

REVISOR'S STATUTE

2002 GENERAL SESSION

STATE OF UTAH

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This act modifies parts of the Utah Code to make technical corrections including wording, cross references, and numbering changes.

§ This act provides an effective date. §

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

AMENDS:

9-3-310, as enacted by Chapter 182, Laws of Utah 1992

9-4-602, as last amended by Chapter 73, Laws of Utah 2001

9-4-703, as last amended by Chapter 181, Laws of Utah 2001

13-14a-6, as enacted by Chapter 63, Laws of Utah 1989

16-11-2, as last amended by Chapter 21, Laws of Utah 1999

17-15-27, as enacted by Chapter 110, Laws of Utah 1999

17-18-2, as last amended by Chapter 372, Laws of Utah 1999

17-53-106, as enacted by Chapter 241, Laws of Utah 2001

17B-4-102, as enacted by Chapter 133, Laws of Utah 2001

17B-4-504, as enacted by Chapter 133, Laws of Utah 2001

17B-4-505, as enacted by Chapter 133, Laws of Utah 2001

17B-4-506, as enacted by Chapter 133, Laws of Utah 2001

17B-4-1010, as enacted by Chapter 133, Laws of Utah 2001

23-20-1, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

24-1-1, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

24-1-7, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

24-1-8, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000



28 **24-1-10**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
29 **24-1-15**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
30 **24-1-16**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
31 **26-28-6**, as last amended by Chapter 117, Laws of Utah 2001
32 **31A-8-207**, as enacted by Chapter 204, Laws of Utah 1986
33 **31A-15-103**, as last amended by Chapter 116, Laws of Utah 2001
34 **31A-23-202 (Effective 07/01/02)**, as last amended by Chapter 8, Laws of Utah 2001, First
35 Special Session
36 **31A-23-202 (Superseded 07/01/02)**, as last amended by Chapter 116, Laws of Utah 2001
37 **31A-28-101**, as repealed and reenacted by Chapter 211, Laws of Utah 1991
38 **32A-13-103**, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
39 **41-6-13.7**, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
40 **41-6-44.10**, as last amended by Chapter 46, Laws of Utah 2001
41 **48-2c-1502**, as enacted by Chapter 260, Laws of Utah 2001
42 **53-3-223**, as last amended by Chapters 46 and 85, Laws of Utah 2001
43 **53-3-231**, as last amended by Chapter 85, Laws of Utah 2001
44 **58-37-13**, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
45 **58-37a-6**, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
46 **58-37c-15**, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
47 **58-37d-7**, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
48 **58-71-601**, as enacted by Chapter 282, Laws of Utah 1996
49 **59-14-207**, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
50 **63-2-903**, as last amended by Chapter 280, Laws of Utah 1992
51 **63-46a-11**, as last amended by Chapter 138, Laws of Utah 2001
52 **63-55-272**, as last amended by Chapter 47, Laws of Utah 1999
53 **63-56-36**, as last amended by Chapter 89, Laws of Utah 1997
54 **67-19-39**, as last amended by Chapter 282, Laws of Utah 1998
55 **67-20-6**, as last amended by Chapter 94, Laws of Utah 1998
56 **67-20-7**, as last amended by Chapter 240, Laws of Utah 1996
57 **72-9-501**, as renumbered and amended by Chapter 270 and last amended by Chapter 282,
58 Laws of Utah 1998

59 **76-3-501**, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
60 **76-10-1107**, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
61 **76-10-1603.5**, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
62 **76-10-1908**, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
63 **77-38a-302**, as enacted by Chapter 137, Laws of Utah 2001
64 **78-30-7**, as last amended by Chapters 101 and 213, Laws of Utah 2001

65 REPEALS:

66 **53-7-108**, as enacted by Chapter 25, Laws of Utah 2001

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

68 Section 1. Section **9-3-310** is amended to read:

69 **9-3-310. Lease of rails from Department of Transportation and Division of Parks**
70 **and Recreation.**

71 The Department of Transportation and the Division of Parks and Recreation shall jointly
72 lease the rails, bed, right-of-way, and related property for not more [~~then~~] than \$1 per year to the
73 authority.

74 Section 2. Section **9-4-602** is amended to read:

75 **9-4-602. Definitions.**

76 As used in this part:

77 (1) "Area of operation" means:

78 (a) in the case of an authority of a city, the city, except that the area of operation of an
79 authority of any city does not include any area that lies within the territorial boundaries of some
80 other city; or

81 (b) in the case of an authority of a county, all of the county for which it is created except,
82 that a county authority may not undertake any project within the boundaries of any city unless a
83 resolution has been adopted by the governing body of the city (and by any authority which shall
84 have been theretofore established and authorized to exercise its powers in the city) declaring that
85 there is need for the county authority to exercise its powers within that city.

86 (2) "Blighted area" means any area where dwellings predominate that, by reason of
87 dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light, or sanitary
88 facilities or any combination of these factors, are detrimental to safety, health, and morals.

89 (3) "Bonds" means any bonds, notes, interim certificates, debentures, or other obligations

90 issued by an authority pursuant to this part.

91 (4) "City" means any city or town in the state.

92 (5) "Clerk" means the city clerk or the county clerk, or the officer charged with the duties
93 customarily imposed on the clerk.

94 (6) "County" means any county in the state.

95 (7) "Elderly" means a person who meets the age, disability, or other conditions established
96 by regulation of the authority.

97 (8) "Federal government" includes the United States of America, the Department of
98 Housing and Urban Development, or any other agency or instrumentality, corporate or otherwise,
99 of the United States.

100 (9) "Governing body" means, in the case of a city, the council or other body of the city in
101 which is vested legislative authority customarily imposed on the city council, and in the case of
102 a county, the board of county commissioners.

103 (10) "Housing authority" or "authority" means any public body corporate and politic
104 created by this part.

105 (11) (a) "Housing project" or "project" means any work or undertaking, on contiguous or
106 noncontiguous sites to:

107 (i) demolish, clear, or remove buildings from any blighted area;

108 (ii) provide or assist in providing decent, safe, and sanitary urban or rural dwellings,
109 apartments, or other living accommodations for persons of medium and low income by any
110 suitable methods, including but not limited to rental, sale of individual units in single or
111 multifamily structures under conventional condominium, cooperative sales contract,
112 lease-purchase agreement, loans, or subsidizing of rentals or charges; or

113 (iii) accomplish a combination of the foregoing.

114 (b) "Housing project" includes:

115 (i) buildings, land, equipment, facilities, and other real or personal property for necessary,
116 convenient, or desirable appurtenances;

117 (ii) streets, sewers, water service, utilities, parks, site preparation and landscaping;

118 (iii) facilities for administrative, community, health, recreational, welfare, or other
119 purposes;

120 (iv) the planning of the buildings and other improvements;

121 (v) the acquisition of property or any interest therein;
122 (vi) the demolition of existing structures;
123 [~~(vi)~~] (vii) the construction, reconstruction, rehabilitation, alteration, or repair of the
124 improvements and all other work in connection with them; and
125 [~~(vii)~~] (viii) all other real and personal property and all tangible or intangible assets held
126 or used in connection with the housing project.

127 (12) "Major disaster" means any flood, drought, fire, hurricane, earthquake, storm, or other
128 catastrophe which in the determination of the governing body is of sufficient severity and
129 magnitude to warrant the use of available resources of the federal, state, and local governments to
130 alleviate the damage, hardship, or suffering caused.

131 (13) "Mayor" means the mayor of the city or the officer charged with the duties
132 customarily imposed on the mayor or executive head of a city.

133 (14) "Obligee of an authority" or "obligee" includes any bondholder, agent or trustee for
134 any bondholder, any lessor demising to the authority used in connection with a project, any
135 assignee or assignees of the lessor's interest in whole or in part, and the federal government when
136 it is a party to any contract with the authority.

137 (15) "Persons of medium and low income" mean persons or families who, as determined
138 by the authority undertaking a project, cannot afford to pay the amounts at which private
139 enterprise, unaided by appropriate assistance, is providing a substantial supply of decent, safe and
140 sanitary housing.

141 (16) "Person with a disability" means a person with any disability as defined by and
142 covered under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102.

143 (17) "Public body" means any city, county or municipal corporation, commission, district,
144 authority, agency, subdivision, or other body of any of the foregoing.

145 (18) "Real property" includes all lands, improvements, and fixtures on them, property of
146 any nature appurtenant to them or used in connection with them, and every estate, interest, and
147 right, legal or equitable, including terms for years.

148 Section 3. Section **9-4-703** is amended to read:

149 **9-4-703. Housing loan fund board -- Duties -- Expenses.**

150 (1) There is created the Olene Walker Housing [~~Trust~~] Loan Fund Board.

151 (2) The board shall be composed of 11 voting members.

152 (a) The governor shall appoint the following members to four-year terms:

- 153 (i) two members from local governments;
- 154 (ii) two members from the mortgage lending community;
- 155 (iii) one member from real estate sales interests;
- 156 (iv) one member from home builders interests;
- 157 (v) one member from rental housing interests;
- 158 (vi) one member from housing advocacy interests;
- 159 (vii) one member of the manufactured housing interest; and
- 160 (viii) two members of the general public.

161 (b) The director or his designee shall serve as the secretary of the committee.

162 (c) The members of the board shall annually elect a chair from among the voting
163 membership of the board.

164 (3) (a) Notwithstanding the requirements of Subsection (2), the governor shall, at the time
165 of appointment or reappointment, adjust the length of terms to ensure that the terms of board
166 members are staggered so that approximately half of the board is appointed every two years.

167 (b) When a vacancy occurs in the membership for any reason, the replacement shall be
168 appointed for the unexpired term.

169 (4) (a) The board shall:

- 170 (i) meet regularly, at least quarterly, on dates fixed by the board;
- 171 (ii) keep minutes of its meetings; and
- 172 (iii) comply with the procedures and requirements of Title 52, Chapter 4, Open and Public
173 Meetings.

174 (b) Seven members of the board constitute a quorum, and the governor, the chair, or a
175 majority of the board may call a meeting of the board.

176 (5) The board shall:

- 177 (a) review the housing needs in the state;
- 178 (b) determine the relevant operational aspects of any grant, loan, or revenue collection
179 program established under the authority of this chapter;
- 180 (c) determine the means to implement the policies and goals of this chapter;
- 181 (d) determine specific projects that the board considers should receive grant or loan
182 moneys; and

183 (e) determine how fund moneys shall be allocated and distributed.

184 (6) (a) (i) Members who are not government employees shall receive no compensation or
185 benefits for their services, but may receive per diem and expenses incurred in the performance of
186 the member's official duties at the rates established by the Division of Finance under Sections
187 63A-3-106 and 63A-3-107.

188 (ii) Members may decline to receive per diem and expenses for their service.

189 (b) (i) State government employee members who do not receive salary, per diem, or
190 expenses from their agency for their service may receive per diem and expenses incurred in the
191 performance of their official duties from the board at the rates established by the Division of
192 Finance under Sections 63A-3-106 and 63A-3-107.

193 (ii) State government employee members may decline to receive per diem and expenses
194 for their service.

195 (c) (i) Local government members who do not receive salary, per diem, or expenses from
196 the entity that they represent for their service may receive per diem and expenses incurred in the
197 performance of their official duties at the rates established by the Division of Finance under
198 Sections 63A-3-106 and 63A-3-107.

199 (ii) Local government members may decline to receive per diem and expenses for their
200 service.

201 Section 4. Section **13-14a-6** is amended to read:

202 **13-14a-6. Security interest of wholesaler or manufacturer not affected.**

203 This chapter may not be construed to affect in any way any security interest that the
204 wholesaler or manufacturer may have in the inventory of the dealer. [~~Any repurchase under this~~
205 ~~chapter is not subject to the provisions of Title 70A, Chapter 6.~~] The retailer, manufacturer, or
206 wholesaler may furnish a representative to inspect all parts and certify their acceptability when
207 packed for shipment.

208 Section 5. Section **16-11-2** is amended to read:

209 **16-11-2. Definitions.**

210 As used in this chapter:

211 (1) "Filed" means the division has received and approved, as to form, a document
212 submitted under the provisions of this chapter, and has marked on the face of the document a
213 stamp or seal indicating the time of day and date of approval, the name of the division, the division

214 director's signature and division seal, or facsimiles of the signature or seal.

215 (2) "Professional corporation" means a corporation organized under this chapter.

216 (3) "Professional service" means the personal service rendered by:

217 (a) a physician, surgeon, or doctor of medicine holding a license under Title 58, Chapter
218 67, Utah Medical Practice Act, and any subsequent laws regulating the practice of medicine;

219 (b) a doctor of dentistry holding a license under Title 58, Chapter 69, Dentist and Dental
220 Hygienist Practice Act, and any subsequent laws regulating the practice of dentistry;

221 (c) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68, Utah
222 Osteopathic Medical Practice Act, and any subsequent laws regulating the practice of osteopathy;

223 (d) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician
224 Practice Act, and any subsequent laws regulating the practice of chiropractic;

225 (e) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric Physician
226 Licensing Act, and any subsequent laws regulating the practice of podiatry;

227 (f) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry Practice
228 Act, and any subsequent laws regulating the practice of optometry;

229 (g) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act,
230 and any subsequent laws regulating the practice of veterinary medicine;

231 (h) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act, and
232 any subsequent laws regulating the practice of architecture;

233 (i) a public accountant holding a license under Title 58, Chapter ~~[26]~~ 26a, Certified Public
234 Accountant Licensing Act, and any subsequent laws regulating the practice of public accounting;

235 (j) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician
236 Practice Act, and any subsequent laws regulating the practice of naturopathy;

237 (k) a pharmacist holding a license under Title 58, Chapter 17a, Pharmacy Practice Act, and
238 any subsequent laws regulating the practice of pharmacy;

239 (l) an attorney granted the authority to practice law by:

240 (i) the Utah Supreme Court~~[, as provided in Title 78, Chapter 51, Attorneys and~~
241 ~~Counselors]~~; or

242 (ii) the Supreme Court, other court, agency, instrumentality, or regulating board that
243 licenses or regulates the authority to practice law in any state or territory of the United States other
244 than Utah;

245 (m) a professional engineer registered under Title 58, Chapter 22, Professional Engineers
246 and Professional Land Surveyor Licensing Act;

247 (n) a real estate broker or real estate agent holding a license under Title 61, Chapter 2,
248 Division of Real Estate, and any subsequent laws regulating the selling, exchanging, purchasing,
249 renting, or leasing of real estate;

250 (o) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing
251 Act, and any subsequent laws regulating the practice of psychology;

252 (p) a clinical or certified social worker holding a license under Title 58, Chapter 60, Part
253 2, Social Worker Licensing Act, and any subsequent laws regulating the practice of social work;

254 (q) a physical therapist holding a license under Title 58, Chapter 24a, Physical Therapist
255 Practice Act, and any subsequent laws regulating the practice of physical therapy; or

256 (r) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter
257 44a, Nurse Midwife Practice Act.

258 (4) "Regulating board" means the board that is charged with the licensing and regulation
259 of the practice of the profession which the professional corporation is organized to render. The
260 definitions of Title 16, Chapter 10a, Utah Revised Business Corporation Act, apply to this chapter
261 unless the context clearly indicates that a different meaning is intended.

262 Section 6. Section **17-15-27** is amended to read:

263 **17-15-27. Appointment of legal counsel by county executive and county legislative**
264 **body.**

265 (1) (a) An elected county executive in a county that has adopted an optional form of county
266 government under Chapter [35a] 52, [~~Optional~~] Forms of County Government [~~Act~~], may appoint
267 an attorney to advise and represent the county executive.

268 (b) An attorney appointed under Subsection (1)(a):

269 (i) serves at the pleasure of the county executive; and

270 (ii) may not perform any of the functions of a county attorney or district attorney under this
271 title.

272 (c) An attorney appointed under this Subsection (1) may represent the county executive
273 in cases and controversies before courts and administrative agencies and tribunals when a conflict
274 exists that precludes the county or district attorney from representing the county executive.

275 (2) A county legislative body may appoint an attorney to represent the county legislative

276 body when a conflict exists that precludes the county or district attorney from representing the
277 county legislative body.

278 Section 7. Section **17-18-2** is amended to read:

279 **17-18-2. Legal adviser to commissioners.**

280 (1) The county attorney is the legal adviser of the county [~~as provided in Title 67, Chapter~~
281 ~~23, Public Attorneys Act~~].

282 (2) The county attorney shall attend meetings of the county legislative body when required.

283 Section 8. Section **17-53-106** is amended to read:

284 **17-53-106. Supervision of county elected officers -- Legislative body and executive**
285 **may examine and audit accounts and conduct investigation.**

286 (1) [~~For purposes of~~] As used in this section, "professional duties" means a county elected
287 officer's functions, duties, and responsibilities specifically provided for by law and includes:

288 (a) the exercise of professional judgment and discretion reasonably related to the officer's
289 required functions, duties, and responsibilities; and

290 (b) the management of deputies and other employees under the supervision of the elected
291 officer under statute or county ordinance, policy, or regulation.

292 (2) (a) A county legislative body and a county executive each:

293 (i) may generally direct and supervise all elected county officers and employees to ensure
294 compliance with general county administrative ordinances, rules, or policies;

295 (ii) may not direct or supervise other elected county officers or their sworn deputies with
296 respect to the performance of the professional duties of the officers or deputies;

297 (iii) may examine and audit the accounts of all county officers having the care,
298 management, collection, or distribution of monies belonging to the county, appropriated to the
299 county, or otherwise available for the county's use and benefit; and

300 (iv) may investigate any matter pertaining to a county officer or to the county or its
301 business or affairs, and may require the attendance of witnesses and take evidence in any such
302 investigation.

