# REVISOR'S STATUTE

2002 GENERAL SESSION

STATE OF UTAH

## Sponsor: Michael G. Waddoups

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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

**24-1-10**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

**24-1-15**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

**24-1-16**, as enacted by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

**26-28-6**, as last amended by Chapter 117, Laws of Utah 2001

**31A-8-207**, as enacted by Chapter 204, Laws of Utah 1986

**31A-15-103**, as last amended by Chapter 116, Laws of Utah 2001

**31A-23-202 (Effective 07/01/02)**, as last amended by Chapter 8, Laws of Utah 2001, First Special Session

**31A-23-202 (Superseded 07/01/02)**, as last amended by Chapter 116, Laws of Utah 2001

**31A-28-101**, as repealed and reenacted by Chapter 211, Laws of Utah 1991

**32A-13-103**, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

**41-6-13.7**, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

**41-6-44.10**, as last amended by Chapter 46, Laws of Utah 2001

**48-2c-1502**, as enacted by Chapter 260, Laws of Utah 2001

**53-3-223**, as last amended by Chapters 46 and 85, Laws of Utah 2001

**53-3-231**, as last amended by Chapter 85, Laws of Utah 2001

**58-37-13**, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

**58-37a-6**, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

**58-37c-15**, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

**58-37d-7**, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

**58-71-601**, as enacted by Chapter 282, Laws of Utah 1996

**59-14-207**, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

**63-2-903**, as last amended by Chapter 280, Laws of Utah 1992

**63-46a-11**, as last amended by Chapter 138, Laws of Utah 2001

**63-55-272**, as last amended by Chapter 47, Laws of Utah 1999

**63-56-36**, as last amended by Chapter 89, Laws of Utah 1997

**67-19-39**, as last amended by Chapter 282, Laws of Utah 1998

**67-20-6**, as last amended by Chapter 94, Laws of Utah 1998

**67-20-7**, as last amended by Chapter 240, Laws of Utah 1996

**72-9-501**, as renumbered and amended by Chapter 270 and last amended by Chapter 282,

Laws of Utah 1998

**76-3-501**, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

**76-10-1107**, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

**76-10-1603.5**, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

**76-10-1908**, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000

**77-38a-302**, as enacted by Chapter 137, Laws of Utah 2001

**78-30-7**, as last amended by Chapters 101 and 213, Laws of Utah 2001

REPEALS:

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

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

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

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

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

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

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

As used in this part:

(1) "Area of operation" means:

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

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

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

(3) "Bonds" means any bonds, notes, interim certificates, debentures, or other obligations issued by an authority pursuant to this part.

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

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

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

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

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

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

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

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

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

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

(iii) accomplish a combination of the foregoing.

(b) "Housing project" includes:

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

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

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

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

(v) the acquisition of property or any interest therein;

(vi) the demolition of existing structures;

[~~(vi)~~] (vii) the construction, reconstruction, rehabilitation, alteration, or repair of the improvements and all other work in connection with them; and

[~~(vii)~~] (viii) all other real and personal property and all tangible or intangible assets held or used in connection with the housing project.

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

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

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

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

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

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

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

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

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

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

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

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

(i) two members from local governments;

(ii) two members from the mortgage lending community;

(iii) one member from real estate sales interests;

(iv) one member from home builders interests;

(v) one member from rental housing interests;

(vi) one member from housing advocacy interests;

(vii) one member of the manufactured housing interest; and

(viii) two members of the general public.

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

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

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

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

(4) (a) The board shall:

(i) meet regularly, at least quarterly, on dates fixed by the board;

(ii) keep minutes of its meetings; and

(iii) comply with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings.

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

(5) The board shall:

(a) review the housing needs in the state;

(b) determine the relevant operational aspects of any grant, loan, or revenue collection program established under the authority of this chapter;

(c) determine the means to implement the policies and goals of this chapter;

(d) determine specific projects that the board considers should receive grant or loan moneys; and

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

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

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

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

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

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

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

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

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

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

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

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

As used in this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) A county legislative body may appoint an attorney to represent the county legislative body when a conflict exists that precludes the county or district attorney from representing the county
legislative body.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) if the county legislative body issues subpoenas and appoints members of the legislative body as a committee and confers on the committee power to hear or take evidence, the committee shall have the same power as the full county legislative body.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) not dedicated to public use.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[~~(23)~~] (24) "Record property owner" or "record owner of property" means the owner of real

property as shown on the records of the recorder of the county in which the property is located and includes a purchaser under a real estate contract if the contract is recorded in the office of the recorder of the county in which the property is located or the purchaser gives written notice of the real estate contract to the agency.

