Management Fund to provide  
5312 coverage to nonstate entities, are repealed July 1, 2001.

5313           (8) Title 63A, Chapter 7, Utah Sports Authority Act, is repealed July 1, 2003.

5314           (9) Title 63A, Chapter 10, State Olympic Coordination Act, is repealed July 1, 2003.

5315           (10) The Utah Health Policy Commission, created in Title 63C, Chapter 3, is repealed July  
5316 1, 2001.

5317           ~~[(11) The Utah Pioneer Sesquicentennial Celebration Coordinating Council created in~~  
5318 ~~Section 63C-5-102 is repealed June 30, 1998.]~~

5319           Section 111. Section **63-55b-163** is amended to read:

5320           **63-55b-163. Repeal dates -- Title 63, Title 63D.**

5321           ~~[(1)] Sections 63-63b-101 and 63-63b-102 are repealed on July 1, 2002.~~

5322           ~~[(2) Section 63D-1-301.6 is repealed January 1, 1999.]~~

5323           Section 112. Section **63-75-7** is amended to read:

5324           **63-75-7. Evaluation of programs -- Report to legislative interim committee.**

5325           (1) At the end of each fiscal year, a final report shall be submitted to the council  
5326 summarizing the outcome of each project under this chapter.

5327           (2) (a) The council may conduct an independent evaluation of any or all of the projects to  
5328 assess the status of services provided and identified outcomes.

5329 (b) The council shall prepare and deliver a report on the program to the Legislature's  
5330 Education, Health[, ] and Human Services, and Judiciary Interim Committees prior to each annual  
5331 general session.

5332 (c) The report shall include a recommendation by the council as to whether the program  
5333 should be terminated, continued, or expanded.

5334 Section 113. Section **63A-9-801** is amended to read:

5335 **63A-9-801. State surplus property program -- Definitions -- Administration.**

5336 (1) As used in this section:

5337 (a) "Agency" means:

5338 (i) the Utah Departments of Administrative Services, Agriculture, Alcoholic Beverage  
5339 Control, Commerce, Community and Economic Development, Corrections, Workforce Services,  
5340 Health, Human Resource Management, Human Services, Insurance, Natural Resources, Public  
5341 Safety, and Transportation and the Labor Commission;

5342 (ii) the Utah Offices of the Auditor, Attorney General, Court Administrator, Crime Victim  
5343 Reparations, Rehabilitation, and Treasurer;

5344 (iii) the Public Service Commission and State Tax Commission;

5345 (iv) the State Boards of Education, Pardons and Parole, and Regents;

5346 (v) the Career Service Review Board [~~and the Citizens' Council on Alcoholic Beverage~~  
5347 ~~Control~~];

5348 (vi) other state agencies designated by the governor;

5349 (vii) the legislative branch, the judicial branch, and the State Board of Regents; and

5350 (viii) an institution of higher education, its president, and its board of trustees for purposes  
5351 of Section 63A-9-802.

5352 (b) "Division" means the Division of Fleet Operations.

5353 (c) "Information technology equipment" means any equipment that is designed to  
5354 electronically manipulate, store, or transfer any form of data.

5355 (d) "Inventory property" means property in the possession of the division that is available  
5356 for purchase by an agency or the public.

5357 (e) "Judicial district" means the geographic districts established by Section 78-1-2.1.

5358 (f) (i) "Surplus property" means property purchased by, seized by, or donated to, an agency  
5359 that the agency wishes to dispose of.

- 5360 (ii) "Surplus property" does not mean real property.
- 5361 (g) "Transfer" means transfer of surplus property without cash consideration.
- 5362 (2) (a) The division shall make rules establishing a state surplus property program that  
5363 meets the requirements of this chapter by following the procedures and requirements of Title 63,  
5364 Chapter 46a, Utah Administrative Rulemaking Act.
- 5365 (b) Those rules shall include:
- 5366 (i) a requirement prohibiting the transfer of surplus property from one agency to another  
5367 agency without written approval from the division;
- 5368 (ii) procedures and requirements governing division administration requirements that an  
5369 agency must follow;
- 5370 (iii) requirements governing purchase priorities;
- 5371 (iv) requirements governing accounting, reimbursement, and payment procedures;
- 5372 (v) procedures for collecting bad debts;
- 5373 (vi) requirements and procedures for disposing of firearms;
- 5374 (vii) the elements of the rates or other charges assessed by the division for services and  
5375 handling;
- 5376 (viii) procedures governing the timing and location of public sales of inventory property;  
5377 and
- 5378 (ix) procedures governing the transfer of information technology equipment by state  
5379 agencies directly to public schools.
- 5380 (c) The division shall report all transfers of information technology equipment by state  
5381 agencies to public schools to the state's Information Technology Commission and to the  
5382 Legislative Interim Education Committee at the end of each fiscal year.
- 5383 (3) In creating and administering the program, the division shall:
- 5384 (a) when conditions, inventory, and demand permit:
- 5385 (i) establish facilities to store inventory property at geographically dispersed locations  
5386 throughout the state; and
- 5387 (ii) hold public sales of property at geographically dispersed locations throughout the state;
- 5388 (b) establish, after consultation with the agency requesting the sale of surplus property, the  
5389 price at which the surplus property shall be sold; and
- 5390 (c) transfer proceeds arising from the sale of state surplus property to the agency requesting

