

**REVISOR'S STATUTE**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: Marda Dillree**

5	J. Morgan Philpot	David Clark	Ty McCartney
6	Eli H. Anderson	Margaret Dayton	Jack A. Seitz
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**10 This act modifies parts of the Utah Code to make technical corrections including**  
**11 wording, cross references, and numbering changes.**

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

13 AMENDS:

14 **10-1-203**, as last amended by Chapter 172, Laws of Utah 2000  
15 **11-17-3**, as last amended by Chapter 30, Laws of Utah 1992  
16 **11-27-2**, as last amended by Chapter 12, Laws of Utah 2001  
17 **13-28-3**, as enacted by Chapter 196, Laws of Utah 1995  
18 **13-34-105**, as enacted by Chapter 222, Laws of Utah 2002  
19 **13-35-103**, as enacted by Chapter 234, Laws of Utah 2002  
20 **13-35-202**, as enacted by Chapter 234, Laws of Utah 2002  
21 **13-35-203**, as enacted by Chapter 234, Laws of Utah 2002  
22 **13-35-204**, as enacted by Chapter 234, Laws of Utah 2002  
23 **16-6a-102**, as last amended by Chapter 197, Laws of Utah 2002  
24 **17-27-106**, as enacted by Chapter 169, Laws of Utah 1999  
25 **17-52-401**, as last amended by Chapter 241, Laws of Utah 2001  
26 **17A-1-301**, as last amended by Chapter 1, Laws of Utah 2000  
27 **17A-1-403**, as last amended by Chapter 106, Laws of Utah 1999  
28 **17A-2-405**, as last amended by Chapter 284, Laws of Utah 2002



- 29           **17A-2-1304**, as last amended by Chapter 243, Laws of Utah 2002  
30           **17A-3-606**, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session  
31           **19-2-104**, as last amended by Chapter 177, Laws of Utah 1998  
32           **20A-3-105.5**, as enacted by Chapter 177, Laws of Utah 2002  
33           **20A-5-403**, as last amended by Chapter 167, Laws of Utah 2002  
34           **26A-1-110**, as last amended by Chapter 249, Laws of Utah 2002  
35           **31A-1-301**, as last amended by Chapters 71 and 308, Laws of Utah 2002  
36           **31A-5-101**, as last amended by Chapter 197, Laws of Utah 2002  
37           **31A-9-101**, as last amended by Chapter 300, Laws of Utah 2000  
38           **31A-21-105**, as last amended by Chapter 114, Laws of Utah 2000  
39           **31A-22-617**, as last amended by Chapter 308, Laws of Utah 2002  
40           **34A-2-301**, as renumbered and amended by Chapter 375, Laws of Utah 1997  
41           **49-15-102**, as renumbered and amended by Chapter 250, Laws of Utah 2002  
42           **49-21-102**, as renumbered and amended by Chapter 250, Laws of Utah 2002  
43           **53-1-106**, as last amended by Chapter 219, Laws of Utah 2002  
44           **53-3-218**, as last amended by Chapter 200, Laws of Utah 2002  
45           **53-3-402**, as last amended by Chapter 270, Laws of Utah 1998  
46           **53-3-805**, as last amended by Chapter 117, Laws of Utah 2001  
47           **53-8-213**, as last amended by Chapter 21, Laws of Utah 1999  
48           **53A-1a-601**, as last amended by Chapter 198, Laws of Utah 2002  
49           **54-15-106**, as enacted by Chapter 6, Laws of Utah 2002  
50           **58-13-4**, as last amended by Chapter 248 and renumbered and amended by Chapter  
51 253, Laws of Utah 1996  
52           **58-31b-202**, as last amended by Chapter 290, Laws of Utah 2002  
53           **58-37-2**, as last amended by Chapter 64, Laws of Utah 1997  
54           **58-57-2**, as last amended by Chapter 297, Laws of Utah 1993  
55           **58-59-501**, as last amended by Chapter 261, Laws of Utah 2002  
56           **58-60-507**, as enacted by Chapter 184, Laws of Utah 1996  
57           **58-60-509**, as enacted by Chapter 248, Laws of Utah 1997  
58           **58-61-602**, as enacted by Chapter 32, Laws of Utah 1994  
59           **58-71-102**, as last amended by Chapter 10, Laws of Utah 1997

60           **58-71-302**, as enacted by Chapter 282, Laws of Utah 1996  
61           **58-76-502**, as enacted by Chapter 218, Laws of Utah 2002  
62           **59-1-206**, as last amended by Chapters 79 and 176, Laws of Utah 2002  
63           **59-14-408**, as enacted by Chapter 175, Laws of Utah 2002  
64           **62A-3-301**, as repealed and reenacted by Chapter 108, Laws of Utah 2002  
65           **62A-11-304.4**, as last amended by Chapter 59, Laws of Utah 2002  
66           **63-2-304**, as last amended by Chapters 78, 86, 108, 283 and 286, Laws of Utah 2002  
67           **63-55-236**, as last amended by Chapter 5, Laws of Utah 2002, Fifth Special Session  
68           **63-55b-120**, as last amended by Chapter 136, Laws of Utah 2002  
69           **63-55b-123**, as enacted by Chapter 22, Laws of Utah 2001  
70           **63-55b-134**, as last amended by Chapter 200, Laws of Utah 2001  
71           **63-55b-153**, as last amended by Chapters 49, 219 and 301, Laws of Utah 2002  
72           **63-55b-172**, as enacted by Chapter 222, Laws of Utah 2001  
73           **70A-2-403**, as enacted by Chapter 154, Laws of Utah 1965  
74           **70A-11-105**, as enacted by Chapter 272, Laws of Utah 1977  
75           **70A-11-106**, as enacted by Chapter 272, Laws of Utah 1977  
76           **72-1-303**, as last amended by Chapter 41, Laws of Utah 2001  
77           **72-3-104**, as last amended by Chapter 324, Laws of Utah 2000  
78           **73-10-2**, as last amended by Chapter 176, Laws of Utah 2002  
79           **75-2-1001**, as repealed and reenacted by Chapter 39, Laws of Utah 1998  
80           **78-3a-306**, as last amended by Chapter 265, Laws of Utah 2002  
81           **78-11-6**, as last amended by Chapter 240, Laws of Utah 1996  
82           **78-11-7**, as last amended by Chapter 240, Laws of Utah 1996  
83           **78-27-37**, as last amended by Chapter 95, Laws of Utah 1999  
84           **78-27-43**, as last amended by Chapter 95, Laws of Utah 1999  
85           **78-36-10.5**, as last amended by Chapter 118, Laws of Utah 1998

86 REPEALS:

87           **9-1-701**, as enacted by Chapter 66, Laws of Utah 1993  
88           **58-60-505**, as enacted by Chapter 184, Laws of Utah 1996

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

90           Section 1. Section **10-1-203** is amended to read:

91           **10-1-203. License fees and taxes -- Application information to be transmitted to**  
92 **the county auditor.**

93           (1) For the purpose of this section, "business" means any enterprise carried on for the  
94 purpose of gain or economic profit, except that the acts of employees rendering services to  
95 employers are not included in this definition.

96           (2) Except as provided in Subsections (3) through (5), the governing body of a  
97 municipality may license for the purpose of regulation and revenue any business within the  
98 limits of the municipality and may regulate that business by ordinance.

99           (3) (a) The governing body of a municipality may raise revenue by levying and  
100 collecting a municipal energy sales or use tax as provided in Part 3, Municipal Energy Sales  
101 and Use Tax Act, except a municipality may not levy or collect a franchise tax or fee as defined  
102 in Subsection 10-1-303(7) on an energy supplier other than the municipal energy sales and use  
103 tax provided in Part 3, Municipal Energy Sales and Use Tax Act.

104           (b) (i) Subsection (3)(a) does not affect the validity of a franchise agreement as defined  
105 in Subsection 10-1-303(6), that is in effect on July 1, 1997, or a future franchise.

106           (ii) A franchise agreement as defined in Subsection 10-1-303(6) in effect on January 1,  
107 1997, or a future franchise shall remain in full force and effect.

108           (c) A municipality that collects a contractual franchise fee pursuant to a franchise  
109 agreement as defined in Subsection 10-1-303(6) with an energy supplier that is in effect on July  
110 1, 1997, may continue to collect that fee as provided in Subsection 10-1-310(2).

111           (d) (i) Subject to the requirements of Subsection (3)(d)(ii), a franchise agreement as  
112 defined in Subsection 10-1-303(6) between a municipality and an energy supplier may contain  
113 a provision that:

114           (A) requires the energy supplier by agreement to pay a contractual franchise fee that is  
115 otherwise prohibited under Part 3, Municipal Energy Sales and Use Tax Act; and

116           (B) imposes the contractual franchise fee on or after the day on which Part 3,  
117 Municipal Energy Sales and Use Tax is:

118           (I) repealed, invalidated, or the maximum allowable rate provided in Section 10-1-305  
119 is reduced; and

120           (II) is not superseded by a law imposing a substantially equivalent tax.

121           (ii) A municipality may not charge a contractual franchise fee under the provisions

122 permitted by Subsection (3)(b)(i) unless the municipality charges an equal contractual franchise  
123 fee or a tax on all energy suppliers.

124 (4) Subject to [~~the provisions of~~] Title 11, Chapter 26, Local Taxation of Utilities  
125 Limitation, a municipality may impose upon, charge, or collect from a public utility engaged in  
126 the business of supplying telephone service or other person or entity engaged in the business of  
127 supplying telephone service any tax, license, fee, license fee, license tax, or similar charge, or  
128 any combination of any of these, based upon the gross revenues of the utility, person, or entity  
129 derived from sales or use or both sales and use of the telephone service within the municipality.

130 (5) (a) The governing body of a municipality may by ordinance raise revenue by  
131 levying and collecting a license fee or tax on:

132 (i) a parking service business in an amount that is less than or equal to:

133 (A) \$1 per vehicle that parks at the parking service business; or

134 (B) 2% of the gross receipts of the parking service business;

135 (ii) a public assembly facility in an amount that is less than or equal to \$1 per ticket  
136 purchased from the public assembly facility; and

137 (iii) subject to the limitations of Subsections (5)(c) and (d), a business that causes  
138 disproportionate costs of municipal services or for which the municipality provides an  
139 enhanced level of municipal services in an amount that is reasonably related to the costs of the  
140 municipal services provided by the municipality.

141 (b) For purposes of this Subsection (5):

142 (i) "Municipal services" include:

143 (A) public utilities; or

144 (B) services for:

145 (I) police;

146 (II) fire;

147 (III) storm water runoff;

148 (IV) traffic control;

149 (V) parking;

150 (VI) transportation;

151 (VII) beautification; or

152 (VIII) snow removal.

- 153 (ii) "Parking service business" means a business:  
154 (A) that primarily provides off-street parking services for a public facility that is  
155 wholly or partially funded by public moneys;  
156 (B) that provides parking for one or more vehicles; and  
157 (C) that charges a fee for parking.
- 158 (iii) "Public assembly facility" means a business operating an assembly facility that:  
159 (A) is wholly or partially funded by public moneys; and  
160 (B) requires a person attending an event at the assembly facility to purchase a ticket.
- 161 (c) Before the governing body of a municipality imposes a license fee or tax on a  
162 business that causes disproportionate costs of municipal services under Subsection (5)(a)(iii),  
163 the governing body of the municipality shall adopt an ordinance defining for purposes of the  
164 tax under Subsection (5)(a)(iii) what constitutes disproportionate costs and what amounts are  
165 reasonably related to the costs of the municipal services provided by the municipality.
- 166 (d) Before the governing body of a municipality imposes a license fee or tax on a  
167 business for which it provides an enhanced level of municipal services under Subsection  
168 (5)(a)(iii), the governing body of the municipality shall adopt an ordinance defining for  
169 purposes of the tax under Subsection (5)(a)(iii) what constitutes the basic level of municipal  
170 services in the municipality and what amounts are reasonably related to the costs of providing  
171 an enhanced level of municipal services in the municipality.
- 172 (6) All license fees and taxes shall be uniform in respect to the class upon which they  
173 are imposed.
- 174 (7) The governing body shall transmit the information from each approved business  
175 license application to the county assessor within 60 days following the approval of the  
176 application.
- 177 (8) If challenged in court, an ordinance enacted by a municipality before January 1,  
178 1994, imposing a business license fee or tax on rental dwellings under this section shall be  
179 upheld unless the business license fee or tax is found to impose an unreasonable burden on the  
180 fee or tax payer.
- 181 Section 2. Section **11-17-3** is amended to read:  
182 **11-17-3. Powers of municipalities, counties, and state universities.**  
183 (1) Each municipality, county, and state university may:

184 (a) finance or acquire, whether by construction, purchase, devise, gift, exchange, or  
185 lease, or any one or more of those methods, and construct, reconstruct, improve, maintain,  
186 equip, and furnish or fund one or more projects, which shall be located within this state, and  
187 which shall be located within, or partially within, the municipality or county or within the  
188 county within which a state university is located, unless an agreement under the Interlocal  
189 Cooperation Act has been entered into as authorized by Subsection (5), except that if a  
190 governing body finds, by resolution, that the effects of international trade practices have been  
191 or will be adverse to Utah manufacturers of industrial products and, therefore, it is desirable to  
192 finance a project in order to maintain or enlarge domestic or foreign markets for Utah industrial  
193 products, a project may consist of the financing on behalf of a user of the costs of acquiring  
194 industrial products manufactured in, and which are to be exported from, the state of Utah;

195 (b) finance for, sell, lease, contract the management of, or otherwise dispose of to, any  
196 person, firm, partnership, or corporation, either public or private, including without limitation  
197 any person, firm, partnership, or corporation engaged in business for a profit, any or all of its  
198 projects upon the terms and conditions as the governing body deems advisable and which do  
199 not conflict with this chapter;

200 (c) issue revenue bonds for the purpose of defraying the cost of financing, acquiring,  
201 constructing, reconstructing, improving, maintaining, equipping, furnishing, or funding any  
202 project and secure the payment of the bonds as provided in this chapter, which revenue bonds  
203 may be issued in one or more series or issues where deemed advisable, and each series or issue  
204 may contain different maturity dates, interest rates, priorities on securities available for  
205 guaranteeing payment of them, and other differing terms and conditions deemed necessary and  
206 not in conflict with this chapter;

207 (d) (i) grant options to renew any lease with respect to any project and to buy any  
208 project at a price the governing body deems desirable; and

209 (ii) sell and convey any real or personal property acquired under Subsection (1)(a) at  
210 public or private sale, and make an order respecting the sale deemed conducive to the best  
211 interests of the municipality, county, or state university, the sale or conveyance to be subject to  
212 the terms of any lease but to be free and clear of any other encumbrance;

213 (e) establish, acquire, develop, maintain, and operate industrial parks; and

214 (f) offer to the holders of its bonds issued pursuant to this chapter the right, where its

215 governing body deems it appropriate, to convert the bonds or some portion of the bond  
216 obligation into an equity position in some or all of the assets developed with the proceeds of  
217 the bond offering.

218 (2) An economic development or new venture investment fund shall be considered to  
219 be located in the municipality or county where its headquarters is located or where any office of  
220 it is located, as long as it is headquartered within the state. It need not make all of its  
221 investments within the state of Utah or such county or municipality, so long as it locates within  
222 the state of Utah or such county or municipality its headquarters where its actual investment  
223 decisions and management functions occur and agrees to, and does, limit the aggregate amount  
224 of its investments in companies located outside the state of Utah to an amount which in the  
225 aggregate does not exceed the aggregate amount of investments made by institutions and funds  
226 located outside the state of Utah in companies headquartered in Utah which the locally  
227 managed fund has sponsored or in which it has invested and which it has brought to the  
228 attention of investors outside the state of Utah. For purposes of enabling an offering of bonds  
229 to fund such a fund, a certification of an executive managerial officer of the manager of said  
230 fund of the intention to comply with this provision may be relied upon. Each fund shall at least  
231 annually certify to the governmental offeror of such bonds its compliance with this provision.

232 (3) Before any municipality, county, or state university issues revenue bonds under this  
233 chapter for the purpose of defraying the cost of acquiring, constructing, reconstructing,  
234 improving, maintaining, equipping, or furnishing any industrial park project, the governing  
235 body of the state university, county, or municipality shall adopt and establish a plan of  
236 development for the tracts of land to constitute the industrial park and shall, by resolution, find  
237 that the project for the establishment of the industrial park is well conceived and has a  
238 reasonable prospect of success, that the project will tend to provide proper economic  
239 development of the municipality or county and will encourage industry to locate within or near  
240 the municipality or county or, in the case of state universities, will further, through industrial  
241 research and development, the instructional progress of the state university. There may be  
242 included as a part of any plan of development for any industrial park zoning regulations,  
243 restrictions on usage of sites within the boundaries of the industrial park, minimum size of  
244 sites, parking and loading regulations, and methods for the providing and furnishing of police  
245 and fire protection and for the furnishing of other municipal or county services which are



246 deemed necessary in order to provide for the maintenance of the public health and safety. If  
247 any water or sewerage facilities are to be acquired as part of the development of the land for an  
248 industrial park under this chapter, water and sewerage facilities may be acquired as part of the  
249 issue of bonds issued under this chapter, through the issuance of bonds payable from water and  
250 sewer charges in the manner as is now or as may hereafter be provided by law, in combination  
251 with an issue of refunding bonds, in combination with an issue of bonds upon the consent of  
252 the holders of outstanding bonds issued for the same purpose, in combination with bonds  
253 issued for the purposes of financing water and sewer facilities which will not be a part of an  
254 industrial park, or in any combination of the foregoing. Any municipality, county, or state  
255 university establishing an industrial park may lease any land acquired and developed as part of  
256 an industrial park to one or more lessees. The lessee may sublease all or a portion of the land  
257 so leased from the municipality or county. Municipalities, counties, and state universities may  
258 sell or lease land in connection with the establishment, acquisition, development, maintenance,  
259 and operation of an industrial park project. Any such lease or sale of land shall be undertaken  
260 only after the adoption by the governing body of a resolution authorizing the lease or sale of the  
261 land for industrial park purposes.

262 (4) (a) No municipality, county, or state university may operate any project referred to  
263 in this section, as a business or in any other manner except as the lessor or administrator of it,  
264 nor may it acquire any such project, or any part of it, by condemnation. This prohibition does  
265 not apply to projects involving research conducted, administered, or managed by a state  
266 university.

267 (b) No municipality, county, or state university may, under this chapter, acquire or  
268 lease projects, or issue revenue bonds for the purpose of defraying the cost of any project or  
269 part of it, used for the generation, transmission, or distribution of electric energy beyond the  
270 project site, or the production, transmission, or distribution of natural gas, except for any  
271 project defined in Subsection 11-17-2(8)(b) or (d).

272 (5) Each municipality, county, and state university may enter, either before or after the  
273 bonds have been issued, into interlocal agreements under Title 11, Chapter 13, Interlocal  
274 Cooperation Act, with one or more municipalities, counties, state universities, or special  
275 service districts created pursuant to Title 17A, Chapter 2, Part 13, Utah Special Service District  
276 Act, in order to accomplish economies of scale or other cost savings and any other additional

277 purposes to be specified in the interlocal agreement, for the issuance of bonds under this  
278 chapter on behalf of all of the signatories to the interlocal agreement by one of the  
279 municipalities, counties, or state universities which is a signatory to the interlocal agreement  
280 for the financing or acquisition of projects qualifying as a project under Subsection 11-17-2(8).

281 For all purposes of Section [~~11-13-7~~] 11-13-207 the signatory to the interlocal agreement  
282 designated as the issuer of the bonds constitutes the administrator of the interlocal agreement.

283 (6) Subsection (4) to the contrary notwithstanding, the governing body of any state  
284 university owning or desiring to own facilities or administer projects described in Subsection  
285 11-17-2(8) may:

286 (a) become a signatory to the interlocal agreement provided for in Subsection (5);

287 (b) enter into a separate security agreement with the issuer of the bonds, as provided in  
288 Section 11-17-5 for the financing or acquisition of a project under Subsection 11-17-2(8) to be  
289 owned by the state university;

290 (c) enter into agreements to secure the obligations of the state university under a  
291 security agreement entered into under Subsection (6)(b), or to provide liquidity for such  
292 obligations including, without limitation, letter of credit agreements with banking institutions  
293 for letters of credit or for standby letters of credit, reimbursement agreements with financial  
294 institutions, line of credit agreements, standby bond purchase agreements, and to provide for  
295 payment of fees, charges, and other amounts coming due under the agreements entered into  
296 under the authority contained in this Subsection (6)(c);

297 (d) provide in security agreements entered into under Subsection (6)(b) and in  
298 agreements entered into under Subsection (6)(c) that the obligations of the state university  
299 under an agreement shall be special obligations payable solely from the revenues derived from  
300 the operation or management of the project, owned by the state university and from net profits  
301 from proprietary activities and any other revenues pledged other than appropriations by the  
302 Utah Legislature, and the governing body of the state university shall pledge all or any part of  
303 such revenues to the payment of its obligations under an agreement; and

304 (e) in order to secure the prompt payment of the obligations of the state university  
305 under a security agreement entered into under Subsection (6)(b) or an agreement entered into  
306 under Subsection (6)(c) and the proper application of the revenues pledged to them, covenant  
307 and provide appropriate provisions in an agreement to the extent permitted and provided for

308 under Section 53B-21-102.

309 (7) Subsection (4) to the contrary notwithstanding, the governing body of any  
310 municipality, county, or special service district owning, desiring to own, or administering  
311 projects or facilities described in Subsection 11-17-2(8) may:

312 (a) become a signatory to the interlocal agreement provided for in Subsection (5);

313 (b) enter into a separate security agreement with the issuer of the bonds, as provided in  
314 Section 11-17-5, for the financing or acquisition of a project under Subsection 11-17-2(8) to be  
315 owned by the municipality, county, or special service district, as the case may be, except that  
316 no municipality, county, or special service district may mortgage the facilities so financed or  
317 acquired;

318 (c) enter into agreements to secure the obligations of the municipality, county, or  
319 special service district, as the case may be, under a security agreement entered into under  
320 Subsection (7)(b), or to provide liquidity for such obligations including, without limitation,  
321 letter of credit agreements with banking institutions for letters of credit or for standby letters of  
322 credit, reimbursement agreements with financial institutions, line of credit agreements, standby  
323 bond purchase agreements, and to provide for payment of fees, charges, and other amounts  
324 coming due under the agreements entered into under the authority contained in this Subsection  
325 (7)(c);

326 (d) provide in security agreements entered into under Subsection (7)(b) and in  
327 agreements entered into under Subsection (7)(c) that the obligations of the municipality,  
328 county, or special service district, as the case may be, under an agreement shall be special  
329 obligations payable solely from the revenues derived from the operation or management of the  
330 project, owned by the municipality, county, or special service district, as the case may be, and  
331 the governing body of the municipality, county, or special service district, as the case may be,  
332 shall pledge all or any part of such revenues to the payment of its obligations under an  
333 agreement; and

334 (e) in order to secure the prompt payment of obligations under a security agreement  
335 entered into under Subsection (7)(b) or an agreement entered into under Subsection (7)(c) and  
336 the proper application of the revenues pledged to them, covenant and provide appropriate  
337 provisions in an agreement to the extent permitted and provided for with respect to revenue  
338 obligations under Section 11-14-17.

339 (8) In connection with the issuance of bonds under this chapter, a municipality, county,  
340 or state university:

341 (a) may provide for the repurchase of bonds tendered by their owners and may enter  
342 into an agreement to provide liquidity for such repurchases, including a letter of credit  
343 agreement, line of credit agreement, standby bond purchase agreement, or other type of  
344 liquidity agreement;

345 (b) may enter into remarketing, indexing, tender agent, or other agreements incident to  
346 the financing of the project or the performance of the issuer's obligations relative to the bonds;  
347 and

348 (c) may provide for payment of fees, charges, and other amounts coming due under the  
349 agreements entered into pursuant to authority contained in Subsection (6).

350 Section 3. Section **11-27-2** is amended to read:

351 **11-27-2. Definitions.**

352 As used in this chapter:

353 (1) "Advance refunding bonds" means refunding bonds issued for the purpose of  
354 refunding outstanding bonds in advance of their maturity.

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

357 (3) "Bond" means any revenue bond, general obligation bond, tax increment bond,  
358 special improvement bond, or refunding bond.

359 (4) "General obligation bond" means any bond, note, warrant, certificate of  
360 indebtedness, or other obligation of a public body payable in whole or in part from revenues  
361 derived from ad valorem taxes and that constitutes an indebtedness within the meaning of any  
362 applicable constitutional or statutory debt limitation.

363 (5) "Governing body" means the council, commission, county legislative body, board  
364 of directors, board of trustees, board of education, board of regents, or other legislative body of  
365 a public body designated in this chapter that is vested with the legislative powers of the public  
366 body, and, with respect to the state, the State Bonding Commission created by Section  
367 63B-1-201.

368 (6) "Government obligations" means:

369 (a) direct obligations of the United States of America, or other securities, the principal

370 of and interest on which are unconditionally guaranteed by the United States of America; or

371 (b) obligations of any state, territory, or possession of the United States, or of any of  
372 the political subdivisions of any state, territory, or possession of the United States, or of the  
373 District of Columbia described in Section 103(a), Internal Revenue Code of 1986.

374 (7) "Issuer" means the public body issuing any bond or bonds.

375 (8) "Public body" means the state or any agency, authority, instrumentality, or  
376 institution of the state, or any municipal or quasi-municipal corporation, political subdivision,  
377 agency, school district, special district, or other governmental entity now or hereafter existing  
378 under the laws of the state.

379 (9) "Refunding bonds" means bonds issued under the authority of this chapter for the  
380 purpose of refunding outstanding bonds.

381 (10) "Resolution" means a resolution of the governing body of a public body taking  
382 formal action under this chapter.

383 (11) "Revenue bond" means any bond, note, warrant, certificate of indebtedness, or  
384 other obligation for the payment of money issued by a public body or any predecessor of any  
385 public body and that is payable from designated revenues not derived from ad valorem taxes or  
386 from a special fund composed of revenues not derived from ad valorem taxes, but excluding all  
387 of the following:

388 (a) any obligation constituting an indebtedness within the meaning of any applicable  
389 constitutional or statutory debt limitation;

390 (b) any obligation issued in anticipation of the collection of taxes, where the entire  
391 issue matures not later than one year from the date of the issue; and

392 (c) any special improvement bond.

393 (12) "Special improvement bond" means any bond, note, warrant, certificate of  
394 indebtedness, or other obligation of a public body or any predecessor of any public body that is  
395 payable from assessments levied on [~~benefited~~] benefitted property and from any special  
396 improvement guaranty fund.

397 (13) "Special improvement guaranty fund" means any special improvement guaranty  
398 fund established under Title 10, Chapter 6, Uniform Fiscal Procedures Act for Utah Cities;  
399 Title 17A, Chapter 3, Part 2, County Improvement Districts[;] Act; or any predecessor or  
400 similar statute.

401 (14) "Tax increment bond" means any bond, note, warrant, certificate of indebtedness,  
402 or other obligation of a public body issued under authority of Title 17A, Chapter 2, Part 16,  
403 Great Salt Lake Development Authority [~~Act~~], or any similar statutes, including Title [~~17A~~]  
404 17B, Chapter [~~2, Part 12, Utah Neighborhood Development~~] 4, Redevelopment Agencies Act.

405 Section 4. Section **13-28-3** is amended to read:

406 **13-28-3. Notice requirement.**

407 If a solicitor represents to an individual that he has been selected or may be eligible to  
408 receive a prize, the solicitor may not request, and the solicitor or sponsor may not accept, a  
409 payment from the individual in any form before the individual receives a written prize notice  
410 that contains all of the information required under Subsection 13-28-4(1) presented in the  
411 [~~matter~~] manner required under Subsections 13-28-4(2) through (6).

412 Section 5. Section **13-34-105** is amended to read:

413 **13-34-105. Exempted institutions.**

414 (1) This chapter does not apply to the following institutions:

415 (a) a Utah institution directly supported, to a substantial degree, with funds provided by  
416 the state, a local school district, or other Utah governmental subdivision;

417 (b) an institution which offers instruction exclusively at or below the 12th grade level;

418 (c) a lawful enterprise which offers only professional review programs, such as C.P.A.  
419 and bar examination review and preparation courses;

420 (d) a Utah private, postsecondary educational institution that is owned, controlled,  
421 operated, or maintained by a bona fide church or religious denomination, which is exempted  
422 from property taxation under the laws of this state;

423 (e) a Utah school or institution which is accredited by a regional or national accrediting  
424 agency recognized by the United States Department of Education. An institution, branch,  
425 extension, or facility operating within the state which is affiliated with an institution operating  
426 in another state must be separately approved by the affiliate's regional or national accrediting  
427 agency to qualify for this exemption;

428 (f) a business organization, trade or professional association, fraternal society, or labor  
429 union that sponsors or conducts courses of instruction or study predominantly for bona fide  
430 employees or members and does not, in advertising, describe itself as a school[~~For~~]; for  
431 purposes of this Subsection (1)(f), a business organization, trade or professional association,

432 fraternal society, or labor union that hires a majority of the persons who successfully complete  
433 its course of instruction or study with a reasonable degree of proficiency and apply for  
434 employment with that same entity is considered to be conducting the course predominantly for  
435 bona fide employees or members;

436 (g) an institution that exclusively offers general education courses or instruction solely  
437 remedial, avocational, nonvocational, or recreational in nature, which does not advertise  
438 occupation objectives or grant educational credentials;

439 (h) an institution which offers only workshops or seminars lasting no longer than three  
440 calendar days and for which academic credit is not awarded; and

441 (i) an institution which offers programs in barbering, cosmetology, real estate,  
442 insurance, or flying that are regulated and approved by a state or federal governmental agency.

443 (2) (a) If available evidence suggests that an exempt institution under this section is not  
444 in compliance with the standards of registration under this chapter and applicable division  
445 rules, the division shall contact the institution and, if appropriate, the state or federal  
446 government agency to request corrective action.

447 (b) Subsection (2)(a) does not apply to an institution exempted under Subsection (1)(e).

448 Section 6. Section **13-35-103** is amended to read:

449 **13-35-103. Utah Powersport Vehicle Franchise Advisory Board -- Creation --**  
450 **Appointment of members -- Alternate members -- Chair -- Quorum -- Conflict of interest.**

451 (1) There is created within the department the Utah Powersport Vehicle Franchise  
452 Advisory Board that consists of:

453 (a) the executive director or the executive director's designee; and

454 (b) six members appointed by the executive director, with the concurrence of the  
455 governor, as follows:

456 (i) three new powersport vehicle franchisees from among the three congressional  
457 districts of the state as the districts were constituted on January 1, 1996, no more than one of  
458 whom shall be located in the same congressional district; and

459 (ii) three members representing powersport vehicle franchisors registered by the  
460 department pursuant to Section 13-35-105, or three members of the general public, none of  
461 whom shall be related to any franchisee, or any combination of these representatives under this  
462 Subsection (1)(b)(ii).

463 (2) The executive director shall also appoint, with the concurrence of the governor, six  
464 alternate members, with one alternate from each of the designations set forth in Subsections  
465 (1)(b)(i) and (1)(b)(ii), who shall take the place of a regular advisory board member from the  
466 same designation at a meeting of the advisory board where that regular advisory board member  
467 is absent or otherwise disqualified from participating in the advisory board meeting.

468 (3) (a) Members of the advisory board shall be appointed for a term of four years.

469 (b) The executive director may adjust the term of members who were appointed to the  
470 advisory board prior to July 1, 2002, by extending the unexpired term of a member for up to  
471 two additional years in order to insure that approximately half of the members are appointed  
472 every two years.

473 (c) In the event of a vacancy on the advisory board, the executive director with the  
474 concurrence of the governor, shall appoint an individual to complete the unexpired term of the  
475 member whose office is vacant.

476 (d) A member may not be appointed to more than two consecutive terms.

477 (4) (a) The executive director or the executive director's designee shall be the chair of  
478 the advisory board.

479 (b) The department shall keep a record of all hearings, proceedings, transactions,  
480 communications, and recommendations of the advisory board.

481 (5) (a) Four or more members of the advisory board constitute a quorum for the  
482 transaction of business.

483 (b) The action of a majority of the members of the advisory board is considered the  
484 action of the advisory board.

485 (6) (a) A member of the advisory board may not participate as a board member in a  
486 proceeding or hearing:

487 (i) involving the member's business or employer; or

488 (ii) when a member, a member's business, family, or employer has a pecuniary interest  
489 in the outcome or other conflict of interest concerning an issue before the advisory board.

490 (b) If a member of the advisory board is disqualified under Subsection (6)(a), the  
491 executive director shall select the appropriate alternate member to act on the issue before the  
492 advisory board as provided in Subsection [~~(1)(c)~~] (2).

493 (7) Except for the executive director or the executive director's designee, an individual



494 may not be appointed or serve on the advisory board while holding any other elective or  
495 appointive state or federal office.