303 (b) In an investigation under Subsection (2)(a)(iv):

304 (i) the county executive or any member of the county legislative body may issue subpoenas
305 and administer oaths to witnesses; and

306 (ii) if the county legislative body issues subpoenas and appoints members of the legislative

307 body as a committee and confers on the committee power to hear or take evidence, the committee
308 shall have the same power as the full county legislative body.

309 (3) Nothing in this section may be construed to prohibit the county executive or county
310 legislative body from initiating an action for removal or prosecution of an elected county officer
311 as provided by statute.

312 Section 9. Section **17B-4-102** is amended to read:

313 **17B-4-102. Definitions.**

314 (1) "Agency" means a separate body corporate and politic, created under Section
315 17B-4-201, that is a political subdivision of the state, that is created to undertake or promote
316 redevelopment, economic development, or education housing development, or any combination
317 of them, as provided in this chapter, and whose geographic boundaries are coterminous with:

318 (a) for an agency created by a county, the unincorporated area of the county; and

319 (b) for an agency created by a city or town, the boundaries of the city or town.

320 (2) "Assessment property owner" or "assessment owner of property" means the owner of
321 real property as shown on the assessment roll of the county in which the property is located,
322 equalized as of the previous November 1.

323 (3) "Assessment roll" has the meaning as defined in Section 59-2-102.

324 (4) "Base taxable value" means the taxable value of the property within a project area from
325 which tax increment will be collected, as shown upon the assessment roll last equalized before:

326 (a) for a pre-July 1, 1993 project area plan, the effective date of the project area plan; or

327 (b) for a post-June 30, 1993 project area plan:

328 (i) the date of the taxing entity committee's approval of the first project area budget; or

329 (ii) if no taxing entity committee approval is required for the project area budget, the later

330 of:

331 (A) the date the project area plan is adopted by the community legislative body; and

332 (B) the date the agency adopts the first project area budget.

333 (5) "Blight" or "blighted" means the condition of an area that meets the requirements of
334 Subsection 17B-4-604(1).

335 (6) "Blight hearing" means a public hearing under Subsection 17B-4-601(3) and Section
336 17B-4-603 regarding the existence or nonexistence of blight within the proposed redevelopment
337 project area.

338 (7) "Blight study" means a study to determine the existence or nonexistence of blight
339 within a survey area as provided in Section 17B-4-602.

340 (8) "Board" means the governing body of an agency, as provided in Section 17B-4-203.

341 (9) "Budget hearing" means the public hearing on a draft project area budget required
342 under Subsection 17B-4-501(2)(e).

343 (10) "Community" means a county, city, or town.

344 (11) "Economic development" means to promote the creation or retention of public or
345 private jobs within the state through:

346 (a) planning, design, development, construction, rehabilitation, business relocation, or any
347 combination of these, within part or all of a project area; and

348 (b) the provision of office, industrial, manufacturing, warehousing, distribution, parking,
349 public, or other facilities, or other improvements that benefit the state or a community.

350 (12) "Education housing development" means the provision of high density housing within
351 a project area that is adjacent to a public or private institution of higher education.

352 [~~(30)~~] (13) "Loan fund board" means the Olene Walker Housing [~~Trust~~] Loan Fund
353 Board, established under Title 9, Chapter 4, Part 7, Olene Walker Housing [~~Trust~~] Loan Fund.

354 [~~(13)~~] (14) "Plan hearing" means the public hearing on a draft project area plan required
355 under Subsection 17B-4-402(1)(e).

356 [~~(14)~~] (15) "Post-June 30, 1993 project area plan" means a redevelopment, economic
357 development, or education housing development project area plan adopted on or after July 1, 1993,
358 whether or not amended subsequent to its adoption.

359 [~~(15)~~] (16) "Pre-July 1, 1993 project area plan" means a redevelopment project area plan
360 adopted before July 1, 1993, whether or not amended subsequent to its adoption.

361 [~~(16)~~] (17) "Private," with respect to real property, means:

362 (a) not owned by the United States or any agency of the federal government, a public
363 entity, or any other governmental entity; and

364 (b) not dedicated to public use.

365 [~~(17)~~] (18) "Project area" means the geographic area described in a project area plan or
366 draft project area plan where the redevelopment, economic development, or education housing
367 development set forth in the project area plan or draft project area plan takes place or is proposed
368 to take place.

369 [~~(18)~~] (19) "Project area budget" means a multiyear projection of annual or cumulative
370 revenues and expenses and other fiscal matters pertaining to a redevelopment, economic
371 development, or education housing development project area that includes:

372 (a) the base taxable value of property in the project area;

373 (b) the projected tax increment expected to be generated within the project area;

374 (c) the amount of tax increment expected to be shared with other taxing entities;

375 (d) the amount of tax increment expected to be used to implement the project area plan,

376 including the estimated amount of tax increment to be used for land acquisition, public

377 improvements, infrastructure improvements, and loans, grants, or other incentives to private and

378 public entities;

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

381 (f) if the area from which tax increment is to be collected is less than the entire project
382 area, a legal description of the portion of the project area from which tax increment will be
383 collected; and

384 (g) for property that the agency owns and expects to sell, the expected total cost of the
385 property to the agency and the expected selling price.

386 [~~(19)~~] (20) "Project area plan" means a written plan under Part 4, Project Area Plan, that,
387 after its effective date, guides and controls the redevelopment, economic development, or
388 education housing development activities within the project area.

389 [~~(20)~~] (21) "Property tax" includes privilege tax and each levy on an ad valorem basis on
390 tangible or intangible personal or real property.

391 [~~(21)~~] (22) "Public entity" means:

392 (a) the state, including any of its departments or agencies; or

393 (b) a political subdivision of the state, including a county, city, town, school district,
394 special district, local district, or interlocal cooperation entity.

395 [~~(22)~~] (23) "Public input hearing" means the public hearing required under Subsection
396 17B-4-402(1)(h)(ii) regarding a proposed redevelopment project.

397 [~~(23)~~] (24) "Record property owner" or "record owner of property" means the owner of real
398 property as shown on the records of the recorder of the county in which the property is located and
399 includes a purchaser under a real estate contract if the contract is recorded in the office of the

400 recorder of the county in which the property is located or the purchaser gives written notice of the
401 real estate contract to the agency.

402 ~~[(24)]~~ (25) "Redevelopment" means the development activities under a project area plan
403 within a redevelopment project area, including:

404 (a) planning, design, development, demolition, clearance, construction, rehabilitation, or
405 any combination of these, of part or all of a project area;

406 (b) the provision of residential, commercial, industrial, public, or other structures or
407 spaces, including recreational and other facilities incidental or appurtenant to them;

408 (c) altering, improving, modernizing, demolishing, reconstructing, or rehabilitating, or any
409 combination of these, existing structures in a project area;

410 (d) providing open space, including streets and other public grounds and space around
411 buildings;

412 (e) providing public or private buildings, infrastructure, structures, and improvements; and

413 (f) providing improvements of public or private recreation areas and other public grounds.

414 ~~[(25)]~~ (26) "Survey area" means an area designated by a survey area resolution for study
415 to determine whether one or more redevelopment projects within the area are feasible.

416 ~~[(26)]~~ (27) "Survey area resolution" means a resolution adopted by the agency board under
417 Subsection 17B-4-401(1)(a) designating a survey area.

418 ~~[(27)]~~ (28) (a) "Tax increment" means, except as provided in Subsection ~~[(27)]~~ (28)(b),
419 the difference between:

420 (i) the amount of property tax revenues generated each tax year by all taxing entities from
421 the area within a project area designated in the project area plan as the area from which tax
422 increment is to be collected, using the current assessed value of the property; and

423 (ii) the amount of property tax revenues that would be generated from that same area using
424 the base taxable value of the property.

425 (b) "Tax increment" does not include taxes levied and collected under Section 59-2-906.1
426 on or after January 1, 1994 upon the taxable property in the project area unless:

427 (i) the project area plan was adopted before May 4, 1993, whether or not the project area
428 plan was subsequently amended; and

429 (ii) the taxes were pledged to support bond indebtedness or other contractual obligations
430 of the agency.

431 [~~(28)~~] (29) "Taxing entity" means a public entity that levies a tax on property within a
432 project area or proposed project area.

433 [~~(29)~~] (30) "Taxing entity committee" means a committee representing the interests of
434 taxing entities, created as provided in Section 17B-4-1002.

435 Section 10. Section **17B-4-504** is amended to read:

436 **17B-4-504. Part of tax increment funds to be used for housing -- Waiver of**
437 **requirement.**

438 (1) (a) Except as provided in Subsection (1)(b), each project area budget adopted on or
439 after May 1, 2000 that provides for more than \$100,000 of annual tax increment to be paid to the
440 agency shall allocate at least 20% of the tax increment for housing as provided in Section
441 17B-4-1010.

442 (b) The 20% requirement of Subsection (1)(a) may be waived in part or whole by the
443 mutual consent of the [~~trust~~] loan fund board and the taxing entity committee if they determine that
444 20% of tax increment is more than is needed to address the community's need for income targeted
445 housing, as defined in Section 17B-4-1010.

446 (2) A project area budget not required under Subsection (1)(a) to allocate tax increment
447 for housing may allocate 20% of tax increment payable to the agency over the life of the project
448 area for housing as provided in Section 17B-4-1010 if the project area budget is under a project
449 area plan that is adopted on or after July 1, 1998.

450 Section 11. Section **17B-4-505** is amended to read:

451 **17B-4-505. Consent of taxing entity committee.**

452 (1) (a) Except as provided in Subsection (1)(b) and subject to Subsection (2), each agency
453 shall obtain the consent of the taxing entity committee for each project area budget under a
454 post-June 30, 1993 project area plan before the agency may collect any tax increment from the
455 project area.

456 (b) For a project area budget adopted from July 1, 1998 through May 1, 2000 that allocates
457 20% or more of the tax increment for housing as provided in Section 17B-4-1010, an agency:

458 (i) need not obtain the consent of the taxing entity committee for the project area budget;
459 and

460 (ii) may not collect any tax increment from all or part of the project area until after:

461 (A) the [~~trust~~] loan fund board has certified the project area budget as complying with the

462 requirements of Section 17B-4-1010; and

463 (B) the agency board has approved and adopted the project area budget by a two-thirds
464 vote.

465 (2) (a) Before a taxing entity committee may consent to a project area budget adopted on
466 or after May 1, 2000 that is required under Subsection 17B-4-504(1)(a) to allocate 20% of tax
467 increment for housing, the agency shall:

468 (i) adopt a housing plan showing the uses for the housing funds; and

469 (ii) provide a copy of the housing plan to the taxing entity committee and the [trust] loan
470 fund board.

471 (b) If an agency amends a housing plan prepared under Subsection (2)(a), the agency shall
472 provide a copy of the amendment to the taxing entity committee and the [trust] loan fund board.

473 Section 12. Section **17B-4-506** is amended to read:

474 **17B-4-506. Filing a copy of the project area budget.**

475 Each agency adopting a project area budget shall:

476 (1) within 30 days after adopting the project area budget, file a copy of the project area
477 budget with the auditor of the county in which the project area is located, the State Tax
478 Commission, the state auditor, the State Board of Education, and each taxing entity affected by the
479 agency's collection of tax increment under the project area budget; and

480 (2) if the project area budget allocates tax increment for housing under Section
481 17B-4-1010, file a copy of the project area budget with the [trust] loan fund board.

482 Section 13. Section **17B-4-1010** is amended to read:

483 **17B-4-1010. Income targeted housing -- Agency may use tax increment for income**
484 **targeted housing.**

485 (1) As used in this section:

486 (a) "Annual income" has the meaning as defined under regulations of the U.S. Department
487 of Housing and Urban Development, 24 CFR, Part 813, as amended or as superseded by
488 replacement regulations.

489 (b) "Fair share ratio" means the ratio derived by:

490 (i) for a city or town, comparing the percentage of all housing units within the city or town
491 that are publicly subsidized income targeted housing units to the percentage of all housing units
492 within the whole county that are publicly subsidized income targeted housing units; or

493 (ii) for the unincorporated part of a county, comparing the percentage of all housing units
494 within the unincorporated county that are publicly subsidized income targeted housing units to the
495 percentage of all housing units within the whole county that are publicly subsidized income
496 targeted housing units.

497 (c) "Family" has the meaning as defined under regulations of the U.S. Department of
498 Housing and Urban Development, 24 CFR, Part 813, as amended or as superseded by replacement
499 regulations.

500 (d) "Housing funds" means the funds allocated in the project area budget under Section
501 17B-4-504 for the purposes provided in Subsection (2).

502 (e) "Income targeted housing" means housing to be owned or occupied by a family whose
503 annual income is at or below 80% of the median annual income for the county in which the
504 housing is located.

505 (f) "Unincorporated" means not within a city or town.

506 (2) (a) Each agency shall use all funds allocated for housing under this section to:

507 (i) pay part or all of the cost of land or construction of income targeted housing within the
508 community that created the agency, if practicable in a mixed income development or area;

509 (ii) pay part or all of the cost of rehabilitation of income targeted housing within the
510 community that created the agency;

511 (iii) pay part or all of the cost of land or installation, construction, or rehabilitation of any
512 building, facility, structure, or other housing improvement, including infrastructure improvements,
513 related to housing located in a project area where blight has been found to exist;

514 (iv) replace housing units lost as a result of the redevelopment, economic development,
515 or education housing development;

516 (v) make payments on or establish a reserve fund for bonds:

517 (A) issued by the agency, the community, or the housing authority that provides income
518 targeted housing within the community; and

519 (B) all or part of the proceeds of which are used within the community for the purposes
520 stated in Subsection (2)(a)(i), (ii), (iii), or (iv); or

521 (vi) if the community's fair share ratio at the time of the first adoption of the project area
522 budget is at least 1.1 to 1.0, make payments on bonds:

523 (A) that were previously issued by the agency, the community, or the housing authority

524 that provides income targeted housing within the community; and

525 (B) all or part of the proceeds of which were used within the community for the purposes
526 stated in Subsection (2)(a)(i), (ii), (iii), or (iv).

527 (b) As an alternative to the requirements of Subsection (2)(a), an agency may pay all
528 housing funds to:

529 (i) the community for use as provided under Subsection (2)(a);

530 (ii) the housing authority that provides income targeted housing within the community for
531 use in providing income targeted housing within the community; or

532 (iii) the Olene Walker Housing [Trust] Loan Fund, established under Title 9, Chapter 4,
533 Part 7, Olene Walker Housing [Trust] Loan Fund, for use in providing income targeted housing
534 within the community.

535 (3) The agency or community shall separately account for the housing funds, together with
536 all interest earned by the housing funds and all payments or repayments for loans, advances, or
537 grants from the housing funds.

538 (4) In using housing funds under Subsection (2)(a), an agency may lend, grant, or
539 contribute housing funds to a person, public body, housing authority, private entity or business,
540 or nonprofit organization for use as provided in Subsection (2)(a).

541 (5) An agency may:

542 (a) issue bonds from time to time to finance a housing undertaking under this section,
543 including the payment of principal and interest upon advances for surveys and plans or preliminary
544 loans; and

545 (b) issue refunding bonds for the payment or retirement of bonds under Subsection (5)(a)
546 previously issued by the agency.

547 (6) (a) If an agency fails to provide housing funds in accordance with the project area
548 budget and, if applicable, the housing plan adopted under Subsection 17B-4-505(2), the [trust] loan
549 fund board may bring legal action to compel the agency to provide the housing funds.

550 (b) In an action under Subsection (6)(a), the court:

551 (i) shall award the [trust] loan fund board a reasonable attorney's fee, unless the court finds
552 that the action was frivolous; and

553 (ii) may not award the agency its attorney's fees, unless the court finds that the action was
554 frivolous.

555 Section 14. Section **23-20-1** is amended to read:

556 **23-20-1. Enforcement authority of conservation officers -- Seizure and disposition**
557 **of property.**

558 (1) Conservation officers of the division shall enforce the provisions of this title with the
559 same authority and following the same procedures as other law enforcement officers.

560 (2) (a) Conservation officers shall seize any protected wildlife illegally taken or held.

561 (b) (i) Upon determination of a defendant's guilt by the court, the protected wildlife shall
562 be confiscated by the court and sold or otherwise disposed of by the division.

563 (ii) Proceeds of the sales shall be deposited in the Wildlife Resources Account.

564 (iii) Migratory wildfowl may not be sold, but must be given to a charitable institution or
565 used for other charitable purposes.

566 (3) Materials and devices used for the unlawful taking or possessing of protected wildlife
567 shall be seized, and upon a finding by the court that they were used in the unlawful taking or
568 possessing of protected wildlife, the materials and devices shall be subject to criminal or civil
569 forfeiture under the procedures and substantive protections established in ~~[the]~~ Title 24, Chapter
570 1, Utah Uniform Forfeiture Procedures Act~~[, Title 24, Chapter 1, of the Utah Code]~~.

571 (4) (a) Conservation officers may seize and impound a vehicle used for the unlawful taking
572 or possessing of protected wildlife for any of the following purposes:

573 (i) to provide for the safekeeping of the vehicle, if the owner or operator is arrested;

574 (ii) to search the vehicle as provided in Subsection (2)(a) or as provided by a search
575 warrant; or

576 (iii) to inspect the vehicle for evidence that protected wildlife was unlawfully taken or
577 possessed.

578 (b) The division shall store any seized vehicle in a public or private garage, state impound
579 lot, or other secured storage facility.