5391 the sale in accordance with the Budgetary Procedures Act, less an amount established by the  
5392 division by rule to pay the costs of administering the surplus property program.

5393 (4) Unless specifically exempted from this chapter by explicit reference to this chapter,  
5394 each state agency shall dispose of and acquire surplus property only by participating in the  
5395 division's program.

5396 Section 114. Section **63C-8-101** is amended to read:

5397 **63C-8-101. Definitions.**

5398 As used in this chapter:

5399 [~~2~~] (1) "Accredited clinical education program" means a clinical education program for  
5400 a health care profession that is accredited by the Accreditation Council on Graduate Medical  
5401 Education.

5402 [~~1~~] (2) "Accredited clinical training program" means a clinical training program that is  
5403 accredited by an entity recognized within medical education circles as an accrediting body for  
5404 medical education, advanced practice nursing education, physician assistance education, or doctor  
5405 of pharmacy education.

5406 (3) "Council" means the Medical Education Council created under Section 63C-8-103.

5407 (4) "Health Care Financing Administration" means the Health Care Financing  
5408 Administration within the United States Department of Health and Human Services.

5409 (5) "Health care professionals in training" means medical students and residents, advance  
5410 practice nursing students, physician assistant students, and doctor of pharmacy students.

5411 (6) "Program" means the Medical Education Program created under Section 63C-8-102.

5412 Section 115. Section **76-8-508** is amended to read:

5413 **76-8-508. Tampering with witness -- Retaliation against witness or informant --**  
5414 **Bribery -- Communicating a threat.**

5415 (1) A person is guilty of a third degree felony if, believing that an official proceeding or  
5416 investigation is pending or about to be instituted, he attempts to induce or otherwise cause a person  
5417 to:

5418 (a) testify or inform falsely;

5419 (b) withhold any testimony, information, document, or item;

5420 (c) elude legal process summoning him to provide evidence; or

5421 (d) absent himself from any proceeding or investigation to which he has been summoned.

5422 (2) A person is guilty of a third degree felony if he:

5423 (a) commits any unlawful act in retaliation for anything done by another as a witness or  
5424 informant;

5425 (b) solicits, accepts, or agrees to accept any benefit in consideration of his doing any of the  
5426 acts specified under Subsection (1); or

5427 (c) communicates to a person a threat that a reasonable person would believe to be a threat  
5428 to do bodily injury to the person, because of any act performed or to be performed by the person  
5429 in his capacity as a witness or informant in an official proceeding or investigation.

5430 Section 116. Section **76-9-704** is amended to read:

5431 **76-9-704. Abuse or desecration of a dead human body -- Penalties.**

5432 (1) For purposes of this section, "dead human body" includes any part of a human body  
5433 in any stage of decomposition, including ancient human remains.

5434 (2) A person is guilty of abuse or desecration of a dead human body if the person  
5435 intentionally and unlawfully:

5436 (a) fails to report the finding of a dead human body to a local law enforcement agency;

5437 (b) disturbs, moves, removes, conceals, or destroys a dead human body or any part of it;

5438 (c) disinters a buried or otherwise interred dead human body, without authority of a court  
5439 order;

5440 (d) dismembers a dead human body to any extent, or damages or detaches any part or  
5441 portion of a dead human body; or

5442 (e) commits, or attempts to commit upon any dead human body sexual penetration or  
5443 intercourse, object rape, sodomy, or object sodomy, as these acts are described in [Title 76,  
5444 Chapter 5, Offenses Against the Person.

5445 (3) A person does not violate this section if when that person directs or carries out  
5446 procedures regarding a dead human body, that person complies with:

5447 [(f)] (a) Title 9, Chapter 8, Part 3, Antiquities[.];

5448 [(e)] (b) Title 26, Chapter 4, Utah Medical Examiner Act;

5449 [(b)] (c) Title 26, Chapter 28, Uniform Anatomical Gift Act;

5450 [(e)] (d) Title 53B, Chapter 17, Part 3, Use of Dead Bodies for Medical Purposes; [or]

5451 [(a)] (e) Title 58, Chapter 9, Funeral Services Licensing Act; or

5452 [(d)] (f) Title 58, Chapter 67, Utah Medical Practice Act, which concerns licensing to



5453 practice medicine[;].