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

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

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

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

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

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

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

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

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

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

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

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

(b) "Tax increment" does not include taxes levied and collected under Section 59-2-906.1

on or after January 1, 1994 upon the taxable property in the project area unless:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) the [~~trust~~] loan fund board has certified the project area budget as complying with the requirements of Section 17B-4-1010; and

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

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

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

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

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

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

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

Each agency adopting a project area budget shall:

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

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) An agency may:

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Materials and devices used for the unlawful taking or possessing of protected wildlife shall be seized, and upon a finding by the court that they were used in the unlawful taking or possessing of protected wildlife, the materials and devices shall be subject to criminal or civil forfeiture under the procedures and substantive protections established in [~~the~~] Title 24, Chapter 1,

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

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

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

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

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

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

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

(6) (a) Upon a finding by a court that the person who used the vehicle for the unlawful taking or possessing of wildlife is guilty of a felony under this title, the vehicle may be subject to criminal or civil forfeiture under the procedures and substantive protections established in [~~the~~] Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act[~~, Title 24, Chapter 1, of the Utah Code~~].

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) preventing the functioning of a legitimate business;

(ii) preventing any individual from working;

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

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

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

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

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

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

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

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

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

(3) The court shall render a decision on a motion or complaint filed under [~~subparagraph~~]

Subsection (2) not later than [~~10~~] ten days after the date of filing, unless the ten-day period is extended by the consent of the parties or by the court for good cause shown.

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

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

(a) contraband;

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

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

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

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

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

(2) If the prosecuting attorney elects to criminally forfeit the owner's interest in the property, the information or indictment must state that the owner's interest in the specifically described property is subject to criminal forfeiture and the basis for the forfeiture.

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

(i) there is a substantial probability that the state will prevail on the issue of forfeiture and

that failure to enter the order will result in the property being sold, transferred, destroyed or removed from the jurisdiction of the court or otherwise made unavailable for forfeiture; and

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

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

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

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

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

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

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

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

(5) Upon conviction of a person for violating any provision of state law subjecting an owner's property to forfeiture and upon the jury's special verdict that the property is forfeitable, the court shall enter a judgment and order the property forfeited to the state treasurer upon the terms stated by the court in its order. Following the entry of an order declaring property forfeited, the court may, upon application of the prosecuting attorney, enter appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers,

accountants, or trustees, or take any other action to protect the interest of the state in property ordered forfeited.

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

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

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

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

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

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

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

(10) (a) Following the entry of an order of forfeiture under this section, the prosecuting attorney shall publish notice of the order's intent to dispose of the property as the court may direct.

The prosecuting attorney shall also provide direct written notice to any person known to have an alleged interest in the property subject to the order of forfeiture.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) the activity giving rise to the investigation or seizure is interstate in nature and sufficiently

complex to justify such transfer;

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

(iii) pursuing forfeiture under state law would unduly burden prosecuting attorneys or state law enforcement agencies.

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

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

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

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

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

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

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

(1) When any property is civilly or criminally forfeited under this chapter by a finding of the

court that no person is entitled to recover the property, the property shall be sold by the state treasurer, or destroyed if unfit for sale, and all revenue or proceeds therefrom shall be deposited in the Uniform School Fund after deducting the costs and expenses of:

(a) maintaining and storing the forfeited property;

(b) administering the forfeiture proceeding;

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

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

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

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

(a) informants in any law enforcement function;

(b) witnesses in any administrative or judicial forum; or

(c) prosecutors in any state or federal actions.