580 (5) A seized vehicle shall be released to the owner no later than 30 days after the date the
581 vehicle is seized, unless the vehicle was used for the unlawful taking or possessing of wildlife by
582 a person who is charged with committing a felony under this title.

583 (6) (a) Upon a finding by a court that the person who used the vehicle for the unlawful
584 taking or possessing of wildlife is guilty of a felony under this title, the vehicle may be subject to
585 criminal or civil forfeiture under the procedures and substantive protections established in ~~[the]~~

586 Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act, ~~Title 24, Chapter 1, of the Utah~~
587 ~~Code~~].

588 (b) The owner of a seized vehicle is liable for the payment of any impound fee if he used
589 the vehicle for the unlawful taking or possessing of wildlife and is found by a court to be guilty
590 of a violation of this title.

591 (c) The owner of a seized vehicle is not liable for the payment of any impound fee or, if
592 the fees have been paid, is entitled to reimbursement of the fees paid, if:

593 (i) no charges are filed or all charges are dropped which involve the use of the vehicle for
594 the unlawful taking or possessing of wildlife;

595 (ii) the person charged with using the vehicle for the unlawful taking or possessing of
596 wildlife is found by a court to be not guilty; or

597 (iii) the owner did not consent to a use of the vehicle which violates this chapter.

598 Section 15. Section **24-1-1** is amended to read:

599 **24-1-1. Title.**

600 This chapter [~~shall be cited~~] is known as the "Utah Uniform Forfeiture Procedures Act."

601 Section 16. Section **24-1-7** is amended to read:

602 **24-1-7. Hardship release of seized property.**

603 (1) An owner is entitled to the immediate release of seized property from the seizing
604 agency pending the final determination of civil forfeiture if:

605 (a) the owner has a possessory interest in the property;

606 (b) continued possession by the agency or the state pending the final disposition of the
607 forfeiture proceedings will cause substantial hardship to the owner, such as:

608 (i) preventing the functioning of a legitimate business;

609 (ii) preventing any individual from working;

610 (iii) preventing any minor child or student from attending school;

611 (iv) preventing or hindering any person from receiving necessary medical care;

612 (v) hindering the care of an elderly or disabled dependent child or adult;

613 (vi) preventing an owner from retaining counsel to provide a defense in the forfeiture
614 proceeding; or

615 (vii) leaving any individual homeless, or any other condition that the court determines
616 causes a substantial hardship; and

617 (c) the hardship from the continued possession by the agency of the seized property
618 outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if
619 it is returned to the owner during the pendency of the proceeding.

620 (2) The right to appointed counsel under Section 24-1-9 applies throughout civil forfeiture
621 proceedings, including an owner's motion for hardship release. An owner may file a motion for
622 hardship release:

623 [~~(i)~~] (a) in the court in which forfeiture proceedings have commenced; or

624 [~~(ii)~~] (b) in any district court having jurisdiction over the property, if forfeiture proceedings
625 have not yet commenced.

626 (3) The court shall render a decision on a motion or complaint filed under subparagraph
627 (2) not later than [~~10~~] ten days after the date of filing, unless the ten-day period is extended by the
628 consent of the parties or by the court for good cause shown.

629 (4) If the owner demonstrates substantial hardship pursuant to subparagraph (1), the court
630 shall order the property immediately released to the owner pending completion of proceedings by
631 the government to obtain forfeiture of the property. The court may place such conditions on
632 release of the property as it finds are necessary and appropriate to preserve the availability of the
633 property or its equivalent for forfeiture.

634 (5) Subparagraph (1) shall not apply if the seized property is:

635 (a) contraband;

636 (b) currency or other monetary instrument or electronic funds, unless such property is used
637 to pay for the costs of defending against the forfeiture proceeding or constitutes the assets of a
638 legitimate business; or

639 (c) likely to be used to commit additional illegal acts if returned to the owner.

640 Section 17. Section **24-1-8** is amended to read:

641 **24-1-8. Criminal procedures.**

642 (1) In cases where an owner is criminally prosecuted for conduct giving rise to forfeiture,
643 the prosecuting attorney may elect to forfeit the owner's interest in the property civilly or
644 criminally, provided that no civil forfeiture judgment may be entered with respect to the property
645 of a defendant who is acquitted of the offense on which the forfeiture claim is based.

646 (2) If the prosecuting attorney elects to criminally forfeit the owner's interest in the
647 property, the information or indictment must state that the owner's interest in the specifically

648 described property is subject to criminal forfeiture and the basis for the forfeiture.

649 (3) (a) Upon application of the prosecuting attorney, the court may enter restraining orders
650 or injunctions, or take other reasonable action to preserve for forfeiture under this section any
651 forfeitable property if, after notice to persons known, or discoverable after due diligence, to have
652 an interest in the property and after affording them an opportunity for a hearing, the court
653 determines that:

654 (i) there is a substantial probability that the state will prevail on the issue of forfeiture and
655 that failure to enter the order will result in the property being sold, transferred, destroyed or
656 removed from the jurisdiction of the court or otherwise made unavailable for forfeiture; and

657 (ii) the need to preserve the availability of the property or prevent its sale, transfer,
658 destruction or removal through the entry of the requested order outweighs the hardship against any
659 party against whom the order is to be entered.

660 (b) A temporary restraining order may be entered ex parte upon application of the
661 prosecuting attorney before or after an information or indictment has been filed with respect to the
662 property, if the prosecuting attorney demonstrates that:

663 (i) there is probable cause to believe that the property with respect to which the order is
664 sought would, in the event of a conviction, be subject to forfeiture under this section; and

665 (ii) provision of notice would jeopardize the availability of the property for forfeiture or
666 would jeopardize an ongoing criminal investigation.

667 (c) The temporary order expires not more than [~~10~~] ten days after entry unless extended
668 for good cause shown or unless the party against whom it is entered consents to an extension. An
669 adversarial hearing concerning an order entered under this paragraph shall be held as soon as
670 practicable and prior to the expiration of the temporary order.

671 (d) The court is not bound by the Utah Rules of Evidence regarding evidence it may
672 receive and consider at any hearing under this paragraph.

673 (4) (a) Upon conviction by a jury of an owner for conduct giving rise to criminal forfeiture,
674 the jury shall be instructed and asked to return a special verdict as to the extent of the property
675 identified in the information or indictment, if any, that is forfeitable.

676 (b) Whether property is forfeitable shall be proven beyond a reasonable doubt.

677 (5) Upon conviction of a person for violating any provision of state law subjecting an
678 owner's property to forfeiture and upon the jury's special verdict that the property is forfeitable, the

679 court shall enter a judgment and order the property forfeited to the state treasurer upon the terms
680 stated by the court in its order. Following the entry of an order declaring property forfeited, the
681 court may, upon application of the prosecuting attorney, enter appropriate restraining orders or
682 injunctions, require the execution of satisfactory performance bonds, appoint receivers,
683 conservators, appraisers, accountants, or trustees, or take any other action to protect the interest
684 of the state in property ordered forfeited.

685 (6) (a) After property is ordered forfeited under this section, the state treasurer shall direct
686 the disposition of the property under Section 24-1-16. Any property right or interest not
687 exercisable by or transferable for value to the state expires and does not revert to the defendant.
688 The defendant or any person acting in concert with or on behalf of the defendant is not eligible to
689 purchase forfeited property at any sale held by the state treasurer unless approved by the judge.

690 (b) The court may stay the sale or disposition of the property pending the conclusion of
691 any appeal of the criminal case giving rise to the forfeiture if the defendant demonstrates that
692 proceeding with the sale or disposition of the property may result in irreparable injury, harm or loss
693 to him.

694 (7) Except under Subparagraphs (3) or (10), a party claiming an interest in property subject
695 to criminal forfeiture under this section:

696 (a) may not intervene in a trial or appeal of a criminal case involving the forfeiture of
697 property under this section; and

698 (b) may not commence an action at law or equity against the state or the county concerning
699 the validity of his alleged interests in the property subsequent to the filing of an indictment or an
700 information alleging that the property is subject to forfeiture under this section.

701 (8) The district court of the state which has jurisdiction of a case under this part may enter
702 orders under this section without regard to the location of any property which may be subject to
703 forfeiture under this section, or which has been ordered forfeited under this section.

704 (9) To facilitate the identification or location of property declared forfeited and to facilitate
705 the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order
706 declaring property forfeited to the state treasurer, the court, may upon application of the
707 prosecuting attorney, order that the testimony of any witness relating to the property forfeited be
708 taken by deposition, and that any book, paper, document, record, recording, or other material not
709 privileged shall be produced as provided for depositions and discovery under the Utah Rules of

710 Civil Procedure.

711 (10) (a) Following the entry of an order of forfeiture under this section, the prosecuting
712 attorney shall publish notice of the order's intent to dispose of the property as the court may direct.
713 The prosecuting attorney shall also provide direct written notice to any person known to have an
714 alleged interest in the property subject to the order of forfeiture.

715 (b) Any person, other than the defendant, asserting a legal interest in property which has
716 been ordered forfeited to the state treasurer under this section may, within 30 days of the final
717 publication of notice or his receipt of written notice under subparagraph (a), whichever is earlier,
718 petition the court for a hearing to adjudicate the validity of his alleged interest in the property. Any
719 genuine issue of material fact, including issues of standing, is triable to a jury upon demand of any
720 party.

721 (c) The petition shall be in writing and signed by the petitioner under penalty of perjury.
722 It shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the
723 time and circumstances of the petitioner's acquisition of the right, title, or interest in the property,
724 and any additional facts supporting the petitioner's claim and the relief sought.

725 (d) The trial or hearing on the petition shall be expedited to the extent practicable. The
726 court may consolidate a trial or hearing on the petition and any petition filed by any other person
727 under this section other than the defendant. The court shall permit the parties to conduct pretrial
728 discovery pursuant to the Utah Rules of Civil Procedure.

729 (e) At the trial or hearing, the petitioner may testify and present evidence and witnesses
730 on his own behalf and cross-examine witnesses who appear at the hearing. The prosecuting
731 attorney may present evidence and witnesses in rebuttal and in defense of the claim to the property
732 and cross-examine witnesses who appear. In addition to testimony and evidence presented at the
733 trial or hearing, the court may consider the relevant portion of the record of the criminal case which
734 resulted in the order of forfeiture. Any trial or hearing shall be conducted pursuant to the Utah
735 Rules of Evidence.

736 (f) The court shall amend the order of forfeiture in accordance with its determination, if
737 after the trial or hearing, the court or jury determines that the petitioner has established by a
738 preponderance of the evidence that:

739 (i) the petitioner has a legal right, title, or interest in the property, and the right, title, or
740 interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest

741 was vested in the petitioner rather than the defendant or was superior to any right, title, or interest
742 of the defendant at the time of the commission of the acts or conduct which gave rise to the
743 forfeiture of the property under this section; or

744 (ii) the petitioner acquired the right, title or interest in the property in a bona fide
745 transaction for value and, at the time of such acquisition, the petitioner did not know that the
746 property was subject to forfeiture.

747 (g) Following the court's disposition of all petitions filed under this paragraph, or if no
748 petitions are filed following the expiration of the period provided in subparagraph (b) for the filing
749 of petitions, the state treasurer has clear title to property subject to the order of forfeiture and may
750 warrant good title to any subsequent purchaser or transferee.

751 Section 18. Section **24-1-10** is amended to read:

752 **24-1-10. Prejudgment and postjudgment interest.**

753 In any civil or criminal proceeding to forfeit currency or other negotiable instruments under
754 this chapter, the court shall award a prevailing owner prejudgment and postjudgment interest on
755 the currency or negotiable instruments at the legal rate of interest established by Section 15-1-1
756 [~~of the Utah Code~~].

757 Section 19. Section **24-1-15** is amended to read:

758 **24-1-15. Transfer and sharing procedures.**

759 (1) For purposes of [~~Section 24-1-15~~] this section, property is deemed to be "seized"
760 whenever any agency takes possession of the property or exercises any degree of control over the
761 property.

762 (2) (a) [~~Transfer of Seized Property.~~] Seizing agencies or prosecuting attorneys authorized
763 to bring civil or criminal forfeiture proceedings under this chapter shall not directly or indirectly
764 transfer seized property to any federal agency or any governmental entity not created under and
765 subject to state law unless the court enters an order, upon petition of the prosecuting attorney,
766 authorizing the property to be transferred. The court may not enter an order authorizing a transfer
767 unless:

768 (i) the activity giving rise to the investigation or seizure is interstate in nature and
769 sufficiently complex to justify such transfer;

770 (ii) the seized property may only be forfeited under federal law; or

771 (iii) pursuing forfeiture under state law would unduly burden prosecuting attorneys or state

772 law enforcement agencies.

773 (b) Notwithstanding Subparagraph (2)(a), the court may refuse to enter an order
774 authorizing a transfer to the federal government if such transfer would circumvent the protections
775 of the Utah Constitution or this chapter that would otherwise be available to the property owner.

776 (c) Prior to granting any order to transfer pursuant to subparagraph (2)(a), the court must
777 give any owner the right to be heard with regard to the transfer.

778 (3) (a) [~~Sharing of Seized Property.~~] All property, money or other things of value received
779 by an agency pursuant to federal law which authorizes the sharing or transfer of all or a portion of
780 forfeited property or the proceeds of the sale of forfeited property to an agency shall be promptly
781 transferred to the state treasurer and sold and deposited in the Uniform School Fund as provided
782 under Section 24-1-16.

783 (b) Subject to subparagraph (3)(a), state agencies are encouraged to seek an equitable share
784 of property forfeited by the federal government and to cooperate with federal law enforcement
785 agencies in all cases in which such cooperation is in the interest of this state.

786 (4) Any agency that violates subparagraph (2) or (3) is civilly liable to the state for three
787 times the amount of the forfeiture diverted and for costs of suit and reasonable attorneys' fees. Any
788 damages awarded to the state shall be paid to the Uniform School Fund. Any agent, including state
789 law enforcement officers who are detached to, deputized or commissioned by, or working in
790 conjunction with a federal agency, who knowingly transfers or otherwise trades seized property
791 in violation of subparagraph (2)(a) or who receives property, money or other things of value under
792 subparagraph (3)(a) and knowingly fails to transfer such property to the state treasurer is guilty of
793 a class B misdemeanor.

794 Section 20. Section **24-1-16** is amended to read:

795 **24-1-16. Disposition of proceeds from criminal or civil forfeiture.**

796 (1) When any property is civilly or criminally forfeited under this chapter by a finding of
797 the court that no person is entitled to recover the property, the property shall be sold by the state
798 treasurer, or destroyed if unfit for sale, and all revenue or proceeds therefrom shall be deposited
799 in the Uniform School Fund after deducting the costs and expenses of:

800 (a) maintaining and storing the forfeited property;

801 (b) administering the forfeiture proceeding;

802 (c) appointed counsel under Section 24-1-9; and

803 [(e)] (d) payment of money to compensate victims of conduct giving rise to or related to
804 the forfeiture, or of conduct which is part of the same scheme that led to the forfeiture under this
805 chapter.

806 (2) No property either seized or forfeited, whether civilly or criminally, nor any revenues
807 or proceeds therefrom shall be paid to, appropriated for, or used for the benefit, directly or
808 indirectly, of law enforcement officers, law enforcement agencies or agencies performing law
809 enforcement functions.

810 (3) No property either seized or forfeited, whether civilly or criminally, nor any revenue
811 or proceeds therefrom shall be, directly or indirectly, paid to, appropriated for, or used for the
812 benefit of persons acting as:

- 813 (a) informants in any law enforcement function;
- 814 (b) witnesses in any administrative or judicial forum; or
- 815 (c) prosecutors in any state or federal actions.

816 (4) The state treasurer shall maintain an accounting of all properties which are either
817 civilly or criminally forfeited and subsequently sold and all proceeds therefrom, and the state
818 auditor shall perform an annual audit of such proceeds and communicate the results of the audit
819 to the state treasurer and to the legislature. All accounting and audit records generated under this
820 subparagraph shall be available and open to the public.

821 Section 21. Section **26-28-6** is amended to read:

822 **26-28-6. Routine inquiry and required request -- Search and notification.**

823 (1) At or near the time of a patient's death, the administrator of the hospital where the
824 patient is being treated or a representative designated by the administrator shall:

825 (a) notify the appropriate organ procurement organization of the imminent or actual death
826 of the patient; [~~and~~]

827 (b) ensure, in collaboration with the organ procurement organization, that readily available
828 persons listed as having priority in Section 26-28-4 are informed of the option to make or refuse
829 to make an anatomical gift in accordance with Section 26-28-4, with reasonable discretion and
830 sensitivity appropriate to the circumstances of the family[~~;~~];

831 (c) enter the required information on a Utah Anatomical Consent Form or hospital death
832 form as adopted by the department, which may include the patient's name and demographic
833 information, medical suitability of the patient, the response of the person to whom the request was

834 made and the person's relationship to the patient, and if the patient does not meet the medical
835 criteria, the reasons he did not meet the criteria; and

836 (d) obtain the signature of the one having the highest priority of the readily available
837 persons listed as having priority in Section 26-28-4, signifying whether he consented or declined
838 to consent to the making of an anatomical gift on behalf of the patient.

839 ~~[(e)]~~ (2) For purposes of Subsection (1)(b), the individual designated by the hospital to
840 initiate the request to the family must be an organ procurement representative or an individual who
841 has completed a course offered or approved by the organ procurement organization and designed
842 in conjunction with the tissue and eye bank community in the methodology for approaching
843 potential donor families.