5454 (4) (a) Failure to report the finding of a dead human body as required under Subsection  
5455 (2)(a) is a class B misdemeanor.

5456 (b) Abuse or desecration of a dead human body as described in Subsections (2)(b) through  
5457 (e) is a third degree felony.

5458 Section 117. Section **76-10-105.1** is amended to read:

5459 **76-10-105.1. Requirement of direct, face-to-face sale of tobacco products.**

5460 (1) As used in this section:

5461 (a) (i) "Cigarette" means any product which contains nicotine, is intended to be burned  
5462 under ordinary conditions of use, and consists of:

5463 (A) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

5464 (B) any roll of tobacco wrapped in any substance containing tobacco which, because of  
5465 its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be  
5466 offered to, or purchased by, consumers as a cigarette described in Subsection (1)(a)(i).

5467 (ii) "Cigarette" does not include a standard 60 carton case.

5468 (b) "Cigarette tobacco" means any product that consists of loose tobacco that contains or  
5469 delivers nicotine and is intended for use by consumers in a cigarette. Unless otherwise stated, the  
5470 requirements pertaining to cigarettes shall also apply to cigarette tobacco.

5471 (c) "Retailer" means any person who sells cigarettes or smokeless tobacco to individuals  
5472 for personal consumption or who operates a facility where vending machines or self-service  
5473 displays are permitted under this section.

5474 (d) "Self-service display" means any display of cigarettes or smokeless tobacco products  
5475 to which the public has access without the intervention of a retail employee.

5476 (e) "Smokeless tobacco" means any product that consists of cut, ground, powdered, or leaf  
5477 tobacco that contains nicotine and that is intended to be placed in the oral cavity. "Smokeless  
5478 tobacco" does not include multi-container packs of smokeless tobacco.

5479 (2) (a) Except as provided in Subsection (3), a retailer may sell cigarettes and smokeless  
5480 tobacco only in a direct, face-to-face exchange between the retailer and the consumer. Examples  
5481 of methods that are not permitted include vending machines and self-service displays.

5482 (b) Subsection (2)(a) does not prohibit the use or display of locked cabinets containing  
5483 cigarettes or smokeless tobacco if the locked cabinets are only accessible to the retailer or its

5484 employees.

5485 (3) The following sales are permitted as exceptions to Subsection (2):

5486 (a) mail-order sales, excluding mail-order redemption of coupons and distribution of free  
5487 samples through the mail; and

5488 (b) vending machines, including vending machines that sell packaged, single cigarettes,  
5489 and self-service displays that are located in a separate and defined area within a facility where the  
5490 retailer ensures that no person younger than [under] 19 years of age is present, or permitted to  
5491 enter, at any time, unless accompanied by a parent or legal guardian.

5492 (4) Any ordinance, regulation, or rule adopted by the governing body of a political  
5493 subdivision or state agency that affects the sale, placement, or display of cigarettes or smokeless  
5494 tobacco that is not essentially identical to the provisions of this section and Section 76-10-102 is  
5495 superceded.

5496 (5) A parent or legal guardian who accompanies a person younger than 19 years of age into  
5497 an area described in Subsection (3)(b) and permits the person younger than 19 years of age to  
5498 purchase or otherwise take a cigar, cigarette, or tobacco in any form is guilty of furnishing tobacco  
5499 as provided for in Section 76-10-104 and the penalties provided for in that section.

5500 (6) Violation of Subsection (2) or (3) is a:

5501 (a) class C misdemeanor on the first offense;

5502 (b) class B misdemeanor on the second offense; and

5503 (c) class A misdemeanor on the third and all subsequent offenses.

5504 Section 118. Section **76-10-803** is amended to read:

5505 **76-10-803. "Public nuisance" defined.**

5506 (1) A public nuisance is a crime against the order and economy of the state and consists  
5507 in unlawfully doing any act or omitting to perform any duty, which act or omission:

5508 (a) annoys, injures, or endangers the comfort, repose, health, or safety of three or more  
5509 persons;

5510 (b) offends public decency;

5511 (c) unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for  
5512 passage, any lake, stream, canal, or basin, or any public park, square, street, or highway;

5513 (d) is a nuisance as defined in Section 78-38-9; or

5514 (e) in any way renders three or more persons insecure in life or the use of property.