496 (8) (a) (i) A member of the advisory board who is not a government employee shall  
497 receive no compensation or benefits for the member's services, but may receive per diem and  
498 expenses incurred in the performance of the member's official duties at the rates established by  
499 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

500 (ii) A member may decline to receive per diem and expenses for the member's services.

501 (b) (i) A state government officer or employee member who does not receive salary,  
502 per diem, or expenses from the member's agency for the member's service may receive per  
503 diem and expenses incurred in the performance of the member's official duties at the rates  
504 established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

505 (ii) A state government officer or employee member may decline to receive per diem  
506 and expenses for the member's service.

507 (9) The department shall provide necessary staff support to the advisory board.

508 Section 7. Section **13-35-202** is amended to read:

509 **13-35-202. Sale or transfer of ownership.**

510 (1) (a) The franchisor shall give effect to the change in a franchise agreement as a  
511 result of an event listed in Subsection (1)(b):

512 (i) subject to Subsection 13-35-305 (2)(b); and

513 (ii) unless exempted under Subsection (2).

514 (b) The franchisor shall give effect to the change in a franchise agreement pursuant to  
515 Subsection (1)(a) for the:

516 (i) sale of a dealership;

517 (ii) contract for sale of a dealership;

518 (iii) transfer of ownership of a franchisee's dealership by sale, transfer of the business,  
519 or by stock transfer; or

520 (iv) change in the executive management of the franchisee's dealership.

521 (2) A franchisor is exempted from the requirements of Subsection (1) if:

522 (a) the transferee is denied, or would be denied, a new powersport vehicle franchisee's  
523 registration pursuant to Section 13-35-105; or

524 (b) the proposed sale or transfer of the business or change of executive management

525 will be substantially detrimental to the distribution of the franchisor's new powersport vehicles  
526 or to competition in the relevant market area, provided that the franchisor has given written  
527 notice to the franchisee within 60 days following receipt by the franchisor of the following:

528 (i) a copy of the proposed contract of sale or transfer executed by the franchisee and the  
529 proposed transferee;

530 (ii) a completed copy of the franchisor's written application for approval of the change  
531 in ownership or executive management, if any, including the information customarily required  
532 by the franchisor; and

533 (iii) (A) a written description of the business experience of the executive management  
534 of the transferee in the case of a proposed sale or transfer of the franchisee's business; or

535 (B) a written description of the business experience of the person involved in the  
536 proposed change of the franchisee's executive management in the case of a proposed change of  
537 executive management.

538 (3) For purposes of this section, the refusal by the franchisor to accept a proposed  
539 transferee who is of good moral character and who otherwise meets the written, reasonable, and  
540 uniformly applied standards or qualifications, if any, of the franchisor relating to the business  
541 experience of executive management and financial capacity to operate and maintain the  
542 dealership required by the franchisor of its franchisees is presumed to be unreasonable and  
543 undertaken without good cause.

544 (4) (a) If after receipt of the written notice from the franchisor described in Subsection  
545 (1) the franchisee objects to the franchisor's refusal to accept the proposed sale or transfer of  
546 the business or change of executive management, the franchisee may file an application for a  
547 hearing before the board up to 60 days from the date of receipt of the notice.

548 (b) After a hearing, the board shall determine, and enter an order providing that:

549 (i) the proposed transferee or change in executive management shall be approved or  
550 may not be approved for specified reasons; or

551 (ii) a proposed transferee or change in executive management is approved if specific  
552 conditions are timely satisfied.

553 (c) (i) The franchisee shall have the burden of proof with respect to all issues raised by  
554 the franchisee's application for a hearing as provided in this section.

555 (ii) During the pendency of the hearing, the franchise agreement shall continue in effect

556 in accordance with its terms.

557 (d) The board shall expedite, upon written request, any determination sought under this  
558 section.

559 Section 8. Section **13-35-203** is amended to read:

560 **13-35-203. Succession to franchise.**

561 (1) (a) A successor, including a family member of a deceased or incapacitated  
562 franchisee, who is designated by the franchisee may succeed the franchisee in the ownership  
563 and operation of the dealership under the existing franchise agreement if:

564 (i) the designated successor gives the franchisor written notice of an intent to succeed  
565 to the rights of the deceased or incapacitated franchisee in the franchise agreement within 180  
566 days after the franchisee's death or incapacity;

567 (ii) the designated successor agrees to be bound by all of the terms and conditions of  
568 the franchise agreement; and

569 (iii) the designated successor meets the criteria generally applied by the franchisor in  
570 qualifying franchisees.

571 (b) A franchisor may refuse to honor the existing franchise agreement with the  
572 designated successor only for good cause.

573 (2) (a) The franchisor may request in writing from a designated successor the personal  
574 and financial data that is reasonably necessary to determine whether the existing franchise  
575 agreement should be honored.

576 (b) The designated successor shall supply the personal and financial data promptly  
577 upon the request.

578 (3) (a) If a franchisor believes that good cause exists for refusing to honor the requested  
579 succession, the franchisor shall serve upon the designated successor notice of its refusal to  
580 approve the succession, within 60 days after the later of:

581 (i) receipt of the notice of the designated successor's intent to succeed the franchisee in  
582 the ownership and operation of the dealership; or

583 (ii) the receipt of the requested personal and financial data.

584 (b) Failure to serve the notice pursuant to Subsection (3)(a) is considered approval of  
585 the designated successor and the franchise agreement is considered amended to reflect the  
586 approval of the succession the day following the last day the franchisor can serve notice under

587 Subsection (3)(a).

588 (4) The notice of the franchisor provided in Subsection (3) shall state the specific  
589 grounds for the refusal to approve the succession and that discontinuance of the franchise  
590 agreement shall take effect not less than 180 days after the date the notice of refusal is served  
591 unless the proposed successor files an application for hearing under Subsection (6).

592 (5) (a) This section does not prevent a franchisee from designating a person as the  
593 successor by written instrument filed with the franchisor.

594 (b) If a franchisee files an instrument under Subsection (5)(a), the instrument governs  
595 the succession rights to the management and operation of the dealership subject to the  
596 designated successor satisfying the franchisor's qualification requirements as described in this  
597 section.

598 (6) (a) If a franchisor serves a notice of refusal to a designated successor pursuant to  
599 Subsection (3), the designated successor may, within the 180-day period provided in  
600 Subsection (4), file with the board an application for a hearing to determine whether or not  
601 good cause exists for the refusal.

602 (b) If application for a hearing is timely filed, the franchisor shall continue to honor the  
603 franchise agreement until after:

- 604 (i) the requested hearing has been concluded;
- 605 (ii) a decision is rendered by the board; and
- 606 (iii) the applicable appeal period has expired following a decision by the board.

607 Section 9. Section **13-35-204** is amended to read:

608 **13-35-204. Franchisor's obligations related to service -- Franchisor audits -- Time**  
609 **limits.**

610 (1) Each franchisor shall specify in writing to each of its franchisees licensed as a new  
611 powersport vehicle dealer in this state:

612 (a) the franchisee's obligations for new powersport vehicle preparation, delivery, and  
613 warranty service on its products;

614 (b) the schedule of compensation to be paid to the franchisee for parts, work, and  
615 service; and

616 (c) the time allowance for the performance of work and service.

617 (2) (a) The schedule of compensation described in Subsection (1) shall include

618 reasonable compensation for diagnostic work, as well as repair service, parts, and labor.

619 (b) Time allowances described in Subsection (1) for the diagnosis and performance of  
620 warranty work and service shall be reasonable and adequate for the work to be performed.

621 (3) (a) In the determination of what constitutes reasonable compensation under this  
622 section, the principal factor to be considered is the prevailing wage rates being paid by  
623 franchisees in the relevant market area in which the franchisee is doing business.

624 (b) Compensation of the franchisee for warranty service work may not be less than the  
625 amount charged by the franchisee for like parts and service to retail or fleet customers, if the  
626 amounts are reasonable. For purposes of this Subsection (3)(b), the term "cost" shall be that  
627 same price paid by a franchisee to a franchisor or supplier for the part when the part is  
628 purchased for a nonwarranty repair.

629 (4) A franchisor may not fail to:

630 (a) perform any warranty obligation;

631 (b) include in written notices of franchisor's recalls to new powersport vehicle owners  
632 and franchisees the expected date by which necessary parts and equipment will be available to  
633 franchisees for the correction of the defects; or

634 (c) compensate any of the franchisees for repairs effected by the recall.

635 (5) If a franchisor disallows a franchisee's claim for a defective part, alleging that the  
636 part is not defective, the franchisor at its option shall:

637 (a) return the part to the franchisee at the franchisor's expense; or

638 (b) pay the franchisee the cost of the part.

639 (6) (a) A claim made by a franchisee pursuant to this section for labor and parts shall  
640 be paid within 30 days after its approval.

641 (b) (i) A claim shall be either approved or disapproved by the franchisor within 30 days  
642 after receipt of the claim on a form generally used by the franchisor and containing the  
643 generally required information.

644 (ii) Any claim not specifically disapproved of in writing within 30 days after the receipt  
645 of the form is considered to be approved, and payment shall be made within 30 days.

646 (7) Warranty service audits of franchisee records may be conducted by the franchisor  
647 on a reasonable basis.

648 (8) A franchisee's claim for warranty compensation may not be denied except for good

649 cause such as performance of nonwarranty repairs, lack of material documentation, fraud, or  
650 misrepresentation.

651 (9) (a) Any charge backs for warranty parts or service compensation and service  
652 incentives shall only be enforceable for the 12-month period immediately following the date  
653 the payment for warranty reimbursement was made by the franchisor.

654 (b) Except as provided in Subsection (9)(c), all charge backs levied by a franchisor for  
655 sales compensation or sales incentives arising out of the sale or lease of a powersport vehicle  
656 sold by a franchisee shall be compensable only if written notice of the charge back is received  
657 by the franchisee within 24 months immediately following the date when payment for the sales  
658 compensation was made by the franchisor.

659 (c) The time limitations of this Subsection (9) do not preclude charge backs for any  
660 fraudulent claim that was previously paid.

661 Section 10. Section **16-6a-102** is amended to read:

662 **16-6a-102. Definitions.**

663 As used in this chapter:

664 (1) (a) "Address" means a location where mail can be delivered by the United States  
665 Postal Service.

666 (b) "Address" includes:

- 667 (i) a post office box number;
- 668 (ii) a rural free delivery route number; and
- 669 (iii) a street name and number.

670 (2) "Affiliate" means a person that directly or indirectly through one or more  
671 intermediaries controls, or is controlled by, or is under common control with, the person  
672 specified.

673 [~~4~~] (3) "Articles of incorporation" include:

- 674 (a) amended articles of incorporation;
- 675 (b) restated articles of incorporation;
- 676 (c) articles of merger; and
- 677 (d) a document of a similar import to the documents described in Subsections [~~4~~]  
678 (3)(a) through (c).

679 [~~3~~] (4) "Assumed corporate name" means the name assumed for use in this state:

- 680 (a) by a:
- 681 (i) foreign corporation pursuant to Section 16-10a-1506; or
- 682 (ii) a foreign nonprofit corporation pursuant to Section 16-6a-1506; and
- 683 (b) because the corporate name of the foreign corporation described in Subsection [(3)]
- 684 (4)(a) is not available for use in this state.
- 685 (5) (a) Except as provided in Subsection (5)(b), "board of directors" means the body
- 686 authorized to manage the affairs of the domestic or foreign nonprofit corporation.
- 687 (b) Notwithstanding Subsection (5)(a), a person may not be considered a member of
- 688 the board of directors because of powers delegated to that person pursuant to Subsection
- 689 16-6a-801(2).
- 690 (6) (a) "Bylaws" means the one or more codes of rules, other than the articles of
- 691 incorporation, adopted pursuant to this chapter for the regulation or management of the affairs
- 692 of the domestic or foreign nonprofit corporation irrespective of the name or names by which
- 693 the codes of rules are designated.
- 694 (b) "Bylaws" includes:
- 695 (i) amended bylaws; and
- 696 (ii) restated bylaws.
- 697 (7) (a) "Cash" or "money" means:
- 698 (i) legal tender;
- 699 (ii) a negotiable instrument; or
- 700 (iii) other cash equivalent readily convertible into legal tender.
- 701 (b) "Cash" and "money" are used interchangeably in this chapter.
- 702 (8) (a) "Class" refers to a group of memberships that have the same rights with respect
- 703 to voting, dissolution, redemption, transfer, or other characteristics.
- 704 (b) For purposes of Subsection (8)(a), rights are considered the same if they are
- 705 determined by a formula applied uniformly to a group of memberships.
- 706 (9) (a) "Conspicuous" means so written that a reasonable person against whom the
- 707 writing is to operate should have noticed the writing.
- 708 (b) "Conspicuous" includes printing or typing in:
- 709 (i) italics;
- 710 (ii) boldface;

711 (iii) contrasting color;

712 (iv) capitals; or

713 (v) underlining.

714 (10) "Control" or a "controlling interest" means the direct or indirect possession of the

715 power to direct or cause the direction of the management and policies of an entity by:

716 (a) the ownership of voting shares;

717 (b) contract; or

718 (c) means other than those specified in Subsection (10)(a) or (b).

719 (11) Subject to Section 16-6a-207, "cooperative nonprofit corporation" or "cooperative"

720 means a nonprofit corporation organized or existing under this chapter.

721 (12) "Corporate name" means:

722 (a) the name of a domestic corporation as stated in the domestic corporation's articles

723 of incorporation;

724 (b) the name of a domestic nonprofit corporation as stated in the domestic nonprofit

725 corporation's articles of incorporation;

726 (c) the name of a foreign corporation as stated in the foreign corporation's:

727 (i) articles of incorporation; or

728 (ii) document of similar import to articles of incorporation; or

729 (d) the name of a foreign nonprofit corporation as stated in the foreign nonprofit

730 corporation's:

731 (i) articles of incorporation; or

732 (ii) document of similar import to articles of incorporation.

733 (13) "Corporation" or "domestic corporation" means a corporation for profit, which is

734 not a foreign corporation, incorporated under or subject to Chapter 10a, Utah Revised Business

735 Corporation Act.

736 (14) "Delegate" means any person elected or appointed to vote in a representative

737 assembly:

738 (a) for the election of a director; or

739 (b) on matters other than the election of a director.

740 (15) "Deliver" includes delivery by mail and any other means of transmission

741 authorized by Section 16-6a-103, except that delivery to the division means actual receipt by



742 the division.

743 (16) "Director" means a member of the board of directors.

744 (17) (a) "Distribution" means the payment of a dividend or any part of the income or  
745 profit of a nonprofit corporation to the nonprofit corporation's:

746 (i) members;

747 (ii) directors; or

748 (iii) officers.

749 (b) "Distribution" does not include fair-value payments for:

750 (i) goods sold; or

751 (ii) services received.

752 (18) "Division" means the Division of Corporations and Commercial Code.

753 (19) "Effective date," when referring to a document filed by the division, means the  
754 time and date determined in accordance with Section 16-6a-108.

755 (20) "Effective date of notice" means the date notice is effective as provided in Section  
756 16-6a-103.

757 (21) (a) "Employee" includes an officer of a nonprofit corporation.

758 (b) (i) Except as provided in Subsection (21)(b)(ii), "employee" does not include a  
759 director of a nonprofit corporation.

760 (ii) Notwithstanding Subsection (21)(b)(i), a director may accept duties that make that  
761 director an employee of a nonprofit corporation.

762 (22) "Executive director" means the executive director of the Department of  
763 Commerce.

764 (23) "Entity" includes:

765 (a) a domestic or foreign corporation;

766 (b) a domestic or foreign nonprofit corporation;

767 (c) a limited liability company;

768 (d) a profit or nonprofit unincorporated association;

769 (e) a business trust;

770 (f) an estate;

771 (g) a partnership;

772 (h) a trust;

- 773 (i) two or more persons having a joint or common economic interest;
- 774 (j) a state;
- 775 (k) the United States; or
- 776 (l) a foreign government.
- 777 (24) "Foreign corporation" means a corporation for profit incorporated under a law
- 778 other than the laws of this state.
- 779 (25) "Foreign nonprofit corporation" means an entity:
- 780 (a) incorporated under a law other than the laws of this state; and
- 781 (b) that would be a nonprofit corporation if formed under the laws of this state.
- 782 (26) "Governmental subdivision" means:
- 783 (a) a county;
- 784 (b) a city;
- 785 (c) a town; or
- 786 (d) any other type of governmental subdivision authorized by the laws of this state.
- 787 (27) "Individual" means:
- 788 (a) a natural person;
- 789 (b) the estate of an incompetent individual; or
- 790 (c) the estate of a deceased individual.
- 791 (28) "Internal Revenue Code" means the federal "Internal Revenue Code of 1986," as
- 792 amended from time to time, or to corresponding provisions of subsequent internal revenue laws
- 793 of the United States of America.
- 794 (29) (a) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing in the
- 795 United States mail, properly addressed, first-class postage prepaid.
- 796 (b) "Mail," "mailed," or "mailing" includes registered or certified mail for which the
- 797 proper fee has been paid.
- 798 (30) (a) "Member" means one or more persons identified or otherwise appointed as a
- 799 member of a domestic or foreign nonprofit corporation as provided:
- 800 (i) in the articles of incorporation;
- 801 (ii) in the bylaws;
- 802 (iii) by a resolution of the board of directors; or
- 803 (iv) by a resolution of the members of the nonprofit corporation.

- 804 (b) "Member" includes "voting member."  
805 (31) "Membership" refers to the rights and obligations of a member or members.  
806 (32) "Nonprofit corporation" or "domestic nonprofit corporation" means an entity,  
807 which is not a foreign nonprofit corporation, incorporated under or subject to the provisions of  
808 this chapter.  
809 (33) "Notice" is as provided in Section 16-6a-103.  
810 (34) "Party related to a director" means:  
811 (a) the spouse of the director;  
812 (b) a child of the director;  
813 (c) a grandchild of the director;  
814 (d) a sibling of the director;  
815 (e) a parent of the director;  
816 (f) the spouse of an individual described in Subsections (34)(b) through (e);  
817 (g) an individual having the same home as the director;  
818 (h) a trust or estate of which the director or any other individual specified in this  
819 Subsection (34) is a substantial beneficiary; or  
820 (i) any of the following of which the director is a fiduciary:  
821 (i) a trust;  
822 (ii) an estate;  
823 (iii) an incompetent;  
824 (iv) a conservatee; or  
825 (v) a minor.  
826 (35) "Person" means an:  
827 (a) individual; or  
828 (b) entity.  
829 (36) "Principal office" means:  
830 (a) the office, in or out of this state, designated by a domestic or foreign nonprofit  
831 corporation as its principal office in the most recent document on file with the division  
832 providing that information, including:  
833 (i) an annual report;  
834 (ii) an application for a certificate of authority; or

835 (iii) a notice of change of principal office; or  
836 (b) if no principal office can be determined, a domestic or foreign nonprofit  
837 corporation's registered office.

838 (37) "Proceeding" includes:

- 839 (a) a civil suit;
- 840 (b) arbitration;
- 841 (c) mediation;
- 842 (d) a criminal action;
- 843 (e) an administrative action; or
- 844 (f) an investigatory action.

845 (38) "Receive," when used in reference to receipt of a writing or other document by a  
846 domestic or foreign nonprofit corporation, means the writing or other document is actually  
847 received:

848 (a) by the domestic or foreign nonprofit corporation at:

- 849 (i) its registered office in this state; or
- 850 (ii) its principal office;

851 (b) by the secretary of the domestic or foreign nonprofit corporation, wherever the  
852 secretary is found; or

853 (c) by any other person authorized by the bylaws or the board of directors to receive the  
854 writing or other document, wherever that person is found.

855 (39) (a) "Record date" means the date established under Part 6, Members or 7, Member  
856 Meetings and Voting on which a nonprofit corporation determines the identity of the nonprofit  
857 corporation's members.

858 (b) The determination described in Subsection (39)(a) shall be made as of the close of  
859 business on the record date unless another time for doing so is specified when the record date is  
860 fixed.

861 (40) "Registered agent" means the registered agent of:

- 862 (a) a domestic nonprofit corporation required to be maintained pursuant to Subsection  
863 16-6a-501(1)(b); or
- 864 (b) a foreign nonprofit corporation required to be maintained pursuant to Subsection  
865 16-6a-1508(1)(b).

866 (41) "Registered office" means the office within this state designated by a domestic or  
867 foreign nonprofit corporation as its registered office in the most recent document on file with  
868 the division providing that information, including:

- 869 (a) articles of incorporation;
- 870 (b) an application for a certificate of authority; or
- 871 (c) a notice of change of registered office.

872 (42) "Secretary" means the corporate officer to whom the bylaws or the board of  
873 directors has delegated responsibility under Subsection 16-6a-818(3) for:

- 874 (a) the preparation and maintenance of:
  - 875 (i) minutes of the meetings of:
    - 876 (A) the board of directors; or
    - 877 (B) the members; and
  - 878 (ii) the other records and information required to be kept by the nonprofit corporation  
879 pursuant to Section 16-6a-1601; and
- 880 (b) authenticating records of the nonprofit corporation.

881 (43) "State," when referring to a part of the United States, includes:

- 882 (a) a state;
- 883 (b) a commonwealth;
- 884 (c) the District of Columbia;
- 885 (d) an agency or governmental and political subdivision of a state, commonwealth, or  
886 District of Columbia;
- 887 (e) territory or insular possession of the United States; or
- 888 (f) an agency or governmental and political subdivision of a territory or insular  
889 possession of the United States.

890 (44) "Street address" means:

- 891 (a) (i) street name and number;
- 892 (ii) city or town; and
- 893 (iii) United States post office zip code designation; or
- 894 (b) if, by reason of rural location or otherwise, a street name, number, city, or town  
895 does not exist, an appropriate description other than that described in Subsection (44)(a) fixing  
896 as nearly as possible the actual physical location but only if the information includes:

- 897 (i) the rural free delivery route;
- 898 (ii) the county; and
- 899 (iii) the United States post office zip code designation.
- 900 (45) "United States" includes any district, authority, office, bureau, commission,
- 901 department, and any other agency of the United States of America.
- 902 (46) "Vote" includes authorization by:
- 903 (a) written ballot; and
- 904 (b) written consent.
- 905 (47) (a) "Voting group" means all the members of one or more classes of members or
- 906 directors that, under this chapter, the articles of incorporation, or the bylaws, are entitled to
- 907 vote and be counted together collectively on a matter.
- 908 (b) All members or directors entitled by this chapter, the articles of incorporation, or
- 909 the bylaws to vote generally on a matter are for that purpose a single voting group.
- 910 (48) (a) "Voting member" means a person entitled to vote for all matters required or
- 911 permitted under this chapter to be submitted to a vote of the members, except as otherwise
- 912 provided in the articles of incorporation or bylaws.
- 913 (b) A person is not a voting member solely because of:
- 914 (i) a right the person has as a delegate;
- 915 (ii) a right the person has to designate a director; or
- 916 (iii) a right the person has as a director.
- 917 Section 11. Section **17-27-106** is amended to read:
- 918 **17-27-106. Limit on plan check fees.**
- 919 (1) A county may not impose or collect a fee for reviewing or approving the plans for a
- 920 commercial or residential building that exceeds the [~~lessor~~] lesser of:
- 921 (a) the actual cost of performing the plan review; and
- 922 (b) 65% of the amount the county charges for a building permit fee for that building.
- 923 (2) (a) For purposes of this Subsection (2):
- 924 (i) "Identical plans" means building plans submitted to a county that:
- 925 (A) are substantially identical to building plans that were previously submitted to and
- 926 reviewed and approved by the county; and
- 927 (B) describe a building that is:

928 (I) located on land zoned the same as the land on which the building described in the  
929 previously approved plans is located; and

930 (II) subject to the same geological and meteorological conditions and the same law as  
931 the building described in the previously approved plans.

932 (ii) "Nominal fee" means a fee that reasonably reimburses a county only for time spent  
933 and expenses incurred in:

934 (A) verifying that building plans are identical plans; and

935 (B) reviewing and approving those minor aspects of identical plans that differ from the  
936 previously reviewed and approved building plans referred to in Subsection (2)(a)(i).

937 (b) Subject to Subsection (1), a county may impose and collect only a nominal fee for  
938 reviewing and approving identical plans.

939 Section 12. Section **17-52-401** is amended to read:

940 **17-52-401. Contents of proposed optional plan.**

941 (1) Each optional plan proposed under this chapter:

942 (a) shall propose the adoption of one of the forms of county government listed in  
943 Subsection 17-52-402(1)(a);

944 (b) shall contain detailed provisions relating to the transition from the existing form of  
945 county government to the form proposed in the optional plan, including provisions relating to  
946 the:

947 (i) election or appointment of officers specified in the optional plan for the new form of  
948 county government;

949 (ii) retention, elimination, or combining of existing offices and, if an office is  
950 eliminated, the division or department of county government responsible for performing the  
951 duties of the eliminated office;

952 (iii) continuity of existing ordinances and regulations;

953 (iv) continuation of pending legislative, administrative, or judicial proceedings;

954 (v) making of interim and temporary appointments; and

955 (vi) preparation, approval, and adjustment of necessary budget appropriations;

956 (c) shall specify the date it is to become effective if adopted, which shall not be earlier  
957 than the first day of January next following the election of officers under the new plan; and

958 (d) notwithstanding any other provision of this title and except with respect to an

959 optional plan that proposes the adoption of the county commission or expanded county  
960 commission form of government, with respect to the county budget:

961 (i) may provide that the county auditor's role is to be the budget officer, to project  
962 county revenues, and to prepare a tentative budget to present to the county executive; and

963 (ii) shall provide that the county executive's role is to prepare and present a proposed  
964 budget to the county legislative body, and the county legislative body's role is to adopt a final  
965 budget.

966 (2) Subject to Subsection (3), an optional plan may include provisions that are  
967 considered necessary or advisable to the effective operation of the proposed optional plan.

968 (3) An optional plan may not include any provision that is inconsistent with or  
969 prohibited by the Utah Constitution or any statute.

970 (4) Each optional plan proposing to change the form of government to a form under  
971 Section [~~17-52-503~~;] 17-52-504[;] or 17-52-505[, ~~or 17-52-506~~] shall:

972 (a) provide for the same executive and legislative officers as are specified in the  
973 applicable section for the form of government being proposed by the optional plan;

974 (b) provide for the election of the county council;

975 (c) specify the number of county council members, which shall be an odd number from  
976 three to nine;

977 (d) specify whether the members of the county council are to be elected from districts,  
978 at large, or by a combination of at large and by district;

979 (e) specify county council members' qualifications and terms and whether the terms are  
980 to be staggered;

981 (f) contain procedures for filling vacancies on the county council, consistent with the  
982 provisions of Section 20A-1-508; and

983 (g) state the initial compensation, if any, of county council members and procedures for  
984 prescribing and changing compensation.

985 (5) Each optional plan proposing to change the form of government to the county  
986 commission form under Section 17-52-501 or the expanded county commission form under  
987 Section 17-52-502 shall specify:

988 (a) (i) for the county commission form of government, that the county commission  
989 shall have three members; or



990 (ii) for the expanded county commission form of government, whether the county  
991 commission shall have five or seven members;

992 (b) the terms of office for county commission members and whether the terms are to be  
993 staggered;

994 (c) whether members of the county commission are to be elected from districts, at  
995 large, or by a combination of at large and from districts; and

996 (d) if any members of the county commission are to be elected from districts, the  
997 district residency requirements for those commission members.

998 Section 13. Section **17A-1-301** is amended to read:

999 **17A-1-301. Exemptions.**

1000 This part does not apply to:

1001 (1) public transit districts established under authority of [~~Title 17A,~~] Chapter 2, Part  
1002 10, Utah Public Transit District Act;

1003 (2) water conservancy districts established under [~~Title 17A,~~] Chapter 2, Part 14, Water  
1004 Conservancy Districts;

1005 (3) soil conservation districts created under the authority of [~~Title 17A,~~] Chapter 3, Part  
1006 8, Soil Conservation Districts;

1007 [~~(4) neighborhood redevelopment agencies established under authority of Title 17A,  
1008 Chapter 2, Part 12, Utah Neighborhood Development Act;~~]

1009 [(5)] (4) metropolitan water districts established under authority of [~~Title 17A,~~]  
1010 Chapter 2, Part 8, Metropolitan Water District Act;

1011 [(6)] (5) any dependent special district established under the authority of [~~Title 17A,~~]  
1012 Chapter 3, Dependent Special Districts; and

1013 [(7)] (6) a hazardous waste facilities authority established under authority of Chapter 2,  
1014 Part 17, Hazardous Waste Facilities Management Act.

1015 Section 14. Section **17A-1-403** is amended to read:

1016 **17A-1-403. Applicability to special districts -- Exceptions.**

1017 This part applies to all special districts under Subsection 17A-1-404(19) except the  
1018 following districts which are specifically excluded from this part:

1019 (1) redevelopment agencies created under [~~Chapter 2, Part 12]~~ Title 17B, Chapter 4;

1020 (2) public transit districts created under Chapter 2, Part 10;

1021 (3) health departments created under Title 26A, Chapter 1; and  
1022 (4) entities created under Title 11, Chapter 13, Interlocal Cooperation Act, unless the  
1023 entity is also a mental health district created under Chapter 3, Part 6, Local Mental Health  
1024 Authorities.

1025 Section 15. Section **17A-2-405** is amended to read:

1026 **17A-2-405. Area in county service area -- Overlapping of areas.**

1027 (1) (a) The boundaries of a county service area may include:

1028 (i) all or part of any unincorporated area of one county; and

1029 (ii) territory located within a municipality.

1030 (b) Notwithstanding Subsection (1)(a)[(i)], the addition of any territory to a county  
1031 service area under this part shall, on and after June 1, 2001 and as provided in Subsection  
1032 17A-2-101.3(1)(a)(i), be governed by Title 17B, Chapter 2, Part 5, Annexation.

1033 (2) County service areas may overlap if the service area which overlaps is entirely  
1034 within the boundaries of the service area which it overlaps.

1035 (3) (a) Except as provided in Subsection (3)(b), not more than two service areas may  
1036 occupy the same area in the county.

1037 (b) Notwithstanding Subsection (3)(a), three service areas may occupy the same area in  
1038 the county if one of the overlapping service areas is countywide.

1039 (4) No overlapping service areas may perform the same services.

1040 (5) All parts of a county service area need not be contiguous.

1041 Section 16. Section **17A-2-1304** is amended to read:

1042 **17A-2-1304. Establishing special service districts -- Improvement districts within**  
1043 **special service districts.**

1044 (1) (a) A county or a municipality may establish a special service district for the  
1045 purpose of providing within the area of the special service district any of the following services  
1046 or any combination of them:

1047 (i) water;

1048 (ii) sewerage;

1049 (iii) drainage;

1050 (iv) flood control;

1051 (v) garbage;

- 1052 (vi) health care;
- 1053 (vii) transportation;
- 1054 (viii) recreation;
- 1055 (ix) fire protection;
- 1056 (x) in a county of the first class, providing, operating, and maintaining jail facilities for
- 1057 the confinement of municipal, state, and other detainees and prisoners;
- 1058 (xi) street lighting;
- 1059 (xii) consolidated 911 and emergency dispatch; and
- 1060 (xiii) animal shelter and control.
- 1061 (b) Snow removal services may be provided in special service districts established
- 1062 under this section to more effectively carry out the purposes of those special service districts.
- 1063 (c) These services may be provided through facilities or systems acquired or
- 1064 constructed for that purpose through construction, purchase, lease, contract, gift, or
- 1065 condemnation or any combination of the above.
- 1066 (d) Special service districts may contract with a franchised, certificated public utility for
- 1067 the construction and operation of an electrical service distribution system within the special
- 1068 service district.
- 1069 (2) (a) The area within any special service district may include all or any part of the
- 1070 county or municipality that established it except that:
- 1071 (i) a special service district may not include the area of any other special service district
- 1072 established by the same county or municipality that is now providing the same service
- 1073 proposed to be supplied by the new special service district;
- 1074 (ii) a special service district established by a county may contain all or a part of any
- 1075 municipality or of an existing improvement district that provides the same service proposed to
- 1076 be provided by the special service district, but only with the consent of the governing authority
- 1077 as provided in a resolution or ordinance adopted by the governing authority; and
- 1078 (iii) a special service district may not include any area not directly [~~benefited~~]
- 1079 benefitted by the services provided under this section without the consent of the [~~nonbenefited~~]
- 1080 nonbenefitted landowner.
- 1081 (b) All parts of a special service district need not be contiguous.
- 1082 (3) (a) As provided in Section 17A-2-1315, the governing authority of any special

1083 service district created under this part may create one or more improvement districts within the  
1084 boundaries of the special service district by following the procedures in, and meeting the  
1085 requirements of, Chapter 3, Part 2, County Improvement District Act, or Part 3, Utah  
1086 Municipal Improvement District Act.

1087 (b) The intent to create an improvement district need not be present at the time a  
1088 special service district is organized.

1089 (c) Any improvement district created within the boundaries of a special service district  
1090 may only be organized to undertake projects or improvements for which the special service  
1091 district creating that improvement district was organized.