844 ~~[(2)]~~ (3) (a) A law enforcement officer, fireman, emergency medical services provider, or
845 other emergency rescuer who finds an individual who is deceased or near death, and a hospital,
846 upon the admission of an individual at or near death, shall:

847 (i) make a reasonable search for a document of gift or other information identifying
848 whether the individual has made or refused to make an anatomical gift; and

849 (ii) if he finds a document of gift, evidence of a document of gift, or evidence of refusal,
850 notify the hospital to which the individual is taken and deliver the evidence to the hospital.

851 (b) When a law enforcement officer, fireman, emergency medical services provider, or
852 other emergency rescuer finds an individual who is deceased at the scene of a motor vehicle
853 accident, and when the deceased individual is transported from the scene of the accident to a
854 funeral establishment licensed under Title 58, Chapter 9, Funeral Services Licensing Act:

855 (i) the law enforcement officer, firemen, emergency medical services provider, or other
856 emergency rescuer shall as soon as reasonably possible, notify the appropriate organ procurement
857 organization of:

858 (A) the identity of the deceased individual, if known; and

859 (B) the name and location of the funeral establishment which received custody of and
860 transported the deceased individual; and

861 (ii) the funeral establishment receiving custody of the deceased individual under this
862 Subsection ~~[(2)]~~ (3) may not embalm the body of the deceased individual until:

863 (A) the funeral establishment receives notice from the organ procurement organization that
864 the readily available persons listed as having priority in Section 26-28-4 have been informed by

865 the individual described in Subsection [~~(1)(e)~~] (2) of the option to make or refuse to make an
866 anatomical gift in accordance with Section 26-28-4, with reasonable discretion and sensitivity
867 appropriate to the circumstances of the family;

868 (B) in accordance with federal law, prior approval for embalming has been obtained from
869 a family member or other authorized person; and

870 (C) the period of time in which embalming is prohibited under Subsection [~~(2)~~] (3)(b)(ii)
871 may not exceed 24 hours after death.

872 [~~(3)~~] (4) A hospital shall notify the appropriate organ procurement organization that a part
873 is available if a person known to be a donor, and at or near death, is in transit to the hospital.

874 [~~(4)~~] (5) The hospital and funeral establishment shall cooperate in the release and removal
875 of the anatomical gift.

876 [~~(5)~~] (6) A person who fails to discharge the duties imposed by this section is not subject
877 to civil or criminal liability but is subject to appropriate administrative sanctions against the
878 professional certification or license and against the facility's license.

879 Section 22. Section **31A-8-207** is amended to read:

880 **31A-8-207. Termination of organization permit -- Payment of organization expenses.**

881 Section 31A-5-209, other than Subsection 31A-5-209(3)(c), applies to the termination of
882 the organization permit and the payment of organization expenses of organizations, except that
883 "Section 31A-5-212" shall be read "Section [~~31A-8-212~~] 31A-8-213."

884 Section 23. Section **31A-15-103** is amended to read:

885 **31A-15-103. Surplus lines insurance -- Unauthorized insurers.**

886 (1) Notwithstanding Section 31A-15-102, a foreign insurer that has not obtained a
887 certificate of authority to do business in this state under Section 31A-14-202 may negotiate for and
888 make insurance contracts with persons in this state and on risks located in this state, subject to the
889 limitations and requirements of this section.

890 (2) For contracts made under this section, the insurer may, in this state, inspect the risks
891 to be insured, collect premiums and adjust losses, and do all other acts reasonably incidental to the
892 contract, through employees or through independent contractors.

893 (3) (a) Subsections (1) and (2) do not permit any person to solicit business in this state on
894 behalf of an insurer that has no certificate of authority.

895 (b) Any insurance placed with a nonadmitted insurer shall be placed with a surplus lines

896 broker licensed under Chapter 23.

897 (c) The commissioner may by rule prescribe how a surplus lines broker may:

898 (i) pay or permit the payment, commission, or other remuneration on insurance placed by
899 the surplus lines broker under authority of the surplus lines broker's license to one holding a license
900 to act as an insurance agent; and

901 (ii) advertise the availability of the surplus lines broker's services in procuring, on behalf
902 of persons seeking insurance, contracts with nonadmitted insurers.

903 (4) For contracts made under this section, nonadmitted insurers are subject to Sections
904 31A-23-302 and 31A-26-303 and the rules adopted under those sections.

905 (5) A nonadmitted insurer may not issue workers' compensation insurance coverage to
906 employers located in this state, except for stop loss coverages issued to employers securing
907 workers' compensation under Subsection 34A-2-201(3).

908 (6) (a) The commissioner may by rule prohibit making contracts under Subsection (1) for
909 a specified class of insurance if authorized insurers provide an established market for the class in
910 this state that is adequate and reasonably competitive.

911 (b) The commissioner may by rule place restrictions and limitations on and create special
912 procedures for making contracts under Subsection (1) for a specified class of insurance if there
913 have been abuses of placements in the class or if the policyholders in the class, because of limited
914 financial resources, business experience, or knowledge, cannot protect their own interests
915 adequately.

916 (c) The commissioner may prohibit an individual insurer from making any contract under
917 Subsection (1) and all insurance agents and brokers from dealing with the insurer if:

918 (i) the insurer has willfully violated this section, Section 31A-4-102, 31A-23-302, or
919 31A-26-303, or any rule adopted under any of these sections;

920 (ii) the insurer has failed to pay the fees and taxes specified under Section 31A-3-301; or

921 (iii) the commissioner has reason to believe that the insurer is in an unsound condition or
922 is operated in a fraudulent, dishonest, or incompetent manner or in violation of the law of its
923 domicile.

924 (d) (i) The commissioner may issue lists of unauthorized foreign insurers whose solidity
925 the commissioner doubts, or whose practices the commissioner considers objectionable.

926 (ii) The commissioner shall issue lists of unauthorized foreign insurers the commissioner

927 considers to be reliable and solid.

928 (iii) In addition to the lists described in Subsections [~~(7)~~] (6)(d)(i) and (ii), the
929 commissioner may issue other relevant evaluations of unauthorized insurers.

930 (iv) An action may not lie against the commissioner or any employee of the department
931 for any written or oral communication made in, or in connection with the issuance of, the lists or
932 evaluations described in this Subsection (6)(d).

933 (e) A foreign unauthorized insurer shall be listed on the commissioner's "reliable" list only
934 if the unauthorized insurer:

935 (i) has delivered a request to the commissioner to be on the list;

936 (ii) has established satisfactory evidence of good reputation and financial integrity;

937 (iii) has delivered to the commissioner a copy of its current annual statement certified by
938 the insurer and continues each subsequent year to file its annual statements with the commissioner
939 within 60 days of its filing with the insurance regulatory authority where it is domiciled;

940 (iv) (A) is in substantial compliance with the solvency standards in Chapter 17, Part VI,
941 Risk-Based Capital, or maintains capital and surplus of at least \$15,000,000, whichever is greater,
942 and maintains in the United States an irrevocable trust fund in either a national bank or a member
943 of the Federal Reserve System, or maintains a deposit meeting the statutory deposit requirements
944 for insurers in the state where it is made, which trust fund or deposit:

945 (I) shall be in an amount not less than \$2,500,000 for the protection of all of the insurer's
946 policyholders in the United States;

947 (II) may consist of cash, securities, or investments of substantially the same character and
948 quality as those which are "qualified assets" under Section 31A-17-201; and

949 (III) may include as part of the trust arrangement a letter of credit that qualifies as
950 acceptable security under Subsection 31A-17-404(3)(c)(iii); or

951 (B) in the case of any "Lloyd's" or other similar incorporated or unincorporated group of
952 alien individual insurers, maintains a trust fund that:

953 (I) shall be in an amount not less than \$50,000,000 as security to its full amount for all
954 policyholders and creditors in the United States of each member of the group;

955 (II) may consist of cash, securities, or investments of substantially the same character and
956 quality as those which are "qualified assets" under Section 31A-17-201; and

957 (III) may include as part of this trust arrangement a letter of credit that qualifies as

958 acceptable security under Subsection 31A-17-404(3)(c)(iii); and

959 (v) for an alien insurer not domiciled in the United States or a territory of the United
960 States, is listed on the Quarterly Listing of Alien Insurers maintained by the National Association
961 of Insurance Commissioners International Insurers Department.

962 (7) A surplus lines broker may not, either knowingly or without reasonable investigation
963 of the financial condition and general reputation of the insurer, place insurance under this section
964 with financially unsound insurers or with insurers engaging in unfair practices, or with otherwise
965 substandard insurers, unless the broker gives the applicant notice in writing of the known
966 deficiencies of the insurer or the limitations on his investigation, and explains the need to place
967 the business with that insurer. A copy of this notice shall be kept in the office of the broker for at
968 least five years. To be financially sound, an insurer shall satisfy standards that are comparable to
969 those applied under the laws of this state to authorized insurers. Insurers on the "doubtful or
970 objectionable" list under Subsection (6)(d) and insurers not on the commissioner's "reliable" list
971 under Subsection (6)(e) are presumed substandard.

972 (8) A policy issued under this section shall include a description of the subject of the
973 insurance and indicate the coverage, conditions, and term of the insurance, the premium charged
974 and premium taxes to be collected from the policyholder, and the name and address of the
975 policyholder and insurer. If the direct risk is assumed by more than one insurer, the policy shall
976 state the names and addresses of all insurers and the portion of the entire direct risk each has
977 assumed. All policies issued under the authority of this section shall have attached or affixed to
978 the policy the following statement: "The insurer issuing this policy does not hold a certificate of
979 authority to do business in this state and thus is not fully subject to regulation by the Utah
980 insurance commissioner. This policy receives no protection from any of the guaranty associations
981 created under Title 31A, Chapter 28."

982 (9) Upon placing a new or renewal coverage under this section, the broker shall promptly
983 deliver to the policyholder or his agent evidence of the insurance consisting either of the policy as
984 issued by the insurer or, if the policy is not then available, a certificate, cover note, or other
985 confirmation of insurance complying with Subsection (8).

986 (10) If the commissioner finds it necessary to protect the interests of insureds and the
987 public in this state, the commissioner may by rule subject policies issued under this section to as
988 much of the regulation provided by this title as is required for comparable policies written by

989 authorized foreign insurers.

990 (11) (a) Each surplus lines transaction in this state shall be examined to determine whether
991 it complies with:

992 (i) the surplus lines tax levied under Chapter 3;

993 (ii) the solicitation limitations of Subsection (3);

994 (iii) the requirement of Subsection (3) that placement be through a surplus lines broker;

995 (iv) placement limitations imposed under Subsections (6)(a), (b), and (c); and

996 (v) the policy form requirements of Subsections (8) and (10).

997 (b) The examination described in Subsection (11)(a) shall take place as soon as practicable
998 after the transaction. The surplus lines broker shall submit to the examiner information necessary
999 to conduct the examination within a period specified by rule.

1000 (c) The examination described in Subsection (11)(a) may be conducted by the
1001 commissioner or by an advisory organization created under Section 31A-15-111 and authorized
1002 by the commissioner to conduct these examinations. The commissioner is not required to
1003 authorize any additional advisory organizations to conduct examinations under this Subsection
1004 (11)(c). The commissioner's authorization of one or more advisory organizations to act as
1005 examiners under this Subsection (11)(c) shall be by rule. In addition, the authorization shall be
1006 evidenced by a contract, on a form provided by the commissioner, between the authorized advisory
1007 organization and the department.

1008 (d) The person conducting the examination described in Subsection (11)(a) shall collect
1009 a stamping fee of an amount not to exceed 1% of the policy premium payable in connection with
1010 the transaction. Stamping fees collected by the commissioner shall be deposited in the General
1011 Fund. The commissioner shall establish this fee by rule. Stamping fees collected by an advisory
1012 organization are the property of the advisory organization to be used in paying the expenses of the
1013 advisory organization. Liability for paying the stamping fee is as required under Subsection
1014 31A-3-303(1) for taxes imposed under Section 31A-3-301. The commissioner shall adopt a rule
1015 dealing with the payment of stamping fees. If stamping fees are not paid when due, the
1016 commissioner or advisory organization may impose a penalty of 25% of the fee due, plus 1-1/2%
1017 per month from the time of default until full payment of the fee. Fees relative to policies covering
1018 risks located partially in this state shall be allocated in the same manner as under Subsection
1019 31A-3-303(4).

1020 (e) The commissioner, representatives of the department, advisory organizations,
1021 representatives and members of advisory organizations, authorized insurers, and surplus lines
1022 insurers are not liable for damages on account of statements, comments, or recommendations made
1023 in good faith in connection with their duties under this Subsection (11)(e) or under Section
1024 31A-15-111.

1025 (f) Examinations conducted under this Subsection (11) and the documents and materials
1026 related to the examinations are confidential.

1027 Section 24. Section **31A-23-202 (Effective 07/01/02)** is amended to read:

1028 **31A-23-202 (Effective 07/01/02). Application for license.**

1029 (1) (a) Subject to Subsection (2) the application for a resident license as an agent, a broker,
1030 or a consultant shall be:

1031 (i) made to the commissioner on forms and in a manner the commissioner prescribes; and

1032 (ii) accompanied by an applicable fee that is not refunded if the application is denied; and

1033 (b) the application for a nonresident license as an agent, a broker, or a consultant shall be:

1034 (i) made on the uniform application; and

1035 (ii) accompanied by an applicable fee that is not refunded if the application is denied.

1036 (2) An application described in Subsection (1) shall provide:

1037 (a) information about the applicant's identity;

1038 (b) the applicant's:

1039 (i) Social Security number; or

1040 (ii) federal employer identification number;

1041 (c) the applicant's personal history, experience, education, and business record;

1042 (d) if the applicant is a natural person, whether the applicant is 18 years of age or older;

1043 (e) whether the applicant has committed an act that is a ground for denial, suspension, or
1044 revocation as set forth in Section 31A-23-216; and

1045 (f) any other information the commissioner reasonably requires.

1046 (3) The commissioner may require any documents reasonably necessary to verify the
1047 information contained in an application.

1048 (4) The following are private records under Subsection 63-2-302(1)(a)(vii), an applicant's:

1049 (a) Social Security number; or

1050 (b) federal employer identification number.

1051 Section 25. Section **31A-23-202 (Superseded 07/01/02)** is amended to read:

1052 **31A-23-202 (Superseded 07/01/02). Application for license.**

1053 (1) (a) Subject to Subsection (2) the application for a resident license as an agent, a broker,
1054 or a consultant shall be:

1055 (i) made to the commissioner on forms and in a manner the commissioner prescribes; and

1056 (ii) accompanied by an applicable fee that is not refunded if the application is denied; and

1057 (b) the application for a nonresident license as an agent, a broker, or a consultant shall be:

1058 (i) made on the uniform application; and

1059 (ii) accompanied by an applicable fee that is not refunded if the application is denied.

1060 (2) An application described in Subsection (1) shall provide:

1061 (a) information about the applicant's identity;

1062 (b) the applicant's:

1063 (i) Social Security number; or

1064 (ii) federal employer identification number;

1065 (c) the applicant's personal history, experience, education, and business record;

1066 (d) if the applicant is a natural person, whether the applicant is 18 years of age or older;

1067 (e) whether the applicant has committed an act that is a ground for denial, suspension, or
1068 revocation as set forth in Section 31A-23-216; and

1069 (f) any other information the commissioner reasonably requires.

1070 (3) The commissioner may require any documents reasonably necessary to verify the
1071 information contained in an application.

1072 (4) The following are private records under Subsection 63-2-302(1)(g), an applicant's:

1073 (a) Social Security number; or

1074 (b) federal employer identification number.

1075 Section 26. Section **31A-28-101** is amended to read:

1076 **31A-28-101. Title.**

1077 This part is known as the "Utah Life and [~~Disability~~] Health Insurance Guaranty
1078 Association Act."

1079 Section 27. Section **32A-13-103** is amended to read:

1080 **32A-13-103. Searches, seizures, and forfeitures.**

1081 (1) The following are subject to forfeiture pursuant to the procedures and substantive

1082 protections established in [~~the~~] Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act[~~, Title~~
1083 ~~24, Chapter 1, of the Utah Code~~]:

1084 (a) all alcoholic products possessed, used, offered for sale, sold, given, furnished, supplied,
1085 received, purchased, stored, warehoused, manufactured, adulterated, shipped, carried, transported,
1086 or distributed in violation of this title or commission rules;

1087 (b) all packages or property used or intended for use as a container for an alcoholic product
1088 in violation of this title or commission rules;

1089 (c) all raw materials, products, and equipment used, or intended for use, in manufacturing,
1090 processing, adulterating, delivering, importing, or exporting any alcoholic product in violation of
1091 this title or commission rules;

1092 (d) all implements, furniture, fixtures, or other personal property used or kept for any
1093 violation of this title or commission rules;

1094 (e) all conveyances including aircraft, vehicles, or vessels used or intended for use, to
1095 transport or in any manner facilitate the transportation, sale, receipt, possession, or concealment
1096 of property described in Subsection (1)(a), (b), (c), or (d); and

1097 (f) all books, records, receipts, ledgers, or other documents used or intended for use in
1098 violation of this title or commission rules.

1099 (2) Any of the property subject to forfeiture under this title may be seized by any peace
1100 officer of this state or any other person authorized by law upon process issued by any court having
1101 jurisdiction over the property in accordance with the procedures provided in Title 77, Chapter 23,
1102 Part 2, Search Warrants. However, seizure without process may be made when:

1103 (a) the seizure is incident to an arrest or search under a search warrant or an inspection
1104 under an administrative inspection warrant;

1105 (b) the property subject to seizure has been the subject of a prior judgment in favor of the
1106 state in a criminal injunction or forfeiture proceeding under this title;

1107 (c) the peace officer or other person authorized by law has probable cause to believe that
1108 the property is directly or indirectly dangerous to health or safety; or

1109 (d) the peace officer or other person authorized by law has probable cause to believe that
1110 the property is being or has been used, intended to be used, held, or kept in violation of this title
1111 or commission rules.