5515 (2) An act which affects three or more persons in any of the ways specified in this section  
5516 is still a nuisance regardless of the extent [of] to which the annoyance or damage inflicted on  
5517 individuals is unequal.

5518 Section 119. Section **76-10-1305** is amended to read:

5519 **76-10-1305. Exploiting prostitution.**

5520 (1) A person is guilty of exploiting prostitution if he:

5521 (a) procures an inmate for a house of prostitution or place in a house of prostitution for one  
5522 who would be an inmate;

5523 (b) encourages, induces, or otherwise purposely causes another to become or remain a  
5524 prostitute;

5525 (c) transports a person into or within this state with a purpose to promote that person's  
5526 engaging in prostitution or procuring or paying for transportation with that purpose;

5527 (d) not being a child or legal [defendant] dependent of a prostitute, shares the proceeds of  
5528 prostitution with a prostitute pursuant to their understanding that he is to share therein; or

5529 (e) owns, controls, manages, supervises, or otherwise keeps, alone or in association with  
5530 another, a house of prostitution or a prostitution business.

5531 (2) Exploiting prostitution is a felony of the third degree.

5532 Section 120. Section **76-10-1902** is amended to read:

5533 **76-10-1902. Definitions.**

5534 As used in this part:

5535 (1) "Bank" means each agent, agency, or office in this state of any person doing business  
5536 in any one of the following capacities:

5537 (a) a commercial bank or trust company organized under the laws of this state or of the  
5538 United States;

5539 (b) a private bank;

5540 (c) a savings and loan association or a building and loan association organized under the  
5541 laws of this state or of the United States;

5542 (d) an insured institution as defined in Section 401 of the National Housing Act;

5543 (e) a savings bank, industrial bank, or other thrift institution;

5544 (f) a credit union organized under the laws of this state or of the United States; or

5545 (g) any other organization chartered under Title 7, Financial Institutions, and subject to the

5546 supervisory authority set forth in that title.

5547 (2) "Conducts" includes initiating, concluding, or participating in initiating or concluding  
5548 a transaction.

5549 (3) (a) "Currency" means the coin and paper money of the United States or of any other  
5550 country that is designated as legal tender, that circulates, and is customarily used and accepted as  
5551 a medium of exchange in the country of issuance.

5552 (b) "Currency" includes United States silver certificates, United States notes, Federal  
5553 Reserve notes, and foreign bank notes customarily used and accepted as a medium of exchange  
5554 in a foreign country.

5555 (4) "Financial institution" means any agent, agency, branch, or office within this state of  
5556 any person doing business, whether or not on a regular basis or as an organized business concern,  
5557 in one or more of the following capacities:

5558 (a) a bank, except bank credit card systems;

5559 (b) a broker or dealer in securities;

5560 (c) a currency dealer or exchanger, including a person engaged in the business of check  
5561 cashing;

5562 (d) an issuer, seller, or redeemer of travelers checks or money orders, except as a selling  
5563 agent exclusively who does not sell more than \$150,000 of the instruments within any 30-day  
5564 period;

5565 (e) a licensed transmitter of funds or other person engaged in the business of transmitting  
5566 funds;

5567 (f) a telegraph company;

5568 (g) a person subject to supervision by any state or federal supervisory authority; or

5569 (h) the United States Postal Service regarding the sale of money orders.

5570 (5) "Financial transaction" means a transaction:

5571 (a) involving the movement of funds by wire or other means or involving one or more  
5572 monetary instruments, which in any way or degree affects commerce; or

5573 (b) involving the use of a financial institution that is engaged in, or its activities affect  
5574 commerce in any way or degree.

5575 (6) The phrase "knows that the property involved represents the proceeds of some form  
5576 of unlawful activity" means that the person knows or it was represented to the person that the

5577 property involved represents proceeds from a form of activity, although the person does not  
5578 necessarily know which form of activity, that constitutes a crime under state or federal law,  
5579 regardless of whether or not the activity is specified in Subsection [(13)] (12).

5580 (7) "Monetary instruments" means coins or currency of the United States or of any other  
5581 country, travelers checks, personal checks, bank checks, money orders, and investment securities  
5582 or negotiable instruments in bearer form or in other form so that title passes upon delivery.

5583 (8) "Person" means an individual, corporation, partnership, trust or estate, joint stock  
5584 company, association, syndicate, joint venture, or other unincorporated organization or group, and  
5585 all other entities cognizable as legal personalities.

5586 (9) "Proceeds" means property acquired or derived directly or indirectly from, produced  
5587 through, realized through, or caused by an act or omission and includes any property of any kind.