1092 (d) The special service district shall meet all procedural requirements for creating an  
1093 improvement district at the time the improvement district is created, as provided in Section  
1094 17A-2-1315 and in Chapter 3, Part 2, County Improvement District Act, or Part 3, Utah  
1095 Municipal Improvement District Act.

1096 (e) In determining whether or not a project or improvement undertaken by an  
1097 improvement district is within the scope of the purposes for which the special service district  
1098 creating that improvement district was organized, any project or improvement reasonably  
1099 related to the purposes for which the special service district creating that improvement district  
1100 was organized is considered to be within the scope of those purposes.

1101 (4) The creation of a special service district to provide jail services as provided in  
1102 Subsection (1)(a)(x) does not affect the ability of a municipality under Section 10-8-58 to  
1103 provide, operate, and maintain facilities for the temporary incarceration, not to exceed 72  
1104 hours, of persons charged with the violation of a municipal ordinance.

1105 Section 17. Section **17A-3-606** is amended to read:

1106 **17A-3-606. Contracts for mental health services provided by local mental health**  
1107 **authorities.**

1108 Where a local mental health authority has established a plan to provide services  
1109 authorized by this part, and those services meet standards fixed by rules of the board, the local  
1110 mental health authority may enter into a contract with the Division of Substance Abuse and  
1111 Mental Health for mental health services to be furnished by that local mental health authority  
1112 for an agreed compensation to be paid by the division.

1113 Section 18. Section **19-2-104** is amended to read:

1114 **19-2-104. Powers of board.**

1115 (1) The board may make rules in accordance with Title 63, Chapter 46a, Utah

1116 Administrative Rulemaking Act:

1117 (a) regarding the control, abatement, and prevention of air pollution from all sources  
1118 and the establishment of the maximum quantity of air contaminants that may be emitted by any  
1119 air contaminant source;

1120 (b) establishing air quality standards;

1121 (c) requiring persons engaged in operations which result in air pollution to:

1122 (i) install, maintain, and use emission monitoring devices, as the board finds necessary;

1123 (ii) file periodic reports containing information relating to the rate, period of emission,  
1124 and composition of the air contaminant; and1125 (iii) provide access to records relating to emissions which cause or contribute to air  
1126 pollution;1127 (d) implementing 15 U.S.C.A. 2601 et seq. Toxic Substances Control Act, Subchapter  
1128 II - Asbestos Hazard Emergency Response, and reviewing and approving asbestos management  
1129 plans submitted by local education agencies under that act;1130 (e) establishing a requirement for a diesel emission opacity inspection and maintenance  
1131 program for diesel-powered motor vehicles;1132 (f) implementing an operating permit program as required by and in conformity with  
1133 Titles IV and V of the federal Clean Air Act Amendments of 1990;1134 (g) establishing requirements for county emissions inspection and maintenance  
1135 programs after obtaining agreement from the counties that would be affected by the  
1136 requirements;1137 (h) with the approval of the governor, implementing in air quality nonattainment areas  
1138 employer-based trip reduction programs applicable to businesses having more than 100  
1139 employees at a single location and applicable to federal, state, and local governments to the  
1140 extent necessary to attain and maintain ambient air quality standards consistent with the state  
1141 implementation plan and federal requirements under the standards set forth in Subsection (2);  
1142 and1143 (i) implementing lead-based paint remediation training, certification, and performance  
1144 requirements in accordance with 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act,

1145 Subchapter IV -- Lead Exposure Reduction, Section 402 and [404] 406.

1146 (2) When implementing Subsection (1)(h) the board shall take into consideration:

1147 (a) the impact of the business on overall air quality; and

1148 (b) the need of the business to use automobiles in order to carry out its business

1149 purposes.

1150 (3) The board may:

1151 (a) hold hearings relating to any aspect of or matter in the administration of this chapter

1152 and compel the attendance of witnesses and the production of documents and other evidence,

1153 administer oaths and take testimony, and receive evidence as necessary;

1154 (b) issue orders necessary to enforce the provisions of this chapter, enforce the orders

1155 by appropriate administrative and judicial proceedings, and institute judicial proceedings to

1156 secure compliance with this chapter;

1157 (c) settle or compromise any civil action initiated to compel compliance with this

1158 chapter and the rules made under this chapter;

1159 (d) secure necessary scientific, technical, administrative, and operational services,

1160 including laboratory facilities, by contract or otherwise;

1161 (e) prepare and develop a comprehensive plan or plans for the prevention, abatement,  
1162 and control of air pollution in this state;

1163 (f) encourage voluntary cooperation by persons and affected groups to achieve the  
1164 purposes of this chapter;

1165 (g) encourage local units of government to handle air pollution within their respective  
1166 jurisdictions on a cooperative basis and provide technical and consultative assistance to them;

1167 (h) encourage and conduct studies, investigations, and research relating to air

1168 contamination and air pollution and their causes, effects, prevention, abatement, and control;

1169 (i) determine by means of field studies and sampling the degree of air contamination  
1170 and air pollution in all parts of the state;

1171 (j) monitor the effects of the emission of air contaminants from motor vehicles on the  
1172 quality of the outdoor atmosphere in all parts of this state and take appropriate action with  
1173 respect to them;

1174 (k) collect and disseminate information and conduct educational and training programs  
1175 relating to air contamination and air pollution;

1176 (l) advise, consult, contract, and cooperate with other agencies of the state, local  
1177 governments, industries, other states, interstate or interlocal agencies, the federal government,  
1178 and with interested persons or groups;

1179 (m) consult, upon request, with any person proposing to construct, install, or otherwise  
1180 acquire an air contaminant source in the state concerning the efficacy of any proposed control  
1181 device, or system for this source, or the air pollution problem which may be related to the  
1182 source, device, or system, but a consultation does not relieve any person from compliance with  
1183 this chapter, the rules adopted under it, or any other provision of law;

1184 (n) accept, receive, and administer grants or other funds or gifts from public and  
1185 private agencies, including the federal government, for the purpose of carrying out any of the  
1186 functions of this chapter;

1187 (o) require the owner and operator of each new source which directly emits or has the  
1188 potential to emit 100 tons per year or more of any air contaminant or the owner or operator of  
1189 each existing source which by modification will increase emissions or have the potential of  
1190 increasing emissions by 100 tons per year or more of any air contaminant, to pay a fee  
1191 sufficient to cover the reasonable costs of:

1192 (i) reviewing and acting upon the notice required under Section 19-2-108; and

1193 (ii) implementing and enforcing requirements placed on the sources by any approval  
1194 order issued pursuant to notice, not including any court costs associated with any enforcement  
1195 action;

1196 (p) assess and collect noncompliance penalties as required in Section 120 of the federal  
1197 Clean Air Act, 42 U.S.C. Sec. 7420;

1198 (q) meet the requirements of federal air pollution laws;

1199 (r) establish work practice, certification, and clearance air sampling requirements for  
1200 persons who:

1201 (i) contract for hire to conduct demolition, renovation, salvage, encapsulation work  
1202 involving friable asbestos-containing materials, or asbestos inspections; or

1203 (ii) conduct work described in Subsection (3)(r)(i) in areas to which the general public  
1204 has unrestrained access or in school buildings that are subject to the federal Asbestos Hazard  
1205 Emergency Response Act of 1986;

1206 (iii) conduct asbestos inspections in facilities subject to 15 U.S.C.A. 2601 et seq.,

1207 Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response; or  
1208 (iv) conduct lead paint inspections in facilities subject to 15 U.S.C.A. 2601 et seq.,

1209 Toxic Substances Control Act, Subchapter IV -- Lead Exposure Reduction;

1210 (s) establish certification requirements for persons required under 15 U.S.C.A. 2601 et  
1211 seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, to  
1212 be accredited as inspectors, management planners, abatement project designers, asbestos  
1213 abatement contractors and supervisors, or asbestos abatement workers;

1214 (t) establish certification requirements for asbestos project monitors, which shall  
1215 provide for experience-based certification of persons who, prior to establishment of the  
1216 certification requirements, had received relevant asbestos training, as defined by rule, and had  
1217 acquired at least 1,000 hours of experience as project monitors;

1218 (u) establish certification procedures and requirements for certification of the  
1219 conversion of a motor vehicle to a clean-fuel vehicle, certifying the vehicle is eligible for the  
1220 tax credit granted in Section 59-7-605 or 59-10-127;

1221 (v) establish a program to certify private sector air quality permitting professionals  
1222 (AQPP), as described in Section 19-2-109.5; and

1223 (w) establish certification requirements for persons required under 15 U.S.C.A. 2601 et  
1224 seq., Toxic Control Act, Subchapter IV -- Lead Exposure Reduction, to be accredited as  
1225 inspectors, risk assessors, supervisors, project designers, or abatement workers.

1226 (4) Any rules adopted under this chapter shall be consistent with provisions of federal  
1227 laws, if any, relating to control of motor vehicles or motor vehicle emissions.

1228 (5) Nothing in this chapter authorizes the board to require installation of or payment for  
1229 any monitoring equipment by the owner or operator of a source if the owner or operator has  
1230 installed or is operating monitoring equipment that is equivalent to equipment which the board  
1231 would require under this section.

1232 Section 19. Section **20A-3-105.5** is amended to read:

1233 **20A-3-105.5. Manner of voting -- Provisional ballot.**

1234 (1) As used in this section:

1235 (a) "Proof of identity" means some form of photo identification, such as a driver  
1236 license or identification card, that establishes a person's identity.

1237 (b) "Proof of residence" means some official document or form, such as a driver



1238 license or utility bill that establishes a person's residence.

1239 (2) The election judges shall follow the procedures and requirements of this section  
1240 when:

1241 (a) the person's right to vote is challenged as provided in Section 20A-3-202; or

1242 (b) the person's name is not found on the official register.

1243 (3) When faced with one of the circumstances outlined in Subsection (2), the election  
1244 judge shall:

1245 (a) request that the person provide proof of identity and proof of residency; and

1246 (b) review the proof of identity and proof of residency provided by the person.

1247 (4) If the election judge is satisfied that the person has established [~~their~~] the person's  
1248 identity and [~~their~~] residence in the voting precinct:

1249 (a) the election judge in charge of the official register shall:

1250 (i) record in the official register the type of source documents that established the  
1251 person's proof of identity and proof of residency;

1252 (ii) write the provisional ballot envelope number opposite the name of the voter in the  
1253 official register; and

1254 (iii) direct the voter to sign his name in the election column in the official register;

1255 (b) another judge shall list the ballot number and voter's name in the pollbook; and

1256 (c) the election judge having charge of the ballots shall:

1257 (i) endorse his initials on the stub;

1258 (ii) check the name of the voter on the pollbook list with the number of the stub;

1259 (iii) give the voter a ballot and a provisional ballot envelope; and

1260 (iv) allow the voter to enter the voting booth.

1261 (5) Whenever the election officer is required to furnish more than one kind of official  
1262 ballot to a voting precinct, the election judges of that voting precinct shall give the registered  
1263 voter the kind of ballot that the voter is qualified to vote.

1264 Section 20. Section **20A-5-403** is amended to read:

1265 **20A-5-403. Polling places -- Booths -- Ballot boxes -- Inspections -- Provisions --**  
1266 **Arrangements.**

1267 (1) Each election officer shall:

1268 (a) designate polling places for each voting precinct in the jurisdiction; and

1269 (b) obtain the approval of the county or municipal legislative body or special district  
1270 governing board for those polling places.

1271 (2) (a) For each polling place, the election officer shall provide:

1272 (i) an American flag;

1273 (ii) a sufficient number of voting booths or compartments;

1274 (iii) the voting devices, voting booths, ballots, ballot boxes, ballot labels, ballot cards,  
1275 write-in ballots, and any other records and supplies necessary to enable a voter to vote; and

1276 (iv) the constitutional amendment cards and voter information pamphlets required by

1277 Part 1.

1278 (b) Each election officer shall ensure that:

1279 (i) each voting booth is at least three feet square, contains a shelf that is at least one  
1280 foot wide extending across one side of the booth at a convenient height for writing, and is

1281 arranged so that the voter can prepare his ballot screened from observation;

1282 (ii) there is at least one voting booth for every 100 voters who voted at the last similar  
1283 election in the voting precinct; and

1284 (iii) there is at least one voting booth that is configured to accommodate persons with  
1285 disabilities.

1286 (c) Each county clerk shall provide a ballot box for each polling place that is large  
1287 enough to properly receive and hold the ballots to be cast.

1288 (3) (a) As of May 15, 2003, all polling places shall be physically inspected by each  
1289 county clerk to ensure access by ~~[people]~~ a person with ~~[disabilities]~~ a disability.

1290 (b) Any issues concerning inaccessibility to polling places by ~~[people]~~ a person with a  
1291 disability discovered during the inspections referred to in Subsection (3)(a) or reported to the  
1292 county clerk on or after May 15, 2002 shall be:

1293 (i) forwarded to the Office of the Lieutenant Governor; and

1294 (ii) within six months of the time of the complaint, the issue of inaccessibility shall be  
1295 either:

1296 (A) remedied at the particular location by the county clerk;

1297 (B) the county clerk shall designate an alternative accessible location for the particular  
1298 precinct; or

1299 (C) if no practical solution can be identified, file with the Office of the Lieutenant

1300 Governor a written explanation identifying the reasons compliance cannot reasonably be met.

1301 (4) The municipality in which the election is held shall pay the cost of conducting each  
1302 municipal election, including the cost of printing and supplies.

1303 (5) The county clerk shall make detailed entries of all proceedings had under this  
1304 chapter.

1305 Section 21. Section **26A-1-110** is amended to read:

1306 **26A-1-110. Local health officer -- Powers and duties -- Vacancy.**

1307 (1) The board shall appoint a local health officer and determine the officer's  
1308 compensation:

1309 (a) subject to ratification by the county executive of the county or counties in the local  
1310 health department; and

1311 (b) as provided by:

1312 (i) ordinance adopted by a county creating a county health department; or

1313 (ii) the interlocal agreement pursuant to which a multicounty health department is  
1314 created.

1315 (2) The local health officer shall:

1316 (a) have the qualifications of training and experience for that office equivalent to those  
1317 approved by the department for local health officers;

1318 (b) be the administrative and executive officer of the local health department and  
1319 devote full time to the duties of the office;

1320 (c) if provisions have been made with the department, act as the local registrar of vital  
1321 statistics within the local health department's boundaries without additional compensation or  
1322 payment of fees provided by law;

1323 (d) (i) prior to the beginning of each fiscal year, prepare an annual budget approved by  
1324 the board and present it:

1325 (A) to the county legislative body if the local health department is a county health  
1326 department; or

1327 (B) to the entity designated in the interlocal agreement creating the local health  
1328 department if the local health department is a multicounty health department; and

1329 (ii) obtain final approval of the annual budget from the governing bodies designated in  
1330 Subsection (2)(d)(i)(A) or (B) after the governing body either:

- 1331 (A) reviews and approves the budget; or
- 1332 (B) amends and approves the budget; and
- 1333 (e) prepare an annual report and provide it to the department and all counties in the
- 1334 local health department.

1335 (3) The report under Subsection (2)(e) shall contain a copy of the independent financial

1336 audit required under Section 26A-1-115, a description of the population served by the local

1337 health department, and other information as requested by the board or the county or counties

1338 creating the local health department.

1339 (4) In the absence or disability of the local health officer, or if there is a vacancy in that

1340 office, the board shall appoint an acting health officer for a temporary period not to exceed one

1341 year. The appointment shall be ratified by the county executive of the county or counties in the

1342 local health department.

1343 Section 22. Section **31A-1-301** is amended to read:

1344 **31A-1-301. Definitions.**

1345 As used in this title, unless otherwise specified:

1346 (1) (a) "Accident and health insurance" means insurance to provide protection against

1347 economic losses resulting from:

1348 (i) a medical condition including:

1349 (A) medical care expenses; or

1350 (B) the risk of disability;

1351 (ii) accident; or

1352 (iii) sickness.

1353 (b) "Accident and health insurance":

1354 (i) includes a contract with disability contingencies including:

1355 (A) an income replacement contract;

1356 (B) a health care contract;

1357 (C) an expense reimbursement contract;

1358 (D) a credit accident and health contract;

1359 (E) a continuing care contract; and

1360 (F) long-term care contracts; and

1361 (ii) may provide:

- 1362 (A) hospital coverage;
- 1363 (B) surgical coverage;
- 1364 (C) medical coverage; or
- 1365 (D) loss of income coverage.
- 1366 (c) "Accident and health insurance" does not include workers' compensation insurance.
- 1367 (2) "Administrator" is defined in Subsection (121).
- 1368 (3) "Adult" means a natural person who has attained the age of at least 18 years.
- 1369 (4) "Affiliate" means any person who controls, is controlled by, or is under common
- 1370 control with, another person. A corporation is an affiliate of another corporation, regardless of
- 1371 ownership, if substantially the same group of natural persons manages the corporations.
- 1372 (5) "Alien insurer" means an insurer domiciled outside the United States.
- 1373 (6) "Amendment" means an endorsement to an insurance policy or certificate.
- 1374 (7) "Annuity" means an agreement to make periodical payments for a period certain or
- 1375 over the lifetime of one or more natural persons if the making or continuance of all or some of
- 1376 the series of the payments, or the amount of the payment, is dependent upon the continuance of
- 1377 human life.
- 1378 (8) "Application" means a document:
- 1379 (a) completed by an applicant to provide information about the risk to be insured; and
- 1380 (b) that contains information that is used by the insurer to:
- 1381 (i) evaluate risk; and
- 1382 (ii) decide whether to:
- 1383 (A) insure the risk under:
- 1384 (I) the coverages as originally offered; or
- 1385 (II) a modification of the coverage as originally offered; or
- 1386 (B) decline to insure the risk.
- 1387 (9) "Articles" or "articles of incorporation" means the original articles, special laws,
- 1388 charters, amendments, restated articles, articles of merger or consolidation, trust instruments,
- 1389 and other constitutive documents for trusts and other entities that are not corporations, and
- 1390 amendments to any of these.
- 1391 (10) "Bail bond insurance" means a guarantee that a person will attend court when
- 1392 required, or will obey the orders or judgment of the court, as a condition to the release of that

1393 person from confinement.

1394 (11) "Binder" is defined in Section 31A-21-102.

1395 (12) "Board," "board of trustees," or "board of directors" means the group of persons  
1396 with responsibility over, or management of, a corporation, however designated.

1397 (13) "Business of insurance" is defined in Subsection [~~(68)~~] (67).

1398 (14) "Business plan" means the information required to be supplied to the  
1399 commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required  
1400 when these subsections are applicable by reference under:

1401 (a) Section 31A-7-201;

1402 (b) Section 31A-8-205; or

1403 (c) Subsection 31A-9-205(2).

1404 (15) "Bylaws" means the rules adopted for the regulation or management of a  
1405 corporation's affairs, however designated and includes comparable rules for trusts and other  
1406 entities that are not corporations.

1407 (16) "Casualty insurance" means liability insurance as defined in Subsection (75).

1408 (17) "Certificate" means evidence of insurance given to:

1409 (a) an insured under a group insurance policy; or

1410 (b) a third party.

1411 (18) "Certificate of authority" is included within the term "license."

1412 (19) "Claim," unless the context otherwise requires, means a request or demand on an  
1413 insurer for payment of benefits according to the terms of an insurance policy.

1414 (20) "Claims-made coverage" means an insurance contract or provision limiting  
1415 coverage under a policy insuring against legal liability to claims that are first made against the  
1416 insured while the policy is in force.

1417 (21) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance  
1418 commissioner.

1419 (b) When appropriate, the terms listed in Subsection (21)(a) apply to the equivalent  
1420 supervisory official of another jurisdiction.

1421 (22) (a) "Continuing care insurance" means insurance that:

1422 (i) provides board and lodging;

1423 (ii) provides one or more of the following services:

- 1424 (A) personal services;
- 1425 (B) nursing services;
- 1426 (C) medical services; or
- 1427 (D) other health-related services; and
- 1428 (iii) provides the coverage described in Subsection (22)(a)(i) under an agreement
- 1429 effective:
- 1430 (A) for the life of the insured; or
- 1431 (B) for a period in excess of one year.
- 1432 (b) Insurance is continuing care insurance regardless of whether or not the board and
- 1433 lodging are provided at the same location as the services described in Subsection (22)(a)(ii).
- 1434 (23) (a) "Control," "controlling," "controlled," or "under common control" means the
- 1435 direct or indirect possession of the power to direct or cause the direction of the management
- 1436 and policies of a person. This control may be:
- 1437 (i) by contract;
- 1438 (ii) by common management;
- 1439 (iii) through the ownership of voting securities; or
- 1440 (iv) by a means other than those described in Subsections (23)(a)(i) through (iii).
- 1441 (b) There is no presumption that an individual holding an official position with another
- 1442 person controls that person solely by reason of the position.
- 1443 (c) A person having a contract or arrangement giving control is considered to have
- 1444 control despite the illegality or invalidity of the contract or arrangement.
- 1445 (d) There is a rebuttable presumption of control in a person who directly or indirectly
- 1446 owns, controls, holds with the power to vote, or holds proxies to vote 10% or more of the
- 1447 voting securities of another person.
- 1448 (24) (a) "Corporation" means insurance corporation, except when referring to:
- 1449 (i) a corporation doing business as an insurance broker, consultant, or adjuster under:
- 1450 (A) Chapter 23, Insurance Marketing - Licensing Agents, Brokers, Consultants, and
- 1451 Reinsurance Intermediaries; and
- 1452 (B) Chapter 26, Insurance Adjusters; or
- 1453 (ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance
- 1454 Holding Companies.

- 1455 (b) "Stock corporation" means stock insurance corporation.
- 1456 (c) "Mutual" or "mutual corporation" means a mutual insurance corporation.
- 1457 (25) "Credit accident and health insurance" means insurance on a debtor to provide  
1458 indemnity for payments coming due on a specific loan or other credit transaction while the  
1459 debtor is disabled.
- 1460 (26) "Credit insurance" means surety insurance under which mortgagees and other  
1461 creditors are indemnified against losses caused by the default of debtors.
- 1462 (27) "Credit life insurance" means insurance on the life of a debtor in connection with  
1463 a loan or other credit transaction.
- 1464 (28) "Creditor" means a person, including an insured, having any claim, whether:
- 1465 (a) matured;
- 1466 (b) unmatured;
- 1467 (c) liquidated;
- 1468 (d) unliquidated;
- 1469 (e) secured;
- 1470 (f) unsecured;
- 1471 (g) absolute;
- 1472 (h) fixed; or
- 1473 (i) contingent.
- 1474 (29) (a) "Customer service representative" means a person that provides insurance  
1475 services and insurance product information:
- 1476 (i) for its agent, broker, or consultant employer; and
- 1477 (ii) to its employer's customer, client, or organization.
- 1478 (b) A customer service representative may only operate within the scope of authority of  
1479 its agent, broker, or consultant employer.
- 1480 (30) "Deadline" means the final date or time:
- 1481 (a) imposed by:
- 1482 (i) statute;
- 1483 (ii) rule; or
- 1484 (iii) order; and
- 1485 (b) by which a required filing or payment must be received by the department.



1486 (31) "Deemer clause" means a provision under this title under which upon the  
1487 occurrence of a condition precedent, the commissioner is deemed to have taken a specific  
1488 action. If the statute so provides, the condition precedent may be the commissioner's failure to  
1489 take a specific action.

1490 (32) "Degree of relationship" means the number of steps between two persons  
1491 determined by counting the generations separating one person from a common ancestor and  
1492 then counting the generations to the other person.

1493 (33) "Department" means the Insurance Department.

1494 (34) "Director" means a member of the board of directors of a corporation.

1495 (35) "Disability" means a physiological or psychological condition that partially or  
1496 totally limits an individual's ability to:

1497 (a) perform the duties of:

1498 (i) that individual's occupation; or

1499 (ii) any occupation for which the individual is reasonably suited by education, training,  
1500 or experience; or

1501 (b) perform two or more of the following basic activities of daily living:

1502 (i) eating;

1503 (ii) toileting;

1504 (iii) transferring;

1505 (iv) bathing; or

1506 (v) dressing.

1507 (36) "Domestic insurer" means an insurer organized under the laws of this state.

1508 (37) "Domiciliary state" means the state in which an insurer:

1509 (a) is incorporated;

1510 (b) is organized; or

1511 (c) in the case of an alien insurer, enters into the United States.

1512 (38) (a) "Eligible employee" means:

1513 (i) an employee who:

1514 (A) works on a full-time basis; and

1515 (B) has a normal work week of 30 or more hours; or

1516 (ii) a person described in Subsection (38)(b).

1517 (b) "Eligible employee" includes, if the individual is included under a health benefit  
1518 plan of a small employer:

- 1519 (i) a sole proprietor;  
1520 (ii) a partner in a partnership; or  
1521 (iii) an independent contractor.

1522 (c) "Eligible employee" does not include, unless eligible under Subsection (38)(b):

- 1523 (i) an individual who works on a temporary or substitute basis for a small employer;  
1524 (ii) an employer's spouse; or  
1525 (iii) a dependent of an employer.

1526 (39) "Employee" means any individual employed by an employer.

1527 (40) "Employee benefits" means one or more benefits or services provided to:

- 1528 (a) employees; or  
1529 (b) dependents of employees.

1530 (41) (a) "Employee welfare fund" means a fund:

1531 (i) established or maintained, whether directly or through trustees, by:

- 1532 (A) one or more employers;  
1533 (B) one or more labor organizations; or  
1534 (C) a combination of employers and labor organizations; and

1535 (ii) that provides employee benefits paid or contracted to be paid, other than income  
1536 from investments of the fund, by or on behalf of an employer doing business in this state or for  
1537 the benefit of any person employed in this state.

1538 (b) "Employee welfare fund" includes a plan funded or subsidized by user fees or tax  
1539 revenues.

1540 (42) "Endorsement" means a written agreement attached to a policy or certificate to  
1541 modify one or more of the provisions of the policy or certificate.

1542 (43) "Excludes" is not exhaustive and does not mean that other things are not also  
1543 excluded. The items listed are representative examples for use in interpretation of this title.

1544 (44) "Expense reimbursement insurance" means insurance:

1545 (a) written to provide payments for expenses relating to hospital confinements resulting  
1546 from illness or injury; and

1547 (b) written:

- 1548 (i) as a daily limit for a specific number of days in a hospital; and
- 1549 (ii) to have a one or two day waiting period following a hospitalization.
- 1550 (45) "Fidelity insurance" means insurance guaranteeing the fidelity of persons holding
- 1551 positions of public or private trust.
- 1552 (46) (a) "Filed" means that a filing is:
- 1553 (i) submitted to the department in accordance with any applicable statute, rule, or filing
- 1554 order;
- 1555 (ii) received by the department within the time period provided in the applicable
- 1556 statute, rule, or filing order; and
- 1557 (iii) accompanied with the applicable one or more filing fees required by:
- 1558 (A) Section 31A-3-103; or
- 1559 (B) rule.
- 1560 (b) "Filed" does not include a filing that is rejected by the department because it is not
- 1561 submitted in accordance with Subsection (46)(a).
- 1562 (47) "Filing," when used as a noun, means an item required to be filed with the
- 1563 department including:
- 1564 (a) a policy;
- 1565 (b) a rate;
- 1566 (c) a form;
- 1567 (d) a document;
- 1568 (e) a plan;
- 1569 (f) a manual;
- 1570 (g) an application;
- 1571 (h) a report;
- 1572 (i) a certificate;
- 1573 (j) an endorsement;
- 1574 (k) an actuarial certification;
- 1575 (l) a licensee annual statement;
- 1576 (m) a licensee renewal application; or
- 1577 (n) an advertisement.
- 1578 (48) "First party insurance" means an insurance policy or contract in which the insurer

1579 agrees to pay claims submitted to it by the insured for the insured's losses.

1580 (49) "Foreign insurer" means an insurer domiciled outside of this state, including an  
1581 alien insurer.

1582 (50) (a) "Form" means one of the following prepared for general use:

1583 (i) a policy;

1584 (ii) a certificate;

1585 (iii) an application; or

1586 (iv) an outline of coverage.

1587 (b) "Form" does not include a document specially prepared for use in an individual  
1588 case.

1589 (51) "Franchise insurance" means individual insurance policies provided through a  
1590 mass marketing arrangement involving a defined class of persons related in some way other  
1591 than through the purchase of insurance.

1592 (52) "Group health plan" means an employee welfare benefit plan to the extent that the  
1593 plan provides medical care:

1594 (a) (i) to employees; or

1595 (ii) to a dependent of an employee; and

1596 (b) (i) directly;

1597 (ii) through insurance reimbursement; or

1598 (iii) through any other method.

1599 (53) "Health benefit plan" means a policy or certificate for health care insurance,  
1600 except that health benefit plan does not include coverage:

1601 (a) solely for:

1602 (i) accident;

1603 (ii) dental;

1604 (iii) vision;

1605 (iv) Medicare supplement;

1606 (v) long-term care; or

1607 (vi) income replacement; or

1608 (b) that is:

1609 (i) offered and marketed as supplemental health insurance;

- 1610 (ii) not offered or marketed as a substitute for:
- 1611 (A) hospital or medical expense insurance; or
- 1612 (B) major medical expense insurance; and
- 1613 (iii) solely for:
- 1614 (A) a specified disease;
- 1615 (B) hospital confinement indemnity; or
- 1616 (C) limited benefit plan.
- 1617 (54) "Health care" means any of the following intended for use in the diagnosis,
- 1618 treatment, mitigation, or prevention of a human ailment or impairment:
- 1619 (a) professional services;
- 1620 (b) personal services;
- 1621 (c) facilities;
- 1622 (d) equipment;
- 1623 (e) devices;
- 1624 (f) supplies; or
- 1625 (g) medicine.
- 1626 (55) (a) "Health care insurance" or "health insurance" means insurance providing:
- 1627 (i) health care benefits; or
- 1628 (ii) payment of incurred health care expenses.
- 1629 (b) "Health care insurance" or "health insurance" does not include accident and health
- 1630 insurance providing benefits for:
- 1631 (i) replacement of income;
- 1632 (ii) short-term accident;
- 1633 (iii) fixed indemnity;
- 1634 (iv) credit accident and health;
- 1635 (v) supplements to liability;
- 1636 (vi) workers' compensation;
- 1637 (vii) automobile medical payment;
- 1638 (viii) no-fault automobile;
- 1639 (ix) equivalent self-insurance; or
- 1640 (x) any type of accident and health insurance coverage that is a part of or attached to

1641 another type of policy.

1642 (56) "Income replacement insurance" or "disability income insurance" means insurance  
1643 written to provide payments to replace income lost from accident or sickness.

1644 (57) "Indemnity" means the payment of an amount to offset all or part of an insured  
1645 loss.

1646 (58) "Independent adjuster" means an insurance adjuster required to be licensed under  
1647 Section 31A-26-201 who engages in insurance adjusting as a representative of insurers.

1648 (59) "Independently procured insurance" means insurance procured under Section  
1649 31A-15-104.

1650 (60) "Individual" means a natural person.

1651 (61) "Inland marine insurance" includes insurance covering:

1652 (a) property in transit on or over land;

1653 (b) property in transit over water by means other than boat or ship;

1654 (c) bailee liability;

1655 (d) fixed transportation property such as bridges, electric transmission systems, radio  
1656 and television transmission towers and tunnels; and

1657 (e) personal and commercial property floaters.

1658 (62) "Insolvency" means that:

1659 (a) an insurer is unable to pay its debts or meet its obligations as they mature;

1660 (b) an insurer's total adjusted capital is less than the insurer's mandatory control level  
1661 RBC under Subsection 31A-17-601(8)(c); or

1662 (c) an insurer is determined to be hazardous under this title.

1663 (63) (a) "Insurance" means:

1664 (i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more  
1665 persons to one or more other persons; or

1666 (ii) an arrangement, contract, or plan for the distribution of a risk or risks among a  
1667 group of persons that includes the person seeking to distribute that person's risk.

1668 (b) "Insurance" includes:

1669 (i) risk distributing arrangements providing for compensation or replacement for  
1670 damages or loss through the provision of services or benefits in kind;

1671 (ii) contracts of guaranty or suretyship entered into by the guarantor or surety as a

1672 business and not as merely incidental to a business transaction; and

1673 (iii) plans in which the risk does not rest upon the person who makes the arrangements,  
1674 but with a class of persons who have agreed to share it.

1675 (64) "Insurance adjuster" means a person who directs the investigation, negotiation, or  
1676 settlement of a claim under an insurance policy other than life insurance or an annuity, on  
1677 behalf of an insurer, policyholder, or a claimant under an insurance policy.

1678 [~~(66)~~] (65) Except as provided in Subsection 31A-23-201.5(1), "insurance agent" or  
1679 "agent" means a person who represents insurers in soliciting, negotiating, or placing insurance.