1112 (3) If the property is seized pursuant to a search or administrative warrant, the peace officer

1113 or other person authorized by law shall make a proper receipt, return, and inventory and ensure the
1114 safekeeping of the property as required by Sections 77-23-206 through 77-23-208[, ~~Utah Code of~~
1115 ~~Criminal Procedure~~]. If the magistrate who issued the warrant is a justice court judge, upon the
1116 filing of the return the jurisdiction of the justice court shall cease and the magistrate shall certify
1117 the record and all files without delay to the district court of the county in which the property was
1118 located. From the time of this filing, the district court has jurisdiction of the case.

1119 (4) In the event of seizure of property without process, the peace officer or other person
1120 authorized by law shall make a return of his acts without delay directly to the district court of the
1121 county in which the property was located, and the district court shall have jurisdiction of the case.
1122 The return shall describe all property seized, the place where it was seized, and any persons in
1123 apparent possession of the property. The officer or other person shall also promptly deliver a
1124 written inventory of anything seized to any person in apparent authority at the premises where the
1125 seizure was made, or post it in a conspicuous place at the premises. The inventory shall state the
1126 place where the property is being held.

1127 (5) Property taken or detained under this section is not repleviable but is considered in
1128 custody of the law enforcement agency making the seizure subject only to the orders of the court
1129 or the official having jurisdiction. When property is seized under this title, the appropriate person
1130 or agency may:

1131 (a) place the property under seal;

1132 (b) remove the property to a place designated by it or the warrant under which it was
1133 seized; or

1134 (c) take custody of the property and remove it to an appropriate location for disposition
1135 in accordance with law.

1136 (6) When any property is subject to forfeiture under this section, proceedings shall be
1137 instituted in accordance with the procedures and substantive protections of ~~[the]~~ Title 24, Chapter
1138 1, Utah Uniform Forfeiture Procedures Act, ~~[Title 24, Chapter 1, of the Utah Code]~~.

1139 (7) When any property is ordered forfeited under ~~[the]~~ Title 24, Chapter 1, Utah Uniform
1140 Forfeiture Procedures Act, ~~[Title 24, Chapter 1, of the Utah Code]~~ by a finding of the court that
1141 no person is entitled to recover the property~~[-(a)]~~, the property, if an alcoholic product or a
1142 package used as a container for an alcoholic product, shall be disposed of as follows:

1143 ~~[(i)]~~ (a) If the alcoholic product is unadulterated, pure, and free from crude, unrectified,

1144 or impure form of ethylic alcohol, or any other deleterious substance or liquid, and is otherwise
1145 in saleable condition, sold in accordance with Section 24-1-16 [~~of the Utah Uniform Forfeiture~~
1146 ~~Procedures Act~~].

1147 [(~~it~~)] (b) If the alcoholic product is impure, adulterated, or otherwise unfit for sale, it and
1148 its package or container shall be destroyed by the department under competent supervision.

1149 Section 28. Section **41-6-13.7** is amended to read:

1150 **41-6-13.7. Vehicle subject to forfeiture -- Seizure -- Procedure.**

1151 (1) Any conveyance, including vehicles, aircraft, water craft, or other vessel used in
1152 violation of Section 41-6-13.5 shall be subject to forfeiture pursuant to the procedures and
1153 substantive protections established in [~~the~~] Title 24, Chapter 1, Utah Uniform Forfeiture
1154 Procedures Act[~~, Title 24, Chapter 1, Utah Code~~].

1155 (2) Property subject to forfeiture under this section may be seized by any peace officer of
1156 this state upon notice and service of process issued by any court having jurisdiction over the
1157 property. However, seizure without notice and service of process may be made when:

1158 (a) the seizure is incident to an arrest under a search warrant or an inspection under an
1159 administrative inspection warrant;

1160 (b) the property subject to seizure has been the subject of a prior judgment in favor of the
1161 state in a criminal injunction or forfeiture proceeding under this section; or

1162 (c) the peace officer has probable cause to believe that the property has been used in
1163 violation of the provisions of Section 41-6-13.5.

1164 (3) Property taken or detained under this section is not repleviable but is in custody of the
1165 law enforcement agency making the seizure, subject only to the orders and decrees of the court or
1166 the official having jurisdiction. When property is seized under this section, the appropriate person
1167 or agency may:

1168 (a) place the property under seal;

1169 (b) remove the property to a place designated by the warrant under which it was seized;

1170 or

1171 (c) take custody of the property and remove it to an appropriate location for disposition
1172 in accordance with law.

1173 Section 29. Section **41-6-44.10** is amended to read:

1174 **41-6-44.10. Implied consent to chemical tests for alcohol or drug -- Number of tests**

1175 -- Refusal -- Warning, report -- Hearing, revocation of license -- Appeal -- Person incapable
1176 of refusal -- Results of test available -- Who may give test -- Evidence.

1177 (1) (a) A person operating a motor vehicle in this state is considered to have given his
1178 consent to a chemical test or tests of his breath, blood, or urine for the purpose of determining
1179 whether he was operating or in actual physical control of a motor vehicle while having a blood or
1180 breath alcohol content statutorily prohibited under Section 41-6-44, 53-3-231, or 53-3-232, while
1181 under the influence of alcohol, any drug, or combination of alcohol and any drug under Section
1182 41-6-44, or while having any measurable controlled substance or metabolite of a controlled
1183 substance in the person's body in violation of Section 41-6-44.6, if the test is or tests are
1184 administered at the direction of a peace officer having grounds to believe that person to have been
1185 operating or in actual physical control of a motor vehicle while having a blood or breath alcohol
1186 content statutorily prohibited under Section 41-6-44, 53-3-231, or 53-3-232, or while under the
1187 influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44, or
1188 while having any measurable controlled substance or metabolite of a controlled substance in the
1189 person's body in violation of Section 41-6-44.6.

1190 (b) (i) The peace officer determines which of the tests are administered and how many of
1191 them are administered.

1192 (ii) If an officer requests more than one test, refusal by a person to take one or more
1193 requested tests, even though he does submit to any other requested test or tests, is a refusal under
1194 this section.

1195 (c) (i) A person who has been requested under this section to submit to a chemical test or
1196 tests of his breath, blood, or urine, may not select the test or tests to be administered.

1197 (ii) The failure or inability of a peace officer to arrange for any specific chemical test is
1198 not a defense to taking a test requested by a peace officer, and it is not a defense in any criminal,
1199 civil, or administrative proceeding resulting from a person's refusal to submit to the requested test
1200 or tests.

1201 (2) (a) If the person has been placed under arrest, has then been requested by a peace
1202 officer to submit to any one or more of the chemical tests under Subsection (1), and refuses to
1203 submit to any chemical test requested, the person shall be warned by the peace officer requesting
1204 the test or tests that a refusal to submit to the test or tests can result in revocation of the person's
1205 license to operate a motor vehicle.

1206 (b) Following the warning under Subsection (2)(a), if the person does not immediately
1207 request that the chemical test or tests as offered by a peace officer be administered a peace officer
1208 shall serve on the person, on behalf of the Driver License Division, immediate notice of the Driver
1209 License Division's intention to revoke the person's privilege or license to operate a motor vehicle.
1210 When the officer serves the immediate notice on behalf of the Driver License Division, he shall:

1211 (i) take the Utah license certificate or permit, if any, of the operator;
1212 (ii) issue a temporary license effective for only 29 days; and
1213 (iii) supply to the operator, on a form approved by the Driver License Division, basic
1214 information regarding how to obtain a hearing before the Driver License Division.

1215 (c) A citation issued by a peace officer may, if approved as to form by the Driver License
1216 Division, serve also as the temporary license.

1217 (d) As a matter of procedure, the peace officer shall submit a signed report, within ten
1218 calendar days after the date of the arrest, that he had grounds to believe the arrested person had
1219 been operating or was in actual physical control of a motor vehicle while having a blood or breath
1220 alcohol content statutorily prohibited under Section 41-6-44, 53-3-231, or 53-3-232, or while under
1221 the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44,
1222 or while having any measurable controlled substance or metabolite of a controlled substance in the
1223 person's body in violation of Section 41-6-44.6, and that the person had refused to submit to a
1224 chemical test or tests under Subsection (1).

1225 (e) (i) A person who has been notified of the Driver License Division's intention to revoke
1226 his license under this section is entitled to a hearing.

1227 (ii) A request for the hearing shall be made in writing within ten calendar days after the
1228 date of the arrest.

1229 (iii) Upon written request, the division shall grant to the person an opportunity to be heard
1230 within 29 days after the date of arrest.

1231 (iv) If the person does not make a timely written request for a hearing before the division,
1232 his privilege to operate a motor vehicle in the state is revoked beginning on the 30th day after the
1233 date of arrest for a period of:

1234 (A) 18 months unless Subsection (2)(e)(iv)(B) applies; or

1235 (B) 24 months if the person has had a previous license sanction after July 1, 1993, under
1236 this section, Section 41-6-44.6, 53-3-223, 53-3-231, 53-3-232, or a conviction after July 1, 1993,

1237 under Section 41-6-44.

1238 (f) If a hearing is requested by the person, the hearing shall be conducted by the Driver
1239 License Division in the county in which the offense occurred, unless the division and the person
1240 both agree that the hearing may be held in some other county.

1241 (g) The hearing shall be documented and shall cover the issues of:

1242 (i) whether a peace officer had reasonable grounds to believe that a person was operating
1243 a motor vehicle in violation of Section 41-6-44, 41-6-44.6, or 53-3-231; and

1244 (ii) whether the person refused to submit to the test.

1245 (h) (i) In connection with the hearing, the division or its authorized agent:

1246 (A) may administer oaths and may issue subpoenas for the attendance of witnesses and the
1247 production of relevant books and papers; and

1248 (B) shall issue subpoenas for the attendance of necessary peace officers.

1249 (ii) The division shall pay witness fees and mileage from the Transportation Fund in
1250 accordance with the rates established in Section 78-46-28.

1251 (i) If after a hearing, the Driver License Division determines that the person was requested
1252 to submit to a chemical test or tests and refused to submit to the test or tests, or if the person fails
1253 to appear before the Driver License Division as required in the notice, the Driver License Division
1254 shall revoke his license or permit to operate a motor vehicle in Utah beginning on the date the
1255 hearing is held for a period of:

1256 (i) (A) 18 months unless Subsection (2)(i)(i)(B) applies; or

1257 (B) 24 months if the person has had a previous license sanction after July 1, 1993, under
1258 this section, Section 41-6-44.6, 53-3-223, 53-3-231, 53-3-232, or a conviction after July 1, 1993,
1259 under Section 41-6-44.

1260 (ii) The Driver License Division shall also assess against the person, in addition to any fee
1261 imposed under Subsection 53-3-205[~~(14)~~] (13), a fee under Section 53-3-105, which shall be paid
1262 before the person's driving privilege is reinstated, to cover administrative costs.

1263 (iii) The fee shall be cancelled if the person obtains an unappealed court decision
1264 following a proceeding allowed under this Subsection (2) that the revocation was improper.

1265 (j) (i) Any person whose license has been revoked by the Driver License Division under
1266 this section may seek judicial review.

1267 (ii) Judicial review of an informal adjudicative proceeding is a trial. Venue is in the

1268 district court in the county in which the offense occurred.

1269 (3) Any person who is dead, unconscious, or in any other condition rendering him
1270 incapable of refusal to submit to any chemical test or tests is considered to not have withdrawn the
1271 consent provided for in Subsection (1), and the test or tests may be administered whether the
1272 person has been arrested or not.

1273 (4) Upon the request of the person who was tested, the results of the test or tests shall be
1274 made available to him.

1275 (5) (a) Only a physician, registered nurse, practical nurse, or person authorized under
1276 Section 26-1-30, acting at the request of a peace officer, may withdraw blood to determine the
1277 alcoholic or drug content. This limitation does not apply to taking a urine or breath specimen.

1278 (b) Any physician, registered nurse, practical nurse, or person authorized under Section
1279 26-1-30 who, at the direction of a peace officer, draws a sample of blood from any person whom
1280 a peace officer has reason to believe is driving in violation of this chapter, or hospital or medical
1281 facility at which the sample is drawn, is immune from any civil or criminal liability arising from
1282 drawing the sample, if the test is administered according to standard medical practice.

1283 (6) (a) The person to be tested may, at his own expense, have a physician of his own
1284 choice administer a chemical test in addition to the test or tests administered at the direction of a
1285 peace officer.

1286 (b) The failure or inability to obtain the additional test does not affect admissibility of the
1287 results of the test or tests taken at the direction of a peace officer, or preclude or delay the test or
1288 tests to be taken at the direction of a peace officer.

1289 (c) The additional test shall be subsequent to the test or tests administered at the direction
1290 of a peace officer.

1291 (7) For the purpose of determining whether to submit to a chemical test or tests, the person
1292 to be tested does not have the right to consult an attorney or have an attorney, physician, or other
1293 person present as a condition for the taking of any test.

1294 (8) If a person under arrest refuses to submit to a chemical test or tests or any additional
1295 test under this section, evidence of any refusal is admissible in any civil or criminal action or
1296 proceeding arising out of acts alleged to have been committed while the person was operating or
1297 in actual physical control of a motor vehicle while under the influence of alcohol, any drug,
1298 combination of alcohol and any drug, or while having any measurable controlled substance or

1299 metabolite of a controlled substance in the person's body.

1300 Section 30. Section **48-2c-1502** is amended to read:

1301 **48-2c-1502. Definitions.**

1302 As used in this part:

1303 (1) "Professional services company" means a limited liability company organized under
1304 this part to render professional services.

1305 (2) "Professional services" means the personal services rendered by:

1306 (a) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act, and
1307 any subsequent laws regulating the practice of architecture;

1308 (b) an attorney granted the authority to practice law by the:

1309 (i) Supreme Court of Utah [~~as provided in Title 78, Chapter 51, Part 6, Attorneys and~~
1310 ~~Counselors~~]; or

1311 (ii) the Supreme Court, other court, agency, instrumentality, or regulating board that
1312 licenses or regulates the authority to practice law in any state or territory of the United States other
1313 than Utah;

1314 (c) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician
1315 Practice Act, and any subsequent laws regulating the practice of chiropractic;

1316 (d) a doctor of dentistry holding a license under Title 58, Chapter 69, Dentists and Dental
1317 Hygienists Practice Act, and any subsequent laws, regulating the practice of dentistry;

1318 (e) a professional engineer registered under Title 58, Chapter 22, Professional Engineers
1319 and Professional Land Surveyors Licensing Act;

1320 (f) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician
1321 Practice Act, and any subsequent laws regulating the practice of naturopathy;

1322 (g) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter
1323 44a, Nurse Midwife Practice Act;

1324 (h) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry Practice
1325 Act, and any subsequent laws regulating the practice of optometry;

1326 (i) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68, Utah
1327 Osteopathic Medical Practice Act, and any subsequent laws regulating the practice of osteopathy;

1328 (j) a pharmacist holding a license under Title 58, Chapter 17a, Pharmacy Practice Act, and
1329 any subsequent laws regulating the practice of pharmacy;

1330 (k) a physician, surgeon, or doctor of medicine holding a license under Title 58, Chapter
1331 67, Utah Medical Practice Act, and any subsequent laws regulating the practice of medicine;

1332 (l) a physical therapist holding a license under Title 58, Chapter 24a, Physical Therapist
1333 Practice Act, and any subsequent laws regulating the practice of physical therapy;

1334 (m) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric Physician
1335 Licensing Act, and any subsequent laws regulating the practice of podiatry;

1336 (n) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing
1337 Act, and any subsequent laws regulating the practice of psychology;

1338 (o) a public accountant holding a license under Title 58, Chapter 26a, Certified Public
1339 Accountant Licensing Act, and any subsequent laws regulating the practice of public accounting;

1340 (p) a real estate broker or real estate agent holding a license under Title 61, Chapter 2,
1341 Division of Real Estate, and any subsequent laws regulating the sale, exchange, purchase, rental,
1342 or leasing of real estate;

1343 (q) a clinical or certified social worker holding a license under Title 58, Chapter 60, Part
1344 2, Social Worker Licensing Act, and any subsequent laws regulating the practice of social work;

1345 (r) a mental health therapist holding a license under Title 58, Chapter 60, Mental Health
1346 Professional Practice Act, and any subsequent laws regulating the practice of mental health
1347 therapy; and

1348 (s) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act, and
1349 any subsequent laws regulating the practice of veterinary medicine.

1350 (3) "Regulating board" means the board or agency organized pursuant to state law that is
1351 charged with the licensing and regulation of the practice of the profession that a company is
1352 organized to render.

1353 Section 31. Section **53-3-223** is amended to read:

1354 **53-3-223. Chemical test for driving under the influence -- Temporary license --**
1355 **Hearing and decision -- Suspension and fee -- Judicial review.**

1356 (1) (a) If a peace officer has reasonable grounds to believe that a person may be violating
1357 or has violated Section 41-6-44, prohibiting the operation of a vehicle with a certain blood or
1358 breath alcohol concentration and driving under the influence of any drug, alcohol, or combination
1359 of a drug and alcohol or while having any measurable controlled substance or metabolite of a
1360 controlled substance in the person's body in violation of Section 41-6-44.6, the peace officer may,

1361 in connection with arresting the person, request that the person submit to a chemical test or tests
1362 to be administered in compliance with the standards under Section 41-6-44.10.