5588 (10) "Property" means anything of value, and includes any interest in property, including  
5589 any benefit, privilege, land, or right with respect to anything of value, whether real or personal,  
5590 tangible or intangible.

5591 (11) "Prosecuting agency" means the office of the attorney general or the office of the  
5592 county attorney, including any attorney on the staff whether acting in a civil or criminal capacity.

5593 (12) "Specified unlawful activity" means any unlawful activity defined as an unlawful  
5594 activity in Section 76-10-1602, except an illegal act under Title 18, Section 1961(1)(B), (C), and  
5595 (D), United States Code, and includes activity committed outside this state which, if committed  
5596 within this state, would be unlawful activity.

5597 (13) "Transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery, or other  
5598 disposition. With respect to a financial institution, "transaction" includes a deposit, withdrawal,  
5599 transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any  
5600 stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer,  
5601 or delivery by, through, or to a financial institution, by whatever means effected.

5602 (14) "Transaction in currency" means a transaction involving the physical transfer of  
5603 currency from one person to another. A transaction that is a transfer of funds by means of bank  
5604 check, bank draft, wire transfer, or other written order that does not include the physical transfer  
5605 of currency is not a transaction in currency under this chapter.

5606 Section 121. Section **77-19-11** is amended to read:

5607 **77-19-11. Who may be present -- Photographic and recording equipment.**

5608 (1) At the discretion of the executive director of the Department of Corrections or his  
5609 designee, the following persons may attend the execution:

5610 (a) the prosecuting attorney, or his designated deputy, of the county in which the defendant  
5611 committed the offense for which he is being executed;

5612 (b) no more than two law enforcement officials from the county in which the defendant  
5613 committed the offense for which he is being executed;

5614 (c) the attorney general or his designated deputy; and

5615 (d) religious representatives, friends, or relatives designated by the defendant, not  
5616 exceeding a total of five persons.

5617 (2) The persons enumerated in Subsection [(2)] (1) may not be required to attend, nor may  
5618 any of them attend as a matter of right.

5619 (3) The executive director of the department or his designee shall permit the attendance  
5620 at the execution of a total of nine members of the press and broadcast news media named by the  
5621 executive director of the department in accordance with rules of the department, provided that the  
5622 selected news media members serve as a pool for other members of the news media as a condition  
5623 of attendance.

5624 (4) (a) Photographic or recording equipment is not permitted at the execution site until  
5625 the execution is completed, the body is removed, and the site has been restored to an orderly  
5626 condition. However, the physical arrangements for the execution may not be disturbed.

5627 (b) A violation of this subsection is a class B misdemeanor.

5628 (5) All persons in attendance are subject to reasonable search as a condition of attendance.

5629 (6) (a) The following persons may also attend the execution:

5630 (i) staff as determined necessary for the execution by the executive director of the  
5631 department or his designee; and

5632 (ii) no more than three correctional officials from other states that are preparing for  
5633 executions, but no more than two correctional officials may be from any one state, as designated  
5634 by the executive director of the department or his designee.

5635 (b) Any person younger than 18 years of age may not attend.

5636 (7) The department shall adopt rules governing the attendance of persons at the execution.  
5637 Section 122. Section **77-20-8.5** is amended to read:

5638 **77-20-8.5. Sureties -- Surrender of defendant -- Arrest of defendant.**

5639 (1) (a) The sureties may at any time prior to a forfeiture of their bail surrender the  
5640 defendant and obtain exoneration of their bail by filing written requests at the time of the  
5641 surrender.

5642 (b) To effect surrender, certified duplicate copies of the undertaking shall be delivered to  
5643 a peace officer, who shall detain the defendant in his custody as upon a commitment, and shall in  
5644 writing acknowledge the surrender upon one copy of the undertaking. This certified copy of the  
5645 undertaking upon which the acknowledgment of surrender is endorsed shall be filed with the court.  
5646 The court may then, upon proper application, order the undertaking exonerated and may order a  
5647 refund of any paid premium, or part of a premium, as it finds just.

5648 (2) For the purpose of surrendering the defendant, the sureties may arrest him at any time  
5649 before they are finally exonerated and at any place within the state.

5650 (3) A surety acting under this section is subject to the provisions of Title 53, Chapter [10]  
5651 11, Bail Bond Recovery Act.