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

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

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

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

(a) notify the appropriate organ procurement organization of the imminent or actual death

of the patient; [~~and~~]

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

(c) enter the required information on a Utah Anatomical Consent Form or hospital death form as adopted by the department, which may include the patient's name and demographic information, medical suitability of the patient, the response of the person to whom the request was made and the person's relationship to the patient, and if the patient does not meet the medical criteria, the reasons he did not meet the criteria; and

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

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

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

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

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

(b) When a law enforcement officer, fireman, emergency medical services provider, or other emergency rescuer finds an individual who is deceased at the scene of a motor vehicle accident, and when the deceased individual is transported from the scene of the accident to a funeral establishment

licensed under Title 58, Chapter 9, Funeral Services Licensing Act:

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

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

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

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

(A) the funeral establishment receives notice from the organ procurement organization that the readily available persons listed as having priority in Section 26-28-4 have been informed by the individual described in Subsection [~~(1)(e)~~] (2) of the option to make or refuse to make an anatomical gift in accordance with Section 26-28-4, with reasonable discretion and sensitivity appropriate to the circumstances of the family;

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

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

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

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

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

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

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

Section 31A-5-209, other than Subsection 31A-5-209(3)(c), applies to the termination of the

organization permit and the payment of organization expenses of organizations, except that "Section 31A-5-212" shall be read "Section [~~31A-8-212~~] 31A-8-213."

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

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

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

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

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

(b) Any insurance placed with a nonadmitted insurer shall be placed with a surplus lines broker licensed under Chapter 23.

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

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

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

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

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

(6) (a) The commissioner may by rule prohibit making contracts under Subsection (1) for a specified class of insurance if authorized insurers provide an established market for the class in this

state that is adequate and reasonably competitive.

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

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

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

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

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

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

(ii) The commissioner shall issue lists of unauthorized foreign insurers the commissioner considers to be reliable and solid.

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

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

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

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

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

(iii) has delivered to the commissioner a copy of its current annual statement certified by the insurer and continues each subsequent year to file its annual statements with the commissioner

within 60 days of its filing with the insurance regulatory authority where it is domiciled;

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

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

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

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

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

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

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

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

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

(7) A surplus lines broker may not, either knowingly or without reasonable investigation of the financial condition and general reputation of the insurer, place insurance under this section with financially unsound insurers or with insurers engaging in unfair practices, or with otherwise substandard insurers, unless the broker gives the applicant notice in writing of the known deficiencies of the insurer or the limitations on his investigation, and explains the need to place the

business with that insurer. A copy of this notice shall be kept in the office of the broker for at least five years. To be financially sound, an insurer shall satisfy standards that are comparable to those applied under the laws of this state to authorized insurers. Insurers on the "doubtful or objectionable" list under Subsection (6)(d) and insurers not on the commissioner's "reliable" list under Subsection (6)(e) are presumed substandard.

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

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

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

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

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

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

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

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

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

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

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

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

(e) The commissioner, representatives of the department, advisory organizations, representatives and members of advisory organizations, authorized insurers, and surplus lines insurers are not liable for damages on account of statements, comments, or recommendations made in good faith in connection with their duties under this Subsection (11)(e) or under Section

31A-15-111.

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

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

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

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

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

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

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

(i) made on the uniform application; and

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

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

(a) information about the applicant's identity;

(b) the applicant's:

(i) Social Security number; or

(ii) federal employer identification number;

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

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

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

(f) any other information the commissioner reasonably requires.

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

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

(a) Social Security number; or

(b) federal employer identification number.

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

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

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

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

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

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

(i) made on the uniform application; and

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

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

(a) information about the applicant's identity;

(b) the applicant's:

(i) Social Security number; or

(ii) federal employer identification number;

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

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

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

(f) any other information the commissioner reasonably requires.

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

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

(a) Social Security number; or

(b) federal employer identification number.

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

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

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

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

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

(1) The following are subject to forfeiture pursuant to the procedures and substantive protections established in [~~the~~] Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act[~~, Title 24, Chapter 1, of the Utah Code~~]:

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

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

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

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

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

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

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

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

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

(c) the peace officer or other person authorized by law has probable cause to believe that the

property is directly or indirectly dangerous to health or safety; or

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

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

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

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

(a) place the property under seal;

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

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

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

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

[~~(i)~~] (a) If the alcoholic product is unadulterated, pure, and free from crude, unrectified, or impure form of ethylic alcohol, or any other deleterious substance or liquid, and is otherwise in saleable condition, sold in accordance with Section 24-1-16 [~~of the Utah Uniform Forfeiture Procedures Act~~].