1363 (b) In this section, a reference to Section 41-6-44 includes any similar local ordinance
1364 adopted in compliance with Subsection 41-6-43(1).

1365 (2) The peace officer shall advise a person prior to the person's submission to a chemical
1366 test that a test result indicating a violation of Section 41-6-44 or 41-6-44.6 shall, and the existence
1367 of a blood alcohol content sufficient to render the person incapable of safely driving a motor
1368 vehicle may, result in suspension or revocation of the person's license to drive a motor vehicle.

1369 (3) If the person submits to a chemical test and the test results indicate a blood or breath
1370 alcohol content in violation of Section 41-6-44 or 41-6-44.6, or if the officer makes a
1371 determination, based on reasonable grounds, that the person is otherwise in violation of Section
1372 41-6-44, the officer directing administration of the test or making the determination shall serve on
1373 the person, on behalf of the division, immediate notice of the division's intention to suspend the
1374 person's license to drive a motor vehicle.

1375 (4) (a) When the officer serves immediate notice on behalf of the division he shall:

1376 (i) take the Utah license certificate or permit, if any, of the driver;

1377 (ii) issue a temporary license certificate effective for only 29 days; and

1378 (iii) supply to the driver, on a form to be approved by the division, basic information
1379 regarding how to obtain a prompt hearing before the division.

1380 (b) A citation issued by the officer may, if approved as to form by the division, serve also
1381 as the temporary license certificate.

1382 (5) As a matter of procedure, the peace officer serving the notice shall send to the division
1383 within ten calendar days after the date of arrest and service of the notice:

1384 (a) the person's license certificate;

1385 (b) a copy of the citation issued for the offense;

1386 (c) a signed report on a form approved by the division indicating the chemical test results,
1387 if any; and

1388 (d) any other basis for the officer's determination that the person has violated Section
1389 41-6-44 or 41-6-44.6.

1390 (6) (a) Upon request in a manner specified by the division, the division shall grant to the
1391 person an opportunity to be heard within 29 days after the date of arrest. The request to be heard

1392 shall be made within ten calendar days of the date of the arrest.

1393 (b) A hearing, if held, shall be before the division in the county in which the arrest
1394 occurred, unless the division and the person agree that the hearing may be held in some other
1395 county.

1396 (c) The hearing shall be documented and shall cover the issues of:

1397 (i) whether a peace officer had reasonable grounds to believe the person was driving a
1398 motor vehicle in violation of Section 41-6-44 or 41-6-44.6;

1399 (ii) whether the person refused to submit to the test; and

1400 (iii) the test results, if any.

1401 (d) (i) In connection with a hearing the division or its authorized agent:

1402 (A) may administer oaths and may issue subpoenas for the attendance of witnesses and the
1403 production of relevant books and papers; or

1404 (B) may issue subpoenas for the attendance of necessary peace officers.

1405 (ii) The division shall pay witness fees and mileage from the Transportation Fund in
1406 accordance with the rates established in Section 78-46-28.

1407 (e) The division may designate one or more employees to conduct the hearing.

1408 (f) Any decision made after a hearing before any designated employee is as valid as if
1409 made by the division.

1410 (g) After the hearing, the division shall order whether the person's license to drive a motor
1411 vehicle is suspended or not.

1412 (h) If the person for whom the hearing is held fails to appear before the division as
1413 required in the notice, the division shall order whether the person's license to drive a motor vehicle
1414 is suspended or not.

1415 (7) (a) A first suspension, whether ordered or not challenged under this Subsection (7), is
1416 for a period of 90 days, beginning on the 30th day after the date of the arrest.

1417 (b) A second or subsequent suspension under this Subsection (7) is for a period of one
1418 year, beginning on the 30th day after the date of arrest.

1419 (8) (a) The division shall assess against a person, in addition to any fee imposed under
1420 Subsection 53-3-205[~~(14)~~] (13) for driving under the influence, a fee under Section 53-3-105 to
1421 cover administrative costs, which shall be paid before the person's driving privilege is reinstated.
1422 This fee shall be cancelled if the person obtains an unappealed division hearing or court decision

1423 that the suspension was not proper.

1424 (b) A person whose license has been suspended by the division under this section may file
1425 a petition within 30 days after the suspension for a hearing on the matter which, if held, is
1426 governed by Section 53-3-224.

1427 Section 32. Section **53-3-231** is amended to read:

1428 **53-3-231. Person under 21 may not operate vehicle with detectable alcohol in body**
1429 **-- Chemical test procedures -- Temporary license -- Hearing and decision -- Suspension of**
1430 **license or operating privilege -- Fees -- Judicial review -- Referral to local substance abuse**
1431 **authority or program.**

1432 (1) (a) As used in this section:

1433 (i) "Local substance abuse authority" has the same meaning as provided in Section
1434 62A-8-101.

1435 (ii) "Substance abuse program" means any substance abuse program licensed by the
1436 Department of Human Services or the Department of Health and approved by the local substance
1437 abuse authority.

1438 (b) Calculations of blood, breath, or urine alcohol concentration under this section shall
1439 be made in accordance with the procedures in Subsection 41-6-44(2).

1440 (2) (a) A person younger than 21 years of age may not operate or be in actual physical
1441 control of a vehicle with any measurable blood, breath, or urine alcohol concentration in his body
1442 as shown by a chemical test.

1443 (b) (i) A person with a valid operator license who violates Subsection (2)(a), in addition
1444 to any other applicable penalties arising out of the incident, shall have his operator license denied
1445 or suspended as provided in Subsection (2)(b)(ii).

1446 (ii) (A) For a first offense under Subsection (2)(a), the Driver License Division of the
1447 Department of Public Safety shall deny the person's operator license if ordered or not challenged
1448 under this section for a period of 90 days beginning on the 30th day after the date of the arrest
1449 under Section 32A-12-209.

1450 (B) For a second or subsequent offense under Subsection (2)(a), within three years of a
1451 prior denial or suspension, the Driver License Division shall suspend the person's operator license
1452 for a period of one year beginning on the 30th day after the date of arrest.

1453 (c) (i) A person who has not been issued an operator license who violates Subsection

1454 (2)(a), in addition to any other penalties arising out of the incident, shall be punished as provided
1455 in Subsection (2)(c)(ii).

1456 (ii) For one year or until he is 17, whichever is longer, a person may not operate a vehicle
1457 and the Driver License Division may not issue the person an operator license or learner's permit.

1458 (3) (a) When a peace officer has reasonable grounds to believe that a person may be
1459 violating or has violated Subsection (2), the peace officer may, in connection with arresting the
1460 person for a violation of Section 32A-12-209, request that the person submit to a chemical test or
1461 tests to be administered in compliance with the standards under Section 41-6-44.10.

1462 (b) The peace officer shall advise a person prior to the person's submission to a chemical
1463 test that a test result indicating a violation of Subsection (2)(a) will result in denial or suspension
1464 of the person's license to operate a motor vehicle or a refusal to issue a license.

1465 (c) If the person submits to a chemical test and the test results indicate a blood, breath, or
1466 urine alcohol content in violation of Subsection (2)(a), or if the officer makes a determination,
1467 based on reasonable grounds, that the person is otherwise in violation of Subsection (2)(a), the
1468 officer directing administration of the test or making the determination shall serve on the person,
1469 on behalf of the Driver License Division, immediate notice of the Driver License Division's
1470 intention to deny or suspend the person's license to operate a vehicle or refusal to issue a license
1471 under Subsection (2).

1472 (4) When the officer serves immediate notice on behalf of the Driver License Division,
1473 he shall:

1474 (a) take the Utah license certificate or permit, if any, of the operator;

1475 (b) issue a temporary license certificate effective for only 29 days if the driver had a valid
1476 operator's license; and

1477 (c) supply to the operator, in a manner specified by the division, basic information
1478 regarding how to obtain a prompt hearing before the Driver License Division.

1479 (5) A citation issued by the officer may, if approved as to form by the Driver License
1480 Division, serve also as the temporary license certificate under Subsection (4)(b).

1481 (6) As a matter of procedure, the peace officer serving the notice shall send to the Driver
1482 License Division within ten calendar days after the date of arrest and service of the notice:

1483 (a) the person's driver license certificate, if any;

1484 (b) a copy of the citation issued for the offense;

1485 (c) a signed report in a manner specified by the Driver License Division indicating the
1486 chemical test results, if any; and

1487 (d) any other basis for the officer's determination that the person has violated Subsection
1488 (2).

1489 (7) (a) (i) Upon request in a manner specified by the division, the Driver License Division
1490 shall grant to the person an opportunity to be heard within 29 days after the date of arrest under
1491 Section 32A-12-209.

1492 (ii) The request shall be made within ten calendar days of the date of the arrest.

1493 (b) A hearing, if held, shall be before the Driver License Division in the county in which
1494 the arrest occurred, unless the Driver License Division and the person agree that the hearing may
1495 be held in some other county.

1496 (c) The hearing shall be documented and shall cover the issues of:

1497 (i) whether a peace officer had reasonable grounds to believe the person was operating a
1498 motor vehicle in violation of Subsection (2)(a);

1499 (ii) whether the person refused to submit to the test; and

1500 (iii) the test results, if any.

1501 (d) In connection with a hearing the Driver License Division or its authorized agent may
1502 administer oaths and may issue subpoenas for the attendance of witnesses and the production of
1503 relevant books and papers and records as defined in Section 46-4-102.

1504 (e) One or more members of the Driver License Division may conduct the hearing.

1505 (f) Any decision made after a hearing before any number of the members of the Driver
1506 License Division is as valid as if made after a hearing before the full membership of the Driver
1507 License Division.

1508 (g) After the hearing, the Driver License Division shall order whether the person:

1509 (i) with a valid license to operate a motor vehicle will have his license denied or not or
1510 suspended or not; or

1511 (ii) without a valid operator license will be refused a license under Subsection (2)(c).

1512 (h) If the person for whom the hearing is held fails to appear before the Driver License
1513 Division as required in the notice, the division shall order whether the person shall have his license
1514 denied, suspended, or not denied or suspended, or whether an operator license will be refused or
1515 not refused.

1516 (8) (a) Following denial or suspension the Driver License Division shall assess against a
1517 person, in addition to any fee imposed under Subsection 53-3-205~~(14)~~ (13), a fee under Section
1518 53-3-105, which shall be paid before the person's driving privilege is reinstated, to cover
1519 administrative costs. This fee shall be canceled if the person obtains an unappealed Driver License
1520 Division hearing or court decision that the suspension was not proper.

1521 (b) A person whose operator license has been denied, suspended, or postponed by the
1522 Driver License Division under this section may file a petition within 30 days after the suspension
1523 for a hearing on the matter which, if held, is governed by Section 53-3-224.

1524 (9) After reinstatement of an operator license for a first offense under this section, a report
1525 authorized under Section 53-3-104 may not contain evidence of the denial or suspension of the
1526 person's operator license under this section if he has not been convicted of any other offense for
1527 which the denial or suspension may be extended.

1528 (10) (a) In addition to the penalties in Subsection (2), a person who violates Subsection
1529 (2)(a) shall:

1530 (i) obtain an assessment and recommendation for appropriate action from a substance
1531 abuse program, but any associated costs shall be the person's responsibility; or

1532 (ii) be referred by the Driver License Division to the local substance abuse authority for
1533 an assessment and recommendation for appropriate action.

1534 (b) (i) Reinstatement of the person's operator license or the right to obtain an operator
1535 license is contingent upon successful completion of the action recommended by the local substance
1536 abuse authority or the substance abuse program.

1537 (ii) The local substance abuse authority's or the substance abuse program's recommended
1538 action shall be determined by an assessment of the person's alcohol abuse and may include:

1539 (A) a targeted education and prevention program;

1540 (B) an early intervention program; or

1541 (C) a substance abuse treatment program.

1542 (iii) Successful completion of the recommended action shall be determined by standards
1543 established by the Division of Substance Abuse.

1544 (c) At the conclusion of the penalty period imposed under Subsection (2), the local
1545 substance abuse authority or the substance abuse program shall notify the Driver License Division
1546 of the person's status regarding completion of the recommended action.

1547 (d) The local substance abuse authorities and the substance abuse programs shall cooperate
1548 with the Driver License Division in:

1549 (i) conducting the assessments;

1550 (ii) making appropriate recommendations for action; and

1551 (iii) notifying the Driver License Division about the person's status regarding completion
1552 of the recommended action.

1553 (e) (i) The local substance abuse authority is responsible for the cost of the assessment of
1554 the person's alcohol abuse, if the assessment is conducted by the local substance abuse authority.

1555 (ii) The local substance abuse authority or a substance abuse program selected by a person
1556 is responsible for:

1557 (A) conducting an assessment of the person's alcohol abuse; and

1558 (B) for making a referral to an appropriate program on the basis of the findings of the
1559 assessment.

1560 (iii) (A) The person who violated Subsection (2)(a) is responsible for all costs and fees
1561 associated with the recommended program to which the person selected or is referred.

1562 (B) The costs and fees under Subsection (10)(e)(iii)(A) shall be based on a sliding scale
1563 consistent with the local substance abuse authority's policies and practices regarding fees for
1564 services or determined by the substance abuse program.

1565 Section 33. Section **58-37-13** is amended to read:

1566 **58-37-13. Property subject to forfeiture -- Seizure -- Procedure.**

1567 (1) As used in this section:

1568 (a) "Claimant" means:

1569 (i) any owner as defined in this section; or

1570 (ii) any interest holder as defined in this section and any other person or entity who asserts
1571 a claim to any property seized for forfeiture under this section;

1572 (b) "Drug distributing paraphernalia" means any property used or designed to be used in
1573 the illegal transportation, storage, shipping, or circulation of a controlled substance. Property is
1574 considered "designed to be used" for one or more of the above-listed purposes if the property has
1575 been altered or modified to include a feature or device which would actually promote or conceal
1576 a violation of this chapter.

1577 (c) "Drug manufacturing equipment or supplies" includes any illegally possessed

1578 controlled substance precursor, or any chemical, laboratory equipment, or laboratory supplies
1579 possessed with intent to engage in clandestine laboratory operations as defined in Section
1580 58-37d-3.

1581 (d) "Interest holder" means a secured party as defined in Section 70A-9a-102, a mortgagee,
1582 lien creditor, or the beneficiary of a security interest or encumbrance pertaining to an interest in
1583 property, whose interest would be perfected against a good faith purchaser for value. A person
1584 who holds property for the benefit of or as an agent or nominee for another, or who is not in
1585 substantial compliance with any statute requiring an interest in property to be recorded or reflected
1586 in public records in order to perfect the interest against a good faith purchaser for value, is not an
1587 interest holder.

1588 (e) "Owner" means an individual or entity who possesses a legal or equitable ownership
1589 in real or personal property.

1590 (f) "Proceeds" means property acquired directly or indirectly from, produced through,
1591 realized through, or caused by an act or omission and includes any property of any kind without
1592 reduction for expenses incurred in the acquisition, maintenance, or production of that property, or
1593 any other purpose.

1594 (g) "Real Property" means:

1595 (i) land; and

1596 (ii) any building, fixture, improvement, appurtenance, structure, or other development that
1597 is affixed permanently to land.

1598 (h) "Resolution of criminal charges" occurs at the time a claimant who is also charged with
1599 violations under [~~Title 58, Chapters~~] Chapter 37, 37a, 37b, 37c, or 37d enters a plea, upon return
1600 of a jury verdict or court ruling in a criminal trial, or upon dismissal of the criminal charge.

1601 (i) "Violation of this chapter" means any conduct prohibited by [~~Title 58, Chapters~~]
1602 Chapter 37, 37a, 37b, 37c, or 37d or any conduct occurring outside the state which would be a
1603 violation of the laws of the place where the conduct occurred and which would be a violation of
1604 [~~Title 58, Chapters~~] Chapter 37, 37a, 37b, 37c, or 37d if the conduct had occurred in this state.

1605 (2) The following are subject to criminal or civil forfeiture pursuant to [~~the~~] Title 24,
1606 Chapter 1, Utah Uniform Forfeiture Procedures Act[~~, Title 24, Chapter 1, of the Utah Code~~]:

1607 (a) all controlled substances which have been manufactured, distributed, dispensed, or
1608 acquired in violation of this chapter;

1609 (b) all raw materials, products, and equipment of any kind used, or intended for use, in
1610 manufacturing, compounding, processing, delivering, importing, or exporting any controlled
1611 substance in violation of this chapter;

1612 (c) all property used or intended for use as a container for property described in
1613 Subsections (2)(a) and (2)(b);

1614 (d) all hypodermic needles, syringes, and other paraphernalia, not including capsules used
1615 with health food supplements and herbs, used or intended for use to administer controlled
1616 substances in violation of this chapter;

1617 (e) all conveyances including aircraft, vehicles, or vessels used or intended to be used to
1618 facilitate the distribution or possession with intent to distribute the property described in
1619 Subsections (2)(a) and (2)(b);

1620 (f) all books, records, and research, including formulas, microfilm, tapes, and data used
1621 or intended for use in violation of this chapter;

1622 (g) everything of value furnished or intended to be furnished in exchange for a controlled
1623 substance in violation of this chapter, and all moneys, negotiable instruments, and securities used
1624 or intended to be used to facilitate any violation of this chapter. An interest in property may not
1625 be civilly forfeited under this Subsection (2) unless it is proven by clear and convincing evidence
1626 that the owner or any interest holder knew of the conduct which made the property subject to
1627 forfeiture. The burden of presenting this evidence is on the state;

1628 (h) all imitation controlled substances as defined in Section 58-37b-2, Imitation Controlled
1629 Substances Act;

1630 (i) (i) all warehousing, housing, and storage facilities, or interest in real property of any
1631 kind used, or intended for use, in producing, cultivating, warehousing, storing, distributing or
1632 manufacturing any controlled substances in violation of this chapter but only if:

1633 (A) the cumulative sales of controlled substances on the property within a two-month
1634 period total or exceed \$1,000; or

1635 (B) the street value of any controlled substances found on the premises at any given time
1636 totals or exceeds \$1,000, but only after the judge makes a specific finding of proportionality under
1637 Section 24-1-14, and subject to the condition that even if proportionality is found, the judge shall
1638 have discretion not to forfeit real property which is a primary residence.