1680 [~~(67)~~] (66) Except as provided in Subsection 31A-23-201.5(1), "insurance broker" or  
1681 "broker" means a person who:

1682 (a) acts in procuring insurance on behalf of an applicant for insurance or an insured;  
1683 and

1684 (b) does not act on behalf of the insurer except by collecting premiums or performing  
1685 other ministerial acts.

1686 [~~(68)~~] (67) "Insurance business" or "business of insurance" includes:

1687 (a) providing health care insurance, as defined in Subsection (55), by organizations that  
1688 are or should be licensed under this title;

1689 (b) providing benefits to employees in the event of contingencies not within the control  
1690 of the employees, in which the employees are entitled to the benefits as a right, which benefits  
1691 may be provided either:

1692 (i) by single employers or by multiple employer groups; or

1693 (ii) through trusts, associations, or other entities;

1694 (c) providing annuities, including those issued in return for gifts, except those provided  
1695 by persons specified in Subsections 31A-22-1305(2) and (3);

1696 (d) providing the characteristic services of motor clubs as outlined in Subsection (82);

1697 (e) providing other persons with insurance as defined in Subsection (63);

1698 (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor,  
1699 or surety, any contract or policy of title insurance;

1700 (g) transacting or proposing to transact any phase of title insurance, including  
1701 solicitation, negotiation preliminary to execution, execution of a contract of title insurance,  
1702 insuring, and transacting matters subsequent to the execution of the contract and arising out of

1703 it, including reinsurance; and

1704 (h) doing, or proposing to do, any business in substance equivalent to Subsections

1705 [~~(68)~~] (67)(a) through (g) in a manner designed to evade the provisions of this title.

1706 [~~(69)~~] (68) Except as provided in Subsection 31A-23-201.5(1), "insurance consultant"

1707 or "consultant" means a person who:

1708 (a) advises other persons about insurance needs and coverages;

1709 (b) is compensated by the person advised on a basis not directly related to the insurance  
1710 placed; and

1711 (c) is not compensated directly or indirectly by an insurer, agent, or broker for advice  
1712 given.

1713 [~~(70)~~] (69) "Insurance holding company system" means a group of two or more  
1714 affiliated persons, at least one of whom is an insurer.

1715 [~~(71)~~] (70) (a) "Insured" means a person to whom or for whose benefit an insurer  
1716 makes a promise in an insurance policy and includes:

1717 (i) policyholders;

1718 (ii) subscribers;

1719 (iii) members; and

1720 (iv) beneficiaries.

1721 (b) The definition in Subsection [~~(71)~~] (70)(a):

1722 (i) applies only to this title; and

1723 (ii) does not define the meaning of this word as used in insurance policies or  
1724 certificates.

1725 [~~(72)~~] (71) (a) (i) "Insurer" means any person doing an insurance business as a  
1726 principal including:

1727 (A) fraternal benefit societies;

1728 (B) issuers of gift annuities other than those specified in Subsections 31A-22-1305(2)

1729 and (3);

1730 (C) motor clubs;

1731 (D) employee welfare plans; and

1732 (E) any person purporting or intending to do an insurance business as a principal on  
1733 that person's own account.



1734 (ii) "Insurer" does not include a governmental entity, as defined in Section 63-30-2, to  
1735 the extent it is engaged in the activities described in Section 31A-12-107.

1736 (b) "Admitted insurer" is defined in Subsection (125)(b).

1737 (c) "Alien insurer" is defined in Subsection (5).

1738 (d) "Authorized insurer" is defined in Subsection (125)(b).

1739 (e) "Domestic insurer" is defined in Subsection (36).

1740 (f) "Foreign insurer" is defined in Subsection (49).

1741 (g) "Nonadmitted insurer" is defined in Subsection (125)(a).

1742 (h) "Unauthorized insurer" is defined in Subsection (125)(a).

1743 [~~65~~] (72) "Interinsurance exchange" is defined in Subsection (109).

1744 (73) "Large employer," in connection with a health benefit plan, means an employer  
1745 who, with respect to a calendar year and to a plan year:

1746 (a) employed an average of at least 51 eligible employees on each business day during  
1747 the preceding calendar year; and

1748 (b) employs at least two employees on the first day of the plan year.

1749 (74) (a) Except for a retainer contract or legal assistance described in Section  
1750 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for  
1751 specified legal expenses.

1752 (b) "Legal expense insurance" includes arrangements that create reasonable  
1753 expectations of enforceable rights.

1754 (c) "Legal expense insurance" does not include the provision of, or reimbursement for,  
1755 legal services incidental to other insurance coverages.

1756 (75) (a) "Liability insurance" means insurance against liability:

1757 (i) for death, injury, or disability of any human being, or for damage to property,  
1758 exclusive of the coverages under:

1759 (A) Subsection (79) for medical malpractice insurance;

1760 (B) Subsection (102) for professional liability insurance; and

1761 (C) Subsection (128) for workers' compensation insurance;

1762 (ii) for medical, hospital, surgical, and funeral benefits to persons other than the  
1763 insured who are injured, irrespective of legal liability of the insured, when issued with or  
1764 supplemental to insurance against legal liability for the death, injury, or disability of human

1765 beings, exclusive of the coverages under:

1766 (A) Subsection (79) for medical malpractice insurance;

1767 (B) Subsection (102) for professional liability insurance; and

1768 (C) Subsection (128) for workers' compensation insurance;

1769 (iii) for loss or damage to property resulting from accidents to or explosions of boilers,  
1770 pipes, pressure containers, machinery, or apparatus;

1771 (iv) for loss or damage to any property caused by the breakage or leakage of sprinklers,  
1772 water pipes and containers, or by water entering through leaks or openings in buildings; or

1773 (v) for other loss or damage properly the subject of insurance not within any other kind  
1774 or kinds of insurance as defined in this chapter, if such insurance is not contrary to law or  
1775 public policy.

1776 (b) "Liability insurance" includes:

1777 (i) vehicle liability insurance as defined in Subsection (126);

1778 (ii) residential dwelling liability insurance as defined in Subsection (111); and

1779 (iii) making inspection of, and issuing certificates of inspection upon, elevators,

1780 boilers, machinery, and apparatus of any kind when done in connection with insurance on  
1781 them.

1782 (76) (a) "License" means the authorization issued by the insurance commissioner under  
1783 this title to engage in some activity that is part of or related to the insurance business.

1784 (b) "License" includes certificates of authority issued to insurers.

1785 (77) (a) "Life insurance" means insurance on human lives and insurances pertaining to  
1786 or connected with human life.

1787 (b) The business of life insurance includes:

1788 (i) granting death benefits;

1789 (ii) granting annuity benefits;

1790 (iii) granting endowment benefits;

1791 (iv) granting additional benefits in the event of death by accident;

1792 (v) granting additional benefits to safeguard the policy against lapse in the event of  
1793 disability; and

1794 (vi) providing optional methods of settlement of proceeds.

1795 (78) (a) "Long-term care insurance" means an insurance policy or rider advertised,

- 1796 marketed, offered, or designated to provide coverage:
- 1797 (i) in a setting other than an acute care unit of a hospital;
- 1798 (ii) for not less than 12 consecutive months for each covered person on the basis of:
- 1799 (A) expenses incurred;
- 1800 (B) indemnity;
- 1801 (C) prepayment; or
- 1802 (D) another method;
- 1803 (iii) for one or more necessary or medically necessary services that are:
- 1804 (A) diagnostic;
- 1805 (B) preventative;
- 1806 (C) therapeutic;
- 1807 (D) rehabilitative;
- 1808 (E) maintenance; or
- 1809 (F) personal care; and
- 1810 (iv) that may be issued by:
- 1811 (A) an insurer;
- 1812 (B) a fraternal benefit society;
- 1813 (C) (I) a nonprofit health hospital; and
- 1814 (II) a medical service corporation;
- 1815 (D) a prepaid health plan;
- 1816 (E) a health maintenance organization; or
- 1817 (F) an entity similar to the entities described in Subsections (78)(a)(iv)(A) through (E)
- 1818 to the extent that the entity is otherwise authorized to issue life or health care insurance.
- 1819 (b) "Long-term care insurance" includes:
- 1820 (i) any of the following that provide directly or supplement long-term care insurance:
- 1821 (A) a group or individual annuity or rider; or
- 1822 (B) a life insurance policy or rider;
- 1823 (ii) a policy or rider that provides for payment of benefits based on:
- 1824 (A) cognitive impairment; or
- 1825 (B) functional capacity; or
- 1826 (iii) a qualified long-term care insurance contract.

- 1827 (c) "Long-term care insurance" does not include:
- 1828 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
- 1829 (ii) basic hospital expense coverage;
- 1830 (iii) basic medical/surgical expense coverage;
- 1831 (iv) hospital confinement indemnity coverage;
- 1832 (v) major medical expense coverage;
- 1833 (vi) income replacement or related asset-protection coverage;
- 1834 (vii) accident only coverage;
- 1835 (viii) coverage for a specified:
- 1836 (A) disease; or
- 1837 (B) accident;
- 1838 (ix) limited benefit health coverage; or
- 1839 (x) a life insurance policy that accelerates the death benefit to provide the option of a
- 1840 lump sum payment:
- 1841 (A) if the following are not conditioned on the receipt of long-term care:
- 1842 (I) benefits; or
- 1843 (II) eligibility; and
- 1844 (B) the coverage is for one or more the following qualifying events:
- 1845 (I) terminal illness;
- 1846 (II) medical conditions requiring extraordinary medical intervention; or
- 1847 (III) permanent institutional confinement.
- 1848 (79) "Medical malpractice insurance" means insurance against legal liability incident to
- 1849 the practice and provision of medical services other than the practice and provision of dental
- 1850 services.
- 1851 (80) "Member" means a person having membership rights in an insurance corporation.
- 1852 (81) "Minimum capital" or "minimum required capital" means the capital that must be
- 1853 constantly maintained by a stock insurance corporation as required by statute.
- 1854 (82) "Motor club" means a person:
- 1855 (a) licensed under:
- 1856 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
- 1857 (ii) Chapter 11, Motor Clubs; or

- 1858 (iii) Chapter 14, Foreign Insurers; and  
1859 (b) that promises for an advance consideration to provide for a stated period of time:  
1860 (i) legal services under Subsection 31A-11-102(1)(b);  
1861 (ii) bail services under Subsection 31A-11-102(1)(c); or  
1862 (iii) trip reimbursement, towing services, emergency road services, stolen automobile  
1863 services, a combination of these services, or any other services given in Subsections  
1864 31A-11-102(1)(b) through (f).
- 1865 (83) "Mutual" means mutual insurance corporation.  
1866 (84) "Network plan" means health care insurance:  
1867 (a) that is issued by an insurer; and  
1868 (b) under which the financing and delivery of medical care is provided, in whole or in  
1869 part, through a defined set of providers under contract with the insurer, including the financing  
1870 and delivery of items paid for as medical care.
- 1871 (85) "Nonparticipating" means a plan of insurance under which the insured is not  
1872 entitled to receive dividends representing shares of the surplus of the insurer.
- 1873 (86) "Ocean marine insurance" means insurance against loss of or damage to:  
1874 (a) ships or hulls of ships;  
1875 (b) goods, freight, cargoes, merchandise, effects, disbursements, profits, moneys,  
1876 securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia  
1877 interests, or other cargoes in or awaiting transit over the oceans or inland waterways;  
1878 (c) earnings such as freight, passage money, commissions, or profits derived from  
1879 transporting goods or people upon or across the oceans or inland waterways; or  
1880 (d) a vessel owner or operator as a result of liability to employees, passengers, bailors,  
1881 owners of other vessels, owners of fixed objects, customs or other authorities, or other persons  
1882 in connection with maritime activity.
- 1883 (87) "Order" means an order of the commissioner.  
1884 (88) "Outline of coverage" means a summary that explains an accident and health  
1885 insurance policy.  
1886 (89) "Participating" means a plan of insurance under which the insured is entitled to  
1887 receive dividends representing shares of the surplus of the insurer.  
1888 (90) "Participation," as used in a health benefit plan, means a requirement relating to

1889 the minimum percentage of eligible employees that must be enrolled in relation to the total  
1890 number of eligible employees of an employer reduced by each eligible employee who  
1891 voluntarily declines coverage under the plan because the employee has other health care  
1892 insurance coverage.

1893 (91) "Person" includes an individual, partnership, corporation, incorporated or  
1894 unincorporated association, joint stock company, trust, reciprocal, syndicate, or any similar  
1895 entity or combination of entities acting in concert.

1896 (92) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).

1897 (93) "Plan year" means:

1898 (a) the year that is designated as the plan year in:

1899 (i) the plan document of a group health plan; or

1900 (ii) a summary plan description of a group health plan;

1901 (b) if the plan document or summary plan description does not designate a plan year or  
1902 there is no plan document or summary plan description:

1903 (i) the year used to determine deductibles or limits;

1904 (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;

1905 or

1906 (iii) the employer's taxable year if:

1907 (A) the plan does not impose deductibles or limits on a yearly basis; and

1908 (B) (I) the plan is not insured; or

1909 (II) the insurance policy is not renewed on an annual basis; or

1910 (c) in a case not described in Subsection (93)(a) or (b), the calendar year.

1911 (94) (a) (i) "Policy" means any document, including attached endorsements and riders,  
1912 purporting to be an enforceable contract, which memorializes in writing some or all of the  
1913 terms of an insurance contract.

1914 (ii) "Policy" includes a service contract issued by:

1915 (A) a motor club under Chapter 11, Motor Clubs;

1916 (B) a service contract provided under Chapter 6a, Service Contracts; and

1917 (C) a corporation licensed under:

1918 (I) Chapter 7, Nonprofit Health Service Insurance Corporations; or

1919 (II) Chapter 8, Health Maintenance Organizations and Limited Health Plans.

- 1920 (iii) "Policy" does not include:
- 1921 (A) a certificate under a group insurance contract; or
- 1922 (B) a document that does not purport to have legal effect.
- 1923 (b) (i) "Group insurance policy" means a policy covering a group of persons that is
- 1924 issued to a policyholder on behalf of the group, for the benefit of group members who are
- 1925 selected under procedures defined in the policy or in agreements which are collateral to the
- 1926 policy.
- 1927 (ii) A group insurance policy may include members of the policyholder's family or
- 1928 dependents.
- 1929 (c) "Blanket insurance policy" means a group policy covering classes of persons
- 1930 without individual underwriting, where the persons insured are determined by definition of the
- 1931 class with or without designating the persons covered.
- 1932 (95) "Policyholder" means the person who controls a policy, binder, or oral contract by
- 1933 ownership, premium payment, or otherwise.
- 1934 (96) "Policy illustration" means a presentation or depiction that includes nonguaranteed
- 1935 elements of a policy of life insurance over a period of years.
- 1936 (97) "Policy summary" means a synopsis describing the elements of a life insurance
- 1937 policy.
- 1938 (98) "Preexisting condition," in connection with a health benefit plan, means:
- 1939 (a) a condition for which medical advice, diagnosis, care, or treatment was
- 1940 recommended or received during the six months immediately preceding the earlier of:
- 1941 (i) the enrollment date; or
- 1942 (ii) the effective date of coverage; or
- 1943 (b) for an individual insurance policy, a pregnancy existing on the effective date of
- 1944 coverage.
- 1945 (99) (a) "Premium" means the monetary consideration for an insurance policy, and
- 1946 includes assessments, membership fees, required contributions, or monetary consideration,
- 1947 however designated.
- 1948 (b) Consideration paid to third party administrators for their services is not "premium,"
- 1949 though amounts paid by third party administrators to insurers for insurance on the risks
- 1950 administered by the third party administrators are "premium."

- 1951           (100) "Principal officers" of a corporation means the officers designated under  
1952 Subsection 31A-5-203(3).
- 1953           (101) "Proceedings" includes actions and special statutory proceedings.
- 1954           (102) "Professional liability insurance" means insurance against legal liability incident  
1955 to the practice of a profession and provision of any professional services.
- 1956           (103) "Property insurance" means insurance against loss or damage to real or personal  
1957 property of every kind and any interest in that property, from all hazards or causes, and against  
1958 loss consequential upon the loss or damage including vehicle comprehensive and vehicle  
1959 physical damage coverages, but excluding inland marine insurance and ocean marine insurance  
1960 as defined under Subsections (61) and (86).
- 1961           (104) "Qualified long-term care insurance contract" or "federally tax qualified  
1962 long-term care insurance contract" means:
- 1963           (a) an individual or group insurance contract that meets the requirements of Section  
1964 7702B(b), Internal Revenue Code; or
- 1965           (b) the portion of a life insurance contract that provides long-term care insurance:
- 1966           (i) (A) by rider; or  
1967           (B) as a part of the contract; and
- 1968           (ii) that satisfies the requirements of Section 7702B(b) and (e), Internal Revenue Code.
- 1969           (105) (a) "Rate" means:
- 1970           (i) the cost of a given unit of insurance; or  
1971           (ii) for property-casualty insurance, that cost of insurance per exposure unit either  
1972 expressed as:
- 1973           (A) a single number; or  
1974           (B) a pure premium rate, adjusted before any application of individual risk variations  
1975 based on loss or expense considerations to account for the treatment of:
- 1976           (I) expenses;  
1977           (II) profit; and  
1978           (III) individual insurer variation in loss experience.
- 1979           (b) "Rate" does not include a minimum premium.
- 1980           (106) (a) Except as provided in Subsection (106)(b), "rate service organization" means  
1981 any person who assists insurers in rate making or filing by:



- 1982 (i) collecting, compiling, and furnishing loss or expense statistics;
- 1983 (ii) recommending, making, or filing rates or supplementary rate information; or
- 1984 (iii) advising about rate questions, except as an attorney giving legal advice.
- 1985 (b) "Rate service organization" does not mean:
- 1986 (i) an employee of an insurer;
- 1987 (ii) a single insurer or group of insurers under common control;
- 1988 (iii) a joint underwriting group; or
- 1989 (iv) a natural person serving as an actuarial or legal consultant.
- 1990 (107) "Rating manual" means any of the following used to determine initial and
- 1991 renewal policy premiums:
- 1992 (a) a manual of rates;
- 1993 (b) classifications;
- 1994 (c) rate-related underwriting rules; and
- 1995 (d) rating formulas that describe steps, policies, and procedures for determining initial
- 1996 and renewal policy premiums.
- 1997 (108) "Received by the department" means:
- 1998 (a) except as provided in Subsection (108)(b), the date delivered to and stamped
- 1999 received by the department, whether delivered:
- 2000 (i) in person;
- 2001 (ii) by a delivery service; or
- 2002 (iii) electronically; and
- 2003 (b) if an item with a department imposed deadline is delivered to the department by a
- 2004 delivery service, the delivery service's postmark date or pick-up date unless otherwise stated in:
- 2005 (i) statute;
- 2006 (ii) rule; or
- 2007 (iii) a specific filing order.
- 2008 (109) "Reciprocal" or "interinsurance exchange" means any unincorporated association
- 2009 of persons:
- 2010 (a) operating through an attorney-in-fact common to all of them; and
- 2011 (b) exchanging insurance contracts with one another that provide insurance coverage
- 2012 on each other.

2013 (110) "Reinsurance" means an insurance transaction where an insurer, for  
2014 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to  
2015 reinsurance transactions, this title sometimes refers to:

2016 (a) the insurer transferring the risk as the "ceding insurer"; and

2017 (b) the insurer assuming the risk as the:

2018 (i) "assuming insurer"; or

2019 (ii) "assuming reinsurer."

2020 (111) "Residential dwelling liability insurance" means insurance against liability  
2021 resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is  
2022 a detached single family residence or multifamily residence up to four units.

2023 (112) "Retrocession" means reinsurance with another insurer of a liability assumed  
2024 under a reinsurance contract. A reinsurer "retrocedes" when it reinsures with another insurer  
2025 part of a liability assumed under a reinsurance contract.

2026 (113) "Rider" means an endorsement to:

2027 (a) an insurance policy; or

2028 (b) an insurance certificate.

2029 (114) (a) "Security" means any:

2030 (i) note;

2031 (ii) stock;

2032 (iii) bond;

2033 (iv) debenture;

2034 (v) evidence of indebtedness;

2035 (vi) certificate of interest or participation in any profit-sharing agreement;

2036 (vii) collateral-trust certificate;

2037 (viii) preorganization certificate or subscription;

2038 (ix) transferable share;

2039 (x) investment contract;

2040 (xi) voting trust certificate;

2041 (xii) certificate of deposit for a security;

2042 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in  
2043 payments out of production under such a title or lease;

- 2044 (xiv) commodity contract or commodity option;
- 2045 (xv) any certificate of interest or participation in, temporary or interim certificate for,  
2046 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed  
2047 in Subsections (114)(a)(i) through (xiv); or
- 2048 (xvi) any other interest or instrument commonly known as a security.
- 2049 (b) "Security" does not include:
- 2050 (i) any insurance or endowment policy or annuity contract under which an insurance  
2051 company promises to pay money in a specific lump sum or periodically for life or some other  
2052 specified period; or
- 2053 (ii) a burial certificate or burial contract.
- 2054 (115) "Self-insurance" means any arrangement under which a person provides for  
2055 spreading its own risks by a systematic plan.
- 2056 (a) Except as provided in this Subsection (115), self-insurance does not include an  
2057 arrangement under which a number of persons spread their risks among themselves.
- 2058 (b) Self-insurance does include an arrangement by which a governmental entity, as  
2059 defined in Section 63-30-2, undertakes to indemnify its employees for liability arising out of  
2060 the employees' employment.
- 2061 (c) Self-insurance does include an arrangement by which a person with a managed  
2062 program of self-insurance and risk management undertakes to indemnify its affiliates,  
2063 subsidiaries, directors, officers, or employees for liability or risk which is related to the  
2064 relationship or employment.
- 2065 (d) Self-insurance does not include any arrangement with independent contractors.
- 2066 (116) "Short-term care insurance" means any insurance policy or rider advertised,  
2067 marketed, offered, or designed to provide coverage that is similar to long-term care insurance  
2068 but that provides coverage for less than 12 consecutive months for each covered person.
- 2069 (117) "Small employer," in connection with a health benefit plan, means an employer  
2070 who, with respect to a calendar year and to a plan year:
- 2071 (a) employed an average of at least two employees but not more than 50 eligible  
2072 employees on each business day during the preceding calendar year; and
- 2073 (b) employs at least two employees on the first day of the plan year.
- 2074 (118) (a) "Subsidiary" of a person means an affiliate controlled by that person either

2075 directly or indirectly through one or more affiliates or intermediaries.

2076 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting  
2077 shares are owned by that person either alone or with its affiliates, except for the minimum  
2078 number of shares the law of the subsidiary's domicile requires to be owned by directors or  
2079 others.

2080 (119) Subject to Subsection (63)(b), "surety insurance" includes:

2081 (a) a guarantee against loss or damage resulting from failure of principals to pay or  
2082 perform their obligations to a creditor or other obligee;

2083 (b) bail bond insurance; and

2084 (c) fidelity insurance.

2085 (120) (a) "Surplus" means the excess of assets over the sum of paid-in capital and  
2086 liabilities.

2087 (b) (i) "Permanent surplus" means the surplus of a mutual insurer that has been  
2088 designated by the insurer as permanent.

2089 (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-209 require  
2090 that mutuals doing business in this state maintain specified minimum levels of permanent  
2091 surplus.

2092 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is  
2093 essentially the same as the minimum required capital requirement that applies to stock insurers.

2094 (c) "Excess surplus" means:

2095 (i) for life or accident and health insurers, health organizations, and property and  
2096 casualty insurers as defined in Section 31A-17-601, the lesser of:

2097 (A) that amount of an insurer's or health organization's total adjusted capital, as defined  
2098 in Subsection (123), that exceeds the product of:

2099 (I) 2.5; and

2100 (II) the sum of the insurer's or health organization's minimum capital or permanent  
2101 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

2102 (B) that amount of an insurer's or health organization's total adjusted capital, as defined  
2103 in Subsection (123), that exceeds the product of:

2104 (I) 3.0; and

2105 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

2106 (ii) for monoline mortgage guaranty insurers, financial guaranty insurers, and title  
2107 insurers, that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

2108 (A) 1.5; and

2109 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).

2110 (121) "Third party administrator" or "administrator" means any person who collects  
2111 charges or premiums from, or who, for consideration, adjusts or settles claims of residents of  
2112 the state in connection with insurance coverage, annuities, or service insurance coverage,  
2113 except:

2114 (a) a union on behalf of its members;

2115 (b) a person administering any:

2116 (i) pension plan subject to the federal Employee Retirement Income Security Act of  
2117 1974;

2118 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or

2119 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;

2120 (c) an employer on behalf of the employer's employees or the employees of one or  
2121 more of the subsidiary or affiliated corporations of the employer;

2122 (d) an insurer licensed under Chapter 5, 7, 8, 9, or 14, but only for a line of insurance  
2123 for which the insurer holds a license in this state; or

2124 (e) a person licensed or exempt from licensing under Chapter 23 or 26 whose activities  
2125 are limited to those authorized under the license the person holds or for which the person is  
2126 exempt.

2127 (122) "Title insurance" means the insuring, guaranteeing, or indemnifying of owners of  
2128 real or personal property or the holders of liens or encumbrances on that property, or others  
2129 interested in the property against loss or damage suffered by reason of liens or encumbrances  
2130 upon, defects in, or the unmarketability of the title to the property, or invalidity or  
2131 unenforceability of any liens or encumbrances on the property.

2132 (123) "Total adjusted capital" means the sum of an insurer's or health organization's  
2133 statutory capital and surplus as determined in accordance with:

2134 (a) the statutory accounting applicable to the annual financial statements required to be  
2135 filed under Section 31A-4-113; and

2136 (b) any other items provided by the RBC instructions, as RBC instructions is defined in

2137 Section 31A-17-601.

2138 (124) (a) "Trustee" means "director" when referring to the board of directors of a  
2139 corporation.

2140 (b) "Trustee," when used in reference to an employee welfare fund, means an  
2141 individual, firm, association, organization, joint stock company, or corporation, whether acting  
2142 individually or jointly and whether designated by that name or any other, that is charged with  
2143 or has the overall management of an employee welfare fund.

2144 (125) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer"  
2145 means an insurer:

2146 (i) not holding a valid certificate of authority to do an insurance business in this state;

2147 or

2148 (ii) transacting business not authorized by a valid certificate.

2149 (b) "Admitted insurer" or "authorized insurer" means an insurer:

2150 (i) holding a valid certificate of authority to do an insurance business in this state; and

2151 (ii) transacting business as authorized by a valid certificate.

2152 (126) "Vehicle liability insurance" means insurance against liability resulting from or  
2153 incident to ownership, maintenance, or use of any land vehicle or aircraft, exclusive of vehicle  
2154 comprehensive and vehicle physical damage coverages under Subsection (103).

2155 (127) "Voting security" means a security with voting rights, and includes any security  
2156 convertible into a security with a voting right associated with it.

2157 (128) "Workers' compensation insurance" means:

2158 (a) insurance for indemnification of employers against liability for compensation based  
2159 on:

2160 (i) compensable accidental injuries; and

2161 (ii) occupational disease disability;

2162 (b) employer's liability insurance incidental to workers' compensation insurance and  
2163 written in connection with it; and

2164 (c) insurance assuring to the persons entitled to workers' compensation benefits the  
2165 compensation provided by law.

2166 Section 23. Section **31A-5-101** is amended to read:

2167 **31A-5-101. Definitions.**

2168 In this chapter, unless the context requires otherwise:

2169 (1) The definitions applicable to the Utah Revised Business Corporation Act in  
2170 Subsections 16-10a-102(2), (23), and (24) apply to stock corporations.

2171 (2) The definitions applicable to nonprofit corporations in Subsections  
2172 16-6a-102[~~(4)~~](3), (6), and (30) apply to mutuals.

2173 (3) "Promoter securities" are securities issued by a stock insurer to the incorporators,  
2174 directors, officers, or their families or nominees at any time prior to, and up to one year  
2175 following, the issuance of a certificate of authority to the stock insurer.

2176 Section 24. Section **31A-9-101** is amended to read:

2177 **31A-9-101. Definitions.**

2178 (1) As used in this chapter:

2179 (a) "Fraternal" or "fraternal benefit society" means a corporation organized or operating  
2180 under this chapter that:

2181 (i) has no capital stock;

2182 (ii) exists solely for:

2183 (A) the benefit of its members and their beneficiaries; and

2184 (B) any lawful social, intellectual, educational, charitable, benevolent, moral, fraternal,  
2185 patriotic, or religious purpose for the benefit of its members or the public, carried on through  
2186 voluntary activity of its members in their local lodges or through institutional programs of the  
2187 fraternal or its local lodges;

2188 (iii) has a lodge system;

2189 (iv) has a representative form of government; and

2190 (v) provides insurance benefits authorized under this chapter.

2191 (b) "Laws of a fraternal" include its articles of incorporation and bylaws, however  
2192 designated.

2193 (c) "Lodge system" means one in which:

2194 (i) there is a supreme governing body;

2195 (ii) subordinate to the supreme governing body are local lodges, however designated,  
2196 into which natural persons are admitted as members in accordance with the laws of the  
2197 fraternal;

2198 (iii) the local lodges are required by the laws of the fraternal to hold regular meetings at

2199 least monthly; and

2200 (iv) the local lodges regularly engage in programs involving member participation to  
2201 implement the purposes of Subsection (1)(a)(ii).

2202 (d) "Representative form of government" means the fraternal complies with Section  
2203 31A-9-403.

2204 (2) In any provisions of law made applicable to fraternal by this chapter, the technical  
2205 terms used in those provisions are applicable to fraternal despite the use of other parallel terms  
2206 by fraternal.

2207 (3) The definitions provided in Subsections 16-6a-102~~(4)~~(3), (6), and (30), and  
2208 Section 31A-1-301 apply to fraternal.

2209 Section 25. Section **31A-21-105** is amended to read:

2210 **31A-21-105. Representations, warranties, and conditions.**

2211 (1) (a) No statement, representation, or warranty made by any person representing the  
2212 insurer in the negotiation for an individual or franchise insurance contract affects the insurer's  
2213 obligations under the policy unless it is stated in the policy or in a written application signed by  
2214 the applicant. No person, except the applicant or another by his written consent, may alter the  
2215 application, except for administrative purposes in a way which is clearly not ascribable to the  
2216 applicant.

2217 (b) No statement, representation, or warranty made by or on behalf of a particular  
2218 certificate holder under a group policy affects the insurer's obligations under the certificate  
2219 unless it is stated in the certificate or in a written document signed by the certificate holder, and  
2220 a copy of it is supplied to the certificate holder.

2221 (c) The policyholder, his assignee, the loss payee or mortgagee or lienholder under  
2222 property insurance, and any person whose life or health is insured under a policy may request,  
2223 in writing, from the company a copy of the application, if he did not receive the policy or a  
2224 copy of it, or if the policy has been reinstated or renewed without the attachment of a copy of  
2225 the original application. If the insurer does not deliver or mail a copy as requested within 30  
2226 days after receipt of the request by the insurer or its agent, or in the case of a group policy  
2227 certificate holder, does not inform that person within the same period how he may inspect the  
2228 policy or a copy of it and application or enrollment card or a copy of it during normal business  
2229 hours at a place reasonably convenient to the certificate holder, nothing in the application or



2230 enrollment card affects the insurer's obligations under the policy to the person making the  
2231 request. Each person whose life or health is insured under a group policy has the same right to  
2232 request a copy of any document under Subsection (1)(b).

2233 (2) Except as provided in Subsection (5), no misrepresentation or breach of an  
2234 affirmative warranty affects the insurer's obligations under the policy unless:

2235 (a) the insurer relies on it and it is either material or is made with intent to deceive; or

2236 (b) the fact misrepresented or falsely warranted contributes to the loss.

2237 (3) No failure of a condition prior to the loss and no breach of a promissory warranty  
2238 affects the insurer's obligations under the policy unless it exists at the time of the loss and  
2239 either increases the risk at the time of the loss or contributes to the loss. This Subsection (3)  
2240 does not apply to failure to tender payment of premium.

2241 (4) Nondisclosure of information not requested by the insurer is not a defense to an  
2242 action against the insurer. Failure to correct within a reasonable time any representation that  
2243 becomes incorrect because of changes in circumstances is misrepresentation, not  
2244 nondisclosure.

2245 (5) If after issuance of a policy the insurer acquires knowledge of sufficient facts to  
2246 constitute a general defense to all claims under the policy, the defense is only available if the  
2247 insurer notifies the insured within 60 days after acquiring the knowledge of its intention to  
2248 defend against a claim if one should arise, or within 120 days if the insurer considers it  
2249 necessary to secure additional medical information and is actively seeking the information at  
2250 the end of the 60 days. The insurer and insured may mutually agree to a policy rider in order to  
2251 continue the policy in force with exceptions or modifications. For purposes of this Subsection  
2252 (5), an insurer has acquired knowledge only if the information alleged to give rise to the  
2253 knowledge was disclosed to the insurer or its agent in connection with communications or  
2254 investigations associated with the insurance policy under which the subject claim arises.