5652 Section 123. Section **77-32-401** is amended to read:

5653 **77-32-401. Indigent Defense Funds Board -- Members -- Administrative support.**

5654 (1) There is created within the Division of Finance the Indigent Defense Funds Board  
5655 composed of the following nine members:

5656 (a) two members who are current commissioners or county executives of participating  
5657 counties appointed by the board of directors of the Utah Association of Counties;

5658 (b) one member at large appointed by the board of directors of the Utah Association of  
5659 Counties;

5660 (c) two members who are current county attorneys of participating counties appointed by  
5661 the Utah Prosecution Council;

5662 (d) the director of the Division of Finance or his designee;

5663 (e) one member appointed by the Administrative Office of the Courts; and

5664 (f) two members who are private attorneys engaged in or familiar with the criminal defense  
5665 practice appointed by the members of the board listed in Subsections (1)(a) through (e).

5666 (2) Members shall serve four-year terms; however, one of the county commissioners, and  
5667 one of the county attorneys appointed to the initial board shall serve two-year terms and the  
5668 remaining other members of the initial board shall be appointed for four-year terms.

5669 (3) A vacancy is created if a member appointed under:

5670 (a) Subsection (1)(a) no longer serves as a county commissioner or county executive; or

5671 (b) Subsection (1)(c) no longer serves as a county attorney.

5672 (4) When a vacancy occurs in the membership for any reason, a replacement shall be  
5673 appointed for the remaining unexpired term in the same manner as the original appointment.

5674 (5) The board may contract for administrative support for up to \$15,000 annually to be  
5675 paid proportionally from each fund.

5676 (6) (a) (i) Members who are not government employees shall receive no compensation or  
5677 benefits for their services, but may receive per diem and expenses incurred in the performance of  
5678 the member's official duties at the rates established by the Division of Finance under Sections  
5679 63A-3-106 and 63A-3-107.

5680 (ii) Members may decline to receive per diem and expenses for their service.

5681 (b) (i) State government officer and employee members who do not receive salary, per  
5682 diem, or expenses from their agency for their service may receive per diem and expenses incurred  
5683 in the performance of their official duties from the board at the rates established by the Division  
5684 of Finance under Sections 63A-3-106 and 63A-3-107.

5685 (ii) State government officer and employee members may decline to receive per diem and  
5686 expenses for their service.

5687 (c) (i) Local government members who do not receive salary, per diem, or expenses from  
5688 the entity that they represent for their service may receive per diem and expenses incurred in the  
5689 performance of their official duties at the rates established by the Division of Finance under  
5690 Sections 63A-3-106 and 63A-3-107.

5691 (ii) Local government members may decline to receive per diem and expenses for their  
5692 service.

5693 [~~6~~] (7) Per diem and expenses for board members shall be paid proportionally from each  
5694 fund.

5695 [~~7~~] (8) Five members shall constitute a quorum and, if a quorum is present, the action  
5696 of a majority of the members present shall constitute the action of the board.

5697 Section 124. Section ~~77-37-3~~ is amended to read:

5698 **~~77-37-3. Bill of Rights.~~**

5699 (1) The bill of rights for victims and witnesses is:

5700 (a) Victims and witnesses have a right to be informed as to the level of protection from



5701 intimidation and harm available to them, and from what sources, as they participate in criminal  
5702 justice proceedings as designated by Section 76-8-508, regarding witness tampering, and Section  
5703 76-8-509, regarding threats against a victim. Law enforcement, prosecution, and corrections  
5704 personnel have the duty to timely provide this information in a form that is useful to the victim.

5705 (b) Victims and witnesses, including children and their guardians, have a right to be  
5706 informed and assisted as to their role in the criminal justice process. All criminal justice agencies  
5707 have the duty to provide this information and assistance.

5708 (c) Victims and witnesses have a right to clear explanations regarding relevant legal  
5709 proceedings; these explanations shall be appropriate to the age of child victims and witnesses. All  
5710 criminal justice agencies have the duty to provide these explanations.

5711 (d) Victims and witnesses should have a secure waiting area that does not require them to  
5712 be in close proximity to defendants or the family and friends of defendants. Agencies controlling  
5713 facilities shall, whenever possible, provide this area.

5714 (e) Victims are entitled to restitution or reparations, including medical costs, as provided  
5715 in Title 63, Chapter [63] 25a, Criminal Justice and Substance Abuse, and Sections [~~77-27-6,~~  
5716 ~~62A-7-122, [and] 76-3-201, and 77-27-6.~~ State and local government agencies that serve victims  
5717 have the duty to have a functional knowledge of the procedures established by the Utah Crime  
5718 Victims' Reparations Board and to inform victims of these procedures.

5719 (f) Victims and witnesses have a right to have any personal property returned as provided  
5720 in Sections 77-24-1 through 77-24-5. Criminal justice agencies shall expeditiously return the  
5721 property when it is no longer needed for court law enforcement or prosecution purposes.

5722 (g) Victims and witnesses have the right to reasonable employer intercession services,  
5723 including pursuing employer cooperation in minimizing employees' loss of pay and other benefits  
5724 resulting from their participation in the criminal justice process. Officers of the court shall provide  
5725 these services and shall consider victims' and witnesses' schedules so that activities which conflict  
5726 can be avoided. Where conflicts cannot be avoided, the victim may request that the responsible  
5727 agency intercede with employers or other parties.

5728 (h) Victims and witnesses, particularly children, should have a speedy disposition of the  
5729 entire criminal justice process. All involved public agencies shall establish policies and procedures  
5730 to encourage speedy disposition of criminal cases.

5731 (i) Victims and witnesses have the right to timely notice of judicial proceedings they are

5732 to attend and timely notice of cancellation of any proceedings. Criminal justice agencies have the  
5733 duty to provide these notifications. Defense counsel and others have the duty to provide timely  
5734 notice to prosecution of any continuances or other changes that may be required.

5735 (j) Victims of sexual offenses have a right to be informed of their right to request voluntary  
5736 testing for themselves for HIV infection as provided in Section 76-5-503 and to request mandatory  
5737 testing of the convicted sexual offender for HIV infection as provided in Section 76-5-502. The  
5738 law enforcement office where the sexual offense is reported shall have the responsibility to inform  
5739 victims of this right.

5740 (2) Informational rights of the victim under this chapter are based upon the victim  
5741 providing his current address and telephone number to the criminal justice agencies involved in  
5742 the case.

5743 Section 125. Section **78-3a-905** is amended to read:

5744 **78-3a-905. Expungement of juvenile court record -- Petition -- Procedure.**

5745 (1) (a) Any person who has been adjudicated under this chapter may, after the expiration  
5746 of one year from the date of termination of the continuing jurisdiction of the juvenile court or, in  
5747 case he was committed to a secure youth corrections facility, one year from the date of his  
5748 unconditional release from the facility, petition the court for the expungement of his record in the  
5749 juvenile court.

5750 (b) (i) Upon the filing of a petition, the court shall set a date for a hearing and shall notify  
5751 the county attorney or, if within [the] a prosecution district, district attorney, and the agency with  
5752 custody of the records of the pendency of the petition and of the date of the hearing.

5753 (ii) The county attorney or district attorney and any other person who may have relevant  
5754 information about the petitioner may testify at the hearing.

5755 (2) (a) If the court finds upon the hearing that the petitioner has not been convicted of a  
5756 felony or of a misdemeanor involving moral turpitude since the termination of the court's  
5757 jurisdiction or his unconditional release from a secure youth corrections facility and that no  
5758 proceeding involving a felony or misdemeanor is pending or being instituted against him, and if  
5759 the court further finds that the rehabilitation of the petitioner has been attained to the satisfaction  
5760 of the court, it shall order sealed all records in the petitioner's case in the custody of the juvenile  
5761 court and any records in the custody of any other agency or official pertaining to the petitioner's  
5762 adjudicated juvenile court cases, except fingerprint records. Fingerprint records shall be retained

5763 in the custody of the juvenile court and any other agency or official. Copies of the order shall be  
5764 sent to each agency or official named in the order and any entity notified of the original  
5765 adjudication under Subsection 78-3a-118(1)(b). To avoid destruction or sealing of the records in  
5766 whole or in part, the agency or entity receiving the expungement order shall only expunge all  
5767 references to the petitioner's name in the records pertaining to the adjudicated juvenile court cases.  
5768 The petitioner, based on good cause, may petition the court to expunge the records in whole or in  
5769 part.

5770 (b) Upon the entry of the order, the proceedings in the petitioner's case shall be considered  
5771 never to have occurred and the petitioner may properly reply accordingly upon any inquiry in the  
5772 matter. Inspection of the records may thereafter only be permitted by the court upon petition by  
5773 the person who is the subject of the records, and only to persons named in the petition.

5774 Section 126. Section **78-3c-4** is amended to read:

5775 **78-3c-4. Disclosure of confidential communications.**

5776 The confidential communication between a victim and a sexual assault counselor is  
5777 available to a third person only when:

5778 (1) the victim is a minor and the counselor believes it is in the best interest of the victim  
5779 to disclose the confidential communication to the victim's parents;

5780 (2) the victim is a minor and the minor's parents or guardian have consented to disclosure  
5781 of the confidential communication to a third party based upon representations made by the  
5782 counselor that it is in the best interest of the minor victim to make such disclosure;

5783 (3) the victim is not a minor, has given consent, and the counselor believes the disclosure  
5784 is necessary to accomplish the desired result of counseling; or

5785 (4) the counselor has an obligation under Title 62A, Chapter [4] 4a, Child and Family  
5786 Services, to report information transmitted in the confidential communication.

5787 Section 127. Section **78-3g-102** is amended to read:

5788 **78-3g-102. Foster Care Citizen Review Board Steering Committee -- Membership**  
5789 **-- Chair -- Compensation -- Duties.**

5790 (1) There is created within state government the Foster Care Citizen Review Board  
5791 Steering Committee composed of the following members:

5792 (a) a member of the Board of Child and Family Services, within the Department of Human  
5793 Services, appointed by the chair of that board;

- 5794 (b) the director of the division, or his designee;
- 5795 (c) a juvenile court judge, appointed by the presiding officer of the Judicial Council;
- 5796 (d) a juvenile court administrator, appointed by the administrator of the courts;
- 5797 (e) a representative of the Utah Foster Parents Association, appointed by the president of
- 5798 that organization;
- 5799 (f) a representative of a statewide advocacy organization for children, appointed by the
- 5800 chair of the committee;
- 5801 (g) a representative of an agency or organization that provides services to children who
- 5802 have been adjudicated to be under the jurisdiction of the juvenile court, appointed by the chair of
- 5803 the committee;
- 5804 (h) the guardian ad litem director, appointed pursuant to Section 78-3a-911, or the
- 5805 director's designee;
- 5806 (i) the director or chief of the child protection unit within the Office of the Attorney
- 5807 General, or his designee;
- 5808 (j) one person from each region who is a member of a board, appointed by the chair of the
- 5809 committee; and
- 5810 (k) a private citizen, appointed by the chair of the committee.
- 5811 (2) The persons described in Subsection (1) shall annually elect a chair of the committee
- 5812 from among themselves.
- 5813 (3) A majority of the members of the committee constitutes a quorum. The action of the
- 5814 majority of a quorum represents the action of the committee.
- 5815 (4) (a) Members of the committee who are not government employees shall receive no
- 5816 compensation or benefits for their services, but may receive per diem and expenses incurred in the
- 5817 performance of the member's official duties at the rates established by the Division of Finance
- 5818 under Sections 63A-3-106 and 63A-3-107.
- 5819 (b) State government officer and employee members who do not receive salary, per diem,
- 5820 or expenses from their agency for their service may receive per diem and expenses incurred in the
- 5821 performance of their official duties from the board at the rates established by the Division of
- 5822 Finance under Sections 63A-3-106 and 63A-3-107.
- 5823 (c) Local government members who do not receive salary, per diem, or expenses from the
- 5824 entity that they represent for their service may receive per diem and expenses incurred in the

5825 performance of their official duties at the rates established by the Division of Finance under  
5826 Sections 63A-3-106 and 63A-3-107.

5827 (d) Members of the committee may decline to receive per diem and expenses for their  
5828 services.

5829 (5) The committee shall:

5830 (a) within appropriations from the Legislature, appoint members of boards in each juvenile  
5831 court district;

5832 (b) supervise the recruitment, training, and retention of board members;

5833 (c) supervise and evaluate the boards;

5834 (d) establish and approve policies for the boards; and

5835 (e) submit a report detailing the results of the boards to the Legislative Health and Human  
5836 Services and Judiciary Interim Committees and the Board of Juvenile Court Judges, on or before  
5837 December 31 of each year.

5838 (6) (a) The Department of Human Services shall provide fiscal management services,  
5839 including payroll and accounting services, to the committee.

5840 (b) Within appropriations from the Legislature, the committee may hire professional and  
5841 clerical staff as it considers necessary and appropriate.

5842 (7) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
5843 committee may make rules necessary for:

5844 (a) recruitment, appointment, and training of board members;

5845 (b) supervision and evaluation of boards; and

5846 (c) establishment of policy for boards.

5847 (8) The committee may receive gifts, grants, devises, and donations. If the donor  
5848 designates a specific purpose or use for the gift, grant, devise, or donation, it shall be used solely  
5849 for that purpose. Undesignated gifts, grants, devises, and donations shall be used for foster care  
5850 citizen review boards in accordance with the requirements and provisions of this chapter.

5851 **Section 128. Repealer.**

5852 This act repeals:

5853 **Section 26-8-15, Violation of chapter a misdemeanor -- Calling ambulance when not**  
5854 **needed a misdemeanor.**

5855 **Section 78-32-12.3, Pilot program -- Purpose -- Evaluation of pilot program --**

5856 **Exceptions.**

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**Legislative Review Note**  
**as of 1-13-00 9:12 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**