1639 (ii) A narcotics officer experienced in controlled substances law enforcement may testify

1640 to establish the street value of the controlled substances for purposes of this Subsection (2);

1641 (j) any firearm, weapon, or ammunition carried or used in connection with a violation of
1642 this chapter or any firearm, weapon, or ammunition kept or located within the proximity of
1643 controlled substances;

1644 (k) all proceeds traceable to any violation of this chapter.

1645 (3) Property subject to forfeiture under this chapter may be seized by any peace officer of
1646 this state upon process issued by any court having jurisdiction over the property. However, seizure
1647 without process may be made when:

1648 (a) the seizure is incident to an arrest or search under a search warrant or an inspection
1649 under an administrative inspection warrant;

1650 (b) the property subject to seizure has been the subject of a prior judgment in favor of the
1651 state in a criminal injunction or forfeiture proceeding under this chapter;

1652 (c) the peace officer has probable cause to believe that the property is directly or indirectly
1653 dangerous to health or safety; or

1654 (d) the peace officer has probable cause to believe that the property has been used or
1655 intended to be used in violation of this chapter and has probable cause to believe the property will
1656 be damaged, intentionally diminished in value, destroyed, concealed, or removed from the state.

1657 (4) Property taken or detained under this section is not repleviable but is in custody of the
1658 law enforcement agency making the seizure, subject only to the orders and decrees of the court or
1659 the official having jurisdiction. When property is seized under this chapter, the appropriate person
1660 or agency may:

1661 (a) place the property under seal;

1662 (b) remove the property to a place designated by it or the warrant under which it was
1663 seized; or

1664 (c) take custody of the property and remove it to an appropriate location for disposition
1665 in accordance with law.

1666 (5) All substances listed in Schedule I that are possessed, transferred, distributed, or
1667 offered for distribution in violation of this chapter are contraband and no property right shall exist
1668 in them. All substances listed in Schedule I which are seized or come into the possession of the
1669 state may be retained for any evidentiary or investigative purpose, including sampling or other
1670 preservation prior to disposal or destruction by the state.

1671 (6) All marijuana or any species of plants from which controlled substances in Schedules
1672 I and II are derived which have been planted or cultivated in violation of this chapter, or of which
1673 the owners or cultivators are unknown, or are wild growths, may be seized and retained for any
1674 evidentiary or investigative purpose, including sampling or other preservation prior to disposal or
1675 destruction by the state. Failure, upon demand by the department or its authorized agent, of any
1676 person in occupancy or in control of land or premises upon which species of plants are growing
1677 or being stored, to produce an appropriate license or proof that he is the holder of a license, is
1678 authority for the seizure and forfeiture of the plants.

1679 (7) Forfeiture proceedings shall conform with the procedures and substantive protections
1680 of ~~[the] Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act[, Title 24, Chapter 1, of the~~
1681 ~~Utah Code]~~.

1682 Section 34. Section **58-37a-6** is amended to read:

1683 **58-37a-6. Seizure -- Forfeiture -- Property rights.**

1684 Drug paraphernalia is subject to seizure and forfeiture in accordance with the procedures
1685 and substantive protections of ~~[the] Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act[;~~
1686 ~~Title 24, of the Utah Code]~~.

1687 Section 35. Section **58-37c-15** is amended to read:

1688 **58-37c-15. Civil forfeiture.**

1689 The following shall be subject to forfeiture in accordance with the procedures and
1690 substantive protections of ~~[the] Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act[; Title~~
1691 ~~24, Chapter 1, of the Utah Code]~~:

1692 (1) all listed controlled substance precursor chemicals regulated under the provisions of
1693 this chapter which have been distributed, possessed, or are intended to be distributed or otherwise
1694 transferred in violation of any felony provision of this chapter; and

1695 (2) all property used by any person to facilitate, aid, or otherwise cause the unlawful
1696 distribution, transfer, possession, or intent to distribute, transfer, or possess a listed controlled
1697 substance precursor chemical in violation of any felony provision of this chapter.

1698 Section 36. Section **58-37d-7** is amended to read:

1699 **58-37d-7. Seizure and forfeiture.**

1700 Chemicals, equipment, supplies, vehicles, aircraft, vessels, and personal and real property
1701 used in furtherance of a clandestine laboratory operation are subject to seizure and forfeiture under

1702 the procedures and substantive protections of ~~[the]~~ Title 24, Chapter 1, Utah Uniform Forfeiture
1703 Procedures Act~~[, Title 24, Chapter 1 of the Utah Code]~~.

1704 Section 37. Section **58-71-601** is amended to read:

1705 **58-71-601. Mentally incompetent or incapacitated naturopathic physician.**

1706 (1) As used in this section:

1707 (a) "Incapacitated person" has the same definition as in Section 75-1-201.

1708 (b) "Mentally ill" has the same definition as in Section 62A-12-202.

1709 (2) If a court of competent jurisdiction determines a naturopathic physician is an
1710 incapacitated person or that he is mentally ill and unable to safely engage in the practice of
1711 medicine, the director shall immediately suspend the license of the naturopathic physician upon
1712 the entry of the judgment of the court, without further proceedings under Title 63, Chapter 46b,
1713 Administrative Procedures Act, regardless of whether an appeal from the court's ruling is pending.
1714 The director shall promptly notify the naturopathic physician, in writing, of the suspension.

1715 (3) (a) If the division and a majority of the board find reasonable cause to believe a
1716 naturopathic physician, who is not determined judicially to be an incapacitated person or to be
1717 mentally ill, is incapable of practicing medicine with reasonable skill regarding the safety of
1718 patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or
1719 physical condition, the board shall recommend that the director file a petition with the division,
1720 and cause the petition to be served upon the naturopathic physician with a notice of hearing on the
1721 sole issue of the capacity of the naturopathic physician to competently and ~~[safety]~~ safely engage
1722 in the practice of medicine.

1723 (b) The hearing shall be conducted under Section 58-1-109, and Title 63, Chapter 46b,
1724 Administrative Procedures Act, except as provided in Subsection (4).

1725 (4) (a) Every naturopathic physician who accepts the privilege of being licensed under this
1726 chapter gives consent to:

1727 (i) submitting at his own expense to an immediate mental or physical examination when
1728 directed in writing by the division and a majority of the board to do so; and

1729 (ii) the admissibility of the reports of the examining physician's testimony or examination,
1730 and waives all objections on the ground the reports constitute a privileged communication.

1731 (b) The examination may be ordered by the division, with the consent of a majority of the
1732 board, only upon a finding of reasonable cause to believe:

1733 (i) the naturopathic physician is mentally ill or incapacitated or otherwise unable to
1734 practice medicine with reasonable skill and safety; and

1735 (ii) immediate action by the division and the board is necessary to prevent harm to the
1736 naturopathic physician's patients or the general public.

1737 (c) (i) Failure of a naturopathic physician to submit to the examination ordered under this
1738 section is a ground for the division's immediate suspension of the naturopathic physician's license
1739 by written order of the director.

1740 (ii) The division may enter the order of suspension without further compliance with Title
1741 63, Chapter 46b, Administrative Procedures Act, unless the division finds the failure to submit to
1742 the examination ordered under this section was due to circumstances beyond the control of the
1743 naturopathic physician and was not related directly to the illness or incapacity of the naturopathic
1744 physician.

1745 (5) (a) A naturopathic physician whose license is suspended under Subsection (2) or (3)
1746 has the right to a hearing to appeal the suspension within ten days after the license is suspended.

1747 (b) The hearing held under this subsection shall be conducted in accordance with Sections
1748 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for the
1749 continuance of the order of suspension in order to prevent harm to the naturopathic physician's
1750 patients or the general public.

1751 (6) A naturopathic physician whose license is revoked, suspended, or in any way restricted
1752 under this section may request the division and the board to consider, at reasonable intervals,
1753 evidence presented by the naturopathic physician, under procedures established by division rule,
1754 regarding any change in the naturopathic physician's condition, to determine whether:

1755 (a) he is or is not able to safely and competently engage in the practice of medicine; and

1756 (b) he is qualified to have his license to practice under this chapter restored completely or
1757 in part.

1758 Section 38. Section **59-14-207** is amended to read:

1759 **59-14-207. Unstamped cigarettes -- Contraband goods -- Seizure.**

1760 (1) Any cigarettes found in this state which have been within the state for 72 hours or
1761 longer in the possession of any wholesaler, distributor, or retailer or have been sold by that
1762 wholesaler, distributor, or retailer not having affixed to the package or container the stamps
1763 required by this chapter, are contraband goods and may be seized without a warrant by the

1764 commission, its employees, or by any peace officer of the state or its political subdivisions.

1765 (2) The seized goods shall be delivered to the commission and the commission shall affix
1766 the proper amount of stamps to the individual packages or containers, prior to instituting forfeiture
1767 proceedings under ~~[the] Title 24, Chapter 1,~~ Utah Uniform Forfeiture Procedures Act~~[-Title 24,~~
1768 ~~Chapter 1 of the Utah Code].~~

1769 Section 39. Section **63-2-903** is amended to read:

1770 **63-2-903. Duties of governmental entities.**

1771 The chief administrative officer of each governmental entity shall:

1772 (1) establish and maintain an active, continuing program for the economical and efficient
1773 management of the governmental entity's records as provided by this chapter;

1774 (2) appoint one or more records officers who will be trained to work with the state archives
1775 in the care, maintenance, scheduling, disposal, classification, designation, access, and preservation
1776 of records;

1777 (3) make and maintain adequate and proper documentation of the organization, functions,
1778 policies, decisions, procedures, and essential transactions of the governmental entity designed to
1779 furnish information to protect the legal and financial rights of persons directly affected by the
1780 entity's activities;

1781 (4) submit to the state archivist proposed schedules of records for final approval by the
1782 records committee;

1783 (5) cooperate with the state archivist in conducting surveys made by the state archivist;

1784 (6) comply with rules issued by the Department of Administrative Services as provided
1785 by Section 63-2-904;

1786 (7) report to the state archives the designation of record series that it maintains;

1787 (8) report to the state archives the classification of each record series that is classified; and

1788 (9) establish and report to the state archives retention schedules for objects that the
1789 governmental entity determines are not records under Subsection ~~[63-2-301]~~ 63-2-103(18), but that
1790 have historical or evidentiary value.

1791 Section 40. Section **63-46a-11** is amended to read:

1792 **63-46a-11. Administrative Rules Review Committee.**

1793 (1) (a) There is created an Administrative Rules Review Committee of ten permanent
1794 members and four ex officio members.

1795 (b) (i) The committee's permanent members shall be composed of five members of the
1796 Senate, appointed by the president of the Senate, and five members of the House, appointed by the
1797 speaker of the House, with no more than three senators and three representatives from the same
1798 political party.

1799 (ii) The permanent members shall convene at least once each month as a committee to
1800 review new agency rules, amendments to existing agency rules, and repeals of existing agency
1801 rules. Meetings may be suspended at the discretion of the committee chairs.

1802 (iii) Members shall serve for two-year terms or until their successors are appointed.

1803 (iv) A vacancy exists whenever a committee member ceases to be a member of the
1804 Legislature, or when a member resigns from the committee. Vacancies shall be filled by the
1805 appointing authority, and the replacement shall serve out the unexpired term.

1806 (c) When the committee reviews existing rules, the committee's permanent members shall
1807 invite the Senate and House chairmen of the standing committee and the Senate and House
1808 chairmen of the appropriation subcommittee that have jurisdiction over the agency whose existing
1809 rules are being reviewed to participate as nonvoting, ex officio members with the committee.

1810 (d) Three representatives and three senators from the permanent members are a quorum for
1811 the transaction of business at any meeting.

1812 (2) Each agency rule as defined in Section 63-46a-2 shall be submitted to the committee
1813 at the same time public notice is given under Section 63-46a-4.

1814 (3) (a) The committee shall exercise continuous oversight of the process of rulemaking.

1815 (b) The committee shall examine rules submitted by each agency to determine:

1816 (i) whether or not they are authorized by statute;

1817 (ii) whether or not they comply with legislative intent;

1818 (iii) their impact on the economy and the government operations of the state and local
1819 political subdivisions; and

1820 (iv) their impact on affected persons.

1821 (c) To carry out these duties, the committee may examine any other issues that it considers
1822 necessary. The committee may also notify and refer rules to the chairmen of the interim committee
1823 which has jurisdiction over a particular agency when the committee determines that an issue
1824 involved in an agency's rules may be more appropriately addressed by that committee.

1825 (d) In reviewing the rules, the committee shall follow generally accepted principles of

1826 statutory construction.

1827 (4) The committee may request that the Office of the Legislative Fiscal Analyst prepare
1828 a fiscal note on any rule.

1829 (5) In order to accomplish its oversight functions, the committee has all the powers granted
1830 to legislative interim committees as set forth in Section 36-12-11.

1831 (6) (a) The committee may prepare written findings of its review of each rule and may
1832 include any recommendations, including legislative action.

1833 (b) The committee shall provide to the agency that enacted the rule:

1834 (i) its findings, if any; and

1835 (ii) a request that the agency notify the committee of any changes it makes in the rule.

1836 (c) The committee shall provide its findings to any member of the Legislature and to any
1837 person affected by the rule who requests the findings.

1838 (d) The committee shall provide its findings to the presiding officers of both the House and
1839 the Senate, Senate and House [~~chair~~] chairs of the standing committee, and the Senate and House
1840 [~~chairmen~~] chairs of the Appropriation Subcommittee that have jurisdiction over the agency whose
1841 rules are the subject of the findings.

1842 (7) (a) The committee may submit a report on its review of state agency rules to each
1843 member of the Legislature at each regular session.

1844 (b) The report shall include:

1845 (i) the findings and recommendations made by the committee under Subsection (6);

1846 (ii) any action taken by an agency in response to committee recommendations; and

1847 (iii) any recommendations by the committee for legislation.

1848 Section 41. Section **63-55-272** is amended to read:

1849 **63-55-272. Repeal dates, Title 72.**

1850 [~~(1) Section 72-2-119, Growth Impact Highway Grants, is repealed July 1, 2001.~~]

1851 [~~(2)~~] Section 72-8-108, State Traffic and Pedestrian Safety Coordinating Council, is
1852 repealed July 1, 2003.

1853 Section 42. Section **63-56-36** is amended to read:

1854 **63-56-36. Alternative methods of construction contracting management.**

1855 (1) (a) Rules shall provide as many alternative methods of construction contracting
1856 management as determined to be feasible.

1857 (b) These rules shall:

1858 (i) grant to the chief procurement officer or the head of the purchasing agency responsible
1859 for carrying out the construction project the discretion to select the appropriate method of
1860 construction contracting management for a particular project; and

1861 (ii) require the procurement officer to execute and include in the contract file a written
1862 statement setting forth the facts which led to the selection of a particular method of construction
1863 contracting management for each project.

1864 (c) Before choosing a construction contracting management method, the chief procurement
1865 officer or the head of the purchasing agency responsible for carrying out the construction project
1866 shall consider the following factors:

1867 (i) when the project must be ready to be occupied;

1868 (ii) the type of project;

1869 (iii) the extent to which the requirements of the procuring agencies and the ways in which
1870 they are to be met are known;

1871 (iv) the location of the project;

1872 (v) the size, scope, complexity, and economics of the project;

1873 (vi) the source of funding and any resulting constraints necessitated by the funding source;

1874 (vii) the availability, qualification, and experience of state personnel to be assigned to the
1875 project and how much time the state personnel can devote to the project; and

1876 (viii) the availability, qualifications, and experience of outside consultants and contractors
1877 to complete the project under the various methods being considered.

1878 (2) (a) Rules adopted by state public procurement units and local public procurement units
1879 to implement this section may authorize the use of a Construction Manager/General Contractor as
1880 one method of construction contracting management.

1881 (b) Those rules shall require that:

1882 (i) the Construction Manager/General Contractor shall be selected using one of the source
1883 selection methods provided for in Sections 63-56-20 through 63-56-35.8 of this chapter; and

1884 (ii) when entering into any subcontract that was not specifically included in the
1885 Construction Manager/General Contractor's cost proposal submitted under the requirements of
1886 Subsection (2)[~~(c)(ii)~~] (b)(i), the Construction Manager/General Contractor shall procure that
1887 subcontractor by using one of the source selection methods provided for in Sections 63-56-20

1888 through 63-56-35.8 of this chapter in the same manner as if the subcontract work was procured
1889 directly by the state.

1890 (3) Procurement rules adopted by the State Building Board under Subsection (1) for state
1891 building construction projects may authorize the use of a design-build provider as one method of
1892 construction contracting management.

1893 Section 43. Section **67-19-39** is amended to read:

1894 **67-19-39. Exemptions.**

1895 Peace officers, as defined under Title 53, Chapter ~~[40]~~ 13, Peace Officer Classifications,
1896 acting in their official capacity as peace officers in undercover roles and assignments, are exempt
1897 from the provisions of this act.