2255 (6) (a) An insurer that offers coverage to a small employer group as required by ~~[P.L.~~  
2256 ~~104-91]~~ Pub. L. No. 104-191, 110 Stat. 1979, Sec. 2711(a), may not rescind a policy or  
2257 individual certificate holder based on application misrepresentation unless the insurer would  
2258 not have been required to issue the coverage in the absence of the misrepresentation.

2259 (b) Subsection (6)(a) does not prevent an insurer from correcting rates if:

2260 (i) in the absence of misrepresentation a different rate would have been required; and

2261 (ii) the corrected rates are in compliance with Section 31A-30-106.

2262 (7) No trivial or transitory breach of or noncompliance with any provision of this  
2263 chapter is a basis for avoiding an insurance contract.

2264 Section 26. Section **31A-22-617** is amended to read:

2265 **31A-22-617. Preferred provider contract provisions.**

2266 Health insurance policies may provide for insureds to receive services or  
2267 reimbursement under the policies in accordance with preferred health care provider contracts as  
2268 follows:

2269 (1) Subject to restrictions under this section, any insurer or third party administrator  
2270 may enter into contracts with health care providers as defined in Section 78-14-3 under which  
2271 the health care providers agree to supply services, at prices specified in the contracts, to  
2272 persons insured by an insurer.

2273 (a) A health care provider contract may require the health care provider to accept the  
2274 specified payment as payment in full, relinquishing the right to collect additional amounts from  
2275 the insured person.

2276 (b) The insurance contract may reward the insured for selection of preferred health care  
2277 providers by:

2278 (i) reducing premium rates;

2279 (ii) reducing deductibles;

2280 (iii) coinsurance;

2281 (iv) other copayments; or

2282 (v) [in] any other reasonable manner.

2283 (c) If the insurer is a managed care organization, as defined in Subsection  
2284 31A-27-311.5(1)(f):

2285 (i) the insurance contract and the health care provider contract shall provide that in the  
2286 event the managed care organization becomes insolvent, the rehabilitator or liquidator may:

2287 (A) require the health care provider to continue to provide health care services under  
2288 the contract until the earlier of:

2289 (I) 90 days after the date of the filing of a petition for rehabilitation or the petition for  
2290 liquidation; or

2291 (II) the date the term of the contract ends; and

2292 (B) subject to Subsection (1)(c)(v), reduce the fees the provider is otherwise entitled to  
2293 receive from the managed care organization during the time period described in Subsection  
2294 (1)(c)(i)(A);

2295 (ii) the provider is required to:

2296 (A) accept the reduced payment under Subsection (1)(c)(i)(B) as payment in full; and

2297 (B) relinquish the right to collect additional amounts from the insolvent managed care  
2298 organization's enrollee, as defined in Section 31A-27-311.5(1)(b);

2299 (iii) if the contract between the health care provider and the managed care organization  
2300 has not been reduced to writing, or the contract fails to contain the language required by  
2301 Subsection (1)(c)(i), the provider may not collect or attempt to collect from the enrollee:

2302 (A) sums owed by the insolvent managed care organization; or

2303 (B) the amount of the regular fee reduction authorized under Subsection (1)(c)(i)(B);

2304 (iv) the following may not bill or maintain any action at law against an enrollee to  
2305 collect sums owed by the insolvent managed care organization or the amount of the regular fee  
2306 reduction authorized under Subsection (1)(c)(i)(B):

2307 (A) a provider;

2308 (B) an agent;

2309 (C) a trustee; or

2310 (D) an assignee of a person described in Subsections (1)(c)(iv)(A) through (C); and

2311 (v) notwithstanding Subsection (1)(c)(i):

2312 (A) a rehabilitator or liquidator may not reduce a fee by less than 75% of the provider's  
2313 regular fee set forth in the contract; and

2314 (B) the enrollee shall continue to pay the copayments, deductibles, and other payments  
2315 for services received from the provider that the enrollee was required to pay before the filing  
2316 of:

2317 (I) a petition for rehabilitation; or

2318 (II) a petition for liquidation.

2319 (2) (a) Subject to Subsections (2)(b) through (2)(f), an insurer using preferred health  
2320 care provider contracts shall pay for the services of health care providers not under the contract,  
2321 unless the illnesses or injuries treated by the health care provider are not within the scope of the  
2322 insurance contract. As used in this section, "class of health care providers" means all health

2323 care providers licensed or licensed and certified by the state within the same professional,  
2324 trade, occupational, or facility licensure or licensure and certification category established  
2325 pursuant to Titles 26, Utah Health Code and 58, Occupations and Professions.

2326 (b) When the insured receives services from a health care provider not under contract,  
2327 the insurer shall reimburse the insured for at least 75% of the average amount paid by the  
2328 insurer for comparable services of preferred health care providers who are members of the  
2329 same class of health care providers. The commissioner may adopt a rule dealing with the  
2330 determination of what constitutes 75% of the average amount paid by the insurer for  
2331 comparable services of preferred health care providers who are members of the same class of  
2332 health care providers.

2333 (c) When reimbursing for services of health care providers not under contract, the  
2334 insurer may make direct payment to the insured.

2335 (d) Notwithstanding Subsection (2)(b), an insurer using preferred health care provider  
2336 contracts may impose a deductible on coverage of health care providers not under contract.

2337 (e) When selecting health care providers with whom to contract under Subsection (1),  
2338 an insurer may not unfairly discriminate between classes of health care providers, but may  
2339 discriminate within a class of health care providers, subject to Subsection (7).

2340 (f) For purposes of this section, unfair discrimination between classes of health care  
2341 providers shall include:

2342 (i) refusal to contract with class members in reasonable proportion to the number of  
2343 insureds covered by the insurer and the expected demand for services from class members; and

2344 (ii) refusal to cover procedures for one class of providers that are:

2345 (A) commonly utilized by members of the class of health care providers for the  
2346 treatment of illnesses, injuries, or conditions;

2347 (B) otherwise covered by the insurer; and

2348 (C) within the scope of practice of the class of health care providers.

2349 (3) Before the insured consents to the insurance contract, the insurer shall fully disclose  
2350 to the insured that it has entered into preferred health care provider contracts. The insurer shall  
2351 provide sufficient detail on the preferred health care provider contracts to permit the insured to  
2352 agree to the terms of the insurance contract. The insurer shall provide at least the following  
2353 information:

2354 (a) a list of the health care providers under contract and if requested their business  
2355 locations and specialties;

2356 (b) a description of the insured benefits, including any deductibles, coinsurance, or  
2357 other copayments;

2358 (c) a description of the quality assurance program required under Subsection (4); and

2359 (d) a description of the adverse benefit determination procedures required under  
2360 Subsection (5).

2361 (4) (a) An insurer using preferred health care provider contracts shall maintain a quality  
2362 assurance program for assuring that the care provided by the health care providers under  
2363 contract meets prevailing standards in the state.

2364 (b) The commissioner in consultation with the executive director of the Department of  
2365 Health may designate qualified persons to perform an audit of the quality assurance program.  
2366 The auditors shall have full access to all records of the organization and its health care  
2367 providers, including medical records of individual patients.

2368 (c) The information contained in the medical records of individual patients shall  
2369 remain confidential. All information, interviews, reports, statements, memoranda, or other data  
2370 furnished for purposes of the audit and any findings or conclusions of the auditors are  
2371 privileged. The information is not subject to discovery, use, or receipt in evidence in any legal  
2372 proceeding except hearings before the commissioner concerning alleged violations of this  
2373 section.

2374 (5) An insurer using preferred health care provider contracts shall provide a reasonable  
2375 procedure for resolving complaints and adverse benefit determinations initiated by the insureds  
2376 and health care providers.

2377 (6) An insurer may not contract with a health care provider for treatment of illness or  
2378 injury unless the health care provider is licensed to perform that treatment.

2379 (7) (a) A health care provider or insurer may not discriminate against a preferred health  
2380 care provider for agreeing to a contract under Subsection (1).

2381 (b) Any health care provider licensed to treat any illness or injury within the scope of  
2382 the health care provider's practice, who is willing and able to meet the terms and conditions  
2383 established by the insurer for designation as a preferred health care provider, shall be able to  
2384 apply for and receive the designation as a preferred health care provider. Contract terms and

2385 conditions may include reasonable limitations on the number of designated preferred health  
2386 care providers based upon substantial objective and economic grounds, or expected use of  
2387 particular services based upon prior provider-patient profiles.

2388 (8) Upon the written request of a provider excluded from a provider contract, the  
2389 commissioner may hold a hearing to determine if the insurer's exclusion of the provider is  
2390 based on the criteria set forth in Subsection (7)(b).

2391 (9) Insurers are subject to the provisions of Sections 31A-22-613.5, 31A-22-614.5, and  
2392 31A-22-618.

2393 (10) Nothing in this section is to be construed as to require an insurer to offer a certain  
2394 benefit or service as part of a health benefit plan.

2395 (11) This section does not apply to catastrophic mental health coverage provided in  
2396 accordance with Section 31A-22-625.

2397 Section 27. Section **34A-2-301** is amended to read:

2398 **34A-2-301. Places of employment to be safe -- Willful neglect -- Penalty.**

2399 (1) An employer may not:

2400 (a) construct, occupy, or maintain any place of employment that is not safe;

2401 (b) require or knowingly permit any employee to be in any employment or place of  
2402 employment that is not safe;

2403 (c) fail to provide and use safety devices and safeguards;

2404 (d) remove, disable, or bypass safety devices and safeguards;

2405 (e) fail to obey orders of the commission;

2406 (f) fail to obey rules of the commission;

2407 (g) fail to adopt and use methods and processes reasonably adequate to render the  
2408 employment and place of employment safe; or

2409 (h) fail or neglect to do every other thing reasonably necessary to protect the life,  
2410 health, and safety of the employer's employees.

2411 (2) Compensation as provided in this chapter [~~3~~] shall be increased 15%, except in case  
2412 of injury resulting in death, when injury is caused by the willful failure of an employer to  
2413 comply with:

2414 (a) the law;

2415 (b) a rule of the commission;

2416 (c) any lawful order of the commission; or

2417 (d) the employer's own written workplace safety program.

2418 Section 28. Section **49-15-102** is amended to read:

2419 **49-15-102. Definitions.**

2420 As used in this chapter:

2421 (1) (a) "Compensation" means the total amount of payments that are includable in  
2422 gross income received by a public safety service employee as base income for the regularly  
2423 scheduled work period. The participating employer shall establish the regularly scheduled  
2424 work period. Base income shall be determined prior to the deduction of any amounts the  
2425 public safety service employee authorizes to be deducted for salary deferral or other benefits  
2426 authorized by federal law.

2427 (b) "Compensation" includes performance-based bonuses and cost-of-living  
2428 adjustments.

2429 (c) "Compensation" does not include:

2430 (i) overtime;

2431 (ii) sick pay incentives;

2432 (iii) retirement pay incentives;

2433 (iv) the monetary value of remuneration paid in kind, as in a residence, use of  
2434 equipment or uniform, travel, or similar payments;

2435 (v) a lump-sum payment or special payment covering accumulated leave; and

2436 (vi) all contributions made by a participating employer under this system or under any  
2437 other employee benefit system or plan maintained by a participating employer for the benefit of  
2438 a member or participant.

2439 (d) "Compensation" for purposes of this chapter may not exceed the amount allowed  
2440 under Internal Revenue Code Section 401(a)(17).

2441 (2) "Final average salary" means the amount computed by averaging the highest three  
2442 years of annual compensation preceding retirement subject to Subsections (2)(a) and (b).

2443 (a) Except as provided in Subsection (2)(b), the percentage increase in annual  
2444 compensation in any one of the years used may not exceed the previous year's compensation by  
2445 more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power  
2446 of the dollar during the previous year, as measured by a United States Bureau of Labor

2447 Statistics Consumer Price Index average as determined by the board.

2448 (b) In cases where the participating employer provides acceptable documentation to the  
2449 office, the limitation in Subsection [~~(3)~~] (2)(a) may be exceeded if:

2450 (i) the public safety service employee has transferred from another agency; or

2451 (ii) the public safety service employee has been promoted to a new position.

2452 (3) "Line-of-duty death" means a death resulting from external force, violence, or  
2453 disease occasioned by an act of duty as a public safety service employee.

2454 (4) "Participating employer" means an employer which meets the participation  
2455 requirements of Section 49-15-201.

2456 (5) (a) "Public safety service" means at least 2,080 hours of regularly scheduled  
2457 compensated employment per year rendered by a member who is a:

2458 (i) law enforcement officer in accordance with Section 53-13-103;

2459 (ii) correctional officer in accordance with Section 53-13-104; and

2460 (iii) special function officer approved in accordance with [~~Section 49-4a-203~~] Sections  
2461 49-15-201 and [~~Section~~] 53-13-105.

2462 (b) "Public safety service" also requires that in the course of employment the  
2463 employee's life or personal safety is at risk.

2464 (6) "Public safety service employee" means an employee of a participating employer  
2465 who performs public safety service under this chapter.

2466 (7) "System" means the Public Safety Noncontributory Retirement System created  
2467 under this chapter.

2468 (8) "Years of service credit" means the number of periods, each to consist of 12 full  
2469 months as determined by the board, whether consecutive or not, during which a public safety  
2470 service employee was employed by a participating employer, including time the public safety  
2471 service employee was absent in the service of the United States government on military duty.

2472 Section 29. Section **49-21-102** is amended to read:

2473 **49-21-102. Definitions.**

2474 As used in this chapter:

2475 (1) "Date of disability" means the date on which a period of continuous disability  
2476 commences, and may not commence on or before the last day of actual work.

2477 (2) "Elimination period" means the three months at the beginning of each continuous



2478 period of total disability for which no benefit will be paid and commences with the date of  
2479 disability.

2480 (3) (a) "Eligible employee" means:

2481 (i) any regular full-time employee as defined under Section 49-12-102 or 49-13-102,  
2482 public safety service employee as defined under Section 49-14-102 or 49-15-102, or judge as  
2483 defined under Section 49-17-102 or 49-18-102, whose employer provides coverage under this  
2484 chapter, or the governor of the state; and

2485 (ii) an employee who is covered by a retirement program offered by the Teachers'  
2486 Insurance and Annuity Association of America, if the employee's employer provides coverage  
2487 under this chapter; and

2488 (b) "Eligible employee" does not include any employee that is exempt from coverage  
2489 under Section 49-21-201.

2490 (4) "Maximum benefit period" means the maximum period of time the monthly  
2491 disability income benefit will be paid under Section 49-21-403 for any continuous period of  
2492 total disability.

2493 (5) "Monthly disability benefit" means the monthly payments and accrual of service  
2494 credit under Section 49-21-401 and health insurance reimbursements paid under Section  
2495 ~~[49-21-408]~~ 49-21-407, or any combination of them.

2496 (6) "Objective medical impairment" means an impairment resulting from an injury or  
2497 illness which is diagnosed by a physician and which is based on accepted objective medical  
2498 tests or findings rather than subjective complaints.

2499 (7) "Physician" means a licensed physician.

2500 (8) "Regular monthly salary" means the amount certified by the participating employer  
2501 as the monthly salary of the eligible employee, unless there is a discrepancy between the  
2502 certified amount and the amount actually paid, in which case the office shall determine the  
2503 regular monthly salary.

2504 (9) "Regular occupation" means either the primary duties performed by the eligible  
2505 employee for the twelve months preceding the date of disability, or a permanent assignment of  
2506 duty to the eligible employee.

2507 (10) "Rehabilitative employment" means any occupation or employment for wage or  
2508 profit, for which the eligible employee is reasonably qualified to perform based on education,

2509 training, or experience while unable to perform the employee's regular occupation.

2510 (11) (a) "Total disability" or "totally disabled" means the complete inability, due to  
2511 objective medical impairment, whether physical or mental, to engage in the eligible employee's  
2512 regular occupation during the elimination period and the first 24 months of disability benefits.

2513 (b) "Total disability" means, after the elimination period and the first 24 months of  
2514 disability benefits, the complete inability, based solely on physical objective medical  
2515 impairment, to engage in any gainful occupation which is reasonable, considering the eligible  
2516 employee's education, training, and experience.

2517 Section 30. Section **53-1-106** is amended to read:

2518 **53-1-106. Department duties -- Powers.**

2519 (1) In addition to the responsibilities contained in this title, the department shall:

2520 (a) make rules and perform the functions specified in Title 41, Chapter 6, Traffic Rules  
2521 and Regulations, including:

2522 (i) setting performance standards for towing companies to be used by the department,  
2523 as required by Section 41-6-102.5; and

2524 (ii) advising the Department of Transportation regarding the safe design and operation  
2525 of school buses, as required by Section 41-6-115;

2526 (b) make rules to establish and clarify standards pertaining to the curriculum and  
2527 teaching methods of a motor vehicle accident prevention course under Section 31A-19a-211;

2528 (c) aid in enforcement efforts to combat drug trafficking [~~using funds appropriated~~  
2529 ~~under Section 58-37-20~~];

2530 [~~(d) as part of the annual budget hearings, provide the Executive Offices, Criminal~~  
2531 ~~Justice, and Legislature Appropriations Subcommittee with a complete accounting of~~  
2532 ~~expenditures and revenues from the funds under Section 58-37-20;~~]

2533 [~~(e)~~] (d) meet with the Department of Administrative Services to formulate contracts,  
2534 establish priorities, and develop funding mechanisms for dispatch and telecommunications  
2535 operations, as required by Section 63A-6-107;

2536 [~~(f)~~] (e) provide assistance to the Crime Victims' Reparations Board and Reparations  
2537 Office in conducting research or monitoring victims' programs, as required by Section  
2538 63-25a-405;

2539 [~~(g)~~] (f) develop sexual assault exam protocol standards in conjunction with the Utah

2540 Hospital Association;

2541 ~~[(h)]~~ (g) engage in emergency planning activities, including preparation of policy and  
2542 procedure and rulemaking necessary for implementation of the federal Emergency Planning  
2543 and Community Right to Know Act of 1986, as required by Section 63-5-5;

2544 ~~[(i)]~~ (h) implement the provisions of Section 53-2-202, the Emergency Management  
2545 Assistance Compact; and

2546 ~~[(j)]~~ (i) (i) maintain a database of the information listed below regarding each driver  
2547 license or state identification card status check made by a law enforcement officer:

2548 (A) the agency employing the law enforcement officer;

2549 (B) the name of the law enforcement officer or the identifying number the agency has  
2550 assigned to the law enforcement officer;

2551 (C) the race and gender of the law enforcement officer;

2552 (D) the purpose of the law enforcement officer's status check, including but not limited  
2553 to a traffic stop or a pedestrian stop; and

2554 (E) the race of the individual regarding whom the status check is made, based on the  
2555 information provided through the application process under Section 53-3-205 or 53-3-804;

2556 (ii) provide access to the database created in Subsection (1)~~[(j)]~~(i)(i) to the  
2557 Commission on Criminal and Juvenile Justice for the purpose of:

2558 (A) evaluating the data;

2559 (B) evaluating the effectiveness of the data collection process; and

2560 (C) reporting and making recommendations to the Legislature; and

2561 (iii) classify any personal identifying information of any individual, including law  
2562 enforcement officers, in the database as protected records under Subsection 63-2-304(9).

2563 (2) (a) The department may establish a schedule of fees as required or allowed in this  
2564 title for services provided by the department.

2565 (b) The fees shall be established in accordance with Section 63-38-3.2.

2566 Section 31. Section **53-3-218** is amended to read:

2567 **53-3-218. Court to report convictions and may recommend suspension of license**

2568 **-- Severity of speeding violation defined.**

2569 (1) As used in this section:

2570 (a) "conviction" means conviction by the court of first impression or final

2571 administrative determination in an administrative traffic proceeding; and

2572 (b) "court" includes an administrative traffic proceeding [~~in accordance with Section~~  
2573 ~~10-3-703.5~~].

2574 (2) (a) A court having jurisdiction over offenses committed under this chapter or any  
2575 other law of this state, or under any municipal ordinance regulating driving motor vehicles on  
2576 highways or driving motorboats on the water, shall forward to the division within ten days, an  
2577 abstract of the court record of the conviction or plea held in abeyance of any person in the court  
2578 for a reportable traffic or motorboating violation of any laws or ordinances, and may  
2579 recommend the suspension of the license of the person convicted.

2580 (b) When the division receives a court record of a conviction or plea in abeyance for a  
2581 motorboat violation, the division may only take action against a person's driver license if the  
2582 motorboat violation is for a violation of Title 41, Chapter 6, Article 5, Driving While  
2583 Intoxicated and Reckless Driving.

2584 (3) The abstract shall be made in the form prescribed by the division and shall include:

2585 (a) the name and address of the party charged;

2586 (b) the number of his license certificate, if any;

2587 (c) the registration number of the motor vehicle or motorboat involved;

2588 (d) whether the motor vehicle was a commercial motor vehicle;

2589 (e) whether the motor vehicle carried hazardous materials;

2590 (f) the nature of the offense;

2591 (g) the date of the hearing;

2592 (h) the plea;

2593 (i) the judgment or whether bail was forfeited; and

2594 (j) the severity of the violation, which shall be graded by the court as "minimum,"  
2595 "intermediate," or "maximum" as established in accordance with Subsection 53-3-221(4).

2596 (4) When a convicted person secures a judgment of acquittal or reversal in any  
2597 appellate court after conviction in the court of first impression, the division shall reinstate his  
2598 license immediately upon receipt of a certified copy of the judgment of acquittal or reversal.

2599 Section 32. Section **53-3-402** is amended to read:

2600 **53-3-402. Definitions.**

2601 As used in this part:

2602 (1) "Alcohol" means any substance containing any form of alcohol, including ethanol,  
2603 methanol, propanol, and isopropanol.

2604 (2) "Alcohol concentration" means the number of grams of alcohol per:

2605 (a) 100 milliliters of blood;

2606 (b) 210 liters of breath; or

2607 (c) 67 milliliters of urine.

2608 (3) "Commercial driver instruction permit" or "CDIP" means a permit issued under  
2609 Section 53-3-408.

2610 (4) "Commercial driver license information system" or "CDLIS" means the  
2611 information system established under Title XII, Pub. L. 99-570, the Commercial Motor  
2612 Vehicle Safety Act of 1986, as a clearinghouse for information related to the licensing and  
2613 identification of commercial motor vehicle drivers.

2614 (5) "Controlled substance" means any substance so classified under Section 102(6) of  
2615 the Controlled Substance Act, 21 U.S.C. 802(6), and includes all substances listed on the  
2616 current Schedules I through V of 21 C.F.R., Part 1308 as they may be revised from time to  
2617 time.

2618 (6) "Employee" means any driver of a commercial motor vehicle, including:

2619 (a) full-time, regularly employed drivers;

2620 (b) casual, intermittent, or occasional drivers;

2621 (c) leased drivers; and

2622 (d) independent, owner-operator contractors while in the course of driving a  
2623 commercial motor vehicle who are either directly employed by or under lease to an employer.

2624 (7) "Employer" means any individual or person including the United States, a state, or  
2625 a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns an  
2626 individual to drive a commercial motor vehicle.

2627 (8) "Felony" means any offense under state or federal law that is punishable by death or  
2628 imprisonment for a term of more than one year.

2629 (9) "Foreign jurisdiction" means any jurisdiction other than the United States or a state  
2630 of the United States.

2631 (10) "Gross vehicle weight rating" or "GVWR" means the value specified by the  
2632 manufacturer as the maximum loaded weight of a single vehicle or GVWR of a combination or

2633 articulated vehicle, and includes the GVWR of the power unit plus the total weight of all towed  
2634 units and the loads on those units.

2635 (11) "Hazardous material" has the same meaning as defined under [~~Section 103;~~] 49  
2636 [~~App.~~] U.S.C. [~~1801~~] Sec. 5101 et seq., Hazardous Materials Transportation Act.

2637 (12) "NDR" means the National Driver Register.

2638 (13) "Nonresident CDL" means a commercial driver license issued by a state to an  
2639 individual who resides in a foreign jurisdiction.

2640 (14) "Out-of-service order" means a temporary prohibition against driving a  
2641 commercial motor vehicle.

2642 (15) "Port-of-entry agent" has the same meaning as provided in Section 72-1-102.

2643 (16) "Serious traffic violation" means a conviction of any of the following:

2644 (a) speeding 15 or more miles per hour above the posted speed limit;

2645 (b) reckless driving as defined by state or local law;

2646 (c) improper or erratic traffic lane changes;

2647 (d) following the vehicle ahead too closely;

2648 (e) any other motor vehicle traffic law which arises in connection with a fatal traffic  
2649 accident;

2650 (f) all other violations under Section 53-3-220 for which mandatory suspension or  
2651 revocation are required.

2652 (17) "State" means a state of the United States, the District of Columbia, any province  
2653 or territory of Canada, or Mexico.

2654 (18) "United States" means the 50 states and the District of Columbia.

2655 Section 33. Section **53-3-805** is amended to read:

2656 **53-3-805. Identification card -- Contents -- Specifications.**

2657 (1) The division shall issue an identification card that:

2658 (a) provides all the information contained in the application, other than the applicant's:

2659 (i) Social Security number, except as provided in Subsection (3); and

2660 (ii) place of birth;

2661 (b) contains a photograph of the applicant; and

2662 (c) contains a facsimile of the applicant's signature.

2663 (2) (a) The card shall be of an impervious material, resistant to wear, damage, and

2664 alteration.

2665 (b) The size, form, and color of the card is prescribed by the commissioner.

2666 (3) At the applicant's request, the card may include any of the following:

2667 (a) a statement that the applicant has a special medical problem or allergies to certain  
2668 drugs, for the purpose of medical treatment; and

2669 (b) the applicant's Social Security number.

2670 (4) (a) The indication of intent under Subsection 53-3-804(2)(~~(i)~~)(j) shall be  
2671 authenticated by the applicant in accordance with division rule.

2672 (b) (i) Notwithstanding Title 63, Chapter 2, Government Records Access and  
2673 Management Act, the division may, upon request, release to an organ procurement  
2674 organization, as defined in Section 26-28-2, the names and addresses of all persons who under  
2675 Subsection 53-3-804(2)(~~(i)~~)(j) indicate that they intend to make an anatomical gift.

2676 (ii) An organ procurement organization may use released information only to:

2677 (A) obtain additional information for an anatomical gift registry; and

2678 (B) inform applicants of anatomical gift options, procedures, and benefits.

2679 (5) The division and its employees are not liable, as a result of false or inaccurate  
2680 information provided under Subsection 53-3-804(2)(~~(i)~~)(j), for direct or indirect:

2681 (a) loss;

2682 (b) detriment; or

2683 (c) injury.

2684 Section 34. Section **53-8-213** is amended to read:

2685 **53-8-213. Special function officer status for certain employees -- Retirement**  
2686 **provisions.**

2687 (1) The commissioner may designate an employee of the Utah Highway Patrol  
2688 Division as a special function officer, as defined in Section 53-13-105, for the purpose of  
2689 enforcing all laws relating to vehicle parts and equipment, including the provisions of this part  
2690 and Title 41, Chapter 6, Article 16, Equipment.

2691 (2) Notwithstanding Section [~~49-4a-203~~] 49-15-201, a special function officer  
2692 designated under this section may not become or be designated as a member of the Public  
2693 Safety Retirement Systems.

2694 Section 35. Section **53A-1a-601** is amended to read:

2695           **53A-1a-601. Job enhancements for technology training.**

2696           (1) In conjunction with the Engineering and Computer Science Initiative provided for  
2697 in Section 53B-6-105, there is established a Public Education Job Enhancement Program to  
2698 attract, train, and retain highly qualified secondary teachers in mathematics, physics, chemistry,  
2699 physical science, learning technology, and information technology.

2700           (2) The program shall provide for the following:

2701           (a) application by a school district superintendent or the principal of a secondary school  
2702 on behalf of a qualified teacher;

2703           (b) an award of up to \$20,000 or a scholarship to cover the tuition costs for a master's  
2704 degree, an endorsement, or graduate education in the areas identified in Subsection (1) to be  
2705 given to selected public school teachers on a competitive basis:

2706           (i) whose applications are approved under Subsection 53A-1a-602(4); and

2707           (ii) who teach at the secondary level in the state's public education system for four  
2708 years in the areas identified in Subsection (1);

2709           (c) (i) as to the cash awards under Subsection (2)(b), payment of the award in two  
2710 installments, with an initial payment of up to \$10,000 at the beginning of the term and up to  
2711 \$10,000 at the conclusion of the term;

2712           (ii) repayment of a portion of the initial payment by the teacher if the teacher fails to  
2713 complete two years of the four-year teaching term in the areas identified in Subsection (1) as  
2714 provided by rule of the State Board of Education in accordance with Title 63, Chapter 46a,  
2715 Utah Administrative Rulemaking Act, unless waived for good cause by the Job Enhancement  
2716 Committee created in Section 53A-1a-602; and

2717           (iii) nonpayment of the second installment if the teacher fails to complete the four-year  
2718 teaching term; and

2719           (d) (i) as to the scholarships awarded under Subsection (2)(b), provision for the  
2720 providing institution to certify adequate performance in obtaining the master's degree,  
2721 endorsement, or graduate education in order for the teacher to maintain the scholarship; and

2722           (ii) repayment by the teacher of a prorated portion of the scholarship, if the teacher fails  
2723 to teach in the state system of public education in the areas identified in Subsection (1) for four  
2724 years after obtaining the master's degree, the endorsement, or graduate education.

2725           (3) An individual teaching in the public schools under a letter of authorization may



2726 participate in the cash award program if:

2727 (a) the individual has taught under the letter of authorization for at least one year in the  
2728 areas referred to in Subsection (1); and

2729 (b) the application made under Subsection (2)(a) is based in large part upon the  
2730 individual receiving a superior evaluation as a classroom teacher.

2731 (4) (a) The program may provide for the expenditure of up to \$1,000,000 of available  
2732 monies, if at least an equal amount of matching monies become available, to provide  
2733 professional development training to superintendents, administrators, and principals in the  
2734 effective use of technology in public schools.

2735 (b) An award granted under this Subsection (4) shall be made in accordance with  
2736 criteria developed and adopted by the Job Enhancement Committee created in Section  
2737 ~~[53A-1-602]~~ 53A-1a-602.

2738 (c) An amount up to \$120,000 of the \$1,000,000 authorized in Subsection (4)(a) may  
2739 be expended, regardless of the matching monies being available.

2740 Section 36. Section **54-15-106** is amended to read:

2741 **54-15-106. Customer to provide equipment necessary to meet applicable code**  
2742 **requirements -- Commission may adopt additional requirements -- Testing and**  
2743 **inspection of interconnection.**

2744 (1) Each customer participating in a net metering program shall provide at the  
2745 customer's expense all equipment necessary to meet applicable local and national standards  
2746 regarding electrical and fire safety, power quality, and interconnection requirements established  
2747 by the National Electrical Code, the National Electrical Safety Code, the Institute of Electrical  
2748 and Electronics Engineers, and Underwriters Laboratories.

2749 (2) After appropriate notice and opportunity for comment, the commission may by  
2750 ~~[regulation]~~ rule adopt additional safety, power quality, and interconnection requirements for  
2751 customer generation systems that the commission considers to be necessary to protect public  
2752 safety and system reliability.

2753 (3) (a) If a customer participating in a net metering program complies with  
2754 requirements referred to under Subsection (1) and additional requirements established under  
2755 Subsection (2), an electrical corporation may not require that customer to:

2756 (i) perform or pay for additional tests; or

2757 (ii) purchase additional liability insurance.

2758 (b) An electrical corporation may not be held directly or indirectly liable for permitting  
2759 or continuing to permit an interconnection of a customer generation system to the electrical  
2760 corporation's system or for an act or omission of a customer participating in a net metering  
2761 program for loss, injury, or death to a third party.

2762 (4) An electrical corporation may test and inspect an interconnection at times that the  
2763 electrical corporation considers necessary to ensure the safety of electrical workers and to  
2764 preserve the integrity of the electric power grid.

2765 Section 37. Section **58-13-4** is amended to read:

2766 **58-13-4. Liability immunity for health care providers on committees --**  
2767 **Evaluating and approving medical care.**

2768 (1) As used in this section, "health care provider" has the same meaning as in Section  
2769 78-14-3.

2770 (2) Health care providers serving in the following capacities and the organizations or  
2771 entities sponsoring these activities are immune from liability with respect to deliberations,  
2772 decisions, or determinations made or information furnished in good faith and without malice:

2773 (a) serving on committees[;]:

2774 (i) established to determine if hospitals and long-term care facilities are being used  
2775 properly;

2776 (ii) established to evaluate and improve the quality of health care or determine whether  
2777 provided health care was necessary, appropriate, properly performed, or provided at a  
2778 reasonable cost;

2779 (iii) functioning under Pub. L. No. 89-97 or as professional standards review  
2780 organizations under Pub. L. No. 92-603;

2781 (iv) that are ethical standards review committees; or

2782 (v) that are similar to committees listed in this Subsection (2) and that are established  
2783 by any hospital, professional association, the Utah Medical Association, or one of its  
2784 component medical societies to evaluate or review the diagnosis or treatment of, or the  
2785 performance of health or hospital services to, patients within this state;

2786 (b) members of licensing boards established under Title 58, Occupations and  
2787 Professions, to license and regulate health care providers; and

2788 (c) health care providers or other persons furnishing information to those committees,  
2789 as required by law, voluntarily, or upon official request.

2790 (3) This section does not relieve any health care provider from liability incurred in  
2791 providing professional care and treatment to any patient.

2792 (4) Health care providers serving on committees or providing information described in  
2793 this section are presumed to have acted in good faith and without malice, absent clear and  
2794 convincing evidence to the contrary.

2795 Section 38. Section **58-31b-202** is amended to read:

2796 **58-31b-202. Prescriptive Practice Peer Committee.**

2797 (1) (a) There is created under Subsection 58-1-203[~~(6)~~](1)(f) the Prescriptive Practice  
2798 Peer Committee.

2799 (b) The Prescriptive Practice Peer Committee shall:

2800 (i) advise the board of nursing regarding prescriptive practice issues;

2801 (ii) periodically audit and review the prescribing records of advanced practice  
2802 registered nurses located on the Controlled Substance Data Bank on a schedule established by  
2803 rule;

2804 (iii) recommend the scope of prescriptive practice authority of advanced practice  
2805 registered nurses consistent with this chapter and with professionally accepted therapies and  
2806 treatments;

2807 (iv) periodically review the current consultation and referral plans prepared in  
2808 accordance with Subsection 58-31b-102(16)(c)(iii) and evaluate compliance with the proposed  
2809 plans; and

2810 (v) recommend disciplinary action.

2811 (c) The composition of this committee shall be:

2812 (i) two individuals who are licensed as advanced practice registered nurses who  
2813 prescribe within their practice and possess a controlled substance license;

2814 (ii) two individuals licensed as physicians and surgeons or osteopathic physicians and  
2815 surgeons; and

2816 (iii) one individual who is a pharmacologist.

2817 (2) The division, in collaboration with the board, may create other peer committees to  
2818 the Board of Nursing pursuant to Subsection 58-1-203[~~(6)~~](1)(f) to make recommendations to

2819 the board regarding licensure, practice, and education issues.

2820 Section 39. Section **58-37-2** is amended to read:

2821 **58-37-2. Definitions.**

2822 (1) As used in this chapter:

2823 (a) "Administer" means the direct application of a controlled substance, whether by  
2824 injection, inhalation, ingestion, or any other means, to the body of a patient or research subject  
2825 by:

2826 (i) a practitioner or, in his presence, by his authorized agent; or

2827 (ii) the patient or research subject at the direction and in the presence of the  
2828 practitioner.

2829 (b) "Agent" means an authorized person who acts on behalf of or at the direction of a  
2830 manufacturer, distributor, or practitioner but does not include a motor carrier, public  
2831 warehouseman, or employee of any of them.

2832 (c) "Continuing criminal enterprise" means any individual, sole proprietorship,  
2833 partnership, corporation, business trust, association, or other legal entity, and any union or  
2834 groups of individuals associated in fact although not a legal entity, and includes illicit as well  
2835 as licit entities created or maintained for the purpose of engaging in conduct which constitutes  
2836 the commission of episodes of activity made unlawful by Title 58, Chapters 37, 37a, 37b, 37c,  
2837 or 37d, which episodes are not isolated, but have the same or similar purposes, results,  
2838 participants, victims, methods of commission, or otherwise are interrelated by distinguishing  
2839 characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct  
2840 and be related either to each other or to the enterprise.

2841 (d) "Control" means to add, remove, or change the placement of a drug, substance, or  
2842 immediate precursor under Section 58-37-3.

2843 (e) (i) "Controlled substance" means a drug or substance included in Schedules I, II, III,  
2844 IV, or V of Section 58-37-4, and also includes a drug or substance included in Schedules I, II,  
2845 III, IV, or V of the federal Controlled Substances Act, Title II, P.L. 91-513, or any controlled  
2846 substance analog.

2847 (ii) "Controlled substance" does not include:

2848 (A) distilled spirits, wine, or malt beverages, as those terms are defined or used in Title  
2849 32A, regarding tobacco or food;

2850 (B) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or  
2851 prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine,  
2852 norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold,  
2853 transferred, or furnished as an over-the-counter medication without prescription; or

2854 (C) dietary supplements, vitamins, minerals, herbs, or other similar substances  
2855 including concentrates or extracts, which are not otherwise regulated by law, which may  
2856 contain naturally occurring amounts of chemical or substances listed in this chapter, or in rules  
2857 adopted pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

2858 (f) (i) "Controlled substance analog" means a substance the chemical structure of  
2859 which is substantially similar to the chemical structure of a controlled substance listed in  
2860 Schedules I and II of Section 58-37-4, or in Schedules I and II of the federal Controlled  
2861 Substances Act, Title II, P.L. 91-513:

2862 (A) which has a stimulant, depressant, or hallucinogenic effect on the central nervous  
2863 system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central  
2864 nervous system of controlled substances in the schedules set forth in this subsection; or

2865 (B) which, with respect to a particular individual, is represented or intended to have a  
2866 stimulant, depressant, or hallucinogenic effect on the central nervous system substantially  
2867 similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of  
2868 controlled substances in the schedules set forth in this subsection.

2869 (ii) Controlled substance analog does not include:

2870 (A) a controlled substance currently scheduled in Schedules I through V of Section  
2871 58-37-4;

2872 (B) a substance for which there is an approved new drug application;

2873 (C) a substance with respect to which an exemption is in effect for investigational use  
2874 by a particular person under Section 505 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 366,  
2875 to the extent the conduct with respect to the substance is permitted by the exemption; or

2876 (D) any substance to the extent not intended for human consumption before an  
2877 exemption takes effect with respect to the substance.

2878 (E) Any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or  
2879 prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine,  
2880 norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold,

2881 transferred, or furnished as an over-the-counter medication without prescription.

2882 (F) Dietary supplements, vitamins, minerals, herbs, or other similar substances  
2883 including concentrates or extracts, which are not otherwise regulated by law, which may  
2884 contain naturally occurring amounts of chemical or substances listed in this chapter, or in rules  
2885 adopted pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

2886 (g) "Conviction" means a determination of guilt by verdict, whether jury or bench, or  
2887 plea, whether guilty or no contest, for any offense proscribed by Title 58, Chapters 37, 37a,  
2888 37b, 37c, or 37d, or for any offense under the laws of the United States and any other state  
2889 which, if committed in this state, would be an offense under Title 58, Chapters 37, 37a, 37b,  
2890 37c, or 37d.

2891 (h) "Counterfeit substance" means:

2892 (i) any substance or container or labeling of any substance that without authorization  
2893 bears the trademark, trade name, or other identifying mark, imprint, number, device, or any  
2894 likeness of them, of a manufacturer, distributor, or dispenser other than the person or persons  
2895 who in fact manufactured, distributed, or dispensed the substance which falsely purports to be a  
2896 controlled substance distributed by, any other manufacturer, distributor, or dispenser; or

2897 (ii) any substance that is represented to be a controlled substance.

2898 (i) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a  
2899 controlled substance or a listed chemical, whether or not an agency relationship exists.

2900 (j) "Department" means the Department of Commerce.

2901 (k) "Depressant or stimulant substance" means:

2902 (i) a drug which contains any quantity of~~[-(A)]~~ barbituric acid or any of the salts of  
2903 barbituric acid; ~~[or]~~

2904 ~~[(B) any derivative of barbituric acid which has been designated by the Secretary of~~  
2905 ~~Agriculture as habit-forming under Section 502 (d) of the federal Food, Drug, and Cosmetic~~  
2906 ~~Act, 21 U.S.C. 352 (d);]~~

2907 (ii) a drug which contains any quantity of:

2908 (A) amphetamine or any of its optical isomers;

2909 (B) any salt of amphetamine or any salt of an optical isomer of amphetamine; or

2910 (C) any substance which the Secretary of Health and Human Services or the Attorney  
2911 General of the United States after investigation has found and by regulation designated

- 2912 habit-forming because of its stimulant effect on the central nervous system; or
- 2913 (iii) lysergic acid diethylamide; or
- 2914 (iv) any drug which contains any quantity of a substance which the Secretary of Health  
2915 and Human Services or the Attorney General of the United States after investigation has found  
2916 to have, and by regulation designated as having, a potential for abuse because of its depressant  
2917 or stimulant effect on the central nervous system or its hallucinogenic effect.
- 2918 (l) "Dispense" means the delivery of a controlled substance by a pharmacist to an  
2919 ultimate user pursuant to the lawful order or prescription of a practitioner, and includes  
2920 distributing to, leaving with, giving away, or disposing of that substance as well as the  
2921 packaging, labeling, or compounding necessary to prepare the substance for delivery.
- 2922 (m) "Dispenser" means a pharmacist who dispenses a controlled substance.
- 2923 (n) "Distribute" means to deliver other than by administering or dispensing a controlled  
2924 substance or a listed chemical.
- 2925 (o) "Distributor" means a person who distributes controlled substances.
- 2926 (p) "Drug" means:
- 2927 (i) articles recognized in the official United States Pharmacopoeia, Official  
2928 Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any  
2929 supplement to any of them;
- 2930 (ii) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention  
2931 of disease in man or other animals;
- 2932 (iii) articles, other than food, intended to affect the structure or function of man or  
2933 other animals; and
- 2934 (iv) articles intended for use as a component of any articles specified in Subsection (i),  
2935 (ii), or (iii); but does not include devices or their components, parts, or accessories.
- 2936 (q) "Drug dependent person" means any individual who unlawfully and habitually uses  
2937 any controlled substance to endanger the public morals, health, safety, or welfare, or who is so  
2938 dependent upon the use of controlled substances as to have lost the power of self-control with  
2939 reference to his dependency.
- 2940 (r) "Food" means:
- 2941 (i) any nutrient or substance of plant, mineral, or animal origin other than a drug as  
2942 specified in this chapter, and normally ingested by human beings; and

2943 (ii) foods for special dietary uses as exist by reason of a physical, physiological,  
2944 pathological, or other condition including but not limited to the conditions of disease,  
2945 convalescence, pregnancy, lactation, allergy, hypersensitivity to food, underweight, and  
2946 overweight; uses for supplying a particular dietary need which exist by reason of age including  
2947 but not limited to the ages of infancy and childbirth, and also uses for supplementing and for  
2948 fortifying the ordinary or unusual diet with any vitamin, mineral, or other dietary property for  
2949 use of a food. Any particular use of a food is a special dietary use regardless of the nutritional  
2950 purposes.

2951 (s) "Immediate precursor" means a substance which the Attorney General of the United  
2952 States has found to be, and by regulation designated as being, the principal compound used or  
2953 produced primarily for use in the manufacture of a controlled substance, or which is an  
2954 immediate chemical intermediary used or likely to be used in the manufacture of a controlled  
2955 substance, the control of which is necessary to prevent, curtail, or limit the manufacture of the  
2956 controlled substance.

2957 (t) "Manufacture" means the production, preparation, propagation, compounding, or  
2958 processing of a controlled substance, either directly or indirectly by extraction from substances  
2959 of natural origin, or independently by means of chemical synthesis or by a combination of  
2960 extraction and chemical synthesis.

2961 (u) "Manufacturer" includes any person who packages, repackages, or labels any  
2962 container of any controlled substance, except pharmacists who dispense or compound  
2963 prescription orders for delivery to the ultimate consumer.

2964 (v) "Marijuana" means all species of the genus cannabis and all parts of the genus,  
2965 whether growing or not; the seeds of it; the resin extracted from any part of the plant; and every  
2966 compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or  
2967 resin. The term does not include the mature stalks of the plant, fiber produced from the stalks,  
2968 oil or cake made from the seeds of the plant, any other compound, manufacture, salt,  
2969 derivative, mixture, or preparation of the mature stalks, except the resin extracted from them,  
2970 fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. Any  
2971 synthetic equivalents of the substances contained in the plant cannabis sativa or any other  
2972 species of the genus cannabis which are chemically indistinguishable and pharmacologically  
2973 active are also included.



2974 (w) "Money" means officially issued coin and currency of the United States or any  
2975 foreign country.

2976 (x) "Narcotic drug" means any of the following, whether produced directly or indirectly  
2977 by extraction from substances of vegetable origin, or independently by means of chemical  
2978 synthesis, or by a combination of extraction and chemical synthesis:

2979 (i) opium, coca leaves, and opiates;

2980 (ii) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or  
2981 opiates;

2982 (iii) opium poppy and poppy straw; or

2983 (iv) a substance, and any compound, manufacture, salt, derivative, or preparation of the  
2984 substance, which is chemically identical with any of the substances referred to in Subsection  
2985 (i), (ii), or (iii), except narcotic drug does not include decocainized coca leaves or extracts of  
2986 coca leaves which do not contain cocaine or ecgonine.

2987 (y) "Negotiable instrument" means documents, containing an unconditional promise to  
2988 pay a sum of money, which are legally transferable to another party by endorsement or  
2989 delivery.

2990 (z) "Opiate" means any drug or other substance having an addiction-forming or  
2991 addiction-sustaining liability similar to morphine or being capable of conversion into a drug  
2992 having addiction-forming or addiction-sustaining liability.

2993 (aa) "Opium poppy" means the plant of the species *papaver somniferum* L., except the  
2994 seeds of the plant.

2995 (bb) "Person" means any corporation, association, partnership, trust, other institution or  
2996 entity or one or more individuals.

2997 (cc) "Poppy straw" means all parts, except the seeds, of the opium poppy, after  
2998 mowing.

2999 (dd) "Possession" or "use" means the joint or individual ownership, control,  
3000 occupancy, holding, retaining, belonging, maintaining, or the application, inhalation,  
3001 swallowing, injection, or consumption, as distinguished from distribution, of controlled  
3002 substances and includes individual, joint, or group possession or use of controlled substances.  
3003 For a person to be a possessor or user of a controlled substance, it is not required that he be  
3004 shown to have individually possessed, used, or controlled the substance, but it is sufficient if it

3005 is shown that the person jointly participated with one or more persons in the use, possession, or  
3006 control of any substances with knowledge that the activity was occurring, or the controlled  
3007 substance is found in a place or under circumstances indicating that the person had the ability  
3008 and the intent to exercise dominion and control over it.

3009 (ee) "Practitioner" means a physician, dentist, veterinarian, pharmacist, scientific  
3010 investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted to  
3011 distribute, dispense, conduct research with respect to, administer, or use in teaching or  
3012 chemical analysis a controlled substance in the course of professional practice or research in  
3013 this state.

3014 (ff) "Prescribe" means to issue a prescription orally or in writing.

3015 (gg) "Prescription" means an order issued by a licensed practitioner, in the course of  
3016 that practitioner's professional practice, for a controlled substance, other drug, or device which  
3017 it dispenses or administers for use by a patient or an animal. The order may be issued by word  
3018 of mouth, written document, telephone, facsimile transmission, computer, or other electronic  
3019 means of communication as defined by rule.

3020 (hh) "Production" means the manufacture, planting, cultivation, growing, or harvesting  
3021 of a controlled substance.

3022 (ii) "Securities" means any stocks, bonds, notes, or other evidences of debt or of  
3023 property.

3024 (jj) "State" means the state of Utah.

3025 (kk) "Ultimate user" means any person who lawfully possesses a controlled substance  
3026 for his own use, for the use of a member of his household, or for administration to an animal  
3027 owned by him or a member of his household.

3028 (2) If a term used in this chapter is not defined, the definition and terms of Title 76,  
3029 Utah Criminal Code, shall apply.

3030 Section 40. Section **58-57-2** is amended to read:

3031 **58-57-2. Definitions.**

3032 In addition to the definitions in Section 58-1-102, as used in this chapter:

3033 (1) "Board" means the Respiratory Care Licensing Board created in Section 58-57-3.

3034 (2) "Health care facility" means any facility or institution in which health care services  
3035 are performed or furnished and includes a hospital, clinic, or emergency care center.

3036 (3) "Physician" means a person licensed to practice medicine under Title 58, Chapter  
3037 [~~12, Part 5~~] 67, Utah Medical Practice Act.

3038 (4) "Practice of respiratory care" means the treatment, operation of equipment,  
3039 management, diagnostic testing, and care of any human disease, deficiency, pain, injury, or  
3040 other physical condition associated with the cardiopulmonary system under the qualified  
3041 medical direction or supervision of a physician who has training and knowledge in the  
3042 diagnosis, treatment, and assessment of respiratory problems. "Practice of respiratory care"  
3043 includes:

3044 (a) accepting and carrying out a licensed physician's written, verbal, or telephonic  
3045 prescription or order specifically relating to respiratory care in a hospital or other health care  
3046 setting and includes consultation with licensed nurses, as appropriate;

3047 (b) administering respiratory care during transportation of a patient and under other  
3048 circumstances where an emergency requires immediate respiratory care;

3049 (c) serving as a resource to other health care professionals and hospital administrators  
3050 in relation to the technical aspects of, and the safe and effective methods for, administering  
3051 respiratory care;

3052 (d) functioning in situations of patient contact requiring individual judgment in  
3053 administering respiratory care under the general supervision of a qualified physician; and

3054 (e) supervising, directing, or teaching personnel in the performance of respiratory care  
3055 modalities as part of a respiratory care education program.

3056 (5) "Respiratory care practitioner" means any person licensed to practice respiratory  
3057 care under this chapter.

3058 (6) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further  
3059 defined by rule includes:

3060 (a) acting contrary to the instructions of the physician responsible for supervising the  
3061 licensee;

3062 (b) knowingly operating any respiratory care equipment that is unsafe or not in  
3063 compliance with standards of condition or operation consistent with the patient's safety;

3064 (c) permitting any person to operate respiratory care equipment who is not competent  
3065 or not allowed to operate the equipment;

3066 (d) revealing to any unauthorized person confidential or privileged information about a

3067 patient;

3068 (e) using any controlled substance, unless the controlled substance is prescribed by a  
3069 physician and used in accordance with the physician's instructions; and

3070 (f) making any statement that is incorrect due to negligence, willfulness, or intent to  
3071 provide false information or entry on any patient record or other record that is used for payment  
3072 of respiratory care services.

3073 Section 41. Section **58-59-501** is amended to read:

3074 **58-59-501. Unlawful conduct.**

3075 Unlawful conduct includes:

3076 (1) engaging in practice as a professional employer organization without a license;

3077 (2) offering an employee a self-funded medical program, unless:

3078 (a) the program provides its benefits under an employee benefit plan that complies with  
3079 29 U.S.C. Sec. [H43] 1001 et seq.; and

3080 (b) the program is maintained for the sole benefit of participating coemployees;

3081 (3) misrepresenting that any self-funded medical program it offers is other than  
3082 self-funded;

3083 (4) offering to its employees any self-funded or partially self-funded medical plan  
3084 without delivering to each plan participant a summary plan description that accurately  
3085 describes terms of the plan, including disclosure that the plan is self-funded or partially  
3086 self-funded;

3087 (5) providing coemployees to any client company under any provision, term, or  
3088 condition that is not contained in a clearly written agreement between the professional  
3089 employer organization and client company;

3090 (6) any willful, fraudulent, or deceitful act by a licensee, caused by a licensee, or at a  
3091 licensee's direction, that causes material injury to a client company or coemployee of a client  
3092 company;

3093 (7) failing to maintain or ensure that client companies maintain in full force and effect  
3094 required workers' compensation insurance on all coemployees in accordance with Utah law  
3095 pursuant to Section 34A-2-103;

3096 (8) failing to pay in a timely manner any federal or state income tax withholding,  
3097 FICA, unemployment tax, employee insurance benefit premium, workers' compensation

3098 premium, or other obligation due and payable directly as a result of engaging in business as a  
3099 professional employer organization; and

3100 (9) failing to comply with federal law regarding any employee benefit offered to an  
3101 employee.

3102 Section 42. Section **58-60-507** is amended to read:

3103 **58-60-507. Qualifications for admission to examination.**

3104 All applicants for admission to any examination qualifying an individual for licensure  
3105 under this part shall:

3106 (1) submit an application on a form provided by the division;

3107 (2) pay the fee established for the examination; and

3108 (3) certify under penalty of perjury as evidenced by notarized signature on the  
3109 application for admission to the examination that the applicant has completed the education or  
3110 experience requirements, or both, as required under Section [~~58-60-505~~ or] 58-60-506.

3111 Section 43. Section **58-60-509** is amended to read:

3112 **58-60-509. Confidentiality -- Exemptions.**

3113 (1) A licensed substance abuse counselor under this part may not disclose any  
3114 confidential communication with a client or patient without the express consent of:

3115 (a) the client or patient;

3116 (b) the parent or legal guardian of a minor client or patient; or

3117 (c) the authorized agent of a client or patient.

3118 (2) A licensed substance abuse counselor under this part is not subject to Subsection  
3119 (1) if:

3120 (a) he is permitted or required by state or federal law, rule, regulation, or order to report  
3121 or disclose any confidential communication, including:

3122 (i) reporting under Title 62A, Chapter 4a, Part [5] 4, Child Abuse or Neglect Reporting  
3123 Requirements;

3124 (ii) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of  
3125 Disabled Adult;

3126 (iii) reporting under Title 78, Chapter 14a, Limitation of Therapist's Duty to Warn; and

3127 (iv) reporting of a communicable disease as required under Section 26-6-6;

3128 (b) the disclosure is part of an administrative, civil, or criminal proceeding and is made

3129 under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or

3130 (c) the disclosure is made under a generally recognized professional or ethical standard  
3131 that authorizes or requires the disclosure.

3132 Section 44. Section **58-61-602** is amended to read:

3133 **58-61-602. Confidentiality -- Exemptions.**

3134 (1) A psychologist under this chapter may not disclose any confidential communication  
3135 with a client or patient without the express consent of:

3136 (a) the client or patient;

3137 (b) the parent or legal guardian of a minor client or patient; or

3138 (c) the authorized agent of a client or patient.

3139 (2) A psychologist under this chapter is not subject to Subsection (1) if:

3140 (a) he is permitted or required by state or federal law, rule, regulation, or order to report  
3141 or disclose any confidential communication, including:

3142 (i) reporting under Title 62A, Chapter [4] 4a, Part [5] 4, Child Abuse Reporting;

3143 (ii) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of  
3144 Disabled Adult;

3145 (iii) reporting under Title 78, Chapter 14a, Limitation of Therapist's Duty to Warn;

3146 (iv) reporting of a communicable disease as required under Section 26-6-6;

3147 (b) the disclosure is part of an administrative, civil, or criminal proceeding and is made  
3148 under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or

3149 (c) the disclosure is made under a generally recognized professional or ethical standard  
3150 that authorizes or requires the disclosure.

3151 Section 45. Section **58-71-102** is amended to read:

3152 **58-71-102. Definitions.**

3153 In addition to the definitions in Section 58-1-102, as used in this chapter:

3154 (1) "Administrative penalty" means a monetary fine imposed by the division for acts or  
3155 omissions determined to constitute unprofessional or unlawful conduct, as a result of an  
3156 adjudicative proceeding conducted in accordance with Title 63, Chapter 46b, [Utah]  
3157 Administrative Procedures Act.

3158 (2) "Acupuncture" has the same definition as in Section 58-72-102.

3159 (3) "Board" means the Naturopathic Physicians Licensing Board created in Section

3160 58-71-201.

3161 (4) "Diagnose" means:

3162 (a) to examine in any manner another person, parts of a person's body, substances,  
3163 fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's  
3164 body, to determine the source, nature, kind, or extent of a disease or other physical or mental  
3165 condition;

3166 (b) to attempt to conduct an examination or determination described under Subsection  
3167 (4)(a); or

3168 (c) to hold oneself out as making or to represent that one is making an examination or  
3169 determination as described in Subsection (4)(a); or

3170 (d) to make an examination or determination as described in Subsection (4)(a) upon or  
3171 from information supplied directly or indirectly by another person, whether or not in the  
3172 presence of the person making or attempting the diagnosis or examination.

3173 (5) "Local anesthesia" means an agent, whether a natural medicine or prescription drug,  
3174 which:

3175 (a) is applied topically or by injection in superficial tissues associated with the  
3176 performance of minor office procedures;

3177 (b) has the ability to produce loss of sensation at the site of minor office procedures;  
3178 and

3179 (c) does not cause loss of consciousness or produce general sedation.

3180 (6) "Medical naturopathic assistant" means an unlicensed individual working under the  
3181 direct and immediate supervision of a licensed naturopathic physician and engaged in specific  
3182 tasks assigned by the licensed naturopathic physician in accordance with the standards and  
3183 ethics of the profession.

3184 (7) (a) "Minor office procedures" means:

3185 (i) the use of operative, electrical, or other methods for repair and care of superficial  
3186 lacerations, abrasions, and benign lesions;

3187 (ii) removal of foreign bodies located in the superficial tissues, excluding the eye or  
3188 ear; and

3189 (iii) the use of antiseptics and local anesthetics in connection with minor office surgical  
3190 procedures; and

- 3191 (b) "Minor office procedures" does not include:
- 3192 (i) general or spinal anesthesia;
- 3193 (ii) office procedures more complicated or extensive than those set forth in Subsection
- 3194 (7)(a);
- 3195 (iii) procedures involving the eye; or
- 3196 (iv) any office procedure involving tendons, nerves, veins, or arteries.
- 3197 (8) "Natural medicine" means:
- 3198 (a) food, food extracts, dietary supplements as defined by the federal Food, Drug, and
- 3199 Cosmetics Act, all homeopathic remedies, and plant substances that are not designated as
- 3200 prescription drugs or controlled substances;
- 3201 (b) over-the-counter medications;
- 3202 (c) other non-prescription substances, the prescription or administration of which is not
- 3203 otherwise prohibited or restricted under federal or state law; and
- 3204 (d) prescription drugs:
- 3205 (i) that are not controlled substances as defined in Section 58-37-2;
- 3206 (ii) the prescription of which is consistent with the competent practice of naturopathic
- 3207 medicine; and
- 3208 (iii) the prescription of which is approved by the division in collaboration with the
- 3209 naturopathic formulary advisory peer committee.
- 3210 (9) (a) "Naturopathic childbirth" means uncomplicated natural childbirth assisted by a
- 3211 naturopathic physician, and includes the use of:
- 3212 (i) natural medicines; and
- 3213 (ii) uncomplicated episiotomy.
- 3214 (b) "Naturopathic childbirth" does not include the use of:
- 3215 (i) forceps delivery;
- 3216 (ii) general or spinal anesthesia;
- 3217 (iii) caesarean section delivery; or
- 3218 (iv) induced labor or abortion.
- 3219 (10) "Naturopathic mobilization therapy":
- 3220 (a) means manually administering mechanical treatment of body structures or tissues
- 3221 for the purpose of restoring normal physiological function to the body by normalizing and



3222 balancing the musculoskeletal system of the body;

3223 (b) does not mean manipulation or adjustment of the joints of the human body beyond  
3224 the elastic barrier; and

3225 (c) does not include manipulation as defined in Title 58, Chapter 73, [~~Part 10,~~]

3226 Chiropractic Physician Practice Act.

3227 (11) "Naturopathic physical medicine" means the use of the physical agents of air,  
3228 water, heat, cold, sound, light, and electromagnetic nonionizing radiation, and the physical  
3229 modalities of electrotherapy, biofeedback, acupuncture, diathermy, ultraviolet light, ultrasound,  
3230 hydrotherapy, naturopathic mobilization therapy, and exercise. Naturopathic medicine does not  
3231 include the practice of physical therapy or physical rehabilitation.

3232 (12) "Practice of naturopathic medicine" means:

3233 (a) a system of primary health care for the prevention, diagnosis, and treatment of  
3234 human health conditions, injuries, and diseases that uses education, natural medicines, and  
3235 natural therapies, to support and stimulate the patient's intrinsic self-healing processes:

3236 (i) using naturopathic childbirth, but only if:

3237 (A) the licensee meets standards of the American College of Naturopathic  
3238 Obstetricians (ACNO) or its successor as determined by the division in collaboration with the  
3239 board; and

3240 (B) the licensee follows a written plan for naturopathic physicians practicing  
3241 naturopathic childbirth approved by the division in collaboration with the board, which  
3242 includes entering into an agreement with a consulting physician and surgeon or osteopathic  
3243 physician, in cases where the scope of practice of naturopathic childbirth may be exceeded and  
3244 specialty care and delivery is indicated, detailing the guidelines by which the naturopathic  
3245 physician will:

3246 (I) refer patients to the consulting physician; and

3247 (II) consult with the consulting physician;

3248 (ii) using naturopathic mobilization therapy;

3249 (iii) using naturopathic physical medicine;

3250 (iv) using minor office procedures;

3251 (v) prescribing or administering natural medicine;

3252 (vi) prescribing medical equipment and devices, diagnosing by the use of medical

3253 equipment and devices, and administering therapy or treatment by the use of medical devices  
3254 necessary and consistent with the competent practice of naturopathic medicine;

3255 (vii) prescribing barrier devices for contraception;

3256 (viii) using dietary therapy;

3257 (ix) taking and using diagnostic x-rays, electrocardiograms, ultrasound, and  
3258 physiological function tests;

3259 (x) taking of body fluids for clinical laboratory tests and using the results of the tests in  
3260 diagnosis;

3261 (xi) taking of a history from and conducting of a physical examination upon a human  
3262 patient; and

3263 (xii) prescribing and administering natural medicines and medical devices, except a  
3264 naturopathic physician may only administer:

3265 (A) a prescription drug, as defined in Section 58-17a-102, in accordance with  
3266 Subsection (8)(d); and

3267 (B) local anesthesia that is not a controlled substance, and only in the performance of  
3268 minor office procedures;

3269 (b) to maintain an office or place of business for the purpose of doing any of the acts  
3270 described in Subsection (12)(a), whether or not for compensation; or

3271 (c) to use, in the conduct of any occupation or profession pertaining to the diagnosis or  
3272 treatment of human diseases or conditions, in any printed material, stationery, letterhead,  
3273 envelopes, signs, or advertisements, the designation "naturopathic physician," "naturopathic  
3274 doctor," "naturopath," "doctor of naturopathic medicine," "doctor of naturopathy,"  
3275 "naturopathic medical doctor," "naturopathic medicine," "naturopathic health care,"  
3276 "naturopathy," "N.D.," "N.M.D.," or any combination of these designations in any manner that  
3277 might cause a reasonable person to believe the individual using the designation is a licensed  
3278 naturopathic physician.

3279 (13) "Prescription drug or device" means:

3280 (a) a drug or device which, under federal law, is required to be labeled with either of  
3281 the following statements or their equivalent:

3282 (i) "CAUTION: Federal law prohibits dispensing without prescription"; or  
3283 (ii) "CAUTION: Federal law restricts this drug to use by or on the order of a licensed

3284 veterinarian"; or

3285 (b) a drug or device that is required by any applicable federal or state law or rule to be  
3286 dispensed on prescription only or is restricted to use by practitioners only.

3287 (14) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-71-501.

3288 (15) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-71-502, and  
3289 as may be further defined by division rule.

3290 Section 46. Section **58-71-302** is amended to read:

3291 **58-71-302. Qualifications for licensure.**

3292 (1) An applicant for licensure as a naturopathic physician, except as set forth in  
3293 ~~[Subsections]~~ Subsection (2) ~~[or (3)]~~, shall:

3294 (a) submit an application in a form prescribed by the division which may include:

3295 (i) submissions by the applicant of information maintained by practitioner data banks,  
3296 as designated by division rule, with respect to the applicant; and

3297 (ii) a record of professional liability claims made against the applicant and settlements  
3298 paid by or in behalf of the applicant;

3299 (b) pay a fee determined by the department under Section 63-38-3.2;

3300 (c) be of good moral character;

3301 (d) provide satisfactory documentation of having successfully completed a program of  
3302 professional education preparing an individual as a naturopathic physician, as evidenced by  
3303 having received an earned degree of doctor of naturopathic medicine from:

3304 (i) a naturopathic medical school or college accredited by the Council of Naturopathic  
3305 Medical Education or its successor organization approved by the division;

3306 (ii) a naturopathic medical school or college that is a candidate for accreditation by the  
3307 Council of Naturopathic Medical Education or its successor organization, and is approved by  
3308 the division in collaboration with the board, upon a finding there is reasonable expectation the  
3309 school or college will be accredited; or

3310 (iii) a naturopathic medical school or college which, at the time of the applicant's  
3311 graduation, met current criteria for accreditation by the Council of Naturopathic Medical  
3312 Education or its successor approved by the division;

3313 (e) provide satisfactory documentation of having successfully completed, after  
3314 successful completion of the education requirements set forth in Subsection (1)(d), 12 months

3315 of clinical experience in naturopathic medicine in a residency program recognized by the  
3316 division and associated with an accredited school or college of naturopathic medicine, and  
3317 under the preceptorship of a licensed naturopathic physician, physician and surgeon, or  
3318 osteopathic physician;

3319 (f) pass the licensing examination sequence required by division rule established in  
3320 collaboration with the board;

3321 (g) be able to read, write, speak, understand, and be understood in the English language  
3322 and demonstrate proficiency to the satisfaction of the board if requested by the board; and

3323 (h) meet with the board and representatives of the division, if requested, for the  
3324 purpose of evaluating the applicant's qualifications for licensure.

3325 (2) An applicant for licensure as a naturopathic physician qualifying under the  
3326 endorsement provision of Section 58-1-302 shall:

3327 (a) be currently licensed in good standing in another jurisdiction as set forth in Section  
3328 58-1-302;

3329 (b) document having met all requirements for licensure under Subsection (1) except the  
3330 clinical experience requirement of Subsection (1)(e);

3331 (c) have passed the examination requirements established under Subsection (1)(f)  
3332 which the applicant has not passed in connection with licensure in another state or jurisdiction;

3333 (d) have been actively engaged in the practice as a naturopathic physician for not less  
3334 than 6,000 hours during the five years immediately preceding the date of application for  
3335 licensure in Utah; and

3336 (e) meet with the board and representatives of the division, if requested for the purpose  
3337 of evaluating the applicant's qualifications for licensure.

3338 Section 47. Section **58-76-502** is amended to read:

3339 **58-76-502. Penalty for unlawful conduct.**

3340 (1) (a) If, upon inspection or investigation, the division concludes that a person has  
3341 violated Section 58-76-501 or any rule or order issued with respect to Section 58-76-501, and  
3342 that disciplinary action is appropriate, the director or his or her designee from within the  
3343 division shall promptly issue a citation to the person according to this chapter and any pertinent  
3344 rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an  
3345 adjudicative proceeding conducted under Title 63, Chapter 46b, Administrative Procedures

3346 Act.

3347 (i) A person who violates Subsections 58-1-501(1)(a) through (d) or Section 58-76-501  
3348 or any rule or order issued with respect to Section 58-76-501, as evidenced by an uncontested  
3349 citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may  
3350 be assessed a fine pursuant to this Subsection (1) and may, in addition to or in lieu of, be  
3351 ordered to cease and desist from violating Subsections 58-1-501(1)(a) through (d) or Section  
3352 58-76-501 or any rule or order issued with respect to this section.

3353 (ii) Except for a cease and desist order, the licensure sanctions cited in Section  
3354 58-76-401 may not be assessed through a citation.

3355 (b) A citation shall:

3356 (i) be in writing;

3357 (ii) describe with particularity the nature of the violation, including a reference to the  
3358 provision of the chapter, rule, or order alleged to have been violated;

3359 (iii) clearly state that the recipient must notify the division in writing within 20  
3360 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing  
3361 conducted under Title 63, Chapter 46b, Administrative Procedures Act; and

3362 (iv) clearly explain the consequences of failure to timely contest the citation or to make  
3363 payment of any fines assessed by the citation within the time specified in the citation.

3364 (c) The division may issue a notice in lieu of a citation.

3365 (d) Each citation issued under this section, or a copy of each citation, may be served  
3366 upon any person upon whom a summons may be served in accordance with the Utah Rules of  
3367 Civil Procedure and may be made personally or upon his agent by a division investigator or by  
3368 any person specially designated by the director or by mail.

3369 (e) If within 20 calendar days from the service of the citation, the person to whom the  
3370 citation was issued fails to request a hearing to contest the citation, the citation becomes the  
3371 final order of the division and is not subject to further agency review. The period to contest a  
3372 citation may be extended by the division for cause.

3373 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation  
3374 the license of a licensee who fails to comply with a citation after it becomes final.

3375 (g) The failure of an applicant for licensure to comply with a citation after it becomes  
3376 final is a ground for denial of license.

3377 (h) No citation may be issued under this section after the expiration of six months  
3378 following the occurrence of any violation.

3379 (i) The director or his designee shall assess fines according to the following:

3380 (i) for a first offense handled pursuant to Subsection (1)(a), a fine of up to \$1,000;

3381 (ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to \$2,000;

3382 and

3383 (iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to  
3384 \$2,000 for each day of continued offense.

3385 (2) An action initiated for a first or second offense which has not yet resulted in a final  
3386 order of the division shall not preclude initiation of any subsequent action for a second or  
3387 subsequent offense during the pendency of any preceding action. The final order on a  
3388 subsequent action shall be considered a second or subsequent offense, respectively, provided  
3389 the preceding action resulted in a first or second offense, respectively.

3390 (3) Any penalty which is not paid may be collected by the director by either referring  
3391 the matter to a collection agency or bringing an action in the district court of the county in  
3392 which the person against whom the penalty is imposed resides or in the county where the office  
3393 of the director is located. Any county attorney or the attorney general of the state shall provide  
3394 legal assistance and advice to the director in any action to collect the penalty. In any action  
3395 brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be  
3396 awarded to the division.

3397 Section 48. Section **59-1-206** is amended to read:

3398 **59-1-206. Appointment of staff -- Executive director -- Compensation --**  
3399 **Administrative secretary -- Internal audit unit -- Appeals office staff -- Division directors**  
3400 **-- Criminal tax investigators.**

3401 (1) The commission shall appoint the following persons who are qualified,  
3402 knowledgeable, and experienced in matters relating to their respective positions, exempt under  
3403 Title 67, Chapter 19, Utah State Personnel Management Act, to serve at the pleasure of, and  
3404 who are directly accountable to, the commission:

3405 (a) in consultation with the governor and with the consent of the Senate, an executive  
3406 director;

3407 (b) an administrative secretary;

3408 (c) an internal audit unit; and

3409 (d) an appeals staff.

3410 (2) The governor shall establish the executive director's salary within the salary range  
3411 fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

3412 (3) Division directors shall be appointed by the executive director subject to the  
3413 approval of the commission. The division directors are exempt employees under Title 67,  
3414 Chapter 19, Utah State Personnel Management Act.

3415 (4) (a) The executive director may with the approval of the commission employ  
3416 additional staff necessary to perform the duties and responsibilities of the commission. These  
3417 employees are subject to Title 67, Chapter 19, Utah State Personnel Management Act.

3418 (b) (i) The executive director may under Subsection (4)(a) employ criminal tax  
3419 investigators to help the commission carry out its duties and responsibilities regarding criminal  
3420 provisions of the state tax laws. The executive director may not employ more than eight  
3421 criminal tax investigators at one time.

3422 (ii) The executive director may designate investigators hired under this Subsection  
3423 (4)(b) as special function officers, as defined in Section 53-13-105, to enforce the criminal  
3424 provisions of the state tax laws.

3425 (iii) Notwithstanding Section [~~49-4a-203~~] 49-15-201, any special function officer  
3426 designated under this Subsection (4)(b) may not become or be designated as a member of the  
3427 Public Safety Retirement System.

3428 (5) The internal audit unit shall provide the following:

3429 (a) an examination to determine the honesty and integrity of fiscal affairs, the accuracy  
3430 and reliability of financial statements and reports, and the adequacy and effectiveness of  
3431 financial controls to properly record and safeguard the acquisition, custody, and use of public  
3432 funds;

3433 (b) an examination to determine whether commission administrators have faithfully  
3434 adhered to commission policies and legislative intent;

3435 (c) an examination to determine whether the operations of the divisions and other units  
3436 of the commission have been conducted in an efficient and effective manner;

3437 (d) an examination to determine whether the programs administered by the divisions  
3438 and other units of the commission have been effective in accomplishing intended objectives;

3439 and

3440 (e) an examination to determine whether management control and information systems  
3441 are adequate and effective in assuring that commission programs are administered faithfully,  
3442 efficiently, and effectively.

3443 (6) The appeals office shall receive and hear appeals to the commission and shall  
3444 conduct the hearings in compliance with formal written rules approved by the commission.  
3445 The commission has final review authority over the appeals.

3446 Section 49. Section **59-14-408** is amended to read:

3447 **59-14-408. Compliance certification -- Prohibition on stamping.**

3448 (1) As used in this section:

3449 (a) "cigarette" has the same meaning as defined in Section 59-22-202; and

3450 (b) "tobacco product manufacturer" has the same meaning as defined in Section  
3451 59-22-202.

3452 (2) No person may affix, or cause to be affixed, a stamp to an individual package or  
3453 container of cigarettes under Section 59-14-205, or pay the tax levied under Part 3, Tobacco  
3454 Products, if the tobacco product manufacturer is not included on the list published by the  
3455 commission under Subsection (3).

3456 (3) (a) The commission shall make available for public inspection a list of tobacco  
3457 product manufacturers that have provided the certification required by Subsection (4) and the  
3458 cigarette brands of those manufacturers sold for consumption in the state.

3459 (b) The commission shall update the list as necessary.

3460 (c) A person is not liable for a violation of Subsection (2) if the cigarette brand and  
3461 manufacturer is included in the commission's list at the time the stamp is affixed or the tax  
3462 paid.

3463 (4) A tobacco product manufacturer shall certify to the commission under penalty of  
3464 perjury, that:

3465 (a) the manufacturer is:

3466 (i) a participating manufacturer as defined in Subsection 59-22-203(1)(a); or

3467 (ii) in full compliance with Subsection 59-22-203(1)(b);

3468 (b) the list attached to the certification is a complete and updated list of all cigarette  
3469 brands sold by the manufacturer for consumption in the state;



3470 (c) the list will be updated as necessary; and

3471 (d) all escrow payments required by Subsection 59-22-203(1)(b) have, to the best of  
3472 the manufacturer's knowledge, been made by all other tobacco product manufacturers that  
3473 previously made or sold the cigarette brands included in the manufacturer's list.

3474 (5) Notwithstanding the requirement of Subsection (4)(d), if the tobacco product  
3475 manufacturer [~~did sell or manufacture~~] sold or manufactured the tobacco product that is the  
3476 subject of the certification prior to March 1, 2002, the tobacco product manufacturer is only  
3477 required to identify the predecessor tobacco product manufacturer.

3478 (6) The commission may require licensees who affix stamps to individual packages or  
3479 containers of cigarettes under Section 59-14-205 or who pay the tax under Part 3, Tobacco  
3480 Products, to submit information necessary to enable the commission to determine whether a  
3481 tobacco product manufacturer is in compliance with Section 59-22-203.

3482 (7) The commission may require each tobacco product manufacturer to appoint a  
3483 registered agent for service of process in the state and identify the registered agent to the  
3484 commission.

3485 (8) A tobacco product manufacturer who falsely represents to any person any  
3486 information specified in Subsection (4), or who fails to appoint the registered agent required by  
3487 this section is guilty of a class B misdemeanor for each violation or false representation.

3488 Section 50. Section **62A-3-301** is amended to read:

3489 **62A-3-301. Definitions.**

3490 As used in this part:

3491 (1) "Abandonment" means any knowing or intentional action or inaction, including  
3492 desertion, by a person or entity acting as a caretaker for a vulnerable adult that leaves the  
3493 vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or  
3494 medical[;] or other health care.

3495 (2) "Abuse" means:

3496 (a) attempting to cause harm, intentionally or knowingly causing harm, or intentionally  
3497 or knowingly placing another in fear of imminent harm;

3498 (b) unreasonable or inappropriate use of physical restraint, medication, or isolation that  
3499 causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's  
3500 orders or used as an unauthorized substitute for treatment, unless that conduct furthers the

3501 health and safety of the adult;

3502 (c) emotional or psychological abuse;

3503 (d) sexual offense as described in Title 76, Chapter 5, Offenses Against the Person; or

3504 (e) deprivation of life sustaining treatment, except:

3505 (i) as provided in Title 75, Chapter 2, Part 11, Personal Choice and Living Will Act; or

3506 (ii) when informed consent, as defined in Section 76-5-111, has been obtained.

3507 (3) "Adult" means a person who is 18 years of age or older.

3508 (4) "Adult protection case file" means documents and information contained in the file

3509 maintained by Adult Protective Services on a particular case, including any report or other

3510 notification received by the division or Adult Protective Services.

3511 (5) "Adult Protective Services" means the unit within the division responsible to

3512 investigate abuse, neglect, and exploitation of vulnerable adults and provide appropriate

3513 protective services.

3514 (6) "Caretaker" means any person, entity, corporation, or public institution that

3515 assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing,

3516 supervision, medical or other health care, or other necessities. "Caretaker" includes a relative

3517 by blood or marriage, a household member, a person who is employed or who provides

3518 volunteer work, or a person who contracts or is under court order to provide care.

3519 (7) "Counsel" means an attorney licensed to practice law in this state.

3520 (8) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.

3521 (9) "Elder adult" means a person 65 years of age or older.

3522 (10) "Emergency" means a circumstance in which a vulnerable adult is at an immediate

3523 risk of death or serious physical injury or is at risk of immediate, serious harm. Risk of

3524 immediate, serious harm includes exploitation that results in the inability of a vulnerable adult

3525 to provide funds for immediate needs, including food, shelter, and necessary medical care.

3526 (11) "Emotional or psychological abuse" means intentional or knowing verbal or

3527 nonverbal conduct directed at a vulnerable adult including ridiculing, intimidating, yelling,

3528 swearing, threatening, isolating, coercing, harassing, or other forms of intimidating behavior

3529 that results or could result in the vulnerable adult suffering mental anguish or emotional

3530 distress, including fear, humiliation, degradation, agitation, confusion, or isolation.

3531 (12) "Exploitation" means the offense described in Subsection 76-5-111(4).

3532 (13) "Harm" means pain, mental anguish, emotional distress, hurt, physical or  
3533 psychological damage, physical injury, serious physical injury, suffering, or distress inflicted  
3534 knowingly or intentionally.

3535 (14) "Intimidation" means communication through verbal or nonverbal conduct which  
3536 threatens deprivation of money, food, clothing, medicine, shelter, social interaction,  
3537 supervision, health care, or companionship, or which threatens isolation or abuse.

3538 (15) (a) "Isolation" means knowingly or intentionally preventing a vulnerable adult  
3539 from having contact with another person by:

3540 (i) preventing the vulnerable adult from receiving visitors, mail, or telephone calls,  
3541 contrary to the express wishes of the vulnerable adult, including communicating to a visitor  
3542 that the vulnerable adult is not present or does not want to meet with or talk to the visitor,  
3543 knowing that communication to be false;

3544 (ii) physically restraining the vulnerable adult in order to prevent the vulnerable adult  
3545 from meeting with a visitor; or

3546 (iii) making false or misleading statements to the vulnerable adult in order to induce  
3547 the vulnerable adult to refuse to receive communication from visitors or other family members.

3548 (b) The term "isolation" does not include an act intended to protect the physical or  
3549 mental welfare of the vulnerable adult or an act performed pursuant to the treatment plan or  
3550 instructions of a physician or other professional advisor of the vulnerable adult.

3551 (16) "Lacks capacity to consent" has the meaning as provided in Section 76-5-111.

3552 (17) "Neglect" means:

3553 (a) (i) failure of a caretaker to provide nutrition, clothing, shelter, supervision, personal  
3554 care, or dental, medical, or other health care; or

3555 (ii) failure to provide protection from health and safety hazards or maltreatment;

3556 (b) failure of a caretaker to provide care to a vulnerable adult in a timely manner and  
3557 with the degree of care that a reasonable person in a like position would exercise;

3558 (c) a pattern of conduct by a caretaker, without the vulnerable adult's informed consent,  
3559 resulting in deprivation of food, water, medication, health care, shelter, cooling, heating, or  
3560 other services necessary to maintain the vulnerable adult's well being;

3561 (d) knowing or intentional failure by a caretaker to carry out a prescribed treatment  
3562 plan that causes or is likely to cause harm to the vulnerable adult;

3563 (e) self-neglect by the vulnerable adult; or

3564 (f) abandonment by a caretaker.

3565 (18) "Physical injury" includes damage to any bodily tissue caused by nontherapeutic  
3566 conduct, to the extent that the tissue must undergo a healing process in order to be restored to a  
3567 sound and healthy condition, or damage to any bodily tissue to the extent that the tissue cannot  
3568 be restored to a sound and healthy condition. "Physical injury" includes skin bruising, a  
3569 dislocation, physical pain, illness, impairment of physical function, a pressure sore, bleeding,  
3570 malnutrition, dehydration, a burn, a bone fracture, a subdural hematoma, soft tissue swelling,  
3571 injury to any internal organ, or any other physical condition that imperils the health or welfare  
3572 of a vulnerable adult and is not a serious physical injury as defined in this section.

3573 (19) "Protected person" means a vulnerable adult for whom the court has ordered  
3574 protective services, including a vulnerable adult for whom emergency protective services have  
3575 been established under the provisions of this chapter.

3576 (20) "Protective services" means any services provided by Adult Protective Services to  
3577 a vulnerable adult, either with the consent of the vulnerable adult or the vulnerable adult's  
3578 guardian or conservator, or by court order, if that adult has been abused, neglected, exploited,  
3579 or is in a state of self-neglect; protective services may include:

3580 (a) an intake system for receiving and screening reports;

3581 (b) investigation of referrals in accordance with statutory and policy guidelines;

3582 (c) protective needs assessment;

3583 (d) coordination and referral to community resources for services; or

3584 (e) short-term, limited services including emergency shelter or respite when family or  
3585 other community resources are not available to provide protection.

3586 (21) "Self-neglect" means the failure of a vulnerable adult to provide food, water,  
3587 medication, health care, shelter, cooling, heating, safety, or other services necessary to maintain  
3588 the vulnerable adult's well being when that failure is the result of the adult's mental or physical  
3589 impairment. Choice of lifestyle or living arrangements may not, by themselves, be evidence of  
3590 self-neglect.

3591 (22) "Serious physical injury" has the meaning as provided in Section 76-5-111.

3592 (23) "Substantiated" or "substantiation" means a finding, based upon a preponderance  
3593 of the evidence, that there is a reasonable basis to conclude that abuse, neglect, or exploitation

3594 occurred, regardless of whether there is an identified perpetrator or current need for protective  
3595 services. If more than one allegation is made or identified during the course of the  
3596 investigation, any allegation determined to meet the criteria for substantiation requires a case  
3597 finding of "substantiated."

3598 (24) "Undue influence" occurs when a person uses the person's role, relationship, or  
3599 power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear  
3600 of a vulnerable adult, or uses the person's role, relationship, or power to gain control  
3601 deceptively over the decision making of the vulnerable adult.

3602 (25) "Unsubstantiated" means a finding, based upon a preponderance of the evidence,  
3603 that there is insufficient evidence to conclude that abuse, neglect, or exploitation occurred.

3604 (26) "Vulnerable adult" means an elder adult, or an adult who has a mental or physical  
3605 impairment which substantially affects that person's ability to:

- 3606 (a) provide personal protection;  
3607 (b) provide necessities such as food, shelter, clothing, or mental or other health care;  
3608 (c) obtain services necessary for health, safety, or welfare;  
3609 (d) carry out the activities of daily living;  
3610 (e) manage the adult's own resources; or  
3611 (f) comprehend the nature and consequences of remaining in a situation of abuse,  
3612 neglect, or exploitation.

3613 Section 51. Section **62A-11-304.4** is amended to read:

3614 **62A-11-304.4. Filing of location information -- Service of process.**

3615 (1) (a) Upon the entry of an order in a proceeding to establish paternity or to establish,  
3616 modify, or enforce a support order, each party shall file identifying information and shall  
3617 update that information as changes occur:

- 3618 (i) with the court or administrative agency that conducted the proceeding; and  
3619 (ii) after October 1, 1998, with the state case registry.

3620 (b) The identifying information required under Subsection (1)(a) shall include the  
3621 person's social security number, driver's license number, residential and mailing addresses,  
3622 telephone numbers, the name, address, and telephone number of employers, and any other data  
3623 required by the United States Secretary of Health and Human Services.

3624 (c) In any subsequent child support action involving the office or between the parties,

3625 state due process requirements for notice and service of process shall be satisfied as to a party  
3626 upon:

3627 (i) a sufficient showing that diligent effort has been made to ascertain the location of  
3628 the party; and

3629 (ii) delivery of notice to the most recent residential or employer address filed with the  
3630 court, administrative agency, or state case registry under Subsection (1)(a).

3631 (2) (a) The office shall provide individuals who are applying for or receiving services  
3632 under this chapter or who are parties to cases in which services are being provided under this  
3633 chapter:

3634 (i) with notice of all proceedings in which support obligations might be established or  
3635 modified; and

3636 (ii) with a copy of any order establishing or modifying a child support obligation, or in  
3637 the case of a petition for modification, a notice of determination that there should be no change  
3638 in the amount of the child support award, within 14 days after issuance of such order or  
3639 determination.

3640 (b) Notwithstanding Subsection (2)(a)(ii), notice in the case of an interstate order shall  
3641 be provided in accordance with Section 78-45f-614.

3642 (3) Service of all notices and orders under this part shall be made in accordance with  
3643 Title 63, Chapter 46b, Administrative Procedures Act, the Utah Rules of Civil Procedure, or  
3644 this section.

3645 (4) Consistent with Title 63, Chapter 2, Government Records Access and Management  
3646 Act, the office shall adopt procedures to classify records to prohibit the unauthorized use or  
3647 disclosure of information relating to a proceeding to:

3648 (a) establish paternity; or

3649 (b) establish or enforce support.

3650 (5) (a) The office shall, upon written request, provide location information available in  
3651 its files on a custodial or noncustodial parent to the other party or the other party's legal counsel  
3652 provided that:

3653 (i) the party seeking the information produces a copy of the parent-time order signed by  
3654 the court;

3655 (ii) the information has not been safeguarded in accordance with Section 454 of the

3656 Social Security Act;

3657 (iii) the party whose location is being sought has been afforded notice in accordance  
3658 with [~~Section 62A-11-304.4~~] this section of the opportunity to contest release of the  
3659 information;

3660 (iv) the party whose location is being sought has not provided the office with a copy of  
3661 a protective order, a current court order prohibiting disclosure, a current court order limiting or  
3662 prohibiting the requesting person's contact with the party whose location is being sought, a  
3663 criminal order, or documentation of a pending proceeding for any of the above; and

3664 (v) there is no other state or federal law that would prohibit disclosure.

3665 (b) "Location information" shall consist of the current residential address of the  
3666 custodial or noncustodial parent and, if different and known to the office, the current residence  
3667 of any children who are the subject of the parent-time order. If there is no current residential  
3668 address available, the person's place of employment and any other location information shall be  
3669 disclosed.

3670 (c) For the purposes of this section, "reason to believe" under Section 454 of the Social  
3671 Security Act means that the person seeking to safeguard information has provided to the office  
3672 a copy of a protective order, current court order prohibiting disclosure, current court order  
3673 prohibiting or limiting the requesting person's contact with the party whose location is being  
3674 sought, [~~or~~] criminal order signed by a court of competent jurisdiction, or documentation of a  
3675 pending proceeding for any of the above.

3676 (d) Neither the state, the department, the office nor its employees shall be liable for any  
3677 information released in accordance with this section.

3678 Section 52. Section **63-2-304** is amended to read:

3679 **63-2-304. Protected records.**

3680 The following records are protected if properly classified by a governmental entity:

3681 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret  
3682 has provided the governmental entity with the information specified in Section 63-2-308;

3683 (2) commercial information or nonindividual financial information obtained from a  
3684 person if:

3685 (a) disclosure of the information could reasonably be expected to result in unfair  
3686 competitive injury to the person submitting the information or would impair the ability of the

3687 governmental entity to obtain necessary information in the future;

3688 (b) the person submitting the information has a greater interest in prohibiting access  
3689 than the public in obtaining access; and

3690 (c) the person submitting the information has provided the governmental entity with  
3691 the information specified in Section 63-2-308;

3692 (3) commercial or financial information acquired or prepared by a governmental entity  
3693 to the extent that disclosure would lead to financial speculations in currencies, securities, or  
3694 commodities that will interfere with a planned transaction by the governmental entity or cause  
3695 substantial financial injury to the governmental entity or state economy;

3696 (4) records the disclosure of which could cause commercial injury to, or confer a  
3697 competitive advantage upon a potential or actual competitor of, a commercial project entity as  
3698 defined in Subsection 11-13-103~~(3)~~(4);

3699 (5) test questions and answers to be used in future license, certification, registration,  
3700 employment, or academic examinations;

3701 (6) records the disclosure of which would impair governmental procurement  
3702 proceedings or give an unfair advantage to any person proposing to enter into a contract or  
3703 agreement with a governmental entity, except that this Subsection (6) does not restrict the right  
3704 of a person to see bids submitted to or by a governmental entity after bidding has closed;

3705 (7) records that would identify real property or the appraisal or estimated value of real  
3706 or personal property, including intellectual property, under consideration for public acquisition  
3707 before any rights to the property are acquired unless:

3708 (a) public interest in obtaining access to the information outweighs the governmental  
3709 entity's need to acquire the property on the best terms possible;

3710 (b) the information has already been disclosed to persons not employed by or under a  
3711 duty of confidentiality to the entity;

3712 (c) in the case of records that would identify property, potential sellers of the described  
3713 property have already learned of the governmental entity's plans to acquire the property; or

3714 (d) in the case of records that would identify the appraisal or estimated value of  
3715 property, the potential sellers have already learned of the governmental entity's estimated value  
3716 of the property;

3717 (8) records prepared in contemplation of sale, exchange, lease, rental, or other



3718 compensated transaction of real or personal property including intellectual property, which, if  
3719 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value  
3720 of the subject property, unless:

3721 (a) the public interest in access outweighs the interests in restricting access, including  
3722 the governmental entity's interest in maximizing the financial benefit of the transaction; or

3723 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of  
3724 the value of the subject property have already been disclosed to persons not employed by or  
3725 under a duty of confidentiality to the entity;

3726 (9) records created or maintained for civil, criminal, or administrative enforcement  
3727 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if  
3728 release of the records:

3729 (a) reasonably could be expected to interfere with investigations undertaken for  
3730 enforcement, discipline, licensing, certification, or registration purposes;

3731 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement  
3732 proceedings;

3733 (c) would create a danger of depriving a person of a right to a fair trial or impartial  
3734 hearing;

3735 (d) reasonably could be expected to disclose the identity of a source who is not  
3736 generally known outside of government and, in the case of a record compiled in the course of  
3737 an investigation, disclose information furnished by a source not generally known outside of  
3738 government if disclosure would compromise the source; or

3739 (e) reasonably could be expected to disclose investigative or audit techniques,  
3740 procedures, policies, or orders not generally known outside of government if disclosure would  
3741 interfere with enforcement or audit efforts;

3742 (10) records the disclosure of which would jeopardize the life or safety of an  
3743 individual;

3744 (11) records the disclosure of which would jeopardize the security of governmental  
3745 property, governmental programs, or governmental recordkeeping systems from damage, theft,  
3746 or other appropriation or use contrary to law or public policy;

3747 (12) records that, if disclosed, would jeopardize the security or safety of a correctional  
3748 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere

3749 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

3750 (13) records that, if disclosed, would reveal recommendations made to the Board of  
3751 Pardons and Parole by an employee of or contractor for the Department of Corrections, the  
3752 Board of Pardons and Parole, or the Department of Human Services that are based on the  
3753 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's  
3754 jurisdiction;

3755 (14) records and audit workpapers that identify audit, collection, and operational  
3756 procedures and methods used by the State Tax Commission, if disclosure would interfere with  
3757 audits or collections;

3758 (15) records of a governmental audit agency relating to an ongoing or planned audit  
3759 until the final audit is released;

3760 (16) records prepared by or on behalf of a governmental entity solely in anticipation of  
3761 litigation that are not available under the rules of discovery;

3762 (17) records disclosing an attorney's work product, including the mental impressions or  
3763 legal theories of an attorney or other representative of a governmental entity concerning  
3764 litigation;

3765 (18) records of communications between a governmental entity and an attorney  
3766 representing, retained, or employed by the governmental entity if the communications would be  
3767 privileged as provided in Section 78-24-8;

3768 (19) personal files of a legislator, including personal correspondence to or from a  
3769 member of the Legislature, provided that correspondence that gives notice of legislative action  
3770 or policy may not be classified as protected under this section;

3771 (20) (a) records in the custody or control of the Office of Legislative Research and  
3772 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated  
3773 legislation or contemplated course of action before the legislator has elected to support the  
3774 legislation or course of action, or made the legislation or course of action public; and

3775 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the  
3776 Office of Legislative Research and General Counsel is a public document unless a legislator  
3777 asks that the records requesting the legislation be maintained as protected records until such  
3778 time as the legislator elects to make the legislation or course of action public;

3779 (21) research requests from legislators to the Office of Legislative Research and

3780 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared  
3781 in response to these requests;

3782 (22) drafts, unless otherwise classified as public;

3783 (23) records concerning a governmental entity's strategy about collective bargaining or  
3784 pending litigation;

3785 (24) records of investigations of loss occurrences and analyses of loss occurrences that  
3786 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the  
3787 Uninsured Employers' Fund, or similar divisions in other governmental entities;

3788 (25) records, other than personnel evaluations, that contain a personal recommendation  
3789 concerning an individual if disclosure would constitute a clearly unwarranted invasion of  
3790 personal privacy, or disclosure is not in the public interest;

3791 (26) records that reveal the location of historic, prehistoric, paleontological, or  
3792 biological resources that if known would jeopardize the security of those resources or of  
3793 valuable historic, scientific, educational, or cultural information;

3794 (27) records of independent state agencies if the disclosure of the records would  
3795 conflict with the fiduciary obligations of the agency;

3796 (28) records of a public institution of higher education regarding tenure evaluations,  
3797 appointments, applications for admissions, retention decisions, and promotions, which could be  
3798 properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public  
3799 Meetings, provided that records of the final decisions about tenure, appointments, retention,  
3800 promotions, or those students admitted, may not be classified as protected under this section;

3801 (29) records of the governor's office, including budget recommendations, legislative  
3802 proposals, and policy statements, that if disclosed would reveal the governor's contemplated  
3803 policies or contemplated courses of action before the governor has implemented or rejected  
3804 those policies or courses of action or made them public;

3805 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,  
3806 revenue estimates, and fiscal notes of proposed legislation before issuance of the final  
3807 recommendations in these areas;

3808 (31) records provided by the United States or by a government entity outside the state  
3809 that are given to the governmental entity with a requirement that they be managed as protected  
3810 records if the providing entity certifies that the record would not be subject to public disclosure

3811 if retained by it;

3812 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body  
3813 except as provided in Section 52-4-7;

3814 (33) records that would reveal the contents of settlement negotiations but not including  
3815 final settlements or empirical data to the extent that they are not otherwise exempt from  
3816 disclosure;

3817 (34) memoranda prepared by staff and used in the decision-making process by an  
3818 administrative law judge, a member of the Board of Pardons and Parole, or a member of any  
3819 other body charged by law with performing a quasi-judicial function;

3820 (35) records that would reveal negotiations regarding assistance or incentives offered  
3821 by or requested from a governmental entity for the purpose of encouraging a person to expand  
3822 or locate a business in Utah, but only if disclosure would result in actual economic harm to the  
3823 person or place the governmental entity at a competitive disadvantage, but this section may not  
3824 be used to restrict access to a record evidencing a final contract;

3825 (36) materials to which access must be limited for purposes of securing or maintaining  
3826 the governmental entity's proprietary protection of intellectual property rights including patents,  
3827 copyrights, and trade secrets;

3828 (37) the name of a donor or a prospective donor to a governmental entity, including a  
3829 public institution of higher education, and other information concerning the donation that could  
3830 reasonably be expected to reveal the identity of the donor, provided that:

3831 (a) the donor requests anonymity in writing;

3832 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be  
3833 classified protected by the governmental entity under this Subsection (37); and

3834 (c) except for public institutions of higher education, the governmental unit to which  
3835 the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and  
3836 has no regulatory or legislative authority over the donor, a member of his immediate family, or  
3837 any entity owned or controlled by the donor or his immediate family;

3838 (38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and  
3839 73-18-13;

3840 (39) a notification of workers' compensation insurance coverage described in Section  
3841 34A-2-205;

3842 (40) (a) the following records of a public institution of education, which have been  
3843 developed, discovered, or received by or on behalf of faculty, staff, employees, or students of  
3844 the institution:

- 3845 (i) unpublished lecture notes;
- 3846 (ii) unpublished research notes and data;
- 3847 (iii) unpublished manuscripts;
- 3848 (iv) creative works in process;
- 3849 (v) scholarly correspondence; and
- 3850 (vi) confidential information contained in research proposals; and

3851 (b) Subsection (40)(a) may not be construed to affect the ownership of a record;

3852 (41) (a) records in the custody or control of the Office of Legislative Auditor General  
3853 that would reveal the name of a particular legislator who requests a legislative audit prior to the  
3854 date that audit is completed and made public; and

3855 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the  
3856 Office of the Legislative Auditor General is a public document unless the legislator asks that  
3857 the records in the custody or control of the Office of Legislative Auditor General that would  
3858 reveal the name of a particular legislator who requests a legislative audit be maintained as  
3859 protected records until the audit is completed and made public;

3860 (42) records that provide detail as to the location of an explosive, including a map or  
3861 other document that indicates the location of:

- 3862 (a) a production facility; or
- 3863 (b) a magazine;

3864 (43) information contained in the database described in Section 62A-3-311.1; and

3865 (44) information contained in the Management Information System and Licensing  
3866 Information System described in Title 62A, Chapter 4a, Child and Family Services.

3867 Section 53. Section **63-55-236** is amended to read:

3868 **63-55-236. Repeal dates, Title 36.**

3869 [~~1~~] Section ~~36-2-2.1~~ is repealed January 1, 2003.]

3870 [~~2~~] Title 36, Chapter 17, Legislative Process Committee, is repealed July 1, 2005.

3871 Section 54. Section **63-55b-120** is amended to read:

3872 **63-55b-120. Repeal dates, Title 20A.**

- 3873 [~~(1) Section 20A-1-205 is repealed January 1, 2003.~~]
- 3874 [~~(2) Section 20A-2-107.1 is repealed July 1, 2002.~~]
- 3875 Section 55. Section **63-55b-123** is amended to read:
- 3876 **63-55b-123. Repeal dates -- Title 23.**
- 3877 [~~Section 23-19-40 is repealed January 1, 2003.~~]
- 3878 Section 56. Section **63-55b-134** is amended to read:
- 3879 **63-55b-134. Repeal dates -- Title 34A.**
- 3880 [~~(1) Title 34A, Chapter 9, Olympic Volunteer Workers' Compensation Act, is repealed~~
- 3881 ~~on January 1, 2003.~~]
- 3882 [~~(2) Title 34A, Chapter 10, Olympic Law Enforcement and Public Safety Workers'~~
- 3883 ~~Compensation Act, is repealed on January 1, 2003.~~]
- 3884 Section 57. Section **63-55b-153** is amended to read:
- 3885 **63-55b-153. Repeal dates -- Titles 53 and 53A.**
- 3886 (1) Subsection 53-3-205(9)(a)(i)(D) is repealed July 1, 2007.
- 3887 (2) Subsection 53-3-804(2)(g) is repealed July 1, 2007.
- 3888 [~~(3) Subsection 53-5-710(4) pertaining to restrictions at Olympic venue secure areas is~~
- 3889 ~~repealed April 1, 2002.~~]
- 3890 [~~(4)~~ (3) Title 53, Chapter 12, State Olympic Public Safety Command Act, is repealed
- 3891 July 1, 2003.
- 3892 [~~(5) Section 53-12-301.1 is repealed April 1, 2002.~~]
- 3893 [~~(6)~~ (4) Section 53A-1-403.5 is repealed July 1, 2007.
- 3894 [~~(7) Section 53A-3-602 is repealed July 1, 2002.~~]
- 3895 Section 58. Section **63-55b-172** is amended to read:
- 3896 **63-55b-172. Repeal dates -- Title 72.**
- 3897 [~~Subsection 72-3-301(6) pertaining to the designation of a state highway during the~~
- 3898 ~~Olympic Winter Games of 2002 is repealed April 1, 2002.~~]
- 3899 Section 59. Section **70A-2-403** is amended to read:
- 3900 **70A-2-403. Power to transfer -- Good faith purchase of goods -- "Entrusting."**
- 3901 (1) A purchaser of goods acquires all title which his transferor had or had power to
- 3902 transfer except that a purchaser of a limited interest acquires rights only to the extent of the
- 3903 interest purchased. A person with voidable title has power to transfer a good title to a good

3904 faith purchaser for value. When goods have been delivered under a transaction of purchase the  
3905 purchaser has such power even though:

- 3906 (a) the transferor was deceived as to the identity of the purchaser~~[, or]~~;
- 3907 (b) the delivery was in exchange for a check which is later dishonored~~[, or]~~;
- 3908 (c) it was agreed that the transaction was to be a "cash sale~~;~~"~~;~~ or
- 3909 (d) the delivery was procured through fraud punishable as larcenous under the criminal  
3910 law.

3911 (2) Any entrusting of possession of goods to a merchant who deals in goods of that  
3912 kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of  
3913 business.

3914 (3) "Entrusting" includes any delivery and any acquiescence in retention of possession  
3915 regardless of any condition expressed between the parties to the delivery or acquiescence and  
3916 regardless of whether the procurement of the entrusting or the possessor's disposition of the  
3917 goods have been such as to be larcenous under the criminal law.

3918 (4) The rights of other purchasers of goods and of lien creditors are governed by [~~the~~  
3919 ~~chapters on Secured Transactions (~~ Chapter [9], ~~Bulk Transfers (Chapter 6)~~] 9a, Uniform  
3920 Commercial Code - Secured Transactions and [~~Documents of Title (~~ Chapter 7~~)~~], Uniform  
3921 Commercial Code - Documents of Title.

3922 Section 60. Section **70A-11-105** is amended to read:

3923 **70A-11-105. Transition provision on change of place of filing.**

3924 (1) A financing statement or continuation statement filed prior to July 1, 1977 which  
3925 shall not have lapsed prior to July 1, 1977 shall remain effective for the period provided in the  
3926 old Uniform Commercial Code, but not less than five years after the filing.

3927 (2) With respect to any collateral acquired by the debtor subsequent to the effective  
3928 date of the corrected Uniform Commercial Code, any effective financing statement or  
3929 continuation statement described in this section shall apply only if the filing or filings are in the  
3930 office or offices that would be appropriate to perfect the security interests in the new collateral  
3931 under the corrected Uniform Commercial Code.

3932 (3) The effectiveness of any financing statement or continuation statement filed prior to  
3933 July 1, 1977 may be continued by a continuation statement as permitted by the corrected  
3934 Uniform Commercial Code, except that if the corrected Uniform Commercial Code requires a

3935 filing in an office where there was no previous financing statement, a new financing statement  
3936 conforming to Section 70A-11-106 shall be filed in that office.

3937 (4) If the record of a mortgage of real estate would have been effective as a fixture  
3938 filing of goods described therein if the corrected Uniform Commercial Code had been in effect  
3939 on the date of recording the mortgage, the mortgage shall be deemed effective as a fixture filing  
3940 as to such goods under [~~subsection (6) of section 70A-9-402~~] Section 70A-9a-502 of the  
3941 corrected Uniform Commercial Code on the effective date of the corrected Uniform  
3942 Commercial Code.

3943 Section 61. Section **70A-11-106** is amended to read:

3944 **70A-11-106. Required refilings.**

3945 (1) If a security interest is perfected or has priority when this act takes effect as to all  
3946 persons or as to certain persons without any filing or recording, and if the filing of a financing  
3947 statement would be required for the perfection or priority of the security interest against those  
3948 persons under the corrected Uniform Commercial Code, the perfection and priority rights of the  
3949 security interest continue until three years after the effective date of the corrected Uniform  
3950 Commercial Code. The perfection will then lapse unless a financing statement is filed as  
3951 provided in Subsection (4) or unless the security interest is perfected otherwise than by filing.

3952 (2) If a security interest is perfected when the corrected Uniform Commercial Code  
3953 takes effect under a law other than the Uniform Commercial Code which requires no further  
3954 filing, refiling or recording to continue its perfection, perfection continues until and will lapse  
3955 three years after the corrected Uniform Commercial Code takes effect, unless a financing  
3956 statement is filed as provided in Subsection (4) or unless the security interest is perfected  
3957 otherwise than by filing, or unless under [~~subsection (3) of section 70A-9-302~~] Section  
3958 70A-9a-311 the other law continues to govern filing.

3959 (3) If a security interest is perfected by a filing, refiling or recording under a law  
3960 repealed by this act which required further filing, refiling or recording to continue its  
3961 perfection, perfection continues and will lapse on the date provided by the law so repealed for  
3962 such further filing, refiling or recording unless a financing statement is filed as provided in  
3963 Subsection (4) or unless the security interest is perfected otherwise than by filing.

3964 (4) A financing statement may be filed within six months before the perfection of a  
3965 security interest would otherwise lapse. Any such financing statement may be signed by either



3966 the debtor or the secured party. It must identify the security agreement, statement or notice  
3967 (however denominated in any statute or other law repealed or modified by this act), state the  
3968 office where and the date when the last filing, refiling or recording, if any, was made with  
3969 respect thereto, and the filing number, if any, or book and page, if any, of recording and further  
3970 state that the security agreement, statement or notice, however denominated, in another filing  
3971 office under the Uniform Commercial Code or under any statute or other law repealed or  
3972 modified by this act is still effective. Section [~~70A-9-401~~] 70A-9a-501 and [~~Section~~  
3973 ~~70A-9-103~~] Sections 70A-9a-301 through 70A-9a-307 determine the proper place to file such a  
3974 financing statement. Except as specified in this subsection, the provisions of Section  
3975 [~~70A-9-403(3)~~] 70A-9a-515 for continuation statements apply to such a financing statement.

3976 Section 62. Section **72-1-303** is amended to read:

3977 **72-1-303. Duties of commission.**

3978 The commission has the following duties:

3979 (1) determining priorities and funding levels of projects in the state transportation  
3980 systems for each fiscal year based on project lists compiled by the department;

3981 (2) determining additions and deletions to state highways under Chapter 4, Designation  
3982 of State Highways Act;

3983 (3) holding public hearings and otherwise providing for public input in transportation  
3984 matters;

3985 (4) making policies and rules in accordance with Title 63, Chapter 46a, Utah  
3986 Administrative Rulemaking Act, necessary to perform the commission's duties described under  
3987 this section;

3988 (5) in accordance with Section 63-46b-12, reviewing orders issued by the executive  
3989 director in adjudicative proceedings held in accordance with Title 63, Chapter 46b,  
3990 Administrative Procedures Act;

3991 (6) advising the department in state transportation systems policy; and

3992 (7) approving settlement agreements of condemnation cases subject to Section  
3993 [~~63-38b-105~~] 63-38b-401.

3994 Section 63. Section **72-3-104** is amended to read:

3995 **72-3-104. City streets -- Class C roads -- Construction and maintenance.**

3996 (1) City streets comprise:

3997 (a) highways, roads, and streets within the corporate limits of the municipalities that  
3998 are not designated as class A state roads or as class B roads; and

3999 (b) those highways, roads, and streets located within a national forest and constructed  
4000 or maintained by the municipality under agreement with the appropriate federal agency.

4001 (2) City streets are class C roads.

4002 (3) Except for city streets within counties of the first and second class as defined in  
4003 Section [~~17-16-13~~] 17-50-501, the state and city have joint undivided interest in the title to all  
4004 rights-of-way for all city streets.

4005 (4) The municipal governing body exercises sole jurisdiction and control of the city  
4006 streets within the municipality.

4007 (5) The department shall cooperate with the municipal legislative body in the  
4008 construction and maintenance of the class C roads within each municipality.

4009 (6) The municipal legislative body shall expend or cause to be expended upon the class  
4010 C roads the funds allocated to each municipality from the Transportation Fund under rules  
4011 made by the department.

4012 (7) Any town or city in the third class may:

4013 (a) contract with the county or the department for the construction and maintenance of  
4014 class C roads within its corporate limits; or

4015 (b) transfer, with the consent of the county, its:

4016 (i) class C roads to the class B road system; and

4017 (ii) funds allocated from the Transportation Fund to the municipality to the county  
4018 legislative body for use upon the transferred class C roads.

4019 (8) A municipal legislative body of any municipality of the third class may use any  
4020 portion of the class C road funds allocated to the municipality for the construction of  
4021 sidewalks, curbs, and gutters on class A state roads within the municipal limits by cooperative  
4022 agreement with the department.

4023 Section 64. Section **73-10-2** is amended to read:

4024 **73-10-2. Board of Water Resources -- Members -- Appointment -- Terms --**  
4025 **Vacancies.**

4026 (1) (a) The Board of Water Resources shall be comprised of eight members to be  
4027 appointed by the governor with the consent of the Senate.

- 4028           **(b)** Not more than four members shall be from the same political party.
- 4029           **(2)** One member of the board shall be appointed from each of the following districts:
- 4030           (a) Bear River District, comprising the counties of Box Elder, Cache, and Rich;
- 4031           (b) Weber District, comprising the counties of Weber, Davis, Morgan, and Summit;
- 4032           (c) Salt Lake District, comprising the counties of Salt Lake and Tooele;
- 4033           (d) Provo River District, comprising the counties of Juab, Utah, and Wasatch;
- 4034           (e) Sevier River District, comprising the counties of Millard, Sanpete, Sevier, Piute,
- 4035 and Wayne;
- 4036           (f) Green River District, comprising the counties of Daggett, Duchesne, and Uintah;
- 4037           (g) Upper Colorado River District, comprising the counties of Carbon, Emery, Grand,
- 4038 and San Juan; and
- 4039           (h) Lower Colorado River District, comprising the counties of Beaver, Garfield, Iron,
- 4040 Washington, and Kane.
- 4041           ~~[(2)]~~ **(3)** (a) Except as required by Subsection ~~[(2)]~~ **(3)**(b), all appointments shall be for
- 4042 terms of four years.
- 4043           (b) Notwithstanding the requirements of Subsection ~~[(2)]~~ **(3)**(a), the governor shall, at
- 4044 the time of appointment or reappointment, adjust the length of terms to ensure that the terms of
- 4045 board members are staggered so that approximately half of the board is appointed every two
- 4046 years.
- 4047           (c) When a vacancy occurs in the membership for any reason, the replacement shall be
- 4048 appointed for the unexpired term with the consent of the Senate and shall be from the same
- 4049 district as such person.
- 4050           ~~[(3)]~~ **(4)** (a) Members shall receive no compensation or benefits for their services, but
- 4051 may receive per diem and expenses incurred in the performance of the member's official duties
- 4052 at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- 4053           (b) Members may decline to receive per diem and expenses for their service.
- 4054           Section 65. Section **75-2-1001** is amended to read:
- 4055           **75-2-1001. Honorary trusts -- Trusts for pets.**
- 4056           (1) Subject to Subsection (3), if a trust is for a specific lawful noncharitable purpose or
- 4057 for a lawful noncharitable purpose to be selected by the trustee and there is no definite or
- 4058 definitely ascertainable beneficiary designated, the trust may be performed by the trustee for 21

4059 years but no longer whether or not the terms of the trust contemplate a longer duration.

4060           (2) Subject to this Subsection (2) and Subsection (3), a trust for the care of a designated  
4061 domestic or pet animal is valid. The trust terminates when no living animal is covered by the  
4062 trust. A governing instrument shall be liberally construed to bring the transfer within this  
4063 subsection, to presume against the merely precatory or honorary nature of the disposition, and  
4064 to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining  
4065 the transferor's intent.

4066           (3) In addition to the provisions of Subsection (3)(a) or (b), a trust covered by either of  
4067 those subsections is subject to the following provisions:

4068           (a) Except as expressly provided otherwise in the trust instrument, no portion of the  
4069 [~~principle~~] principal or income may be converted to the use of the trustee or to any use other  
4070 than for the trust's purposes or for the benefit of a covered animal.

4071           (b) Upon termination, the trustee shall transfer the unexpended trust property in the  
4072 following order:

4073           (i) as directed in the trust instrument;

4074           (ii) if the trust was created in a nonresiduary clause in the transferor's will or in a  
4075 codicil to the transferor's will, under the residuary clause in the transferor's will; and

4076           (iii) if no taker is produced by the application of Subsection (3)(b)(i) or (ii), to the  
4077 transferor's heirs under Section 75-2-711.

4078           (c) For the purposes of Section 75-2-707, the residuary clause is treated as creating a  
4079 future interest under the terms of a trust.

4080           (d) The intended use of the principal or income can be enforced by an individual  
4081 designated for that purpose in the trust instrument or, if none, by an individual appointed by a  
4082 court upon application to it by an individual.

4083           (e) Except as ordered by the court or required by the trust instrument, no filing, report,  
4084 registration, periodic accounting, separate maintenance of funds, appointment, or fee is  
4085 required by reason of the existence of the fiduciary relationship of the trustee.

4086           (f) A court may reduce the amount of the property transferred, if it determines that that  
4087 amount substantially exceeds the amount required for the intended use. The amount of the  
4088 reduction, if any, passes as unexpended trust property under Subsection (3)(b).

4089           (g) If no trustee is designated or no designated trustee is willing or able to serve, a

4090 court shall name a trustee. A court may order the transfer of the property to another trustee, if  
4091 required to assure that the intended use is carried out and if no successor trustee is designated  
4092 in the trust instrument or if no designated successor trustee agrees to serve or is able to serve.  
4093 A court may also make such other orders and determinations as shall be advisable to carry out  
4094 the intent of the transferor and the purpose of this section.

4095 Section 66. Section **78-3a-306** is amended to read:

4096 **78-3a-306. Shelter hearing.**

4097 (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays  
4098 after any one or all of the following occur:

4099 (a) removal of the child from his home by the Division of Child and Family Services;

4100 (b) placement of the child in the protective custody of the Division of Child and Family  
4101 Services;

4102 (c) emergency kinship placement under Subsection 62A-4a-202.1(6); or

4103 (d) as an alternative to removal of the child, a parent has entered a domestic violence  
4104 shelter at the request of the Division of Child and Family Services.

4105 (2) Upon the occurrence of any of the circumstances described in Subsections (1)(a)  
4106 through (1)(d), the division shall issue a notice that contains all of the following:

4107 (a) the name and address of the person to whom the notice is directed;

4108 (b) the date, time, and place of the shelter hearing;

4109 (c) the name of the minor on whose behalf a petition is being brought;

4110 (d) a concise statement regarding:

4111 (i) the reasons for removal or other action of the division under Subsection (1); and

4112 (ii) the allegations and code sections under which the proceeding has been instituted;

4113 (e) a statement that the parent or guardian to whom notice is given, and the minor, are  
4114 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is  
4115 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be  
4116 provided; and

4117 (f) a statement that the parent or guardian is liable for the cost of support of the minor  
4118 in the protective custody, temporary custody, and custody of the division, and the cost for legal  
4119 counsel appointed for the parent or guardian under Subsection (2)(e), according to his financial  
4120 ability.

4121 (3) That notice shall be personally served as soon as possible, but no later than one  
4122 business day after removal of a child from his home, on:

4123 (a) the appropriate guardian ad litem; and

4124 (b) both parents and any guardian of the minor, unless they cannot be located.

4125 (4) The following persons shall be present at the shelter hearing:

4126 (a) the child, unless it would be detrimental for the child;

4127 (b) the child's parents or guardian, unless they cannot be located, or fail to appear in  
4128 response to the notice;

4129 (c) counsel for the parents, if one has been requested;

4130 (d) the child's guardian ad litem;

4131 (e) the caseworker from the Division of Child and Family Services who has been  
4132 assigned to the case; and

4133 (f) the attorney from the attorney general's office who is representing the division.

4134 (5) (a) At the shelter hearing, the court shall provide an opportunity for the minor's  
4135 parent or guardian, if present, and any other person having relevant knowledge, to provide  
4136 relevant testimony. The court may also provide an opportunity for the minor to testify.

4137 (b) The court may consider all relevant evidence, in accordance with the Utah Rules of  
4138 Juvenile Procedure. The court shall hear relevant evidence presented by the minor, his parent  
4139 or guardian, the requesting party, or their counsel, but may in its discretion limit testimony and  
4140 evidence to only that which goes to the issues of removal and the child's need for continued  
4141 protection.

4142 (6) If the child is in the protective custody of the division, the division shall report to  
4143 the court:

4144 (a) the reasons why the minor was removed from the parent's or guardian's custody;

4145 (b) any services provided to the child and his family in an effort to prevent removal;

4146 (c) the need, if any, for continued shelter;

4147 (d) the available services that could facilitate the return of the minor to the custody of  
4148 his parent or guardian; and

4149 (e) whether the child has any relatives who may be able and willing to take temporary  
4150 custody.

4151 (7) The court shall consider all relevant evidence provided by persons or entities

4152 authorized to present relevant evidence pursuant to this section.

4153 (8) If necessary to protect the child, preserve the rights of a party, or for other good  
4154 cause shown, the court may grant no more than one time-limited continuance, not to exceed  
4155 five judicial days.

4156 (9) If the child is in the protective custody of the division, the court shall order that the  
4157 minor be released from the protective custody of the division unless it finds, by a  
4158 preponderance of the evidence, that any one of the following exist:

4159 (a) there is a substantial danger to the physical health or safety of the minor and the  
4160 minor's physical health or safety may not be protected without removing him from his parent's  
4161 custody. If a minor has previously been adjudicated as abused, neglected, or dependent and a  
4162 subsequent incident of abuse, neglect, or dependency occurs, that fact constitutes prima facie  
4163 evidence that the child cannot safely remain in the custody of his parent;

4164 (b) the minor is suffering emotional damage, as may be indicated by, but is not limited  
4165 to, extreme anxiety, depression, withdrawal, or negative aggressive behavior toward self or  
4166 others, and there are no reasonable means available by which the minor's emotional health may  
4167 be protected without removing the minor from the custody of his parent;

4168 (c) the minor or another minor residing in the same household has been physically or  
4169 sexually abused, or is considered to be at substantial risk of being physically or sexually  
4170 abused, by a parent, a member of the parent's household, or other person known to the parent.  
4171 If a parent has received actual notice that physical or sexual abuse by a person known to the  
4172 parent has occurred, and there is evidence that the parent has allowed the child to be in the  
4173 physical presence of the alleged abuser, that fact constitutes prima facie evidence that the child  
4174 is at substantial risk of being physically or sexually abused;

4175 (d) the parent is unwilling to have physical custody of the child;

4176 (e) the minor has been left without any provision for his support;

4177 (f) a parent who has been incarcerated or institutionalized has not or cannot arrange for  
4178 safe and appropriate care for the minor;

4179 (g) a relative or other adult custodian with whom the minor has been left by the parent  
4180 is unwilling or unable to provide care or support for the minor, the whereabouts of the parent  
4181 are unknown, and reasonable efforts to locate him have been unsuccessful;

4182 (h) the minor is in immediate need of medical care;

4183 (i) the physical environment or the fact that the child is left unattended poses a threat to  
4184 the child's health or safety;

4185 (j) the minor or another minor residing in the same household has been neglected;

4186 (k) the parent, or an adult residing in the same household as the parent, has been  
4187 charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any  
4188 clandestine laboratory operation, as defined in Section 58-37d-3, was located in the residence  
4189 or on the property where the child resided; or

4190 (l) the child's welfare is otherwise endangered.

4191 (10) (a) The court shall also make a determination on the record as to whether  
4192 reasonable efforts were made to prevent or eliminate the need for removal of the minor from  
4193 his home and whether there are available services that would prevent the need for continued  
4194 removal. If the court finds that the minor can be safely returned to the custody of his parent or  
4195 guardian through the provision of those services, it shall place the minor with his parent or  
4196 guardian and order that those services be provided by the division.

4197 (b) In making that determination, and in ordering and providing services, the child's  
4198 health, safety, and welfare shall be the paramount concern, in accordance with federal law.

4199 (11) Where the division's first contact with the family occurred during an emergency  
4200 situation in which the child could not safely remain at home, the court shall make a finding that  
4201 any lack of preplacement preventive efforts was appropriate.

4202 (12) In cases where actual sexual abuse or abandonment, or serious physical abuse or  
4203 neglect are involved, neither the division nor the court has any duty to make "reasonable  
4204 efforts" or to, in any other way, attempt to maintain a child in his home, return a child to his  
4205 home, provide reunification services, or attempt to rehabilitate the offending parent or parents.

4206 (13) The court may not order continued removal of a minor solely on the basis of  
4207 educational neglect as described in Subsection 78-3a-103(1)(~~tr~~)(s)(ii).

4208 (14) (a) Whenever a court orders continued removal of a minor under this section, it  
4209 shall state the facts on which that decision is based.

4210 (b) If no continued removal is ordered and the minor is returned home, the court shall  
4211 state the facts on which that decision is based.

4212 (15) If the court finds that continued removal and temporary custody are necessary for  
4213 the protection of a child because harm may result to the child if he were returned home, it shall



4214 order continued removal regardless of any error in the initial removal of the child, or the failure  
4215 of a party to comply with notice provisions, or any other procedural requirement of this chapter  
4216 or Title 62A, Chapter 4a, Child and Family Services.

4217 Section 67. Section **78-11-6** is amended to read:

4218 **78-11-6. Injury or death of child -- Suit by parent or guardian.**

4219 Except as provided in Title [35A] 34A, Chapter [3] 2, Workers' Compensation Act, a  
4220 parent or guardian may maintain an action for the death or injury of a minor child when the  
4221 injury or death is caused by the wrongful act or neglect of another. Any civil action may be  
4222 maintained against the person causing the injury or death or, if the person is employed by  
4223 another person who is responsible for that person's conduct, also against the employer. If a  
4224 parent, stepparent, adoptive parent, or legal guardian is the alleged defendant in an action for  
4225 the death or injury of a child, a guardian ad litem may be appointed for the injured child or a  
4226 child other than the deceased child according to the procedures outlined in Section 78-7-9.

4227 Section 68. Section **78-11-7** is amended to read:

4228 **78-11-7. Death of adult -- Suit by heir or personal representative.**

4229 Except as provided in Title [35A] 34A, Chapter [3] 2, Workers' Compensation Act,  
4230 when the death of a person not a minor is caused by the wrongful act or neglect of another, his  
4231 heirs, or his personal representatives for the benefit of his heirs, may maintain an action for  
4232 damages against the person causing the death, or, if such person is employed by another person  
4233 who is responsible for his conduct, then also against such other person. If such adult person  
4234 has a guardian at the time of his death, only one action can be maintained for the injury to or  
4235 death of such person, and such action may be brought by either the personal representatives of  
4236 such adult deceased person, for the benefit of his heirs, or by such guardian for the benefit of  
4237 the heirs as provided in Section 78-11-6. In every action under this and Section 78-11-6 such  
4238 damages may be given as under all the circumstances of the case may be just.

4239 Section 69. Section **78-27-37** is amended to read:

4240 **78-27-37. Definitions.**

4241 As used in Sections 78-27-37 through 78-27-43:

4242 (1) "Defendant" means a person, other than a person immune from suit as defined in  
4243 Subsection (3), who is claimed to be liable because of fault to any person seeking recovery.

4244 (2) "Fault" means any actionable breach of legal duty, act, or omission proximately

4245 causing or contributing to injury or damages sustained by a person seeking recovery, including  
4246 negligence in all its degrees, comparative negligence, assumption of risk, strict liability, breach  
4247 of express or implied warranty of a product, products liability, and misuse, modification, or  
4248 abuse of a product.

4249 (3) "Person immune from suit" means:

4250 (a) an employer immune from suit under Title 34A, Chapter [3] 2, Workers'  
4251 Compensation Act, or Chapter [3a] 3, Utah Occupational Disease Act; and

4252 (b) a governmental entity or governmental employee immune from suit pursuant to  
4253 Title 63, Chapter 30, Utah Governmental Immunity Act.

4254 (4) "Person seeking recovery" means any person seeking damages or reimbursement on  
4255 its own behalf, or on behalf of another for whom it is authorized to act as legal representative.

4256 Section 70. Section **78-27-43** is amended to read:

4257 **78-27-43. Effect on immunity, exclusive remedy, indemnity, contribution.**

4258 Nothing in Sections 78-27-37 through 78-27-42 affects or impairs any common law or  
4259 statutory immunity from liability, including, but not limited to, governmental immunity as  
4260 provided in Title 63, Chapter 30, and the exclusive remedy provisions of Title 34A, Chapter  
4261 [3] 2, Workers' Compensation Act. Nothing in Sections 78-27-37 through 78-27-42 affects or  
4262 impairs any right to indemnity or contribution arising from statute, contract, or agreement.

4263 Section 71. Section **78-36-10.5** is amended to read:

4264 **78-36-10.5. Order of restitution -- Service -- Enforcement -- Disposition of**  
4265 **personal property -- Hearing.**

4266 (1) Each order of restitution shall:

4267 (a) direct the defendant to vacate the premises, remove his personal property, and  
4268 restore possession of the premises to the plaintiff, or be forcibly removed by a sheriff or  
4269 constable;

4270 (b) advise the defendant of the time limit set by the court for the defendant to vacate  
4271 the premises, which shall be three business days following service of the order, unless the court  
4272 determines that a longer or shorter period is appropriate under the circumstances; and

4273 (c) advise the defendant of the defendant's right to a hearing to contest the manner of  
4274 its enforcement.

4275 (2) (a) A copy of the order of restitution and a form for the defendant to request a

4276 hearing as listed on the form shall be served in accordance with Section 78-36-6 by a person  
4277 authorized to serve process pursuant to Section 78-27-58. If personal service is impossible or  
4278 impracticable, service may be made by:

4279 (i) mailing a copy of the order and the form to the defendant's last-known address and  
4280 posting a copy of the order and the form at a conspicuous place on the premises; or

4281 (ii) mailing a copy of the order and the form to the commercial tenant defendant's  
4282 last-known place of business and posting a copy of the order and the form at a conspicuous  
4283 place on the business premises.

4284 (b) A request for hearing by the defendant may not stay enforcement of the restitution  
4285 order unless:

4286 (i) the defendant furnishes a corporate bond, cash bond, certified funds, or a property  
4287 bond to the clerk of the court in an amount approved by the court according to the formula set  
4288 forth in Subsection 78-36-8.5(2)(b); and

4289 (ii) the court orders that the restitution order be stayed.

4290 (c) The date of service, the name, title, signature, and telephone number of the person  
4291 serving the order and the form shall be legibly endorsed on the copy of the order and the form  
4292 served on the defendant.

4293 (d) Within ten days of service, the person serving the order and the form shall file  
4294 proof of service in accordance with Rule 4~~(f)~~(e), Utah Rules of Civil Procedure.

4295 (3) (a) If the defendant fails to comply with the order within the time prescribed by the  
4296 court, a sheriff or constable at the plaintiff's direction may enter the premises by force using the  
4297 least destructive means possible to remove the defendant.

4298 (b) Any personal property of the defendant may be removed from the premises by the  
4299 sheriff or constable and transported to a suitable location for safe storage. The sheriff or  
4300 constable may delegate responsibility for storage to the plaintiff, who shall store the personal  
4301 property in a suitable place and in a reasonable manner.

4302 (c) The personal property removed and stored shall be inventoried by the sheriff or  
4303 constable or the plaintiff who shall keep the original inventory and personally deliver or mail  
4304 the defendant a copy of the inventory immediately after the personal property is removed.

4305 (4) (a) After demand made by the defendant within 30 days of removal of personal  
4306 property from the premises, the sheriff or constable or the plaintiff shall promptly return all of

4307 the defendant's personal property upon payment of the reasonable costs incurred for its removal  
4308 and storage.

4309 (b) The person storing the personal property may sell the property remaining in storage  
4310 at a public sale if:

4311 (i) the defendant does not request a hearing or demand return of the personal property  
4312 within 30 days of its removal from the premises; or

4313 (ii) the defendant fails to pay the reasonable costs incurred for the removal and storage  
4314 of the personal property.

4315 (c) In advance of the sale, the person storing the personal property shall mail to the  
4316 defendant's last-known address a written notice of the time and place of the sale.

4317 (d) If the defendant is present at the sale, he may specify the order in which the  
4318 personal property shall be sold, and only so much personal property shall be sold as to satisfy  
4319 the costs of removal, storage, advertising, and conducting the sale. The remainder of the  
4320 personal property, if any, shall be released to the defendant. If the defendant is not present at  
4321 the sale, the proceeds, after deduction of the costs of removal, storage, advertising, and  
4322 conducting the sale shall be paid to the plaintiff up to the amount of any judgment the plaintiff  
4323 obtained against the defendant. Any surplus shall be paid to the defendant, if the defendant's  
4324 whereabouts are known. If the defendant's whereabouts are not known, any surplus shall be  
4325 disposed of in accordance with Title 67, Chapter 4a, Unclaimed Property Act.

4326 (e) The plaintiff may donate the property to charity if:

4327 (i) the defendant does not request a hearing or demand return of the personal property  
4328 within 30 days of its removal from the premises; or

4329 (ii) the defendant fails to pay the reasonable costs incurred for the removal and storage  
4330 of the personal property; and

4331 (iii) donation is a commercially reasonable alternative.

4332 (f) If the property belonging to a person who is not a defendant is removed and stored  
4333 in accordance with this section, that person may claim the property by delivering a written  
4334 demand for its release to the sheriff or constable or the plaintiff. If the claimant provides  
4335 proper identification and evidence of ownership, the sheriff or constable or the plaintiff shall  
4336 promptly release the property at no cost to the claimant.

4337 (5) In the event of a dispute concerning the manner of enforcement of the restitution

4338 order, the defendant or any person claiming to own stored personal property may file a request  
4339 for a hearing. The court shall set the matter for hearing within ten days from the filing of the  
4340 request, or as soon thereafter as practicable, and shall mail notice of the hearing to the parties.

4341 (6) The Judicial Council shall draft the forms necessary to implement this section.

4342 Section 72. **Repealer.**

4343 This act repeals:

4344 Section **9-1-701, Short title.**

4345 Section **58-60-505, Qualifications for licensure prior to July 1, 1998.**

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**Legislative Review Note**

as of 1-13-03 10:23 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number HB0165**

**Revisor's Statute**

*18-Jan-03*

*3:45 PM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**