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

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

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

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

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

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

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

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

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

(a) place the property under seal;

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

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

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

**41-6-44.10. Implied consent to chemical tests for alcohol or drug -- Number of tests -- Refusal -- Warning, report -- Hearing, revocation of license -- Appeal -- Person incapable of refusal -- Results of test available -- Who may give test -- Evidence.**

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

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

(ii) If an officer requests more than one test, refusal by a person to take one or more

requested tests, even though he does submit to any other requested test or tests, is a refusal under this section.

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

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

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

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

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

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

(iii) supply to the operator, on a form approved by the Driver License Division, basic information regarding how to obtain a hearing before the Driver License Division.

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

(d) As a matter of procedure, the peace officer shall submit a signed report, within ten calendar days after the date of the arrest, that he had grounds to believe the arrested person had been operating or was in actual physical control of a motor vehicle while having a blood or breath alcohol content statutorily prohibited under Section 41-6-44, 53-3-231, or 53-3-232, or while under the influence of alcohol, any drug, or combination of alcohol and any drug under Section 41-6-44, or

while having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section 41-6-44.6, and that the person had refused to submit to a chemical test or tests under Subsection (1).

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The division shall pay witness fees and mileage from the Transportation Fund in

accordance with the rates established in Section 78-46-28.

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

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

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

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

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

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

(ii) Judicial review of an informal adjudicative proceeding is a trial. Venue is in the district court in the county in which the offense occurred.

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

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

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

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

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

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

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

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

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

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

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

As used in this part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric Physician

Licensing Act, and any subsequent laws regulating the practice of podiatry;

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

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

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

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

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

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

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

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

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

(1) (a) If a peace officer has reasonable grounds to believe that a person may be violating or has violated Section 41-6-44, prohibiting the operation of a vehicle with a certain blood or breath alcohol concentration and driving under the influence of any drug, alcohol, or combination of a drug and alcohol or while having any measurable controlled substance or metabolite of a controlled substance in the person's body in violation of Section 41-6-44.6, the peace officer may, in connection with arresting the person, request that the person submit to a chemical test or tests to be administered in compliance with the standards under Section 41-6-44.10.

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

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

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

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

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

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

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

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

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

(a) the person's license certificate;

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

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

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

(6) (a) Upon request in a manner specified by the division, the division shall grant to the

person an opportunity to be heard within 29 days after the date of arrest. The request to be heard shall be made within ten calendar days of the date of the arrest.

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

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

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

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

(iii) the test results, if any.

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

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

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

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

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

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

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

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

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

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

(8) (a) The division shall assess against a person, in addition to any fee imposed under

Subsection 53-3-205[~~(14)~~] (13) for driving under the influence, a fee under Section 53-3-105 to cover administrative costs, which shall be paid before the person's driving privilege is reinstated. This fee shall be cancelled if the person obtains an unappealed division hearing or court decision that the suspension was not proper.

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

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

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

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

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

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

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

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

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

(ii) (A) For a first offense under Subsection (2)(a), the Driver License Division of the Department of Public Safety shall deny the person's operator license if ordered or not challenged

under this section for a period of 90 days beginning on the 30th day after the date of the arrest under Section 32A-12-209.

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

(c) (i) A person who has not been issued an operator license who violates Subsection (2)(a), in addition to any other penalties arising out of the incident, shall be punished as provided in Subsection (2)(c)(ii).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) the test results, if any.

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

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

(f) Any decision made after a hearing before any number of the members of the Driver

License Division is as valid as if made after a hearing before the full membership of the Driver License Division.

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

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

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

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

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

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

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

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

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

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

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

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

(A) a targeted education and prevention program;

(B) an early intervention program; or

(C) a substance abuse treatment program.

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

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

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

(i) conducting the assessments;

(ii) making appropriate recommendations for action; and

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

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

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

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

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

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

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

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

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

(1) As used in this section:

(a) "Claimant" means:

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

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

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

(c) "Drug manufacturing equipment or supplies" includes any illegally possessed controlled substance precursor, or any chemical, laboratory equipment, or laboratory supplies possessed with intent to engage in clandestine laboratory operations as defined in Section 58-37d-3.

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

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

(f) "Proceeds" means property acquired directly or indirectly from, produced through,

realized through, or caused by an act or omission and includes any property of any kind without reduction for expenses incurred in the acquisition, maintenance, or production of that property, or any other purpose.

(g) "Real Property" means:

(i) land; and

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

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

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

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

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

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

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

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

(e) all conveyances including aircraft, vehicles, or vessels used or intended to be used to facilitate the distribution or possession with intent to distribute the property described in Subsections

(2)(a) and (2)(b);

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

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

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

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

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

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

(ii) A narcotics officer experienced in controlled substances law enforcement may testify to establish the street value of the controlled substances for purposes of this Subsection (2);

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

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

(3) Property subject to forfeiture under this chapter may be seized by any peace officer of this state upon process issued by any court having jurisdiction over the property. However, seizure

without process may be made when:

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

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

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

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

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

(a) place the property under seal;

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

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

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

(6) All marijuana or any species of plants from which controlled substances in Schedules I and II are derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or are wild growths, may be seized and retained for any evidentiary or investigative purpose, including sampling or other preservation prior to disposal or

destruction by the state. Failure, upon demand by the department or its authorized agent, of any person in occupancy or in control of land or premises upon which species of plants are growing or being stored, to produce an appropriate license or proof that he is the holder of a license, is authority for the seizure and forfeiture of the plants.

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

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

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

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

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

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

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

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

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

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

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

Chemicals, equipment, supplies, vehicles, aircraft, vessels, and personal and real property used in furtherance of a clandestine laboratory operation are subject to seizure and forfeiture under the procedures and substantive protections of [~~the~~] Title 24, Chapter 1, Utah Uniform Forfeiture

Procedures Act[~~, Title 24, Chapter 1 of the Utah Code~~].

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

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

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The chief administrative officer of each governmental entity shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) their impact on affected persons.

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

(d) In reviewing the rules, the committee shall follow generally accepted principles of statutory construction.

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

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

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

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

(i) its findings, if any; and

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

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

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

(7) (a) The committee may submit a report on its review of state agency rules to each

member of the Legislature at each regular session.

(b) The report shall include:

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

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

(iii) any recommendations by the committee for legislation.

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

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

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

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

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

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

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

(b) These rules shall:

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

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

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

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

(ii) the type of project;

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

(iv) the location of the project;

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

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

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

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

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

(b) Those rules shall require that:

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

(ii) when entering into any subcontract that was not specifically included in the Construction Manager/General Contractor's cost proposal submitted under the requirements of Subsection (2)[~~(c)(ii)~~] (b)(i), the Construction Manager/General Contractor shall procure that subcontractor by using one of the source selection methods provided for in Sections 63-56-20 through 63-56-35.8 of this chapter in the same manner as if the subcontract work was procured directly by the state.

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

Section 43. Section **67-19-39** is amended to read:

**67-19-39. Exemptions.**

Peace officers, as defined under Title 53, Chapter [~~10~~] 13, Peace Officer Classifications, acting in their official capacity as peace officers in undercover roles and assignments, are exempt from the provisions of this act.

Section 44. Section **67-20-6** is amended to read:

**67-20-6. Workers' compensation medical benefits.**

A compensatory service worker is considered a government employee for purposes of receiving workers' compensation medical benefits, which shall be the exclusive remedy for all injuries and occupational diseases as provided under:

(1) Title 34A, Chapter [~~(2)~~] 2, Workers' Compensation Act[~~,~~]; and

(2) Title 34A, Chapter 3, Utah Occupational Disease Act.

Section 45. Section **67-20-7** is amended to read:

**67-20-7. Workers' compensation benefits for volunteer firefighters.**

(1) In addition to the purposes set out in Subsections 67-20-3(2) and (3), a volunteer firefighter, as defined in Section 49-5-103, is considered an agency employee for the purpose of receiving workers' compensation benefits under:

(a) Title [~~35A~~] 34A, Chapter [~~3~~] 2, Workers' Compensation Act; and

(b) Title 34A, Chapter [~~3a~~] 3, Utah Occupational Disease Act.

(2) These benefits are the exclusive remedy for all injuries and occupational diseases resulting from his services as a volunteer firefighter. Compensation shall be computed as indicated in Section 49-5-802.

Section 46. Section **72-9-501** is amended to read:

**72-9-501. Construction, operation, and maintenance of ports-of-entry by the department -- Function of ports-of-entry -- Checking and citation powers of port-of-entry agents.**

(1) (a) The department shall construct ports-of-entry for the purpose of checking motor carriers, drivers, vehicles, and vehicle loads for compliance with state and federal laws including laws relating to:

(i) driver qualifications;

(ii) Title 53, Chapter 3, Part 4, Uniform Commercial Driver License Act;

(iii) vehicle registration;

(iv) fuel tax payment;

(v) vehicle size, weight, and load;

(vi) security or insurance;

(vii) this chapter;

(viii) hazardous material as defined under 49 U.S.C. [~~app. Sec. 1802~~] 5102;

(ix) livestock transportation; and

(x) safety.

(b) The ports-of-entry shall be located on state highways at sites determined by the department.

(2) (a) The ports-of-entry shall be operated and maintained by the department.

(b) A port-of-entry agent may check, inspect, or test drivers, vehicles, and vehicle loads for compliance with state and federal laws specified in Subsection (1).

(3) (a) A port-of-entry agent, in whose presence an offense described in this section is committed, may:

(i) issue and deliver a misdemeanor or infraction citation under Section 77-7-18;

(ii) request and administer chemical tests to determine blood alcohol concentration in compliance with Section 41-6-44.3;

(iii) place a driver out-of-service in accordance with Section 53-3-417; and

(iv) serve a driver with notice of the Driver License Division of the Department of Public Safety's intention to disqualify the driver's privilege to drive a commercial motor vehicle in accordance with Section 53-3-418.

(b) This section does not grant actual arrest powers as defined in Section 77-7-1 to a port-of-entry agent who is not a peace officer or special function officer designated under Title 53, Chapter 13, Peace Officer Classifications.

Section 47. Section **76-3-501** is amended to read:

**76-3-501. Vehicle subject to forfeiture -- Seizure -- Procedure.**

(1) Any vehicle used in the commission of, attempt to commit, or flight after commission of any felony in which a firearm or other dangerous weapon as defined in Section 76-10-501, or explosive, chemical, or incendiary device or parts as defined in Section 76-10-306 is used, or any vehicle used in the commission of the illegal possession or sale of a firearm in or from the vehicle, is subject to forfeiture.

(2) Vehicles subject to forfeiture under this section may be seized by any peace officer of this state upon process issued by any court having jurisdiction over the vehicle. However, seizure without process may be made when:

(a) the seizure is incident to a lawful arrest, with or without an arrest warrant;

(b) the vehicle is seized incident to a lawful search with or without a search warrant or an inspection under an administrative inspection warrant;

(c) the vehicle subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding; or

(d) the peace officer seizing the vehicle has probable cause to believe that the vehicle has been used or is intended to be used in violation of this section and the peace officer reasonably believes that the vehicle will be lost, damaged, or used in further violation of law if the officer delays seizure to obtain a warrant.

(3) Forfeiture proceedings under this section shall be instituted promptly in accordance with the procedures and substantive protections of [~~the~~] Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act[~~, Title 24, Chapter 1, of the Utah Code~~].

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

(a) remove the vehicle to a place designated by the court, official, or the warrant under which the vehicle was seized; or

(b) take custody of the vehicle and remove it to an appropriate location for disposition in accordance with law.

Section 48. Section **76-10-1107** is amended to read:

**76-10-1107. Seizure and sale of devices or equipment used for gambling.**

(1) Whenever any magistrate shall determine that any devices or equipment is used or kept for the purpose of being used for gambling, the magistrate may authorize the county commissioner of the county wherein the seizure occurred, in conjunction with the sheriff, or if the seizure occurred

within the limits of an incorporated city or town, may authorize its governing body, in conjunction with its chief law enforcement officer, to seize the devices or equipment and institute forfeiture proceedings in accordance with the procedures and substantive protections of [~~the~~] Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act[~~, Title 24, Chapter 1, of the Utah Code~~].

(2) The proceeds of any sale shall be paid to the Uniform School Fund, [~~Title 53A, Chapter 16, Section 101 of the Utah Code~~] as provided in Section 53A-16-101.

Section 49. Section **76-10-1603.5** is amended to read:

**76-10-1603.5. Violation a felony -- Costs -- Forfeiture -- Fines -- Divestiture -- Restrictions -- Dissolution or reorganization -- Prior restraint.**

(1) A person who violates any provision of Section 76-10-1603 is guilty of a second degree felony. In addition to penalties prescribed by law, the court may order the person found guilty of the felony to pay to the state, if the attorney general brought the action, or to the county, if the county attorney or district attorney brought the action, the costs of investigating and prosecuting the offense and the costs of securing the forfeitures provided for in this section. The person shall forfeit to the Uniform School Fund, [~~Title 53A, Chapter 16, Section 101, of the Utah Code~~] as provided in Section 53A-16-101:

(a) any interest acquired or maintained in violation of any provision of Section 76-10-1603;

(b) any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of in violation of Section 76-10-1603; and

(c) any property constituting or derived from the net proceeds which the person obtained, directly or indirectly, from the conduct constituting the pattern of unlawful activity or from any act or conduct constituting the pattern of unlawful activity proven as part of the violation of any provision of Section 76-10-1603.

(2) If a violation of Section 76-10-1603 is based on a pattern of unlawful activity consisting of acts or conduct in violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222, the property subject to forfeiture under this section is limited to property, the seizure or forfeiture of which would not constitute a prior restraint on the exercise of an affected party's rights under the

First Amendment to the Constitution of the United States or Article I, Sec. 15 of the Utah Constitution, or would not otherwise unlawfully interfere with the exercise of those rights.

(3) In lieu of a fine otherwise authorized by law for a violation of Section 76-10-1603, a defendant who derives net proceeds from a conduct prohibited by Section 76-10-1603[~~,~~] may be fined not more than twice the amount of the net proceeds.

(4) Property subject to criminal forfeiture in accord with the procedures and substantive protections of [~~the~~] Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act [~~Title 24, Chapter 1, of the Utah Code~~]:

(a) includes:

[~~(a)~~] (i) real property, including things growing on, affixed to, and found in land; and

[~~(b)~~] (ii) tangible and intangible personal property including money, rights, privileges, interests, claims, and securities of any kind; [~~(c)~~] but

(b) does not include property exchanged or to be exchanged for services rendered in connection with the defense of the charges or any related criminal case.

(5) Upon conviction for violating any provision of Section 76-10-1603, and in addition to any penalty prescribed by law and in addition to any forfeitures provided for in this section, the court may do any or all of the following:

(a) order the person to divest himself of any interest in or any control, direct or indirect, of any enterprise;

(b) impose reasonable restrictions on the future activities or investments of any person, including prohibiting the person from engaging in the same type of endeavor as the enterprise engaged in, to the extent the Utah Constitution and the Constitution of the United States permit; or

(c) order the dissolution or reorganization of any enterprise.

(6) If a violation of Section 76-10-1603 is based on a pattern of unlawful activity consisting of acts or conduct in violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222, the court may not enter any order that would amount to a prior restraint on the exercise of an affected party's rights under the First Amendment to the Constitution of the United States or Article I, [~~Sec. 15 of the~~] Section 15, Utah Constitution.

(7) All rights, title, and interest in forfeitable property described in Subsections (1) and (2) vest in the state treasurer, on behalf of the Uniform School Fund, upon the commission of the act or conduct giving rise to the forfeiture under this section.

(8) For purposes of this section, the "net proceeds" of an offense means property acquired as a result of the violation minus the direct costs of acquiring the property.

Section 50. Section **76-10-1908** is amended to read:

**76-10-1908. Forfeiture -- Grounds -- Procedure -- Disposition of property seized.**

(1) (a) Any of the following property shall be subject to civil or criminal forfeiture:

(i) any conveyance including vehicles, aircraft, watercraft, or other vessel used in violation of Section 76-10-1904; and

(ii) any property which is the net proceeds of a violation of Section 76-10-1903, 76-10-1904, or 76-10-1906.

(b) For purposes of this section, the "net proceeds" of an offense means property acquired as a result of the violation minus the direct costs of acquiring the property.

(2) Property subject to forfeiture under Subsection (1) may be seized by any peace officer of this state upon process issued by any court having jurisdiction over the property. However, seizure without process may be made when:

(a) the seizure is incident to an arrest or search under a search warrant, an inspection under an administrative inspection warrant, under a writ of attachment, or under a writ of garnishment;

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

(c) the peace officer has probable cause to believe that the property has been used in violation of Section 76-10-1903, 76-10-1904, or 76-10-1906.

(3) Forfeiture proceedings under this section shall be commenced in accordance with the procedures and substantive protections of [~~the~~] Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act[~~, Title 24, Chapter 1, of the Utah Code~~].

(4) Property taken or detained under this section is not repleviable but is in custody of the law enforcement agency making the seizure, subject only to the orders and decrees of the court or

the official having jurisdiction. When property is seized under this chapter, the appropriate person or agency may:

(a) place the property under seal;

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

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

Section 51. Section **77-38a-302** is amended to read:

**77-38a-302. Restitution criteria.**

(1) When a defendant is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to victims of crime as provided in this Subsection (1), or for conduct for which the defendant has agreed to make restitution as part of a plea disposition. For purposes of restitution, a victim has the meaning as defined in Subsection 77-38a-102[~~(12)~~] (13) and in determining whether restitution is appropriate, the court shall follow the criteria and procedures as provided in Subsections (2) through (5).

(2) In determining restitution, the court shall determine complete restitution and court-ordered restitution.

(a) "Complete restitution" means restitution necessary to compensate a victim for all losses caused by the defendant.

(b) "Court-ordered restitution" means the restitution the court having criminal jurisdiction orders the defendant to pay as a part of the criminal sentence at the time of sentencing.

(c) Complete restitution and court-ordered restitution shall be determined as provided in Subsection (5).

(3) If the court determines that restitution is appropriate or inappropriate under this part, the court shall make the reasons for the decision part of the court record.

(4) If the defendant objects to the imposition, amount, or distribution of the restitution, the court shall at the time of sentencing allow the defendant a full hearing on the issue.

(5) (a) For the purpose of determining restitution for an offense, the offense shall include any criminal conduct admitted by the defendant to the sentencing court or to which the defendant agrees to pay restitution. A victim of an offense that involves as an element a scheme, a conspiracy, or a pattern of criminal activity, includes any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern.

(b) In determining the monetary sum and other conditions for complete restitution, the court shall consider all relevant facts, including:

(i) the cost of the damage or loss if the offense resulted in damage to or loss or destruction of property of a victim of the offense;

(ii) the cost of necessary medical and related professional services and devices relating to physical or mental health care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(iii) the cost of necessary physical and occupational therapy and rehabilitation;

(iv) the income lost by the victim as a result of the offense if the offense resulted in bodily injury to a victim; and

(v) the cost of necessary funeral and related services if the offense resulted in the death of a victim.

(c) In determining the monetary sum and other conditions for court-ordered restitution, the court shall consider the factors listed in Subsections (5)(a) and (b) and:

(i) the financial resources of the defendant and the burden that payment of restitution will impose, with regard to the other obligations of the defendant;

(ii) the ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;

(iii) the rehabilitative effect on the defendant of the payment of restitution and the method of payment; and

(iv) other circumstances which the court determines may make restitution inappropriate.

(d) The court may decline to make an order or may defer entering an order of restitution if the court determines that the complication and prolongation of the sentencing process, as a result of

considering an order of restitution under this subsection, substantially outweighs the need to provide restitution to the victim.

Section 52. Section **78-30-7** is amended to read:

**78-30-7. Jurisdiction of district and juvenile court -- Time for filing.**

(1) Adoption proceedings shall be commenced by filing a petition with the clerk of the district court either:

(a) in the district where the person adopting resides; or

(b) with the juvenile court as provided in Subsection 78-3a-104(1)(o).

(2) If a child is conceived in Utah, adoption proceedings may be commenced by filing a petition with the clerk of [~~a~~] the district court in the district [~~court~~] where the child was born.

(3) All orders, decrees, agreements, and notices in the proceedings shall be filed with the clerk of the court where the adoption proceedings were commenced under Subsection (1) or (2).

(4) A petition for adoption shall be filed within 30 days of the date the adoptee is placed in the home of the petitioners for the purpose of adoption, unless the time for filing has been extended by the court, or unless the adoption is arranged by a licensed child-placing agency in which case the agency may extend the filing time.

Section 53. **Repealer.**

This act repeals:

Section **53-7-108, Electronic writing.**

Section 54. **Effective date.**

This act takes effect on May 6, 2002, except that the amendments to Section 31A-23-202 (Effective 07/01/02) take effect on July 1, 2002.