1898 Section 44. Section **67-20-6** is amended to read:

1899 **67-20-6. Workers' compensation medical benefits.**

1900 A compensatory service worker is considered a government employee for purposes of
1901 receiving workers' compensation medical benefits, which shall be the exclusive remedy for all
1902 injuries and occupational diseases as provided under:

1903 (1) Title 34A, Chapter ~~[2]~~ 2, Workers' Compensation Act~~;~~; and

1904 (2) Title 34A, Chapter 3, Utah Occupational Disease Act.

1905 Section 45. Section **67-20-7** is amended to read:

1906 **67-20-7. Workers' compensation benefits for volunteer firefighters.**

1907 (1) In addition to the purposes set out in Subsections 67-20-3(2) and (3), a volunteer
1908 firefighter, as defined in Section 49-5-103, is considered an agency employee for the purpose of
1909 receiving workers' compensation benefits under:

1910 (a) Title ~~[35A]~~ 34A, Chapter ~~[3]~~ 2, Workers' Compensation Act; and

1911 (b) Title 34A, Chapter ~~[3a]~~ 3, Utah Occupational Disease Act.

1912 (2) These benefits are the exclusive remedy for all injuries and occupational diseases
1913 resulting from his services as a volunteer firefighter. Compensation shall be computed as indicated
1914 in Section 49-5-802.

1915 Section 46. Section **72-9-501** is amended to read:

1916 **72-9-501. Construction, operation, and maintenance of ports-of-entry by the**
1917 **department -- Function of ports-of-entry -- Checking and citation powers of port-of-entry**
1918 **agents.**

1919 (1) (a) The department shall construct ports-of-entry for the purpose of checking motor
1920 carriers, drivers, vehicles, and vehicle loads for compliance with state and federal laws including
1921 laws relating to:

1922 (i) driver qualifications;

1923 (ii) Title 53, Chapter 3, Part 4, Uniform Commercial Driver License Act;

1924 (iii) vehicle registration;

1925 (iv) fuel tax payment;

1926 (v) vehicle size, weight, and load;

1927 (vi) security or insurance;

1928 (vii) this chapter;

1929 (viii) hazardous material as defined under 49 U.S.C. [~~app. Sec. 1802~~] 5102;

1930 (ix) livestock transportation; and

1931 (x) safety.

1932 (b) The ports-of-entry shall be located on state highways at sites determined by the
1933 department.

1934 (2) (a) The ports-of-entry shall be operated and maintained by the department.

1935 (b) A port-of-entry agent may check, inspect, or test drivers, vehicles, and vehicle loads
1936 for compliance with state and federal laws specified in Subsection (1).

1937 (3) (a) A port-of-entry agent, in whose presence an offense described in this section is
1938 committed, may:

1939 (i) issue and deliver a misdemeanor or infraction citation under Section 77-7-18;

1940 (ii) request and administer chemical tests to determine blood alcohol concentration in
1941 compliance with Section 41-6-44.3;

1942 (iii) place a driver out-of-service in accordance with Section 53-3-417; and

1943 (iv) serve a driver with notice of the Driver License Division of the Department of Public
1944 Safety's intention to disqualify the driver's privilege to drive a commercial motor vehicle in
1945 accordance with Section 53-3-418.

1946 (b) This section does not grant actual arrest powers as defined in Section 77-7-1 to a
1947 port-of-entry agent who is not a peace officer or special function officer designated under Title 53,
1948 Chapter 13, Peace Officer Classifications.

1949 Section 47. Section **76-3-501** is amended to read:

1950 **76-3-501. Vehicle subject to forfeiture -- Seizure -- Procedure.**

1951 (1) Any vehicle used in the commission of, attempt to commit, or flight after commission
1952 of any felony in which a firearm or other dangerous weapon as defined in Section 76-10-501, or
1953 explosive, chemical, or incendiary device or parts as defined in Section 76-10-306 is used, or any
1954 vehicle used in the commission of the illegal possession or sale of a firearm in or from the vehicle,
1955 is subject to forfeiture.

1956 (2) Vehicles subject to forfeiture under this section may be seized by any peace officer of
1957 this state upon process issued by any court having jurisdiction over the vehicle. However, seizure
1958 without process may be made when:

1959 (a) the seizure is incident to a lawful arrest, with or without an arrest warrant;

1960 (b) the vehicle is seized incident to a lawful search with or without a search warrant or an
1961 inspection under an administrative inspection warrant;

1962 (c) the vehicle subject to seizure has been the subject of a prior judgment in favor of the
1963 state in a criminal injunction or forfeiture proceeding; or

1964 (d) the peace officer seizing the vehicle has probable cause to believe that the vehicle has
1965 been used or is intended to be used in violation of this section and the peace officer reasonably
1966 believes that the vehicle will be lost, damaged, or used in further violation of law if the officer
1967 delays seizure to obtain a warrant.

1968 (3) Forfeiture proceedings under this section shall be instituted promptly in accordance
1969 with the procedures and substantive protections of [~~the~~ Title 24, Chapter 1, Utah Uniform
1970 Forfeiture Procedures Act], [~~Title 24, Chapter 1, of the Utah Code~~].

1971 (4) Any vehicle taken or detained under this section is not repleviable but is in custody of
1972 the law enforcement agency making the seizure, subject only to the orders and decrees of the court
1973 or the official having jurisdiction. When a vehicle is seized under this chapter the appropriate
1974 person or agency may:

1975 (a) remove the vehicle to a place designated by the court, official, or the warrant under
1976 which the vehicle was seized; or

1977 (b) take custody of the vehicle and remove it to an appropriate location for disposition in
1978 accordance with law.

1979 Section 48. Section **76-10-1107** is amended to read:

1980 **76-10-1107. Seizure and sale of devices or equipment used for gambling.**

1981 (1) Whenever any magistrate shall determine that any devices or equipment is used or kept
1982 for the purpose of being used for gambling, the magistrate may authorize the county commissioner
1983 of the county wherein the seizure occurred, in conjunction with the sheriff, or if the seizure
1984 occurred within the limits of an incorporated city or town, may authorize its governing body, in
1985 conjunction with its chief law enforcement officer, to seize the devices or equipment and institute
1986 forfeiture proceedings in accordance with the procedures and substantive protections of ~~[the] Title~~
1987 24, Chapter 1, Utah Uniform Forfeiture Procedures Act~~[, Title 24, Chapter 1, of the Utah Code]~~.

1988 (2) The proceeds of any sale shall be paid to the Uniform School Fund, ~~[Title 53A,~~
1989 ~~Chapter 16, Section 101 of the Utah Code]~~ as provided in Section 53A-16-101.

1990 Section 49. Section **76-10-1603.5** is amended to read:

1991 **76-10-1603.5. Violation a felony -- Costs -- Forfeiture -- Fines -- Divestiture --**
1992 **Restrictions -- Dissolution or reorganization -- Prior restraint.**

1993 (1) A person who violates any provision of Section 76-10-1603 is guilty of a second degree
1994 felony. In addition to penalties prescribed by law, the court may order the person found guilty of
1995 the felony to pay to the state, if the attorney general brought the action, or to the county, if the
1996 county attorney or district attorney brought the action, the costs of investigating and prosecuting
1997 the offense and the costs of securing the forfeitures provided for in this section. The person shall
1998 forfeit to the Uniform School Fund, ~~[Title 53A, Chapter 16, Section 101, of the Utah Code]~~ as
1999 provided in Section 53A-16-101:

2000 (a) any interest acquired or maintained in violation of any provision of Section
2001 76-10-1603;

2002 (b) any interest in, security of, claim against, or property or contractual right of any kind
2003 affording a source of influence over any enterprise which the person has established, operated,
2004 controlled, conducted, or participated in the conduct of in violation of Section 76-10-1603; and

2005 (c) any property constituting or derived from the net proceeds which the person obtained,
2006 directly or indirectly, from the conduct constituting the pattern of unlawful activity or from any act
2007 or conduct constituting the pattern of unlawful activity proven as part of the violation of any
2008 provision of Section 76-10-1603.

2009 (2) If a violation of Section 76-10-1603 is based on a pattern of unlawful activity
2010 consisting of acts or conduct in violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or
2011 76-10-1222, the property subject to forfeiture under this section is limited to property, the seizure

2012 or forfeiture of which would not constitute a prior restraint on the exercise of an affected party's
2013 rights under the First Amendment to the Constitution of the United States or Article I, Sec. 15 of
2014 the Utah Constitution, or would not otherwise unlawfully interfere with the exercise of those
2015 rights.

2016 (3) In lieu of a fine otherwise authorized by law for a violation of Section 76-10-1603, a
2017 defendant who derives net proceeds from a conduct prohibited by Section 76-10-1603[;] may be
2018 fined not more than twice the amount of the net proceeds.

2019 (4) Property subject to criminal forfeiture in accord with the procedures and substantive
2020 protections of [~~the~~] Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act [~~Title 24, Chapter~~
2021 ~~1, of the Utah Code~~];

2022 (a) includes:

2023 [~~(a)~~] (i) real property, including things growing on, affixed to, and found in land; and

2024 [~~(b)~~] (ii) tangible and intangible personal property including money, rights, privileges,
2025 interests, claims, and securities of any kind; [~~(c)~~] but

2026 (b) does not include property exchanged or to be exchanged for services rendered in
2027 connection with the defense of the charges or any related criminal case.

2028 (5) Upon conviction for violating any provision of Section 76-10-1603, and in addition
2029 to any penalty prescribed by law and in addition to any forfeitures provided for in this section, the
2030 court may do any or all of the following:

2031 (a) order the person to divest himself of any interest in or any control, direct or indirect,
2032 of any enterprise;

2033 (b) impose reasonable restrictions on the future activities or investments of any person,
2034 including prohibiting the person from engaging in the same type of endeavor as the enterprise
2035 engaged in, to the extent the Utah Constitution and the Constitution of the United States permit;
2036 or

2037 (c) order the dissolution or reorganization of any enterprise.

2038 (6) If a violation of Section 76-10-1603 is based on a pattern of unlawful activity
2039 consisting of acts or conduct in violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or
2040 76-10-1222, the court may not enter any order that would amount to a prior restraint on the
2041 exercise of an affected party's rights under the First Amendment to the Constitution of the United
2042 States or Article I, [~~Sec. 15 of the~~] Section 15, Utah Constitution.

2043 (7) All rights, title, and interest in forfeitable property described in Subsections (1) and (2)
2044 vest in the state treasurer, on behalf of the Uniform School Fund, upon the commission of the act
2045 or conduct giving rise to the forfeiture under this section.

2046 (8) For purposes of this section, the "net proceeds" of an offense means property acquired
2047 as a result of the violation minus the direct costs of acquiring the property.

2048 Section 50. Section **76-10-1908** is amended to read:

2049 **76-10-1908. Forfeiture -- Grounds -- Procedure -- Disposition of property seized.**

2050 (1) (a) Any of the following property shall be subject to civil or criminal forfeiture:

2051 (i) any conveyance including vehicles, aircraft, watercraft, or other vessel used in violation
2052 of Section 76-10-1904; and

2053 (ii) any property which is the net proceeds of a violation of Section 76-10-1903,
2054 76-10-1904, or 76-10-1906.

2055 (b) For purposes of this section, the "net proceeds" of an offense means property acquired
2056 as a result of the violation minus the direct costs of acquiring the property.

2057 (2) Property subject to forfeiture under Subsection (1) may be seized by any peace officer
2058 of this state upon process issued by any court having jurisdiction over the property. However,
2059 seizure without process may be made when:

2060 (a) the seizure is incident to an arrest or search under a search warrant, an inspection under
2061 an administrative inspection warrant, under a writ of attachment, or under a writ of garnishment;

2062 (b) the property subject to seizure has been the subject of a prior judgment in favor of the
2063 state in a criminal injunction or forfeiture proceeding under this section; or

2064 (c) the peace officer has probable cause to believe that the property has been used in
2065 violation of Section 76-10-1903, 76-10-1904, or 76-10-1906.

2066 (3) Forfeiture proceedings under this section shall be commenced in accordance with the
2067 procedures and substantive protections of ~~[the]~~ Title 24, Chapter 1, Utah Uniform Forfeiture
2068 Procedures Act~~[, Title 24, Chapter 1, of the Utah Code]~~.

2069 (4) Property taken or detained under this section is not repleviable but is in custody of the
2070 law enforcement agency making the seizure, subject only to the orders and decrees of the court or
2071 the official having jurisdiction. When property is seized under this chapter, the appropriate person
2072 or agency may:

2073 (a) place the property under seal;

2074 (b) remove the property to a place designated by it or the warrant under which it was
2075 seized; or

2076 (c) take custody of the property and remove it to an appropriate location for disposition
2077 in accordance with law.

2078 Section 51. Section **77-38a-302** is amended to read:

2079 **77-38a-302. Restitution criteria.**

2080 (1) When a defendant is convicted of criminal activity that has resulted in pecuniary
2081 damages, in addition to any other sentence it may impose, the court shall order that the defendant
2082 make restitution to victims of crime as provided in this Subsection (1), or for conduct for which
2083 the defendant has agreed to make restitution as part of a plea disposition. For purposes of
2084 restitution, a victim has the meaning as defined in Subsection 77-38a-102[~~(12)~~] (13) and in
2085 determining whether restitution is appropriate, the court shall follow the criteria and procedures
2086 as provided in Subsections (2) through (5).

2087 (2) In determining restitution, the court shall determine complete restitution and
2088 court-ordered restitution.

2089 (a) "Complete restitution" means restitution necessary to compensate a victim for all losses
2090 caused by the defendant.

2091 (b) "Court-ordered restitution" means the restitution the court having criminal jurisdiction
2092 orders the defendant to pay as a part of the criminal sentence at the time of sentencing.

2093 (c) Complete restitution and court-ordered restitution shall be determined as provided in
2094 Subsection (5).

2095 (3) If the court determines that restitution is appropriate or inappropriate under this part,
2096 the court shall make the reasons for the decision part of the court record.

2097 (4) If the defendant objects to the imposition, amount, or distribution of the restitution, the
2098 court shall at the time of sentencing allow the defendant a full hearing on the issue.

2099 (5) (a) For the purpose of determining restitution for an offense, the offense shall include
2100 any criminal conduct admitted by the defendant to the sentencing court or to which the defendant
2101 agrees to pay restitution. A victim of an offense that involves as an element a scheme, a
2102 conspiracy, or a pattern of criminal activity, includes any person directly harmed by the defendant's
2103 criminal conduct in the course of the scheme, conspiracy, or pattern.

2104 (b) In determining the monetary sum and other conditions for complete restitution, the

2105 court shall consider all relevant facts, including:

2106 (i) the cost of the damage or loss if the offense resulted in damage to or loss or destruction
2107 of property of a victim of the offense;

2108 (ii) the cost of necessary medical and related professional services and devices relating to
2109 physical or mental health care, including nonmedical care and treatment rendered in accordance
2110 with a method of healing recognized by the law of the place of treatment;

2111 (iii) the cost of necessary physical and occupational therapy and rehabilitation;

2112 (iv) the income lost by the victim as a result of the offense if the offense resulted in bodily
2113 injury to a victim; and

2114 (v) the cost of necessary funeral and related services if the offense resulted in the death of
2115 a victim.

2116 (c) In determining the monetary sum and other conditions for court-ordered restitution, the
2117 court shall consider the factors listed in Subsections (5)(a) and (b) and:

2118 (i) the financial resources of the defendant and the burden that payment of restitution will
2119 impose, with regard to the other obligations of the defendant;

2120 (ii) the ability of the defendant to pay restitution on an installment basis or on other
2121 conditions to be fixed by the court;

2122 (iii) the rehabilitative effect on the defendant of the payment of restitution and the method
2123 of payment; and

2124 (iv) other circumstances which the court determines may make restitution inappropriate.

2125 (d) The court may decline to make an order or may defer entering an order of restitution
2126 if the court determines that the complication and prolongation of the sentencing process, as a result
2127 of considering an order of restitution under this subsection, substantially outweighs the need to
2128 provide restitution to the victim.

2129 Section 52. Section **78-30-7** is amended to read:

2130 **78-30-7. Jurisdiction of district and juvenile court -- Time for filing.**

2131 (1) Adoption proceedings shall be commenced by filing a petition with the clerk of the
2132 district court either:

2133 (a) in the district where the person adopting resides; or

2134 (b) with the juvenile court as provided in Subsection 78-3a-104(1)(o).

2135 (2) If a child is conceived in Utah, adoption proceedings may be commenced by filing a

2136 petition with the clerk of [a] the district court in the district [court] where the child was born.

2137 (3) All orders, decrees, agreements, and notices in the proceedings shall be filed with the
2138 clerk of the court where the adoption proceedings were commenced under Subsection (1) or (2).

2139 (4) A petition for adoption shall be filed within 30 days of the date the adoptee is placed
2140 in the home of the petitioners for the purpose of adoption, unless the time for filing has been
2141 extended by the court, or unless the adoption is arranged by a licensed child-placing agency in
2142 which case the agency may extend the filing time.

2143 Section 53. **Repealer.**

2144 This act repeals:

2145 Section **53-7-108, Electronic writing.**

2145a **§ Section 54. Effective date.**

2145b **THIS ACT TAKES EFFECT ON MAY 6, 2002, EXCEPT THAT THE AMENDMENTS TO SECTION**

2145c **31A-23-202 (Effective 07/01/02) TAKE EFFECT ON JULY 1, 2002. §**

Legislative Review Note
as of 1-7-02 3:00 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel