REVISOR'S STATUTE

2004 GENERAL SESSION

STATE OF UTAH

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LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- modifies parts of the Utah Code by making technical corrections including wording, cross referencing, and numbering changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

9-4-505, as last amended by Chapter 95, Laws of Utah 2003

9-4-704, as last amended by Chapters 133 and 181, Laws of Utah 2001

10-2-405, as last amended by Chapters 211 and 292, Laws of Utah 2003

10-2-411, as last amended by Chapter 206, Laws of Utah 2001

10-3-103, as last amended by Chapter 17, Laws of Utah 1999

10-3-104, as last amended by Chapter 17, Laws of Utah 1999

10-3-105, as last amended by Chapter 292, Laws of Utah 2003

10-3-106, as last amended by Chapter 1, Laws of Utah 2000

10-6-151, as last amended by Chapter 9, Laws of Utah 2001

11-13-313, as renumbered and amended by Chapter 286, Laws of Utah 2002

11-36-402, as last amended by Chapter 211, Laws of Utah 2000

11-37-101, as last amended by Chapter 159, Laws of Utah 2002

11-40-101, as enacted by Chapter 39, Laws of Utah 2003

11-40-102, as enacted by Chapter 39, Laws of Utah 2003

13-25a-103, as last amended by Chapter 263, Laws of Utah 2003

17B-2-604, as enacted by Chapter 284, Laws of Utah 2002

20A-7-203, as last amended by Chapter 304, Laws of Utah 2003

20A-7-702, as last amended by Chapter 331, Laws of Utah 2002

20A-11-101, as last amended by Chapters 45 and 93, Laws of Utah 1999

31A-5-401.1, as enacted by Chapter 95, Laws of Utah 1987

31A-7-201, as last amended by Chapter 71, Laws of Utah 2002

31A-7-307, as last amended by Chapter 91, Laws of Utah 1987

31A-8-103, as last amended by Chapter 298, Laws of Utah 2003

31A-8-214, as enacted by Chapter 204, Laws of Utah 1986

31A-8-215, as last amended by Chapter 261, Laws of Utah 1989

31A-8-301, as last amended by Chapter 344, Laws of Utah 1995

31A-8-402.7, as enacted by Chapter 308, Laws of Utah 2002

31A-8-501, as last amended by Chapter 263, Laws of Utah 2001

31A-11-104, as last amended by Chapter 298, Laws of Utah 2003

31A-14-206, as last amended by Chapter 203, Laws of Utah 1992

31A-14-214, as last amended by Chapter 277, Laws of Utah 1992

31A-15-103, as last amended by Chapter 298, Laws of Utah 2003

31A-18-106, as last amended by Chapter 114, Laws of Utah 2000

31A-19a-403, as renumbered and amended by Chapter 130, Laws of Utah 1999

31A-21-404, as last amended by Chapter 298, Laws of Utah 2003

31A-22-101, as enacted by Chapter 242, Laws of Utah 1985

31A-22-303, as last amended by Chapter 187, Laws of Utah 2002

31A-22-315, as last amended by Chapter 269, Laws of Utah 1997

31A-22-400, as last amended by Chapter 308, Laws of Utah 2002

31A-22-701, as last amended by Chapter 116, Laws of Utah 2001

31A-22-802, as last amended by Chapter 116, Laws of Utah 2001

31A-22-808, as last amended by Chapter 116, Laws of Utah 2001

31A-23a-102, as renumbered and amended by Chapter 298, Laws of Utah 2003

31A-25-202, as last amended by Chapter 116, Laws of Utah 2001

31A-30-103, as last amended by Chapters 114 and 308, Laws of Utah 2002

32A-11a-108, as enacted by Chapter 328, Laws of Utah 1998

41-1a-120, as last amended by Chapter 345, Laws of Utah 2000

41-12a-306, as last amended by Chapter 92, Laws of Utah 1987

46-4-503, as renumbered and amended by Chapters 20 and 209, Laws of Utah 2003

53-3-102, as last amended by Chapter 200, Laws of Utah 2002

53B-2a-102, as last amended by Chapters 233 and 289, Laws of Utah 2003

54-8a-8.5, as enacted by Chapter 189, Laws of Utah 2001

57-8-38, as enacted by Chapter 265, Laws of Utah 2003

58-1-301, as last amended by Chapter 232, Laws of Utah 1997

58-37d-4, as last amended by Chapter 115, Laws of Utah 2003

58-46a-305, as enacted by Chapter 28, Laws of Utah 1994

58-55-103, as enacted by Chapter 241, Laws of Utah 2002

58-55-302, as last amended by Chapter 241, Laws of Utah 2002

58-63-102, as last amended by Chapter 271, Laws of Utah 2001

59-2-103, as last amended by Chapter 275, Laws of Utah 1995

59-7-605, as last amended by Chapter 198, Laws of Utah 2003

59-10-127, as last amended by Chapter 198, Laws of Utah 2003

59-12-1503, as enacted by Chapter 282, Laws of Utah 2003

61-1-4, as last amended by Chapters 160 and 232, Laws of Utah 1997

61-2-6, as last amended by Chapter 232, Laws of Utah 1997

63-2-301, as last amended by Chapters 97 and 191, Laws of Utah 2002

63-2-302, as last amended by Chapters 39, 252 and 298, Laws of Utah 2003

63-34-13, as last amended by Chapter 214, Laws of Utah 2003

63-55-209, as last amended by Chapter 291, Laws of Utah 2003

63-55-210, as enacted by Chapter 323, Laws of Utah 2000

63-55-223, as last amended by Chapter 140, Laws of Utah 1998

63-55-241, as last amended by Chapters 72 and 369, Laws of Utah 2001

63-55-253, as last amended by Chapters 84 and 238, Laws of Utah 2001

63-55-263, as last amended by Chapters 16 and 254, Laws of Utah 2003

63-55-272, as last amended by Chapter 185, Laws of Utah 2002

63-55b-126, as last amended by Chapter 307, Laws of Utah 2002

63-55b-153, as last amended by Chapters 131 and 223, Laws of Utah 2003

63-55b-159, as last amended by Chapter 6, Laws of Utah 2001, First Special Session

63-55b-163, as last amended by Chapter 212, Laws of Utah 2003

63-55b-167, as enacted by Chapter 307, Laws of Utah 1999

63-55b-176, as enacted by Chapter 366, Laws of Utah 1999

63A-3-205, as last amended by Chapter 135, Laws of Utah 1996

63E-1-102, as last amended by Chapters 8 and 291, Laws of Utah 2003

64-13-6, as last amended by Chapter 45, Laws of Utah 2001

70C-6-101, as last amended by Chapter 91, Laws of Utah 1987

70C-6-203, as last amended by Chapter 91, Laws of Utah 1987

73-18c-307, as enacted by Chapter 348, Laws of Utah 1997

75-7-309, as enacted by Chapter 227, Laws of Utah 2002

76-7-301, as last amended by Chapter 70, Laws of Utah 1993

76-7-302, as last amended by Chapter 2, Laws of Utah 1991, First Special Session

77-13-6, as last amended by Chapter 290, Laws of Utah 2003

77-32-401.5, as enacted by Chapter 333, Laws of Utah 1998

78-3a-503 (Superseded 07/01/04), as last amended by Chapter 240, Laws of Utah 1998

78-11-22, as last amended by Chapter 3, Laws of Utah 2003

78-31b-6, as repealed and reenacted by Chapter 228, Laws of Utah 1994

78-31b-8, as last amended by Chapter 288, Laws of Utah 2000

REPEALS:

59-1-212, as enacted by Chapter 263, Laws of Utah 1991

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

Section 1. Section **9-4-505** is amended to read:

9-4-505. Allocation of volume cap.

(1) (a) Subject to Subsection (1)(b), the volume cap for each year shall be distributed by the board of review to the various allotment accounts as set forth in Section 9-4-506.

(b) The board of review may distribute up to 50% of each increase in the volume cap that occurs after [~~the effective date of this Subsection (1)(b)~~] March 11, 1999, for use in development that occurs in quality growth areas, depending upon the board's analysis of the relative need for additional volume cap between development in quality growth areas and the allotment accounts under Section 9-4-506.

(2) To obtain an allocation of the volume cap, issuing authorities shall submit to the board of review an application containing information required by the procedures and processes of the board of review.

(3) The board of review shall establish criteria for making allocations of volume cap that are consistent with the purposes of the code and this part. In making an allocation of volume cap the board of review shall consider the following:

(a) the principal amount of the bonds proposed to be issued;

(b) the nature and the location of the project or the type of program;

(c) the likelihood that the bonds will be sold and the timeframe of bond issuance;

(d) whether the project or program could obtain adequate financing without an allocation of volume cap;

(e) the degree to which an allocation of volume cap is required for the project or program to proceed or continue;

(f) the social, health, economic, and educational effects of the project or program on the local community and state as a whole;

(g) the anticipated economic development created or retained within the local community and the state as a whole;

(h) the anticipated number of jobs, both temporary and permanent, created or retained within the local community and the state as a whole;

(i) if the project is a residential rental project, the degree to which the residential rental project:

(i) targets lower income populations;

(ii) is accessible housing; and

(j) whether the project meets the principles of quality growth recommended by the Quality Growth Commission created under Section 11-38-201.

(4) The board of review shall evidence an allocation of volume cap by issuing a certificate in accordance with Section 9-4-507.

(5) (a) From January 1 to June 30, the board shall set aside at least 50% of the Small Issue Bond Account that may be allocated only to manufacturing projects.

(b) From July 1 to August 15, the board shall set aside at least 50% of the Pool Account that may be allocated only to manufacturing projects.

Section 2. Section **9-4-704** is amended to read:

9-4-704. Distribution of fund moneys.

(1) The executive director shall:

(a) make grants and loans from the fund for any of the activities authorized by Section 9-4-705, as directed by the board;

(b) establish the criteria with the approval of the board by which loans and grants will be made; and

(c) determine with the approval of the board the order in which projects will be funded.

(2) The executive director shall distribute, as directed by the board, any federal moneys contained in the fund according to the procedures, conditions, and restrictions placed upon the use of those moneys by the federal government.

(3) (a) The executive director shall distribute, as directed by the board, any funds received pursuant to Section 17B-4-1010 to pay the costs of providing income targeted housing within the community that created the redevelopment agency under Title 17B, Chapter 4, Redevelopment Agencies Act.

(b) As used in Subsection (3)(a):

(i) "Community" has the meaning as defined in Subsection 17B-4-102[~~(1)~~](10).

(ii) "Income targeted housing" has the meaning as defined in Subsection 17B-4-1010(1).

(4) Except federal money and money received under Section 17B-4-1010, the executive director shall distribute, as directed by the board, all other moneys from the fund according to the following requirements:

(a) Not less than 30% of all fund moneys shall be distributed to rural areas of the state.

(b) At least 50% of the moneys in the fund shall be distributed as loans to be repaid to the fund by the entity receiving them.

(i) (A) Of the fund moneys distributed as loans, at least 50% shall be distributed to benefit persons whose annual income is at or below 50% of the median family income for the state.

(B) The remaining loan moneys shall be distributed to benefit persons whose annual income is at or below 80% of the median family income for the state.

(ii) The executive director or his designee shall lend moneys in accordance with this Subsection (4) at a rate based upon the borrower's ability to pay.

(c) Any fund moneys not distributed as loans shall be distributed as grants.

(i) At least 90% of the fund moneys distributed as grants shall be distributed to benefit persons whose annual income is at or below 50% of the median family income for the state.

(ii) The remaining fund moneys distributed as grants may be used by the executive director to obtain federal matching funds or for other uses consistent with the intent of this part, including the payment of reasonable loan servicing costs, but no more than 3% of the revenues of

the fund may be used to offset other department or board administrative expenses.

(5) The executive director may with the approval of the board:

(a) enact rules to establish procedures for the grant and loan process by following the procedures and requirements of Title 63, Chapter 46a, Utah Administrative Rulemaking Act; and

(b) service or contract, pursuant to Title 63, Chapter 56, Utah Procurement Code, for the servicing of loans made by the fund.

Section 3. Section **10-2-405** is amended to read:

10-2-405. Acceptance or rejection of an annexation petition -- Modified petition.

(1) (a) (i) (A) A municipal legislative body may:

(I) except as provided in Subsection (1)(b) and subject to Subsection (1)(a)(i)(B), deny a petition filed under Section 10-2-403; or

(II) accept the petition for further consideration under this part.

(B) A petition shall be considered to have been accepted for further consideration under this part if a municipal legislative body fails to act to deny or accept the petition under Subsection (1)(a)(i)(A):

(I) in the case of a city of the first or second class, within 14 days after the filing of the petition; or

(II) in the case of a city of the third, fourth, or fifth class or a town, at the next regularly scheduled meeting of the municipal legislative body that is at least 14 days after the date the petition was filed.

(ii) If a municipal legislative body denies a petition under Subsection (1)(a)(i)(A), it shall, within five days of the denial, mail written notice of the denial to the contact sponsor, the clerk of the county in which the area proposed for annexation is located, and the chair of the planning commission of each township in which any part of the area proposed for annexation is located.

(b) A municipal legislative body may not deny a petition filed under Section 10-2-403 proposing to annex an area located in a county of the first class if:

(i) the petition contains the signatures of the owners of private real property that:

(A) is located within the area proposed for annexation;

(B) covers a majority of the private land area within the area proposed for annexation; and

(C) is equal in value to at least 1/2 of the value of all private real property within the area proposed for annexation;

(ii) the population in the area proposed for annexation does not exceed 10% of the population of the proposed annexing municipality;

(iii) the property tax rate for municipal services in the area proposed to be annexed is higher than the property tax rate of the proposed annexing municipality; and

(iv) all annexations by the proposed annexing municipality during the year that the petition was filed have not increased the municipality's population by more than 20%.

(2) If the municipal legislative body accepts a petition under Subsection (1)(a)(i)(A) or is considered to have accepted the petition under Subsection (1)(a)(i)(B), the city recorder or town clerk, as the case may be, shall, within 30 days of that acceptance:

(a) obtain from the assessor, clerk, surveyor, and recorder of the county in which the area proposed for annexation is located the records the city recorder or town clerk needs to determine whether the petition meets the requirements of Subsections 10-2-403(2), (3), and (4);

(b) with the assistance of the municipal attorney, determine whether the petition meets the requirements of Subsections 10-2-403(2), (3), and (4); and

(c) (i) if the city recorder or town clerk determines that the petition meets those requirements, certify the petition and mail or deliver written notification of the certification to the municipal legislative body, the contact sponsor, the county legislative body, and the chair of the planning commission of each township in which any part of the area proposed for annexation is located; or

(ii) if the city recorder or town clerk determines that the petition fails to meet any of those requirements, reject the petition and mail or deliver written notification of the rejection and the reasons for the rejection to the municipal legislative body, the contact sponsor, the county legislative body, and the chair of the planning commission of each township in which any part of the area proposed for annexation is located.

(3) (a) (i) If the city recorder or town clerk rejects a petition under Subsection (2)[~~(b)~~](c)(ii), the petition may be modified to correct the deficiencies for which it was rejected and then refiled with the city recorder or town clerk, as the case may be.

(ii) A signature on an annexation petition filed under Section 10-2-403 may be used toward fulfilling the signature requirement of Subsection 10-2-403(2)(b) for the petition as modified under Subsection (3)(a)(i).

(b) If a petition is refiled under Subsection (3)(a) after having been rejected by the city recorder or town clerk under Subsection (2)[~~(b)~~](c)(ii), the refiled petition shall be treated as a newly filed petition under Subsection 10-2-403(1).

(4) Each county assessor, clerk, surveyor, and recorder shall provide copies of records that a city recorder or town clerk requests under Subsection (2)(a).

Section 4. Section **10-2-411** is amended to read:

10-2-411. Disqualification of commission member -- Alternate member.

(1) A member of the boundary commission is disqualified with respect to a protest before the commission if that member owns property:

(a) for a proposed annexation of an area located within a county of the first class:

(i) within the area proposed for annexation in a petition that is the subject of the protest; or

(ii) that is in the unincorporated area within 1/2 mile of the area proposed for annexation in a petition that is the subject of a protest under Subsection 10-2-407(1)(a)[~~(i)(D)~~](ii); or

(b) for a proposed annexation of an area located in a specified county, within the area proposed for annexation.

(2) If a member is disqualified under Subsection (1), the body that appointed the disqualified member shall appoint an alternate member to serve on the commission for purposes of the protest as to which the member is disqualified.

Section 5. Section **10-3-103** is amended to read:

10-3-103. Governing body in cities of the first class.

Except as provided under Subsection 10-2-303(1)(f), the governing body of each city of

the first class that has not adopted an optional form of government under Part 12, [~~Alternative~~] Optional Forms of Municipal Government Act, shall be a commission of five members of which one shall be the mayor and the remaining four shall be commissioners.

Section 6. Section **10-3-104** is amended to read:

10-3-104. Governing body in cities of the second class.

Except as provided under Subsection 10-2-303(1)(f), the governing body of each city of the second class that has not adopted an optional form of government under Part 12, [~~Alternative~~] Optional Forms of Municipal Government Act, shall be a commission of three members of which one shall be the mayor and the remaining two shall be commissioners.

Section 7. Section **10-3-105** is amended to read:

10-3-105. Governing body in cities of the third, fourth, and fifth class.

Except as provided under Subsection 10-2-303(1)(f), the governing body of each city of the third, fourth, or fifth class that has not adopted an optional form of government under Part 12, [~~Alternative~~] Optional Forms of Municipal Government Act, shall be a council composed of six members, one of whom shall be the mayor and the remaining five shall be council members.

Section 8. Section **10-3-106** is amended to read:

10-3-106. Governing body in towns.

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

Section 9. Section **10-6-151** is amended to read:

10-6-151. Independent audits required.

Independent audits of all cities are required, to be performed in conformity with Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations and Other Local Entities. In the case of a city organized under Title 10, Chapter 3, Part 12, [~~Alternative~~] Optional Forms of Municipal Government Act, the council shall appoint an independent auditor for the purpose of complying with the requirements of this section and of Title 51, Chapter 2, Audits of Political Subdivisions, Interlocal Organizations and Other Local Entities.

Section 10. Section **11-13-313** is amended to read:

11-13-313. Arbitration of disputes.

Any impact alleviation contract may provide that disputes between the parties will be submitted to arbitration pursuant to Title 78, Chapter 31a, Utah Uniform Arbitration Act.

Section 11. Section **11-36-402** is amended to read:

11-36-402. Challenging an impact fee by arbitration -- Procedure -- Appeal -- Costs.

(1) Each person or entity intending to challenge an impact fee under Subsection 11-36-401(4)(c)(ii) shall file a written request for arbitration with the local political subdivision within the time limitation provided in Subsection 11-36-401(4)(b) for the applicable type of challenge.

(2) If a person or entity files a written request for arbitration under Subsection (1), an arbitrator or arbitration panel shall be selected as follows:

(a) the local political subdivision and the person or entity filing the request may agree on a single arbitrator within ten days after the day the request for arbitration is filed; or

(b) if a single arbitrator is not agreed to in accordance with Subsection (2)(a), an arbitration panel shall be created with the following members:

(i) each party shall select an arbitrator within 20 days after the date the request is filed; and

(ii) the arbitrators selected under Subsection (2)(b)(i) shall select a third arbitrator.

(3) The arbitration panel shall hold a hearing on the challenge within 30 days after the date:

(a) the single arbitrator is agreed on under Subsection (2)(a); or

(b) the two arbitrators are selected under Subsection (2)(b)(i).

(4) The arbitrator or arbitration panel shall issue a decision in writing within ten days from the date the hearing under Subsection (3) is completed.

(5) Except as provided in this section, each arbitration shall be governed by Title 78, Chapter 31a, Utah Uniform Arbitration Act.

(6) The parties may agree to:

(a) binding arbitration;

(b) formal, nonbinding arbitration; or

(c) informal, nonbinding arbitration.

(7) If the parties agree in writing to binding arbitration:

(a) the arbitration shall be binding;

(b) the decision of the arbitration panel shall be final;

(c) neither party may appeal the decision of the arbitration panel; and

(d) notwithstanding Subsection (10), the person or entity challenging the impact fee may not also challenge the impact fee under Subsection 11-36-401(1), (4)(c)(i), or (4)(c)(iii).

(8) (a) Except as provided in Subsection (8)(b), if the parties agree to formal, nonbinding arbitration, the arbitration shall be governed by the provisions of Title 63, Chapter 46b, Administrative Procedures Act.

(b) For purposes of applying Title 63, Chapter 46b, Administrative Procedures Act, to a formal, nonbinding arbitration under this section, notwithstanding Section 63-46b-20, "agency" means a local political subdivision.

(9) (a) An appeal from a decision in an informal, nonbinding arbitration may be filed with the district court in which the local political subdivision is located.

(b) Each appeal under Subsection (9)(a) shall be filed within 30 days after the date the arbitration panel issues a decision under Subsection (4).

(c) The district court shall consider de novo each appeal filed under this Subsection (9).

(d) Notwithstanding Subsection (10), a person or entity that files an appeal under this Subsection (9) may not also challenge the impact fee under Subsection 11-36-401(1), (4)(c)(i), or (4)(c)(iii).

(10) (a) Except as provided in Subsections (7)(d) and (9)(d), this section may not be construed to prohibit a person or entity from challenging an impact fee as provided in Subsection 11-36-401(1), (4)(c)(i), or (4)(c)(iii).

(b) The filing of a written request for arbitration within the required time in accordance

with Subsection (1) tolls all time limitations under Section 11-36-401 until the date the arbitration panel issues a decision.

(11) The person or entity filing a request for arbitration and the local political subdivision shall equally share all costs of an arbitration proceeding under this section.

Section 12. Section **11-37-101** is amended to read:

11-37-101. Definition -- Procurement -- Use of recycled goods.

(1) "Local government entity" means:

(a) municipalities, cities, and counties;

(b) entities created under Title 26A, Chapter 1, Local Health [~~Department~~] Departments; and

(c) political subdivisions created by cities or counties, including entities created under:

[~~(ii)~~] (i) Title 9, Chapter 4, Part 9, Utah Housing Corporation Act; and

[~~(i)~~] (ii) Title 11, Chapter 13, Interlocal Cooperation Act[~~;~~].

[~~(iii) Title 9, Chapter 13, Utah Technology and Small Business Finance Act.~~]

(2) The procurement officer or other person responsible for purchasing supplies for each local government entity shall:

(a) maintain for reference a copy of the current listing of recycled items available on state contract as issued by the chief procurement officer under Section 63-56-9; and

(b) give recycled items consideration when inviting bids and purchasing supplies.

Section 13. Section **11-40-101** is amended to read:

11-40-101. Definitions.

As used in this chapter:

(1) "Applicant" means a person who seeks employment with a public water utility, either as an employee or as an independent contractor, and who, after employment, would, in the judgment of the public water utility, be in a position to affect the safety or security of the [~~public~~] publicly owned treatment works or public water system or to affect the safety or well-being of patrons of the public water utility.

(2) "Division" means the Criminal Investigation and Technical Services Division of the

Department of Public Safety, established in Section 53-10-103.

(3) "Independent contractor":

(a) means an engineer, contractor, consultant, or supplier who designs, constructs, operates, maintains, repairs, replaces, or provides water treatment or conveyance facilities or equipment, or related control or security facilities or equipment, to the public water utility; and

(b) includes the employees and agents of the engineer, contractor, consultant, or supplier.

(4) "Person seeking access" means a person who seeks access to a public water utility's public water system or [~~public~~] publicly owned treatment works and who, after obtaining access, would, in the judgment of the public water utility, be in a position to affect the safety or security of the [~~public~~] publicly owned treatment works or public water system or to affect the safety or well-being of patrons of the public water utility.

(5) "[~~Public~~] Publicly owned treatment works" has the same meaning as defined in Section 19-5-102.

(6) "Public water system" has the same meaning as defined in Section 19-4-102.

(7) "Public water utility" means a county, city, town, independent special district under Title 17A, Chapter 2, Independent Special Districts, local district under Title 17B, Chapter 2, Local Districts, or other political subdivision of the state that operates [~~public~~] publicly owned treatment works or a public water system.

Section 14. Section **11-40-102** is amended to read:

11-40-102. Criminal background check authorized -- Written notice required.

(1) A public water utility may:

(a) require an applicant to submit to a criminal background check as a condition of employment;

(b) periodically require existing employees of the public water utility to submit to a criminal background check if, in the judgment of the public water utility, the employee is in a position to affect the safety or security of the [~~public~~] publicly owned treatment works or public water system or to affect the safety or well-being of patrons of the public water utility; and

(c) require a person seeking access to submit to a criminal background check as a

condition of acquiring access.

(2) (a) Each applicant, person seeking access, and existing employee described in Subsection (1)(b) shall, if required by the public water utility:

(i) submit a fingerprint card in a form acceptable to the division; and

(ii) consent to a fingerprint background check by:

(A) the Utah Bureau of Criminal Identification; and

(B) the Federal Bureau of Investigation.

(b) If requested by a public water utility, the division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for each applicant, person seeking access, or existing employee through a national criminal history system.

(c) (i) A public water utility may make an applicant's employment with the public water utility or the access of a person seeking access conditional pending completion of a criminal background check under this section.

(ii) If a criminal background check discloses that an applicant or a person seeking access failed to disclose accurately a criminal history, the public water utility may deny or, if conditionally given, immediately terminate the applicant's employment or the person's access.

(iii) If an applicant or person seeking access accurately disclosed the relevant criminal history and the criminal background check discloses that the applicant or person seeking access has been convicted of a crime that indicates a potential risk for the safety of the public water utility's public water system or [~~public~~] publicly owned treatment works or for the safety or well-being of patrons of the public water utility, the public water utility may deny or, if conditionally given, immediately terminate the applicant's employment or the person's access.

(3) Each public water utility that requests a criminal background check under Subsection (1) shall prepare criteria for which criminal activity will preclude employment and shall provide written notice to the person who is the subject of the criminal background check that the background check has been requested.

Section 15. Section **13-25a-103** is amended to read:

13-25a-103. Prohibited conduct for telephone solicitations -- Exceptions.

(1) Except as provided in Subsection (2), a person may not operate or authorize the operation of an automated telephone dialing system to make a telephone solicitation.

(2) A person may operate an automated telephone dialing system if a call is made:

(a) with the prior express consent of the person who is called agreeing to receive a telephone solicitation from a specific solicitor;

(b) to a person with whom the solicitor has an established business relationship; or

(c) by or on behalf of a charitable organization as defined in Section 13-22-2.

(3) A person may not make a telephone solicitation to a residential telephone without prior express consent during any of the following times:

(a) before 8 a.m. or after 9 p.m. local time;

(b) on a Sunday; or

(c) on a legal holiday.

(4) A person may not make or authorize a telephone solicitation in violation of Title 47 U.S.C. 227.

(5) Any telephone solicitor who makes an unsolicited telephone call to a telephone number shall:

(a) identify [~~themselves~~] the telephone solicitor;

(b) identify the business on whose behalf the [~~person~~] the telephone solicitor is soliciting;

(c) identify the purpose of the call promptly upon making contact by telephone with the person who is the object of the telephone solicitation;

(d) discontinue the solicitation if the person being solicited gives a negative response at any time during the telephone call; and

(e) hang up the phone, or in the case of an automated telephone dialing system operator, disconnect the automated telephone dialing system from the telephone line within 25 seconds of the termination of the call by the person being called.

(6) A telephone solicitor may not withhold the display of the telephone solicitor's telephone number from a caller identification service when that number is being used for telemarketing purposes and when the telephone solicitor's service or equipment is capable of

allowing the display of the number.

Section 16. Section **17B-2-604** is amended to read:

17B-2-604. Withdrawal petition requirements.

(1) Each petition under Section 17B-2-603 shall:

(a) indicate the typed or printed name and current address of each owner of acre-feet of water, property owner, registered voter, or authorized representative of the governing body signing the petition;

(b) separately group signatures by municipality and, in the case of unincorporated areas, by county;

(c) if it is a petition signed by the owners of land, the assessment of which is based on acre-feet of water, indicate the address of the property and the property tax identification parcel number of the property as to which the owner is signing the request;

(d) designate up to three signers of the petition as sponsors, or in the case of a petition filed under Subsection 17B-2-603(1)(a)(iv), designate a governmental representative as a sponsor, and in each case, designate one sponsor as the contact sponsor with the mailing address and telephone number of each;

(e) state the reasons for withdrawal; and

(f) when the petition is filed with the local district board of trustees, be accompanied by a map generally depicting the boundaries of the area proposed to be withdrawn and a legal description of the area proposed to be withdrawn.

(2) (a) The local district may prepare an itemized list of expenses, other than attorney expenses, that will necessarily be incurred by the local district in the withdrawal proceeding. The itemized list of expenses may be submitted to the contact sponsor. If the list of expenses is submitted to the contact sponsor within 21 days after receipt of the petition, the contact sponsor on behalf of the petitioners shall be required to pay the expenses to the local district within 90 days of receipt. Until funds to cover the expenses are delivered to the local district, the district will have no obligation to proceed with the withdrawal and the time limits on the district stated in this part will be tolled. If the expenses are not paid within the 90 days, or within 90 days from the

conclusion of any arbitration under Subsection (2)(b), the petition requesting the withdrawal shall be considered to have been withdrawn.

(b) If there is no agreement between the board of trustees of the local district and the contact sponsor on the amount of expenses that will necessarily be incurred by the local district in the withdrawal proceeding, either the board of trustees or the contact sponsor may submit the matter to binding arbitration in accordance with Title 78, Chapter 31b, Alternative Dispute Resolution Act; provided that, if the parties cannot agree upon an arbitrator and the rules and procedures that will control the arbitration, either party may pursue arbitration under Title 78, Chapter 31a, Utah Uniform Arbitration Act.

(3) A signer of a petition may withdraw or, once withdrawn, reinstate the signer's signature at any time before the public hearing under Section 17B-2-606 by submitting a written withdrawal or reinstatement with the board of trustees of the local district in which the area proposed to be withdrawn is located.

(4) If it reasonably appears that, if the withdrawal which is the subject of a petition filed under Subsection 17B-2-603(1)(a)(i) or (ii) is granted, it will be necessary for a municipality to provide to the withdrawn area the service previously supplied by the local district, the board of trustees of the local district may, within 21 days after receiving the petition, notify the contact sponsor in writing that, before it will be considered by the board of trustees, the petition must be presented to and approved by the governing body of the municipality as provided in Subsection 17B-2-603(1)(a)(iv) before it will be considered by the local district board of trustees. If the notice is timely given to the contact sponsor, the petition shall be considered to have been withdrawn until the municipality files a petition with the local district under Subsection 17B-2-603(1)(a)(iv).

(5) (a) After receiving the notice required by Subsection 17B-2-603(2), unless specifically allowed by law, a public entity may not make expenditures from public funds to support or oppose the gathering of signatures on a petition for withdrawal.

(b) Nothing in this section prohibits a public entity from providing factual information and analysis regarding a withdrawal petition to the public, so long as the information grants equal

access to both the opponents and proponents of the petition for withdrawal.

(c) Nothing in this section prohibits a public official from speaking, campaigning, contributing personal monies, or otherwise exercising the public official's constitutional rights.

Section 17. Section **20A-7-203** is amended to read:

20A-7-203. Form of initiative petition and signature sheets.

(1) (a) Each proposed initiative petition shall be printed in substantially the following form:

"INITIATIVE PETITION To the Honorable ____, Lieutenant Governor:

We, the undersigned citizens of Utah, respectfully demand that the following proposed law be submitted to the legal voters/Legislature of Utah for their/its approval or rejection at the regular general election/session to be held/ beginning on _____(month\day\year);

Each signer says:

I have personally signed this petition;

I am registered to vote in Utah or intend to become registered to vote in Utah before the certification of the petition names by the county clerk; and

My residence and post office address are written correctly after my name.

NOTICE TO SIGNERS:

Public hearings to discuss this petition were held at: (list dates and locations of public hearings.)"

(b) The sponsors of an initiative shall attach a copy of the proposed law to each initiative petition.

(2) Each signature sheet shall:

(a) be printed on sheets of paper 8-1/2 inches long and 11 inches wide;

(b) be ruled with a horizontal line 3/4 inch from the top, with the space above that line blank for the purpose of binding;

(c) contain the title of the initiative printed below the horizontal line;

(d) contain the word "Warning" printed or typed at the top of each signature sheet under the title of the initiative;

(e) contain, to the right of the word "Warning," the following statement printed or typed in not less than eight-point, single leaded type:

"It is a class A misdemeanor for anyone to sign any initiative petition with any other name than his own, or knowingly to sign his name more than once for the same measure, or to sign an initiative petition when he knows he is not a registered voter and knows that he does not intend to become registered to vote before the certification of the petition names by the county clerk."; and

(f) be vertically divided into columns as follows:

(i) the first column shall appear at the extreme left of the sheet, be 5/8 inch wide, be headed with "For Office Use Only," and be subdivided with a light vertical line down the middle with the left subdivision entitled "Registered" and the right subdivision left untitled;

(ii) the next column shall be three inches wide, headed "Registered Voter's Printed Name (must be legible to be counted)";

(iii) the next column shall be three inches wide, headed "Signature of Registered Voter"; and

(iv) the final column shall be 4-3/8 inches wide, headed "Street Address, City, Zip Code".

(3) The final page of each initiative packet shall contain the following printed or typed statement:

"Verification

State of Utah, County of ____

I, _____, of ____, hereby state that:

I am a resident of Utah and am at least 18 years old;

All the names that appear in this packet were signed by persons who professed to be the persons whose names appear in it, and each of them signed his name on it in my presence;

I believe that each has printed and signed his name and written his post office address and residence correctly, and that each signer is registered to vote in Utah or intends to become registered to vote before the certification of the petition names by the county clerk.

I have not paid or given anything of value to any person who signed this petition to encourage [~~them~~] that person to sign it.

(Name) (Residence Address) (Date)"

(4) The forms prescribed in this section are not mandatory, and, if substantially followed, the initiative petitions are sufficient, notwithstanding clerical and merely technical errors.

Section 18. Section **20A-7-702** is amended to read:

20A-7-702. Voter information pamphlet -- Form -- Contents -- Distribution.

(1) The lieutenant governor shall ensure that all information submitted for publication in the voter information pamphlet is:

(a) printed and bound in a single pamphlet;

(b) printed in clear readable type, no less than ten-point, except that the text of any measure may be set forth in eight-point type; and

(c) printed on a quality and weight of paper that best serves the voters.

(2) The voter information pamphlet shall contain the following items in this order:

(a) a cover title page;

(b) an introduction to the pamphlet by the lieutenant governor;

(c) a table of contents;

(d) a list of all candidates for constitutional offices;

(e) a list of candidates for each legislative district;

(f) a 100-word statement of qualifications for each candidate for the office of governor, lieutenant governor, attorney general, state auditor, or state treasurer, if submitted by the candidate to the lieutenant governor's office before July 15 at 5 p.m.;

(g) information pertaining to all measures to be submitted to the voters, beginning a new page for each measure and containing, in the following order for each measure:

(i) a copy of the number and ballot title of the measure;

(ii) the final vote cast by the Legislature on the measure if it is a measure submitted by the Legislature or by referendum;

(iii) the impartial analysis of the measure prepared by the Office of Legislative Research and General Counsel;

(iv) the arguments in favor of the measure, the rebuttal to the arguments in favor of the measure, the arguments against the measure, and the rebuttal to the arguments against the measure, with the name and title of the authors at the end of each argument or rebuttal;

(v) for each constitutional amendment, a complete copy of the text of the constitutional amendment, with all new language underlined, and all deleted language placed within brackets; and

(vi) for each initiative qualified for the ballot, a copy of the measure as certified by the lieutenant governor;

(h) a description provided by the Judicial Council of the selection and retention process for judges, including, in the following order:

(i) a description of the judicial selection process;

(ii) a description of the judicial performance evaluation process;

(iii) a description of the judicial retention election process;

(iv) a list of the criteria and minimum standards of judicial performance evaluation;

(v) the names of the judges standing for retention election; and

(vi) for each judge:

(A) the counties in which the judge is subject to retention election;

(B) a short biography of professional qualifications and a recent photograph;

(C) for each standard of performance, a statement identifying whether or not the judge met the standard and, if not, the manner in which the judge failed to meet the standard;

(D) a statement provided by the Utah Supreme Court identifying the cumulative number of informal reprimands, when consented to by the judge in accordance with [~~Section 78-7-107~~] Subsection 78-8-107(2)(d), formal reprimands, and all orders of censure and suspension issued by the Utah Supreme Court under Utah Constitution Article VIII, Section 13 during the judge's current term and the immediately preceding term, and a detailed summary of the supporting reasons for each violation of the Code of Judicial Conduct that the judge has received; and

(E) a statement identifying whether or not the judge was certified by the Judicial Council;

(vii) (A) except as provided in Subsection (2)(h)(vii)(B), for each judge, in graphic

format, the responses for each attorney, jury, and other survey question used by the Judicial Council for certification of judges, displayed in 1% increments;

(B) notwithstanding Subsection (2)(h)(vii)(A), if the sample size for the survey for a particular judge is too small to provide statistically reliable information in 1% increments, the survey results for that judge shall be reported as being above or below 70% and a statement by the surveyor explaining why the survey is statistically unreliable shall also be included;

(i) an explanation of ballot marking procedures prepared by the lieutenant governor, indicating the ballot marking procedure used by each county and explaining how to mark the ballot for each procedure;

(j) voter registration information, including information on how to obtain an absentee ballot;

(k) a list of all county clerks' offices and phone numbers; and

(l) on the back cover page, a printed copy of the following statement signed by the lieutenant governor:

"I, _____ (print name), Lieutenant Governor of Utah, certify that the measures contained in this pamphlet will be submitted to the voters of Utah at the election to be held throughout the state on ____ (date of election), and that this pamphlet is complete and correct according to law. SEAL

Witness my hand and the Great Seal of the State, at Salt Lake City, Utah this ____ day of ____ (month), ____ (year)

(signed) _____

Lieutenant Governor"

(3) The lieutenant governor shall:

(a) ensure that one copy of the voter information pamphlet is placed in one issue of every newspaper of general circulation in the state not more than 40 nor less than 15 days before the day fixed by law for the election;

(b) ensure that a sufficient number of printed voter information pamphlets are available for distribution as required by this section;

(c) provide voter information pamphlets to each county clerk for free distribution upon request and for placement at polling places; and

(d) ensure that the distribution of the voter information pamphlets is completed 15 days before the election.

Section 19. Section **20A-11-101** is amended to read:

20A-11-101. Definitions.

As used in this chapter:

(1) "Address" means the number and street where an individual resides or where a reporting entity has its principal office.

(2) "Ballot proposition" includes initiatives, referenda, proposed constitutional amendments, and any other ballot propositions submitted to the voters that are authorized by the Utah Code Annotated 1953.

(3) "Candidate" means any person who:

(a) files a declaration of candidacy for a public office; or

(b) receives contributions, makes expenditures, or gives consent for any other person to receive contributions or make expenditures to bring about the person's nomination or election to a public office.

(4) "Chief election officer" means:

(a) the lieutenant governor for state office candidates, legislative office candidates, officeholders, political parties, political action committees, corporations, political issues committees, and state school board candidates; and

(b) the county clerk for local school board candidates.

(5) "Continuing political party" means an organization of voters that participated in the last regular general election and polled a total vote equal to 2% or more of the total votes cast for all candidates for the United States House of Representatives.

(6) (a) "Contribution" means any of the following when done for political purposes:

(i) a gift, subscription, donation, loan, advance, or deposit of money or anything of value given to the filing entity;

(ii) an express, legally enforceable contract, promise, or agreement to make a gift, subscription, donation, unpaid or partially unpaid loan, advance, or deposit of money or anything of value to the filing entity;

(iii) any transfer of funds from another reporting entity or a corporation to the filing entity;

(iv) compensation paid by any person or reporting entity other than the filing entity for personal services provided without charge to the filing entity;

(v) remuneration from any organization or its directly affiliated organization that has a registered lobbyist to compensate a legislator for a loss of salary or income while the Legislature is in session;

(vi) salaries or other remuneration paid to a legislator by any agency or subdivision of the state, including school districts, for the period the Legislature is in session; and

(vii) goods or services provided to or for the benefit of the filing entity at less than fair market value.

(b) "Contribution" does not include:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of the filing entity; or

(ii) money lent to the filing entity by a financial institution in the ordinary course of business.

(7) (a) "Corporation" means a domestic or foreign, profit or nonprofit, business organization that is registered as a corporation or is authorized to do business in a state and makes any expenditure from corporate funds for:

(i) political purposes; or

(ii) the purpose of influencing the approval or the defeat of any ballot proposition.

(b) "Corporation" does not mean:

(i) a business organization's political action committee or political issues committee; or

(ii) a business entity organized as a partnership or a sole proprietorship.

(8) "Detailed listing" means:

(a) for each contribution or public service assistance:

(i) the name and address of the individual or source making the contribution or public service assistance;

(ii) the amount or value of the contribution or public service assistance; and

(iii) the date the contribution or public service assistance was made; and

(b) for each expenditure:

(i) the amount of the expenditure;

(ii) the person or entity to whom it was disbursed;

(iii) the specific purpose, item, or service acquired by the expenditure; and

(iv) the date the expenditure was made.

(9) "Election" means each:

(a) regular general election;

(b) regular primary election; and

(c) special election at which candidates are eliminated and selected.

(10) (a) "Expenditure" means:

(i) any disbursement from contributions, receipts, or from the separate bank account required by this chapter;

(ii) a purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of value made for political purposes;

(iii) an express, legally enforceable contract, promise, or agreement to make any purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of value for political purposes;

(iv) compensation paid by a corporation or filing entity for personal services rendered by a person without charge to a reporting entity;

(v) a transfer of funds between the filing entity and a candidate's personal campaign committee; or

(vi) goods or services provided by the filing entity to or for the benefit of another reporting entity for political purposes at less than fair market value.

(b) "Expenditure" does not include:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a reporting entity;

(ii) money lent to a reporting entity by a financial institution in the ordinary course of business; or

(iii) anything listed in Subsection [~~(5)~~](10)(a) that is given by a corporation or reporting entity to candidates for office or officeholders in states other than Utah.

(11) "Filing entity" means the reporting entity that is filing a report required by this chapter.

(12) "Financial statement" includes any summary report, interim report, or other statement disclosing contributions, expenditures, receipts, donations, or disbursements that is required by this chapter.

(13) "Governing board" means the individual or group of individuals that determine the candidates and committees that will receive expenditures from a political action committee.

(14) "Incorporation" means the process established by Title 10, Chapter 2, Part 1, Incorporation, by which a geographical area becomes legally recognized as a city or town.

(15) "Incorporation election" means the election authorized by Section 10-2-111.

(16) "Incorporation petition" means a petition authorized by Section 10-2-109.

(17) "Individual" means a natural person.

(18) "Interim report" means a report identifying the contributions received and expenditures made since the last report.

(19) "Legislative office" means the office of state senator, state representative, speaker of the House of Representatives, president of the Senate, and the leader, whip, and assistant whip of any party caucus in either house of the Legislature.

(20) "Legislative office candidate" means a person who:

(a) files a declaration of candidacy for the office of state senator or state representative;

(b) declares himself to be a candidate for, or actively campaigns for, the position of speaker of the House of Representatives, president of the Senate, or the leader, whip, and

assistant whip of any party caucus in either house of the Legislature; and

(c) receives contributions, makes expenditures, or gives consent for any other person to receive contributions or make expenditures to bring about the person's nomination or election to a legislative office.

(21) "Newly registered political party" means an organization of voters that has complied with the petition and organizing procedures of this chapter to become a registered political party.

(22) "Officeholder" means a person who holds a public office.

(23) "Party committee" means any committee organized by or authorized by the governing board of a registered political party.

(24) "Person" means both natural and legal persons, including individuals, business organizations, personal campaign committees, party committees, political action committees, political issues committees, labor unions, and labor organizations.

(25) "Personal campaign committee" means the committee appointed by a candidate to act for the candidate as provided in this chapter.

(26) (a) "Political action committee" means an entity, or any group of individuals or entities within or outside this state, that solicits or receives contributions from any other person, group, or entity or makes expenditures for political purposes. A group or entity may not divide or separate into units, sections, or smaller groups for the purpose of avoiding the financial reporting requirements of this chapter, and substance shall prevail over form in determining the scope or size of a political action committee.

(b) "Political action committee" includes groups affiliated with a registered political party but not authorized or organized by the governing board of the registered political party that receive contributions or makes expenditures for political purposes.

(c) "Political action committee" does not mean:

(i) a party committee;

(ii) any entity that provides goods or services to a candidate or committee in the regular course of its business at the same price that would be provided to the general public;

(iii) an individual;

(iv) individuals who are related and who make contributions from a joint checking account;

(v) a corporation; or

(vi) a personal campaign committee.

(27) "Political convention" means a county or state political convention held by a registered political party to select candidates.

(28) (a) "Political issues committee" means an entity, or any group of individuals or entities within or outside this state, that solicits or receives donations from any other person, group, or entity or makes disbursements to influence, or to intend to influence, directly or indirectly, any person to:

(i) assist in placing a statewide ballot proposition on the ballot, assist in keeping a statewide ballot proposition off the ballot, or refrain from voting or vote for or vote against any statewide ballot proposition; or

(ii) sign or refuse to sign an incorporation petition or refrain from voting, vote for, or vote against any proposed incorporation in an incorporation election.

(b) "Political issues committee" does not mean:

(i) a registered political party or a party committee;

(ii) any entity that provides goods or services to an individual or committee in the regular course of its business at the same price that would be provided to the general public;

(iii) an individual;

(iv) individuals who are related and who make contributions from a joint checking account; or

(v) a corporation, except a corporation whose apparent purpose is to act as a political issues committee.

(29) (a) "Political issues contribution" means any of the following:

(i) a gift, subscription, unpaid or partially unpaid loan, advance, or deposit of money or anything of value given to a political issues committee;

(ii) an express, legally enforceable contract, promise, or agreement to make a political

issues donation to influence the approval or defeat of any ballot proposition;

(iii) any transfer of funds received by a political issues committee from a reporting entity;

(iv) compensation paid by another reporting entity for personal services rendered without charge to a political issues committee; and

(v) goods or services provided to or for the benefit of a political issues committee at less than fair market value.

(b) "Political issues contribution" does not include:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a political issues committee; or

(ii) money lent to a political issues committee by a financial institution in the ordinary course of business.

(30) (a) "Political issues expenditure" means any of the following:

(i) any payment from political issues contributions made for the purpose of influencing the approval or the defeat of a statewide ballot proposition;

(ii) a purchase, payment, distribution, loan, advance, deposit, or gift of money made for the purpose of influencing the approval or the defeat of a statewide ballot proposition;

(iii) an express, legally enforceable contract, promise, or agreement to make any political issues expenditure;

(iv) compensation paid by a reporting entity for personal services rendered by a person without charge to a political issues committee; or

(v) goods or services provided to or for the benefit of another reporting entity at less than fair market value.

(b) "Political issues expenditure" does not include:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a political issues committee; or

(ii) money lent to a political issues committee by a financial institution in the ordinary course of business.

(31) "Political purposes" means an act done with the intent or in a way to influence or

tend to influence, directly or indirectly, any person to refrain from voting or to vote for or against any candidate for public office at any caucus, political convention, primary, or election.

(32) "Primary election" means any regular primary election held under the election laws.

(33) "Public office" means the office of governor, lieutenant governor, state auditor, state treasurer, attorney general, state or local school board member, state senator, state representative, speaker of the House of Representatives, president of the Senate, and the leader, whip, and assistant whip of any party caucus in either house of the Legislature.

(34) (a) "Public service assistance" means the following when given or provided to an officeholder to defray the costs of functioning in a public office or aid the officeholder to communicate with the officeholder's constituents:

(i) a gift, subscription, donation, unpaid or partially unpaid loan, advance, or deposit of money or anything of value to an officeholder; or

(ii) goods or services provided at less than fair market value to or for the benefit of the officeholder.

(b) "Public service assistance" does not include:

(i) anything provided by the state;

(ii) services provided without compensation by individuals volunteering a portion or all of their time on behalf of an officeholder;

(iii) money lent to an officeholder by a financial institution in the ordinary course of business;

(iv) news coverage or any publication by the news media; or

(v) any article, story, or other coverage as part of any regular publication of any organization unless substantially all the publication is devoted to information about the officeholder.

(35) "Publicly identified class of individuals" means a group of 50 or more individuals sharing a common occupation, interest, or association that contribute to a political action committee or political issues committee and whose names can be obtained by contacting the political action committee or political issues committee upon whose financial report they are

listed.

(36) "Receipts" means contributions and public service assistance.

(37) "Registered lobbyist" means a person registered under Title 36, Chapter 11, Lobbyist Disclosure and Regulation Act.

(38) "Registered political action committee" means any political action committee that is required by this chapter to file a statement of organization with the lieutenant governor's office.

(39) "Registered political issues committee" means any political issues committee that is required by this chapter to file a statement of organization with the lieutenant governor's office.

(40) "Registered political party" means an organization of voters that:

(a) participated in the last regular general election and polled a total vote equal to 2% or more of the total votes cast for all candidates for the United States House of Representatives for any of its candidates for any office; or

(b) has complied with the petition and organizing procedures of this chapter.

(41) "Report" means a verified financial statement.

(42) "Reporting entity" means a candidate, a candidate's personal campaign committee, an officeholder, and a party committee, a political action committee, and a political issues committee.

(43) "School board office" means the office of state school board or local school board.

(44) (a) "Source" means the person or entity that is the legal owner of the tangible or intangible asset that comprises the contribution.

(b) "Source" means, for political action committees and corporations, the political action committee and the corporation as entities, not the contributors to the political action committee or the owners or shareholders of the corporation.

(45) "State office" means the offices of governor, lieutenant governor, attorney general, state auditor, and state treasurer.

(46) "State office candidate" means a person who:

(a) files a declaration of candidacy for a state office; or

(b) receives contributions, makes expenditures, or gives consent for any other person to receive contributions or make expenditures to bring about the person's nomination or election to a

state office.

(47) "Summary report" means the year end report containing the summary of a reporting entity's contributions and expenditures.

(48) "Supervisory board" means the individual or group of individuals that allocate expenditures from a political issues committee.

Section 20. Section **31A-5-401.1** is amended to read:

31A-5-401.1. Definitions.

As used in this Part [~~IV~~] 4:

(1) "Voting members of mutuals" and "voting members" mean persons entitled to vote at annual or special meetings of the members of a mutual, as set forth in the articles of incorporation or amendments to the articles.

(2) Voting members of mutuals and voting members do not necessarily include policyholders of the mutual, if the articles of incorporation or amendments [~~thereto~~] to the articles of incorporation so provide, and if the articles of incorporation or amendments have been approved by the commissioner after a hearing.

Section 21. Section **31A-7-201** is amended to read:

31A-7-201. Organization, incorporation, and licensing.

[~~Part II of~~] Chapter 5, Part 2, Organization of Corporations, governs the organization, incorporation, and licensing of nonprofit health service corporations with the following exceptions:

(1) Section 16-6a-201 applies in place of Section 31A-5-202.

(2) Sections 16-6a-401 and 31A-1-109 apply in place of Subsection 31A-5-203(2)(a).

(3) The last sentence of Subsection 31A-5-203(2)(e) does not apply.

Section 22. Section **31A-7-307** is amended to read:

31A-7-307. Committees of directors.

(1) If provided by the articles or bylaws of a corporation, the board of directors may, by a resolution adopted by a majority of the full board, designate one or more committees, each consisting of three or more directors, to serve at the pleasure of the board. The board may

designate one or more directors as alternate members of any committee to substitute for any absent member at any meeting of the committee. The designation of a committee and delegation of authority to it does not relieve the board or any director of responsibility imposed upon it or him by law.

(2) (a) Corporations organized and operating under this chapter shall have an audit committee and a nominating committee.

(b) A majority of the members of the audit and nominating committees may not be insiders as defined under Subsection 31A-7-303(3).

(3) When the board is not in session, a committee may exercise the powers of the board in the management of the business and affairs of the corporation to the extent authorized in the resolution or in the articles or bylaws, except final action regarding:

(a) compensation or indemnification of any person who is a director, principal officer, or one of the three most highly paid employees, and any benefits or payments requiring shareholder or policyholder approval;

(b) approval of any contract required to be approved by the board under Section 31A-7-309 or of any other transaction in which a director has a material interest adverse to the corporation;

(c) amendment of the articles or bylaws;

(d) corporate reorganization under Part [~~IV of this chapter~~] 4, Reorganization;

(e) any other decision requiring shareholder or policyholder approval;

(f) amendment or repeal of any action previously taken by the full board which by its terms is not subject to amendment or repeal by a committee;

(g) dividends or other distributions to shareholders or policyholders, other than in the routine implementation of policy determinations of the full board;

(h) selection of principal officers; and

(i) filling vacancies on the board or any committee created under Subsection (1) except that the articles or bylaws may provide for temporary appointments to fill vacancies on the board or any committee, the appointments to last no longer than the end of the next board meeting.

(4) Subsection 31A-5-412(4) applies to the subsequent review provided in corporations organized and operating under this chapter.

Section 23. Section **31A-8-103** is amended to read:

31A-8-103. Applicability to other provisions of law.

(1) (a) Except for exemptions specifically granted under this title, an organization is subject to regulation under all of the provisions of this title.

(b) Notwithstanding any provision of this title, an organization licensed under this chapter:

(i) is wholly exempt from:

(A) Chapter 7, Nonprofit Health Service Insurance Corporations;

(B) Chapter 9, Insurance Fraternals;

(C) Chapter 10, Annuities;

(D) Chapter 11, Motor Clubs;

(E) Chapter 12, State Risk Management Fund;

(F) Chapter 13, Employee Welfare Funds and Plans;

(G) Chapter 19a, Utah Rate Regulation Act; and

(H) Chapter 28, Guaranty Associations; and

(ii) is not subject to:

(A) Chapter 3, Department Funding, Fees, and Taxes, except for Part [~~I~~] 1;

(B) Section 31A-4-107;

(C) Chapter 5, Domestic Stock and Mutual Insurance Corporations, except for provisions specifically made applicable by this chapter;

(D) Chapter 14, Foreign Insurers, except for provisions specifically made applicable by this chapter;

(E) Chapter 17, Determination of Financial Condition, except:

(I) Parts [~~II~~] 2 and [~~VI~~] 6; or

(II) as made applicable by the commissioner by rule consistent with this chapter;

(F) Chapter 18, Investments, except as made applicable by the commissioner by rule

consistent with this chapter; and

(G) Chapter 22, Contracts in Specific Lines, except for Parts [~~VI, VII~~] 6, 7, and [~~XII~~] 12.

(2) The commissioner may by rule waive other specific provisions of this title that the commissioner considers inapplicable to health maintenance organizations or limited health plans, upon a finding that the waiver will not endanger the interests of:

(a) enrollees;

(b) investors; or

(c) the public.

(3) Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, and Title 16, Chapter 10a, Utah Revised Business Corporation Act, do not apply to an organization except as specifically made applicable by:

(a) this chapter;

(b) a provision referenced under this chapter; or

(c) a rule adopted by the commissioner to deal with corporate law issues of health maintenance organizations that are not settled under this chapter.

(4) (a) Whenever in this chapter, Chapter 5, or Chapter 14 is made applicable to an organization, the application is:

(i) of those provisions that apply to a mutual corporation if the organization is nonprofit; and

(ii) of those that apply to a stock corporation if the organization is for profit.

(b) When Chapter 5 or 14 is made applicable to an organization under this chapter, "mutual" means nonprofit organization.

(5) Solicitation of enrollees by an organization is not a violation of any provision of law relating to solicitation or advertising by health professionals if that solicitation is made in accordance with:

(a) this chapter; and

(b) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries.

(6) This title does not prohibit any health maintenance organization from meeting the requirements of any federal law that enables the health maintenance organization to:

(a) receive federal funds; or

(b) obtain or maintain federal qualification status.

(7) Except as provided in Section 31A-8-501, an organization is exempt from statutes in this title or department rules that restrict or limit the organization's freedom of choice in contracting with or selecting health care providers, including Section 31A-22-618.

(8) An organization is exempt from the assessment or payment of premium taxes imposed by Sections 59-9-101 through 59-9-104.

Section 24. Section **31A-8-214** is amended to read:

31A-8-214. Securities.

[~~Part III of~~] Chapter 5, Part 3, Securities of Domestic Insurance Corporations, applies to securities of organizations, except that the amount "$150,000" in Subsection 31A-5-304(1) shall be read "one-half of the minimum capital required of the organization."

Section 25. Section **31A-8-215** is amended to read:

31A-8-215. Management.

[~~Part IV of~~] Chapter 5, Part 4, Management of Insurance Corporations, applies to organizations, except that for purposes of this chapter, Subsection 31A-5-412(3)(e) shall be read: "corporate reorganizations under Section 31A-8-216."

Section 26. Section **31A-8-301** is amended to read:

31A-8-301. Requirements for doing business in state.

(1) Except as provided in Section 31A-8-302, only corporations incorporated and licensed under Part [~~II of this chapter~~] 2, Domestic Organizations, may do business in this state as an organization.

(2) To do business in this state as an organization, foreign corporations doing a similar business in other states shall incorporate a subsidiary and license if under Part [~~II of this chapter~~] 2, Domestic Organizations, for its Utah business. Except as to Chapter 16, Insurance Holding Companies, the laws applicable to domestic organizations apply only to the organization and not

to its foreign parent corporation.

Section 27. Section **31A-8-402.7** is amended to read:

31A-8-402.7. Discontinuance and nonrenewal limitations.

(1) Subject to Section 31A-4-115, an insurer that elects to discontinue offering a health benefit plan under Subsections 31A-8-402.3(3)(e) and 31A-8-402.5(3)(e) is prohibited from writing new business:

(a) in the market in this state for which the insurer discontinues or does not renew; and

(b) for a period of five years beginning on the date of discontinuation of the last coverage that is discontinued.

(2) If an insurer is doing business in one established geographic service area of the state, Sections 31A-8-402.3 and 31A-8-402.5 apply only to the insurer's operations in that service area.

(3) Notwithstanding whether Chapter 22, Part [~~VII~~] 7, Group Accident and Health Insurance, requires a conversion policy be available for certain persons who are no longer entitled to group coverage, an organization may not be required to provide a conversion policy to a person residing outside of the organization's service area.

(4) The commissioner may, by rule or order, define the scope of service area.

Section 28. Section **31A-8-501** is amended to read:

31A-8-501. Access to health care providers.

(1) As used in this section:

(a) "Class of health care provider" means a health care provider or a health care facility regulated by the state within the same professional, trade, occupational, or certification category established under Title 58, Occupations and Professions, or within the same facility licensure category established under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(b) "Covered health care services" or "covered services" means health care services for which an enrollee is entitled to receive under the terms of a health maintenance organization contract.

(c) "Credentialed staff member" means a health care provider with active staff privileges

at an independent hospital or federally qualified health center.

(d) "Federally qualified health center" means as defined in the Social Security Act, 42 U.S.C. Sec. 1395[~~(x)~~]x.

(e) "Independent hospital" means a general acute hospital that:

(i) is licensed pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; and

(ii) is controlled by a board of directors of which 51% or more reside in the county where the hospital is located and:

(A) the board of directors is ultimately responsible for the policy and financial decisions of the hospital; or

(B) the hospital is licensed for 60 or fewer beds and is not owned, in whole or in part, by an entity that owns or controls a health maintenance organization if the hospital is a contracting facility of the organization.

(f) "Noncontracting provider" means an independent hospital, federally qualified health center, or credentialed staff member who has not contracted with a health maintenance organization to provide health care services to enrollees of the organization.

(2) Except for a health maintenance organization which is under the common ownership or control of an entity with a hospital located within ten paved road miles of an independent hospital, a health maintenance organization shall pay for covered health care services rendered to an enrollee by an independent hospital, a credentialed staff member at an independent hospital, or a credentialed staff member at his local practice location if:

(a) the enrollee:

(i) lives or resides within 30 paved road miles of the independent hospital; or

(ii) if Subsection (2)(a)(i) does not apply, lives or resides in closer proximity to the independent hospital than a contracting hospital;

(b) the independent hospital is located prior to December 31, 2000 in a county with a population density of less than 100 people per square mile, or the independent hospital is located in a county with a population density of less than 30 people per square mile; and

(c) the enrollee has complied with the prior authorization and utilization review requirements otherwise required by the health maintenance organization contract.

(3) A health maintenance organization shall pay for covered health care services rendered to an enrollee at a federally qualified health center if:

(a) the enrollee:

(i) lives or resides within 30 paved road miles of the federally qualified health center; or

(ii) if Subsection (3)(a)(i) does not apply, lives or resides in closer proximity to the federally qualified health center than a contracting provider;

(b) the federally qualified health center is located in a county with a population density of less than 30 people per square mile; and

(c) the enrollee has complied with the prior authorization and utilization review requirements otherwise required by the health maintenance organization contract.

(4) (a) A health maintenance organization shall reimburse a noncontracting provider or the enrollee for covered services rendered pursuant to Subsection (2) a like dollar amount as it pays to contracting providers under a noncapitated arrangement for comparable services.

(b) A health maintenance organization shall reimburse a federally qualified health center or the enrollee for covered services rendered pursuant to Subsection (3) a like amount as paid by the health maintenance organization under a noncapitated arrangement for comparable services to a contracting provider in the same class of health care providers as the provider who rendered the service.

(5) A noncontracting provider may only refer an enrollee to another noncontracting provider so as to obligate the enrollee's health maintenance organization to pay for the resulting services if:

(a) the noncontracting provider making the referral or the enrollee has received prior authorization from the organization for the referral; or

(b) the practice location of the noncontracting provider to whom the referral is made:

(i) is located in a county with a population density of less than 25 people per square mile; and

(ii) is within 30 paved road miles of:

(A) the place where the enrollee lives or resides; or

(B) the independent hospital or federally qualified health center at which the enrollee may receive covered services pursuant to Subsection (2) or (3).

(6) Notwithstanding this section, a health maintenance organization may contract directly with an independent hospital, federally qualified health center, or credentialed staff member.

Section 29. Section **31A-11-104** is amended to read:

31A-11-104. Applicability of other portions of the Insurance Code.

(1) In addition to this chapter, motor clubs are subject to the applicable sections of:

(a) Chapters 1, 2, 4, 16, 21, 22, 26, and 27[~~,~~];

(b) Chapter 3, Part [~~I of Chapter 3,~~] 1;

(c) Chapter 23a, Parts [~~I, IV~~] 1, 4, and [~~V of Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries,~~] 5; and

(d) Section 31A-23a-207.

(2) Sections 31A-14-204 and 31A-14-216 apply to nondomestic motor clubs.

(3) Section 31A-5-401 applies to domestic motor clubs.

(4) Sections 31A-5-105, 31A-5-106, and 31A-5-216 apply to both domestic and nondomestic motor clubs.

(5) Both domestic and nondomestic motor clubs are subject to the Insurance Department fees under Section 31A-3-103. Other provisions of the Insurance Code apply to motor clubs only as specifically provided in this chapter.

Section 30. Section **31A-14-206** is amended to read:

31A-14-206. Commercially domiciled insurers.

(1) As used in this section, and except as to title insurers, the commissioner may consider a foreign insurer to be "commercially domiciled" in this state if:

(a) during the three immediately preceding calendar years, the foreign insurer wrote more insurance premiums in this state than it wrote in its state of domicile during the same period; or

(b) during the same three-year period, the foreign insurer's gross premiums written in this

state constituted 15% or more of the insurer's total gross premiums written in the United States.

(2) Subject to Subsection (3), an insurer determined by the commissioner to be commercially domiciled in this state may be subjected to Chapters 16, 17, 18, 27, and Chapter 5, Parts [~~IV, V~~] 4, 5, and [~~VI~~] 6 in the same manner and to the same extent as domestic insurers. The commissioner shall, by order, notify any commercially domiciled insurer not exempt under Subsection (3) of the extent to which the insurer is subject to the provisions listed under this Subsection (2).

(3) The commissioner may exempt from the provisions of this section any commercially domiciled insurer if he determines that the insurer has assets physically located in this state or an asset to liability ratio sufficient to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to Utah policyholders.

(4) Subsection 31A-14-205(4) applies to the conflict of the laws of this state with the laws of the insurer's domicile for foreign insurers, including commercially domiciled insurers, under this section.

(5) This section does not excuse or exempt any foreign insurer from complying with the provisions under this title which are otherwise applicable to a foreign insurer.

Section 31. Section **31A-14-214** is amended to read:

31A-14-214. Amendment to articles and notice of corporate reorganization.

Sections 16-10a-1001 through 16-10a-1004 apply when a foreign insurer amends its articles of incorporation. If a foreign insurer plans to undergo any corporate reorganization of the kinds dealt with in Chapter 5, Part [~~V~~] 5, Corporate Reorganization, the insurer shall notify the commissioner in writing, at the same time that the first formal step of the statutory procedure for achieving the reorganization is taken in the domiciliary jurisdiction or elsewhere. The insurer shall provide the details required by the commissioner, whether by rule or order.

Section 32. Section **31A-15-103** is amended to read:

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

(1) Notwithstanding Section 31A-15-102, a foreign insurer that has not obtained a

certificate of authority to do business in this state under Section 31A-14-202 may negotiate for and make insurance contracts with persons in this state and on risks located in this state, subject to the limitations and requirements of this section.

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

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

(b) Any insurance placed with a nonadmitted insurer shall be placed with a surplus lines producer licensed under Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and Reinsurance Intermediaries.

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

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

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

(4) For contracts made under this section, nonadmitted insurers are subject to Sections 31A-23a-402 and 31A-23a-403 and the rules adopted under those sections.

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

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

(b) The commissioner may by rule place restrictions and limitations on and create special procedures for making contracts under Subsection (1) for a specified class of insurance if there have been abuses of placements in the class or if the policyholders in the class, because of limited

financial resources, business experience, or knowledge, cannot protect their own interests adequately.

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

(i) the insurer has willfully violated this section, Section 31A-4-102, 31A-23a-402, or 31A-26-303, or any rule adopted under any of these sections;

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

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

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

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

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

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

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

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

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

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

(iv) (A) is in substantial compliance with the solvency standards in Chapter 17, Part [~~VI~~] 6, Risk-Based Capital, or maintains capital and surplus of at least $15,000,000, whichever is

greater, and maintains in the United States an irrevocable trust fund in either a national bank or a member of the Federal Reserve System, or maintains a deposit meeting the statutory deposit requirements for insurers in the state where it is made, which trust fund or deposit:

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

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

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

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

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

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

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

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

(7) A surplus lines producer may not, either knowingly or without reasonable investigation of the financial condition and general reputation of the insurer, place insurance under this section with financially unsound insurers or with insurers engaging in unfair practices, or with otherwise substandard insurers, unless the producer gives the applicant notice in writing of the known deficiencies of the insurer or the limitations on his investigation, and explains the need to place the business with that insurer. A copy of this notice shall be kept in the office of the producer for at least five years. To be financially sound, an insurer shall satisfy standards that are comparable to those applied under the laws of this state to authorized insurers. Insurers on the

"doubtful or objectionable" list under Subsection (6)(d) and insurers not on the commissioner's "reliable" list under Subsection (6)(e) are presumed substandard.

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

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

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

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

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

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

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

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

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

(b) The examination described in Subsection (11)(a) shall take place as soon as

practicable after the transaction. The surplus lines producer shall submit to the examiner information necessary to conduct the examination within a period specified by rule.

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

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

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

(f) Examinations conducted under this Subsection (11) and the documents and materials

related to the examinations are confidential.

Section 33. Section **31A-18-106** is amended to read:

31A-18-106. Investment limitations generally applicable.

(1) The investment limitations listed in Subsections (1)(a) through (l) apply to each insurer.

(a) (i) Except as provided in Subsection (1)(a)(ii), for investments authorized under Subsection 31A-18-105(1) that are not amortizable under applicable valuation rules, the limitation is 5% of assets.

(ii) The limitation of Subsection (1)(a)(i) and the limitation of Subsection (2) do not apply to demand deposits and certificates of deposit in solvent banks and savings and loan institutions to the extent they are insured by a federal deposit insurance agency.

(b) For investments authorized under Subsection 31A-18-105(2), the limitation is 10% of assets.

(c) For investments authorized under Subsection 31A-18-105(3), the limitation is 50% of assets.

(d) For investments authorized under Subsection 31A-18-105(4), that are considered to be investments in kinds of securities or evidences of debt pledged, those investments are subject to the class limitations applicable to the pledged securities or evidences of debt.

(e) For investments authorized under Subsection 31A-18-105(5), the limitation is 35% of assets.

(f) For investments authorized under Subsection 31A-18-105(6), the limitation is:

(i) 20% of assets for life insurers; and

(ii) 50% of assets for nonlife insurers.

(g) For investments authorized under Subsection 31A-18-105(7), the limitation is 5% of assets, except as to insurers organized and operating under Chapter 7, Nonprofit Health Service Insurance Corporations, in which case the limitation is 25% of assets.

(h) For investments authorized under Subsection 31A-18-105(8), the limitation is 20% of assets inclusive of home office and branch office properties, except as to insurers organized and

operating under Chapter 7, Nonprofit Health Service Insurance Corporations, in which case the limitation is 35% of assets, inclusive of home office and branch office properties.

(i) For investments authorized under Subsection 31A-18-105(10), the limitation is 1% of assets.

(j) For investments authorized under Subsection 31A-18-105(11), the limitation is the greater of that permitted or required for compliance with Section 31A-18-103.

(k) Except as provided in Subsection (1)(l), an insurer's investments in subsidiaries is limited to 50% of the insurer's total adjusted capital. Investments by an insurer in its subsidiaries includes:

(i) the insurer's loans, advances, and contributions to its subsidiaries; and

(ii) the insurer's holding of bonds, notes, and stocks of its subsidiaries are included.

(l) Under a plan of merger approved by the commissioner, the commissioner may allow an insurer any portion of its assets invested in an insurance subsidiary. The approved plan of merger shall require the acquiring insurer to conform its accounting for investments in subsidiaries to Subsection (1)(k) within a specified period that may not exceed five years.

(2) The limits on investments listed in Subsections (2)(a) through (e) apply to each insurer.

(a) For all investments in a single entity, its affiliates, and subsidiaries, the limitation is 10% of assets, except that the limit imposed by this Subsection (2)(a) does not apply to:

(i) investments in the government of the United States or its agencies;

(ii) investments guaranteed by the government of the United States; or

(iii) investments in the insurer's insurance subsidiaries.

(b) Investments authorized by Subsection 31A-18-105(3) shall comply with the requirements listed in this Subsection (2)(b).

(i) (A) Except as provided in this Subsection (2)(b)(i), the amount of any loan secured by a mortgage or deed of trust may not exceed 80% of the value of the real estate interest mortgaged, unless the excess over 80%:

(I) is insured or guaranteed by the United States, any state of the United States, any

instrumentality, agency, or political subdivision of the United States, any of its states, or a combination of any of these; or

(II) insured by an insurer approved by the commissioner and qualified to insure that type of risk in this state.

(B) Mortgage loans representing purchase money mortgages acquired from the sale of real estate are not subject to the limitation of Subsection (2)(b)(i)(A).

(ii) Subject to Subsection (2)(b)(v), loans or evidences of debt secured by real estate may only be secured by unencumbered real property, or an unencumbered interest in real property that is located in the United States.

(iii) Evidence of debt secured by first mortgages or deeds of trust upon leasehold estates shall require that:

(A) the leasehold estate exceed the maturity of the loan by not less than 10% of the lease term;

(B) the real estate not be otherwise encumbered; and

(C) the mortgagee is entitled to be subrogated to all rights under the leasehold.

(iv) Subject to Subsection (2)(b)(v):

(A) participation in any mortgage loan must:

(I) be senior to other participants; and

(II) give the holder substantially the rights of a first mortgagee; or

(B) the interest of the insurer in the evidence of indebtedness must be of equal priority, to the extent of the interest, with other interests in the real property.

(v) A fee simple or leasehold real estate or any interest in either of them is not considered to be encumbered within the meaning of this chapter by reason of any prior mortgage or trust deed held or assumed by the insurer as a lien on the property, if:

(A) the total of the mortgages or trust deeds held does not exceed 70% of the value of the property; and

(B) the security created by the prior mortgage or trust deed is a first lien.

(c) Loans permitted under Subsection 31A-18-105(4) may not exceed 75% of the market

value of the collateral pledged, except that loans upon the pledge of United States government bonds may be equal to the market values of the pledge.

(d) For an equity interest in a single real estate property authorized under Subsection 31A-18-105(8), the limitation is 5% of assets.

(e) Investments authorized under Subsection 31A-18-105(10) shall be in connection with potential changes in the value of specifically identified:

(i) assets which the insurer owns; or

(ii) liabilities which the insurer has incurred.

(3) The restrictions on investments listed in Subsections (3)(a) and (b) apply to each insurer.

(a) Except for financial futures contracts and real property acquired and occupied by the insurer for home and branch office purposes, a security or other investment is not eligible for purchase or acquisition under this chapter unless it is:

(i) interest bearing or income paying; and

(ii) not then in default.

(b) A security is not eligible for purchase at a price above its market value.

(4) Computation of percentage limitations under this section:

(a) is based only upon the insurer's total qualified invested assets described in Section 31A-18-105 and this section, as these assets are valued under Section 31A-17-401; and

(b) excludes investments permitted under Section 31A-18-108 and Subsections 31A-17-203(2) and (3).

(5) An insurer may not make an investment that, because the investment does not conform to Section 31A-18-105 and this section, has the result of rendering the insurer, under Chapter 17, Part [~~VI~~] 6, Risk-Based Capital, subject to proceedings under Chapter 27, Insurers Rehabilitation and Liquidation.

(6) A pattern of persistent deviation from the investment diversification standards set forth in Section 31A-18-105 and this section may be grounds for a finding that the person or persons with authority to make the insurer's investment decisions are "incompetent" as used in

Subsection 31A-5-410(3).

(7) Section 77r-1 of the Secondary Mortgage Market Enhancement Act of 1984 does not apply to the purchase, holding, investment, or valuation limitations of assets of insurance companies subject to this chapter.

Section 34. Section **31A-19a-403** is amended to read:

31A-19a-403. Definitions.

As used in this part:

(1) "Uniform classification plan," in addition to the definition of "classification system" in Section [~~31A-19a-201~~] 31A-19a-102, means a plan:

(a) that is consistent between all insurers of classification codes and descriptions; and

(b) by which like workers' compensation exposures are grouped for the purposes of underwriting, rating, and statistical reporting.

(2) "Uniform experience rating plan" means a plan that is consistent between all insurers for experience rating entities insured for workers' compensation insurance.

(3) "Uniform statistical plan" means a plan that is consistent between all insurers that is used for the reporting of workers' compensation insurance statistical data.

Section 35. Section **31A-21-404** is amended to read:

31A-21-404. Out-of-state insurers.

Any insurer extending mass marketed life or accident and health insurance under a group or blanket policy issued outside of this state to residents of this state shall, with respect to the mass marketed life or accident and health insurance policy:

(1) comply with:

(a) Sections 31A-23a-402 and 31A-23a-403; and [~~Part III of~~]

(b) Chapter 26, Part 3, Claim Practices; and

(2) upon the commissioner's request, deliver to the commissioner a copy of any mass marketed life or accident and health insurance policy, certificates issued under these policies, and advertising material used in this state in connection with the policy.

Section 36. Section **31A-22-101** is amended to read:

31A-22-101. Scope of part.

This Part [~~I~~] 1 applies to those suretyship obligations that are subject to Chapter 21 and this chapter under Section 31A-21-101.

Section 37. Section **31A-22-303** is amended to read:

31A-22-303. Motor vehicle liability coverage.

(1) (a) In addition to complying with the requirements of Chapter 21, Insurance Contracts in General, and [~~Part II of~~] Chapter 22, Part 2, Liability Insurance in General, a policy of motor vehicle liability coverage under Subsection 31A-22-302(1)(a) shall:

(i) name the motor vehicle owner or operator in whose name the policy was purchased, state that named insured's address, the coverage afforded, the premium charged, the policy period, and the limits of liability;

(ii) (A) if it is an owner's policy, designate by appropriate reference all the motor vehicles on which coverage is granted, insure the person named in the policy, insure any other person using any named motor vehicle with the express or implied permission of the named insured, and, except as provided in Subsection (7), insure any person included in Subsection (1)(a)(iii) against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of these motor vehicles within the United States and Canada, subject to limits exclusive of interest and costs, for each motor vehicle, in amounts not less than the minimum limits specified under Section 31A-22-304; or

(B) if it is an operator's policy, insure the person named as insured against loss from the liability imposed upon him by law for damages arising out of the insured's use of any motor vehicle not owned by him, within the same territorial limits and with the same limits of liability as in an owner's policy under Subsection (1)(ii)(A);

(iii) except as provided in Subsection (7), insure persons related to the named insured by blood, marriage, adoption, or guardianship who are residents of the named insured's household, including those who usually make their home in the same household but temporarily live elsewhere, to the same extent as the named insured and the available coverage of the policy may not be reduced to the persons described in this Subsection (1)(a)(iii) because:

(A) a permissive user driving a covered motor vehicle is at fault in causing an accident; or

(B) the named insured or any of the persons described in this Subsection (1)(a)(iii) driving a covered motor vehicle is at fault in causing an accident; and

(iv) cover damages or injury resulting from a covered driver of a motor vehicle who is stricken by an unforeseeable paralysis, seizure, or other unconscious condition and who is not reasonably aware that paralysis, seizure, or other unconscious condition is about to occur to the extent that a person of ordinary prudence would not attempt to continue driving.

(b) The driver's liability under Subsection (1)(a)(iv) is limited to the insurance coverage.

(2) (a) A policy containing motor vehicle liability coverage under Subsection 31A-22-302(1)(a) may:

(i) provide for the prorating of the insurance under that policy with other valid and collectible insurance;

(ii) grant any lawful coverage in addition to the required motor vehicle liability coverage;

(iii) if the policy is issued to a person other than a motor vehicle business, limit the coverage afforded to a motor vehicle business or its officers, agents, or employees to the minimum limits under Section 31A-22-304, and to those instances when there is no other valid and collectible insurance with at least those limits, whether the other insurance is primary, excess, or contingent; and

(iv) if issued to a motor vehicle business, restrict coverage afforded to anyone other than the motor vehicle business or its officers, agents, or employees to the minimum limits under Section 31A-22-304, and to those instances when there is no other valid and collectible insurance with at least those limits, whether the other insurance is primary, excess, or contingent.

(b) (i) The liability insurance coverage of a permissive user of a motor vehicle owned by a motor vehicle business shall be primary coverage.

(ii) The liability insurance coverage of a motor vehicle business shall be secondary to the liability insurance coverage of a permissive user as specified under Subsection (2)(b)(i).

(3) Motor vehicle liability coverage need not insure any liability:

(a) under any workers' compensation law under Title 34A, Utah Labor Code;

(b) resulting from bodily injury to or death of an employee of the named insured, other than a domestic employee, while engaged in the employment of the insured, or while engaged in the operation, maintenance, or repair of a designated vehicle; or

(c) resulting from damage to property owned by, rented to, bailed to, or transported by the insured.

(4) An insurance carrier providing motor vehicle liability coverage has the right to settle any claim covered by the policy, and if the settlement is made in good faith, the amount of the settlement is deductible from the limits of liability specified under Section 31A-22-304.

(5) A policy containing motor vehicle liability coverage imposes on the insurer the duty to defend, in good faith, any person insured under the policy against any claim or suit seeking damages which would be payable under the policy.

(6) (a) If a policy containing motor vehicle liability coverage provides an insurer with the defense of lack of cooperation on the part of the insured, that defense is not effective against a third person making a claim against the insurer, unless there was collusion between the third person and the insured.

(b) If the defense of lack of cooperation is not effective against the claimant, after payment, the insurer is subrogated to the injured person's claim against the insured to the extent of the payment and is entitled to reimbursement by the insured after the injured third person has been made whole with respect to the claim against the insured.

(7) A policy of motor vehicle liability coverage under Subsection 31A-22-302(1) may specifically exclude from coverage a person who is a resident of the named insured's household, including a person who usually makes his home in the same household but temporarily lives elsewhere, if:

(a) at the time of the proposed exclusion, each person excluded from coverage satisfies the owner's or operator's security requirement of Section 41-12a-301, independently of the named insured's proof of owner's or operator's security;

(b) the named insured and the person excluded from coverage each provide written consent to the exclusion; and

(c) the insurer includes the name of each person excluded from coverage in the evidence of insurance provided to an additional insured or loss payee.

(8) A policy of motor vehicle liability coverage may limit coverage to the policy minimum limits under Section 31A-22-304 if the insured motor vehicle is operated by a person who has consumed any alcohol or any illegal drug or illegal substance if the policy or a specifically reduced premium was extended to the insured upon express written declaration executed by the insured that the insured motor vehicle would not be so operated.

(9) (a) When a claim is brought exclusively by a named insured or a person described in Subsection (1)(a)(iii) and asserted exclusively against a named insured or an individual described in Subsection (1)(a)(iii), the claimant may elect to resolve the claim:

(i) by submitting the claim to binding arbitration; or

(ii) through litigation.

(b) Once the claimant has elected to commence litigation under Subsection (9)(a)(ii), the claimant may not elect to resolve the claim through binding arbitration under this section without the written consent of both parties and the defendant's liability insurer.

(c) (i) Unless otherwise agreed on in writing by the parties, a claim that is submitted to binding arbitration under Subsection (9)(a)(i) shall be resolved by a panel of three arbitrators.

(ii) Unless otherwise agreed on in writing by the parties, each party shall select an arbitrator. The arbitrators selected by the parties shall select a third arbitrator.

(d) Unless otherwise agreed on in writing by the parties, each party will pay the fees and costs of the arbitrator that party selects. Both parties shall share equally the fees and costs of the third arbitrator.

(e) Except as otherwise provided in this section, an arbitration procedure conducted under this section shall be governed by Title 78, Chapter 31a, Utah Uniform Arbitration Act, unless otherwise agreed on in writing by the parties.

(f) (i) Discovery shall be conducted in accordance with Rules 26b through 36, Utah Rules of Civil Procedure.

(ii) All issues of discovery shall be resolved by the arbitration panel.

(g) A written decision of two of the three arbitrators shall constitute a final decision of the arbitration panel.

(h) Prior to the rendering of the arbitration award:

(i) the existence of a liability insurance policy may be disclosed to the arbitration panel; and

(ii) the amount of all applicable liability insurance policy limits may not be disclosed to the arbitration panel.

(i) The amount of the arbitration award may not exceed the liability limits of all the defendant's applicable liability insurance policies, including applicable liability umbrella policies. If the initial arbitration award exceeds the liability limits of all applicable liability insurance policies, the arbitration award shall be reduced to an amount equal to the liability limits of all applicable liability insurance policies.

(j) The arbitration award is the final resolution of all claims between the parties unless the award was procured by corruption, fraud, or other undue means.

(k) If the arbitration panel finds that the action was not brought, pursued, or defended in good faith, the arbitration panel may award reasonable fees and costs against the party that failed to bring, pursue, or defend the claim in good faith.

(l) Nothing in this section is intended to limit any claim under any other portion of an applicable insurance policy.

Section 38. Section **31A-22-315** is amended to read:

31A-22-315. Motor vehicle insurance reporting -- Penalty.

(1) (a) Each insurer that issues a policy that includes motor vehicle liability coverage, uninsured motorist coverage, underinsured motorist coverage, or personal injury coverage under this part shall before the seventh day of each calendar month provide to the Department of Public Safety's designated agent selected in accordance with Title 41, Chapter 12a, Part [~~VIII~~] 8, Uninsured Motorist Identification Database Program, a record of each motor vehicle insurance policy in effect for vehicles registered or garaged in Utah as of the previous month that was issued by the insurer.

(b) This Subsection (1) does not preclude more frequent reporting.

(2) The record shall include:

(a) the name, date of birth, and driver license number of each insured owner or operator, and the address of the named insured;

(b) the make, year, and vehicle identification number of each insured vehicle; and

(c) the policy number, effective date, and expiration date of each policy.

(3) Each insurer shall provide this information on magnetic tape or in another form the Department of Public Safety's designated agent agrees to accept.

(4) (a) The commissioner may, following procedures set forth in Title 63, Chapter 46b, Administrative Procedures Act, assess a fine against an insurer of up to $250 for each day the insurer fails to comply with this section.

(b) If an insurer shows that the failure to comply with this section was inadvertent, accidental, or the result of excusable neglect, the commissioner shall excuse the fine.

Section 39. Section **31A-22-400** is amended to read:

31A-22-400. Scope of part.

This Part [~~IV~~] 4 applies to all life insurance policies and contracts, including:

(1) an annuity contract;

(2) a credit life contract;

(3) a franchise contract;

(4) a group contract; and

(5) a blanket contract.

Section 40. Section **31A-22-701** is amended to read:

31A-22-701. Groups eligible for group or blanket insurance.

(1) A group or blanket accident and health insurance policy may be issued to:

(a) any group to which a group life insurance policy may be issued under Sections 31A-22-502 through 31A-22-507;

(b) a policy issued pursuant to a conversion privilege under this Part [~~VII~~] 7; or

(c) a group specifically authorized by the commissioner upon a finding that:

(i) authorization is not contrary to the public interest;

(ii) the proposed group is actuarially sound;

(iii) formation of the proposed group may result in economies of scale in administrative, marketing, and brokerage costs; and

(iv) the health insurance policy, certificate, or other indicia of coverage that will be offered to the proposed group is substantially equivalent to policies that are otherwise available to similar groups.

(2) Blanket policies may also be issued to:

(a) any common carrier or any operator, owner, or lessee of a means of transportation, as policyholder, covering persons who may become passengers as defined by reference to their travel status;

(b) an employer, as policyholder, covering any group of employees, dependents, or guests, as defined by reference to specified hazards incident to any activities of the policyholder;

(c) an institution of learning, including a school district, school jurisdictional units, or the head, principal, or governing board of any of those units, as policyholder, covering students, teachers, or employees;

(d) any religious, charitable, recreational, educational, or civic organization, or branch of those organizations, as policyholder, covering any group of members or participants as defined by reference to specified hazards incident to the activities sponsored or supervised by the policyholder;

(e) a sports team, camp, or sponsor of the team or camp, as policyholder, covering members, campers, employees, officials, or supervisors;

(f) any volunteer fire department, first aid, civil defense, or other similar volunteer organization, as policyholder, covering any group of members or participants as defined by reference to specified hazards incident to activities sponsored, supervised, or participated in by the policyholder;

(g) a newspaper or other publisher, as policyholder, covering its carriers;

(h) an association, including a labor union, which has a constitution and bylaws and which

has been organized in good faith for purposes other than that of obtaining insurance, as policyholder, covering any group of members or participants as defined by reference to specified hazards incident to the activities or operations sponsored or supervised by the policyholder;

(i) a health insurance purchasing association organized and controlled solely by participating employers as defined in Section 31A-34-103; and

(j) any other class of risks which, in the judgment of the commissioner, may be properly eligible for blanket accident and health insurance.

(3) The judgment of the commissioner may be exercised on the basis of:

(a) individual risks;

(b) class of risks; or

(c) both Subsections (3)(a) and (b).

Section 41. Section **31A-22-802** is amended to read:

31A-22-802. Definitions.

As used in this Part [~~VIII~~] 8:

(1) "Credit accident and health insurance" means insurance on a debtor to provide indemnity for payments coming due on a specific loan or other credit transaction while the debtor is disabled.

(2) "Credit life insurance" means life insurance on the life of a debtor in connection with a specific loan or credit transaction.

(3) "Credit transaction" means any transaction under which the payment for money loaned or for goods, services, or properties sold or leased is to be made on future dates.

(4) "Creditor" means the lender of money or the vendor or lessor of goods, services, or property, for which payment is arranged through a credit transaction, or any successor to the right, title, or interest of any lender or vendor.

(5) "Debtor" means a borrower of money or a purchaser, including a lessee under a lease intended as security, of goods, services, or property, for which payment is arranged through a credit transaction.

(6) "Indebtedness" means the total amount payable by a debtor to a creditor in connection

with a credit transaction, including principal finance charges and interest.

(7) "Net indebtedness" means the total amount required to liquidate the indebtedness, exclusive of any unearned interest, any insurance on the monthly outstanding balance coverage, or any finance charge.

(8) "Net written premiums" means gross written premiums minus refunds on termination.

Section 42. Section **31A-22-808** is amended to read:

31A-22-808. Premiums and refunds.

(1) Each policy, certificate, or statement of insurance shall provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by the debtor for insurance shall be paid or credited promptly to the person entitled to it. The formula used in computing the refund shall be filed with and approved by the commissioner under Chapter 21, Part [~~H~~] 2, Approval of Forms. No refund is required if it would be less than $5.

(2) If a creditor requires a debtor to make any payment for credit life or credit accident and health insurance and an individual policy, certificate, or statement of insurance is not issued, the creditor shall immediately give written notice to the debtor and credit the account.

(3) The amount charged the debtor for credit life or accident and health insurance may not exceed the premiums charged by the insurer as computed at the time the charge to the debtor is determined.

Section 43. Section **31A-23a-102** is amended to read:

31A-23a-102. Definitions.

As used in this chapter:

(1) "Bail bond producer" means a person who:

(a) is appointed by:

(i) a surety insurer that issues bail bonds; or

(ii) a bail bond surety company licensed under Chapter 35, Bail Bond Sureties and Agents Act;

(b) is designated to execute or countersign undertakings of bail in connection with judicial

proceedings; and

(c) receives or is promised money or other things of value for engaging in an act described in Subsection (1)(b).

(2) "Escrow" means a license subline of authority in conjunction with the title insurance line of authority that allows a person to conduct escrow as defined in Section 31A-1-301.

(3) "Home state" means any state or territory of the United States or the District of Columbia in which an insurance producer:

(a) maintains the insurance producer's principal:

(i) place of residence; or

(ii) place of business; and

(b) is licensed to act as an insurance producer.

(4) "Insurer" is as defined in Section 31A-1-301, except the following persons or similar persons are not insurers for purposes of Part 7, Producer Controlled Insurers:

(a) all risk retention groups as defined in:

(i) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499;

(ii) the Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.; and

(iii) Chapter 15, Part [~~H~~] 2, Risk Retention Groups Act;

(b) all residual market pools and joint underwriting authorities or associations; and

(c) all captive insurers.

(5) "License" is defined in Section 31A-1-301.

(6) (a) "Managing general agent" means any person, firm, association, or corporation that:

(i) manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office;

(ii) acts as an agent for the insurer whether it is known as a managing general agent, manager, or other similar term;

(iii) with or without the authority, either separately or together with affiliates, directly or indirectly produces and underwrites an amount of gross direct written premium equal to, or more

than 5% of, the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year; and

(iv) (A) adjusts or pays claims in excess of an amount determined by the commissioner; or

(B) negotiates reinsurance on behalf of the insurer.

(b) Notwithstanding Subsection (6)(a), the following persons may not be considered as managing general agent for the purposes of this chapter:

(i) an employee of the insurer;

(ii) a United States manager of the United States branch of an alien insurer;

(iii) an underwriting manager that, pursuant to contract:

(A) manages all the insurance operations of the insurer;

(B) is under common control with the insurer;

(C) is subject to Chapter 16, Insurance Holding Companies; and

(D) is not compensated based on the volume of premiums written; and

(iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney.

(7) "Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract if the person engaged in that act:

(a) sells insurance; or

(b) obtains insurance from insurers for purchasers.

(8) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager as these terms are defined in Subsections (9) and (10).

(9) "Reinsurance intermediary-broker" means a person other than an officer or employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

(10) (a) "Reinsurance intermediary-manager" means a person, firm, association, or corporation who:

(i) has authority to bind or who manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office; and

(ii) acts as an agent for the reinsurer whether the person, firm, association, or corporation is known as a reinsurance intermediary-manager, manager, or other similar term.

(b) Notwithstanding Subsection (10)(a), the following persons may not be considered reinsurance intermediary-managers for the purpose of this chapter with respect to the reinsurer:

(i) an employee of the reinsurer;

(ii) a United States manager of the United States branch of an alien reinsurer;

(iii) an underwriting manager that, pursuant to contract:

(A) manages all the reinsurance operations of the reinsurer;

(B) is under common control with the reinsurer;

(C) is subject to Chapter 16, Insurance Holding Companies; and

(D) is not compensated based on the volume of premiums written; and

(iv) the manager of a group, association, pool, or organization of insurers that:

(A) engage in joint underwriting or joint reinsurance; and

(B) are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

(11) "Search" means a license subline of authority in conjunction with the title insurance line of authority that allows a person to issue title insurance commitments or policies on behalf of a title insurer.

(12) "Sell" means to exchange a contract of insurance:

(a) by any means;

(b) for money or its equivalent; and

(c) on behalf of an insurance company.

(13) "Solicit" means attempting to sell:

(a) a particular kind of insurance; and

(b) from a particular insurance company.

(14) "Terminate" means:

(a) the cancellation of the relationship between:

(i) an insurance producer; and

(ii) a particular insurer; or

(b) the termination of the producer's authority to transact insurance on behalf of a particular insurance company.

(15) "Title marketing representative" means a person who:

(a) represents a title insurer in soliciting, requesting, or negotiating the placing of:

(i) title insurance; or

(ii) escrow services; and

(b) does not have a search or escrow license as provided in Section 31A-23a-106.

(16) "Uniform application" means the version of the National Association of Insurance Commissioner's uniform application for resident and nonresident producer licensing at the time the application is filed.

(17) "Uniform business entity application" means the version of the National Association of Insurance Commissioner's uniform business entity application for resident and nonresident business entities at the time the application is filed.

Section 44. Section **31A-25-202** is amended to read:

31A-25-202. Application for license.

(1) (a) An application for a license as a third party administrator shall be:

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

(ii) accompanied by the applicable fee, which is not refundable if the application is denied.

(b) The application for a license as a third party administrator shall:

(i) state the applicant's:

(A) Social Security number; or

(B) federal employer identification number;

(ii) provide information about:

(A) the applicant's identity;

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

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

(D) whether the applicant has committed an act that is a ground for denial, suspension, or revocation as set forth in Section 31A-25-208; and

(iii) any other information as the commissioner reasonably requires.

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

(3) The following are private records under Subsection 63-2-302(1)[~~(g)~~](h):

(a) an applicant's Social Security number; and

(b) an applicant's federal employer identification number.

Section 45. Section **31A-30-103** is amended to read:

31A-30-103. Definitions.

As used in this chapter:

(1) "Actuarial certification" means a written statement by a member of the American Academy of Actuaries or other individual approved by the commissioner that a covered carrier is in compliance with Section 31A-30-106, based upon the examination of the covered carrier, including review of the appropriate records and of the actuarial assumptions and methods used by the covered carrier in establishing premium rates for applicable health benefit plans.

(2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person.

(3) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under a rating system for that class of business by the covered carrier to covered insureds with similar case characteristics for health benefit plans with the same or similar coverage.

(4) "Basic coverage" means the coverage provided in the Basic Health Care Plan under Subsection 31A-22-613.5(2).

(5) "Carrier" means any person or entity that provides health insurance in this state including:

(a) an insurance company;

(b) a prepaid hospital or medical care plan;

(c) a health maintenance organization;

(d) a multiple employer welfare arrangement; and

(e) any other person or entity providing a health insurance plan under this title.

(6) (a) Except as provided in Subsection (6)(b), "case characteristics" means demographic or other objective characteristics of a covered insured that are considered by the carrier in determining premium rates for the covered insured.

(b) "Case characteristics" does not include:

(i) duration of coverage since the policy was issued;

(ii) claim experience; and

(iii) health status.

(7) "Class of business" means all or a separate grouping of covered insureds established under Section 31A-30-105.

(8) "Conversion policy" means a policy providing coverage under the conversion provisions required in Chapter 22, Part [~~VII~~] 7, Group Accident and Health Insurance.

(9) "Covered carrier" means any individual carrier or small employer carrier subject to this chapter.

(10) "Covered individual" means any individual who is covered under a health benefit plan subject to this chapter.

(11) "Covered insureds" means small employers and individuals who are issued a health benefit plan that is subject to this chapter.

(12) "Dependent" means an individual to the extent that the individual is defined to be a dependent by:

(a) the health benefit plan covering the covered individual; and

(b) Chapter 22, Part [~~VI~~] 6, Accident and Health Insurance.

(13) "Established geographic service area" means a geographical area approved by the commissioner within which the carrier is authorized to provide coverage.

(14) "Index rate" means, for each class of business as to a rating period for covered insureds with similar case characteristics, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate.

(15) "Individual carrier" means a carrier that provides coverage on an individual basis through a health benefit plan regardless of whether:

(a) coverage is offered through:

(i) an association;

(ii) a trust;

(iii) a discretionary group; or

(iv) other similar groups; or

(b) the policy or contract is situated out-of-state.

(16) "Individual conversion policy" means a conversion policy issued to:

(a) an individual; or

(b) an individual with a family.

(17) "Individual coverage count" means the number of natural persons covered under a carrier's health benefit products that are individual policies.

(18) "Individual enrollment cap" means the percentage set by the commissioner in accordance with Section 31A-30-110.

(19) "New business premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or offered, or that could have been charged or offered, by the carrier to covered insureds with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

(20) "Preexisting condition" is as defined in Section 31A-1-301.

(21) "Premium" means all monies paid by covered insureds and covered individuals as a condition of receiving coverage from a covered carrier, including any fees or other contributions associated with the health benefit plan.

(22) (a) "Rating period" means the calendar period for which premium rates established by a covered carrier are assumed to be in effect, as determined by the carrier.

(b) A covered carrier may not have:

(i) more than one rating period in any calendar month; and

(ii) no more than 12 rating periods in any calendar year.

(23) "Resident" means an individual who has resided in this state for at least 12 consecutive months immediately preceding the date of application.

(24) "Short-term limited duration insurance" means a health benefit product that:

(a) is not renewable; and

(b) has an expiration date specified in the contract that is less than 364 days after the date the plan became effective.

(25) "Small employer carrier" means a carrier that provides health benefit plans covering eligible employees of one or more small employers in this state, regardless of whether:

(a) coverage is offered through:

(i) an association;

(ii) a trust;

(iii) a discretionary group; or

(iv) other similar grouping; or

(b) the policy or contract is situated out-of-state.

(26) "Uninsurable" means an individual who:

(a) is eligible for the Comprehensive Health Insurance Pool coverage under the underwriting criteria established in Subsection 31A-29-111(4); or

(b) (i) is issued a certificate for coverage under Subsection 31A-30-108(3); and

(ii) has a condition of health that does not meet consistently applied underwriting criteria as established by the commissioner in accordance with Subsections 31A-30-106(1)(i) and (j) for which coverage the applicant is applying.

(27) "Uninsurable percentage" for a given calendar year equals UC/CI where, for purposes of this formula:

[~~(b)~~] (a) "CI" means the carrier's individual coverage count as of December 31 of the preceding year[~~.~~]; and

[~~(a)~~] (b) "UC" means the number of uninsurable individuals who were issued an individual policy on or after July 1, 1997[~~; and~~].

Section 46. Section **32A-11a-108** is amended to read:

32A-11a-108. Reasonable compensation -- Arbitration.

(1) If a supplier violates Section 32A-11a-103 or 32A-11a-107, the supplier shall be liable to the wholesaler for the laid-in cost of inventory of the affected brands plus any diminution in the fair market value of the wholesaler's business with relation to the affected brands. In determining fair market value, consideration shall be given to all elements of value, including good will and going concern value.

(2) (a) A distributorship agreement may require that any or all disputes between a supplier and a wholesaler be submitted to binding arbitration. In the absence of an applicable arbitration provision in the distributorship agreement, either the supplier or the wholesaler may request arbitration if a supplier and a wholesaler are unable to mutually agree on:

(i) whether or not good cause exists for termination or nonrenewal;

(ii) whether or not the supplier unreasonably withheld approval of a sale or transfer under Section 32A-11a-107; or

(iii) the reasonable compensation to be paid for the value of the wholesaler's business in accordance with Subsection (1).

(b) If a supplier or wholesaler requests arbitration under Subsection (2)(a) and the other party agrees to submit the matter to arbitration, an arbitration panel shall be created with the following members:

(i) one member selected by the supplier in a writing delivered to the wholesaler within ten business days of the date arbitration was requested under Subsection (2)(a);

(ii) one member selected by the wholesaler in a writing delivered to the supplier within ten business days of the date arbitration was requested under Subsection (2)(a); and

(iii) one member selected by the two arbitrators appointed under Subsections (2)(b)(i) and

(ii).

(c) If the arbitrators selected under Subsection (2)(b)(iii) fail to choose a third arbitrator within ten business days of their selection, a judge of a district court in the county in which the wholesaler's principal place of business is located shall select the third arbitrator.

(d) Arbitration costs shall be divided equally between the wholesaler and the supplier.

(e) The award of the arbitration panel is binding on the parties unless appealed within 20 days from the date of the award.

(f) Subject to the requirements of this chapter, arbitration and all proceedings on appeal shall be governed by Title 78, Chapter 31a, Utah Uniform Arbitration Act.

Section 47. Section **41-1a-120** is amended to read:

41-1a-120. Participation in Uninsured Motorist Identification Database Program.

(1) The division shall provide the Department of Public Safety's designated agent, as defined in Section 41-12a-802, with a record of all current motor vehicle registrations.

(2) The division shall perform the duties specified in:

(a) Title 41, Chapter 12a, Part [~~VIII~~] 8, Uninsured Motorist Identification Database Program; and

(b) Sections 41-1a-109 and 41-1a-110.

(3) The division shall cooperate with the Department of Public Safety in making rules and developing procedures to use the Uninsured Motorist Identification Database.

Section 48. Section **41-12a-306** is amended to read:

41-12a-306. Claims adjustment by persons with owner's or operator's security other than insurance.

(1) An owner or operator of a motor vehicle with respect to whom owner's or operator's security is maintained by a means other than an insurance policy under Subsection 41-12a-103(9)(a), shall refer all bodily injury claims against the owner's or operator's security to an independent adjuster licensed under Title 31A, Chapter 26, Insurance Adjusters, or to an attorney.

(2) Unless otherwise provided by contract, any motor vehicle claim adjustment expense

incurred by a person maintaining owner's or operator's security by a means other than an insurance policy under Subsection 41-12a-103(9)(a), shall be paid by the person who maintains this type of owner's or operator's security.

(3) Owners and operators of motor vehicles maintaining owner or operator's security by a means other than an insurance policy under Subsection 41-12a-103(9)(a) are subject to the claim adjustment provisions of Title 31A, Chapter 26, Part [~~III~~] 3, Claim Practices, in connection with claims against such persons which arise out of the ownership, maintenance, or use of a motor vehicle.

(4) In addition to other penalties and remedies available for failure to abide by this section, the department may require any person violating this section to maintain owner's or operator's security only in the manner specified under Subsection 41-12a-103(9)(a).

Section 49. Section **46-4-503** is amended to read:

46-4-503. Government products and services provided electronically.

(1) Notwithstanding Section 46-4-501, a state governmental agency that administers one or more of the following transactions shall allow those transactions to be conducted electronically:

(a) an application for or renewal of a professional or occupational license issued under Title 58, Occupations and Professions;

(b) the renewal of a drivers license;

(c) an application for a hunting or fishing license;

(d) the filing of:

(i) a return under Title 59, Chapter 10 or 12;

(ii) a court document, as defined by the Judicial Council; or

(iii) a document under Title 70A, Uniform Commercial Code;

(e) a registration for:

(i) a product; or

(ii) a brand;

(f) a renewal of a registration of a motor vehicle;

(g) a registration under:

(i) Title 16, Corporations;

(ii) Title 42, Names; or

(iii) Title 48, [~~Partnerships~~] Partnership; or

(h) submission of an application for benefits:

(i) under Title 35A, Chapter 3, Employment Support Act;

(ii) under Title 35A, Chapter 4, Employment Security Act; or

(iii) related to accident and health insurance.

(2) The state system of public education, in coordination with the Utah Education Network, shall make reasonable progress toward making the following services available electronically:

(a) secure access by parents and students to student grades and progress reports;

(b) e-mail communications with:

(i) teachers;

(ii) parent-teacher associations; and

(iii) school administrators;

(c) access to school calendars and schedules; and

(d) teaching resources that may include:

(i) teaching plans;

(ii) curriculum guides; and

(iii) media resources.

(3) A state governmental agency shall:

(a) in carrying out the requirements of this section, take reasonable steps to ensure the security and privacy of records that are private or controlled as defined by Title 63, Chapter 2, Government Records Access and Management Act;

(b) in addition to those transactions listed in Subsections (1) and (2), determine any additional services that may be made available to the public through electronic means; and

(c) as part of [~~their agency~~] the agency's information technology [~~plans~~] plan required by

Section 63D-1a-303, report on the progress of compliance with Subsections (1) through (3).

(4) Notwithstanding the other provisions of this part, a state governmental agency is not required by this part to conduct a transaction electronically if:

(a) conducting the transaction electronically is not required by federal law; and

(b) conducting the transaction electronically is:

(i) impractical;

(ii) unreasonable; or

(iii) not permitted by laws pertaining to privacy or security.

Section 50. Section **53-3-102** is amended to read:

53-3-102. Definitions.

As used in this chapter:

(1) "Cancellation" means the termination by the division of a license issued through error or fraud or for which consent under Section 53-3-211 has been withdrawn.

(2) "Class D license" means the class of license issued to drive motor vehicles not defined as commercial motor vehicles or motorcycles under this chapter.

(3) "Class M license" means the class of license issued to drive a motorcycle as defined under this chapter.

(4) "Commercial driver license" or "CDL" means a license issued substantially in accordance with the requirements of Title XII, Pub. L. 99-570, the Commercial Motor Vehicle Safety Act of 1986, and in accordance with Part 4, Uniform Commercial Driver License Act, which authorizes the holder to drive a class of commercial motor vehicle.

(5) (a) "Commercial motor vehicle" means a motor vehicle designed or used to transport passengers or property if the vehicle:

(i) has a gross vehicle weight rating of 26,001 or more pounds or a lesser rating as determined by federal regulation;

(ii) is designed to transport more than 15 passengers, including the driver; or

(iii) is transporting hazardous materials and is required to be placarded in accordance with 49 C.F.R. Part 172, Subpart F.

(b) The following vehicles are not considered a commercial motor vehicle for purposes of Part 4, Uniform Commercial Driver License Act:

(i) equipment owned and operated by the United States Department of Defense when driven by any active duty military personnel and members of the reserves and national guard on active duty including personnel on full-time national guard duty, personnel on part-time training, and national guard military technicians and civilians who are required to wear military uniforms and are subject to the code of military justice;

(ii) vehicles controlled and driven by a farmer to transport agricultural products, farm machinery, or farm supplies to or from a farm within 150 miles of his farm but not in operation as a motor carrier for hire;

(iii) firefighting and emergency vehicles; and

(iv) recreational vehicles that are not used in commerce and are driven solely as family or personal conveyances for recreational purposes.

(6) "Conviction" means any of the following:

(a) an unvacated adjudication of guilt or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an administrative proceeding;

(b) an unvacated forfeiture of bail or collateral deposited to secure a person's appearance in court;

(c) a plea of guilty or nolo contendere accepted by the court;

(d) the payment of a fine or court costs;

(e) violation of a condition of release without bail, regardless of whether the penalty is rebated, suspended, or probated.

(7) "Denial" or "denied" means the withdrawal of a driving privilege by the division to which the provisions of Title 41, Chapter 12a, Part [~~IV~~] 4, Proof of Owner's or Operator's Security, do not apply.

(8) "Director" means the division director appointed under Section 53-3-103.

(9) "Disqualification" means either:

(a) the suspension, revocation, cancellation, denial, or any other withdrawal by a state of

a person's privileges to drive a commercial motor vehicle;

(b) a determination by the Federal Highway Administration, under 49 C.F.R. Part 386, that a person is no longer qualified to drive a commercial motor vehicle under 49 C.F.R. Part 391; or

(c) the loss of qualification that automatically follows conviction of an offense listed in 49 C.F.R. Part 383.51.

(10) "Division" means the Driver License Division of the department created in Section 53-3-103.

(11) "Drive" means:

(a) to operate or be in physical control of a motor vehicle upon a highway; and

(b) in Subsections 53-3-414(1) through (3), Subsection 53-3-414(5), and Sections 53-3-417 and 53-3-418, the operation or physical control of a motor vehicle at any place within the state.

(12) (a) "Driver" means any person who drives, or is in actual physical control of a motor vehicle in any location open to the general public for purposes of vehicular traffic.

(b) In Part 4, Uniform Commercial Driver License Act, "driver" includes any person who is required to hold a CDL under Part 4 or federal law.

(13) "Extension" means a renewal completed exclusively by mail.

(14) "Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(15) "Highway" means the entire width between property lines of every way or place of any nature when any part of it is open to the use of the public, as a matter of right, for traffic.

(16) "License" means the privilege to drive a motor vehicle.

(17) "License certificate" means the evidence of the privilege issued under this chapter to drive a motor vehicle.

(18) "Motorboat" has the same meaning as provided under Section 73-18-2.

(19) "Motorcycle" means every motor vehicle, other than a tractor, having a seat or saddle for the use of the rider and designed to travel with not more than three wheels in contact

with the ground.

(20) "Nonresident" means a person who:

(a) is not a resident of this state; and

(b) (i) has not engaged in any gainful occupation in this state for an aggregate period of 60 days in the preceding 12 months; or

(ii) is temporarily assigned by his employer to work in Utah.

(21) (a) "Owner" means a person other than a lienholder having an interest in the property or title to a vehicle.

(b) "Owner" includes a person entitled to the use and possession of a vehicle subject to a security interest in another person but excludes a lessee under a lease not intended as security.

(22) "Renewal" means to validate a license certificate so that it expires at a later date.

(23) "Reportable violation" means an offense required to be reported to the division as determined by the division and includes those offenses against which points are assessed under Section 53-3-221.

(24) "Revocation" means the termination by action of the division of a licensee's privilege to drive a motor vehicle.

(25) "School bus" means every publicly or privately owned motor vehicle designed for transporting ten or more passengers and operated for the transportation of children to or from school or school activities.

(26) "Suspension" means the temporary withdrawal by action of the division of a licensee's privilege to drive a motor vehicle.

(27) "Taxicab" means any class D motor vehicle transporting any number of passengers for hire and that is subject to state or federal regulation as a taxi.

Section 51. Section **53B-2a-102** is amended to read:

53B-2a-102. President -- Appointment -- Duties.

(1) (a) The board shall appoint a president for the Utah College of Applied Technology.

(b) The president of the Utah College of Applied Technology does not need to have a doctorate degree, but shall have extensive experience in applied technology education.

(c) The president shall serve at the board's discretion.

(d) The names of the final candidates for president of the Utah College of Applied Technology shall be publicly disclosed.

(e) The chair and vice chair of the Utah College of Applied Technology Board of Trustees shall be members of the search committee for the president.

(2) The president shall:

(a) direct the Utah College of Applied Technology and coordinate the activities of each of its college campuses;

(b) in cooperation with the board of trustees and with the approval of the board, develop a competency-based associate of applied technology degree;

(c) ensure that an applied technology education degree is transferable to other higher education institutions in accordance with board rules;

(d) in consultation with the board of trustees, campus presidents, and campus boards of directors, prepare a comprehensive strategic plan for delivering applied technology education through the Utah College of Applied Technology college campuses;

(e) after consulting with local school districts and other higher education institutions in the regions, ensure that the curricula of the Utah College of Applied Technology [~~meets~~] meet the needs of the state, the regions, and the local school districts;

(f) in consultation with the board of trustees, campus presidents, and campus boards of directors, and after consulting with local school districts and other higher education institutions in the region, develop strategies for providing applied technology education in rural areas, specifically considering the distances between rural applied technology education providers;

(g) establish minimum standards for applied technology programs of the Utah College of Applied Technology college campuses;

(h) in conjunction with the board of trustees, develop and implement a system of common definitions, standards, and criteria for tracking and measuring the effectiveness of applied technology education;

(i) in conjunction with the board of trustees, develop and implement a plan to inform

citizens about the availability, cost, and advantages of applied technology education;

(j) after consulting with the State Board of Education and local school districts, ensure that secondary students in the public education system have access to applied technology education through the Utah College of Applied Technology college campuses; and

(k) provide expertise and monitor applied technology education within the region served by Snow College in accordance with Section 53B-16-205.

Section 52. Section **54-8a-8.5** is amended to read:

54-8a-8.5. Alternative dispute resolution.

(1) An association formed under Section 54-8a-9 shall make available an alternative dispute resolution program to resolve disputes arising from damage to underground facilities between:

(a) an operator;

(b) an owner;

(c) an excavator; or

(d) other interested party.

(2) The alternative dispute program created under this section is in addition to the ability of a party to bring a civil action under Section 54-8a-8.

(3) The alternative dispute resolution program shall:

(a) include mediation and arbitration;

(b) require that one or more appointed mediators or arbitrators decide:

(i) the issue of liability for any reimbursement; and

(ii) the amount of reimbursement; and

(c) shall be consistent with Title 78, Chapter 31a, Utah Uniform Arbitration Act.

(4) Nothing in this section shall be construed to change the basis for civil liability for damages.

Section 53. Section **57-8-38** is amended to read:

57-8-38. Arbitration.

The declaration, bylaws, or association rules may provide that disputes between the parties

shall be submitted to arbitration pursuant to Title 78, Chapter 31a, Utah Uniform Arbitration Act.

Section 54. Section **58-1-301** is amended to read:

58-1-301. License application -- Licensing procedure.

(1) (a) Each license applicant shall apply to the division in writing upon forms available from the division. Each completed application shall contain documentation of the particular qualifications required of the applicant, shall include the applicant's Social Security number, shall be verified by the applicant, and shall be accompanied by the appropriate fees.

(b) An applicant's Social Security number is a private record under Subsection 63-2-302(1)[~~(g)~~](h).

(2) (a) A license shall be issued to an applicant who submits a complete application if the division determines that the applicant meets the qualifications of licensure.

(b) A written notice of additional proceedings shall be provided to an applicant who submits a complete application, but who has been, is, or will be placed under investigation by the division for conduct directly bearing upon his qualifications for licensure, if the outcome of additional proceedings is required to determine the division's response to the application.

(c) A written notice of denial of licensure shall be provided to an applicant who submits a complete application if the division determines that the applicant does not meet the qualifications of licensure.

(d) A written notice of incomplete application and conditional denial of licensure shall be provided to an applicant who submits an incomplete application. This notice shall advise the applicant that the application is incomplete and that the application is denied, unless the applicant corrects the deficiencies within the time period specified in the notice and otherwise meets all qualifications for licensure.

(3) Before any person is issued a license under this title, all requirements for that license as established under this title and by rule shall be met.

(4) If all requirements are met for the specific license, the division shall issue the license.

Section 55. Section **58-37d-4** is amended to read:

58-37d-4. Prohibited acts -- Second degree felony.

(1) It is unlawful for any person to knowingly or intentionally:

(a) possess a controlled substance precursor with the intent to engage in a clandestine laboratory operation;

(b) possess laboratory equipment or supplies with the intent to engage in a clandestine laboratory operation;

(c) sell, distribute, or otherwise supply a precursor chemical, laboratory equipment, or laboratory supplies knowing or having reasonable cause to believe it will be used for a clandestine laboratory operation;

(d) evade recordkeeping provisions of Title 58, Chapter 37c, Utah Controlled [~~Substances~~] Substance Precursor Act, or the regulations issued under that act, knowing or having reasonable cause to believe that the material distributed or received will be used for a clandestine laboratory operation;

(e) conspire with or aid another to engage in a clandestine laboratory operation;

(f) produce or manufacture, or possess with intent to produce or manufacture a controlled or counterfeit substance except as authorized under Title 58, Chapter 37, Utah Controlled Substances Act;

(g) transport or convey a controlled or counterfeit substance with the intent to distribute or to be distributed by the person transporting or conveying the controlled or counterfeit substance or by any other person regardless of whether the final destination for the distribution is within this state or any other location; or

(h) engage in compounding, synthesis, concentration, purification, separation, extraction, or other physical or chemical processing of any substance, including a controlled substance precursor, or the packaging, repackaging, labeling, or relabeling of a container holding a substance that is a product of any of these activities, knowing or having reasonable cause to believe that the substance [~~that~~] is a product of any of these activities and will be used in the illegal manufacture of specified controlled substances.

(2) A person who violates any provision of Subsection (1) is guilty of a second degree felony.

Section 56. Section **58-46a-305** is amended to read:

58-46a-305. Exemptions from licensure.

In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in acts and practices included within the definition of practice as a hearing instrument specialist or hearing instrument intern, subject to their professional licensure authorization and restrictions, without being licensed under this chapter:

(1) an audiologist licensed under the provisions of Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act; and

(2) a physician and surgeon licensed under the provisions of Title 58, Chapter 67, Utah Medical Practice Act, or osteopathic physician licensed under the provisions of Title 58, Chapter [~~12~~] 68, [~~Part 1,~~] Utah Osteopathic [~~Medicine Licensing~~] Medical Practice Act.

Section 57. Section **58-55-103** is amended to read:

58-55-103. Construction Services Commission created -- Functions -- Appointment -- Qualifications and terms of members -- Vacancies -- Expenses -- Meetings.

(1) There is created within the division the Construction Services Commission. The commission shall:

(a) with the concurrence of the director, make reasonable rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to administer and enforce this chapter which are consistent with this chapter including:

(i) licensing of various licensees;

(ii) approving and establishing a passing score for applicant examinations;

(iii) standards of supervision for students or persons in training to become qualified to obtain a license in the trade they represent; and

(iv) standards of conduct for various licensees;

(b) approve or disapprove fees adopted by the division under Section 63-38-3.2;

(c) except where the boards conduct them, conduct all administrative hearings not delegated to an administrative law judge relating to the licensing of any applicant;

(d) except as otherwise provided in Sections 38-11-207 and 58-55-503, with the

concurrence of the director, impose sanctions against licensees and certificate holders with the same authority as the division under Section 58-1-401;

(e) advise the director on the administration and enforcement of any matters affecting the division and the construction industry;

(f) advise the director on matters affecting the division budget;

(g) advise and assist trade associations in conducting construction trade seminars and industry education and promotion; and

(h) perform other duties as provided by this chapter.

(2) Initially the commission shall be comprised of the five members of the Contractors Licensing Board and two of the three chair persons from the Plumbers Licensing Board, the Alarm System Security and Licensing Board, and the Electricians Licensing Board. The terms of office of the commission members who are serving on the Contractors Licensing Board shall continue as they serve on the commission. The commission shall be comprised of seven members appointed by the executive director with the approval of the governor from the following groups:

(a) one member shall be a licensed general engineering contractor;

(b) one member shall be a licensed general building contractor;

(c) two members shall be licensed residential and small commercial contractors;

(d) two members shall be two of the three chair persons from the Plumbers Licensing Board, the Alarm System Security and Licensing Board, and the Electricians Licensing Board, with the contingency that they will rotate in succession every two years among the three chair persons; and

(e) one member shall be from the general public, provided, however that the certified public accountant on the Contractors Licensing Board will continue to serve until the current term expires, after which this one member shall be appointed from the general public.

(3) (a) Except as required by Subsection (3)(b), as terms of current commission members expire, the executive director with the approval of the governor shall appoint each new member or reappointed member to a four-year term ending June 30.

(b) Notwithstanding the requirements of Subsection (3)(a), the executive director with

the approval of the governor shall, at the time of appointment or reappointment, adjust the length of terms to stagger the terms of commission members so that approximately one-half of the commission members are appointed every two years.

(c) A commission member may not serve more than two consecutive terms.

(4) The commission shall elect annually one of its members as chair, for a term of one year.

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

(6) (a) Members shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the members' official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

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

(7) The commission shall meet at least monthly unless the director determines otherwise. The director may call additional meetings at the director's discretion, upon the request of the chair, or upon the written request of three or more commission members.

(8) Four members constitute a quorum for the transaction of business. If a quorum is present when a vote is taken, the affirmative vote of commission members present is the act of the commission.

(9) The commission shall comply with the procedures and requirements of Title 13, Chapter 1, Department of Commerce, and Title 63, Chapter 46b, Administrative Procedures Act, in all of its adjudicative proceedings.

Section 58. Section **58-55-302** is amended to read:

58-55-302. Qualifications for licensure.

(1) Each applicant for a license under this chapter shall:

(a) submit an application prescribed by the division;

(b) pay a fee as determined by the department under Section 63-38-3.2;

(c) (i) meet the examination requirements established by rule by the commission with the concurrence of the director, except for the classifications of apprentice plumber, residential

apprentice plumber, and apprentice electrician for whom no examination is required; or

(ii) if required in Section 58-55-304, the individual qualifier must pass the required examination if the applicant is a business entity;

(d) if an apprentice, identify the proposed supervisor of the apprenticeship;

(e) if an applicant for a contractor's license:

(i) produce satisfactory evidence of financial responsibility, except for a construction trades instructor for whom evidence of financial responsibility is not required;

(ii) produce satisfactory evidence of knowledge and experience in the construction industry and knowledge of the principles of the conduct of business as a contractor, reasonably necessary for the protection of the public health, safety, and welfare; and

(iii) be a licensed master electrician if an applicant for an electrical contractor's license or a licensed master residential electrician if an applicant for a residential electrical contractor's license; or

(iv) be a journeyman plumber or residential journeyman plumber if an applicant for a plumbing contractor's license; and

(f) if an applicant for a construction trades instructor license, satisfy any additional requirements established by rule.

(2) After approval of an applicant for a contractor's license by the applicable board and the division, the applicant shall file the following with the division before the division issues the license:

(a) proof of workers' compensation insurance which covers employees of the applicant in accordance with applicable Utah law;

(b) proof of public liability insurance in coverage amounts and form established by rule except for a construction trades instructor for whom public liability insurance is not required; and

(c) proof of registration as required by applicable law with the:

(i) Utah Department of Commerce;

(ii) Division of Corporations and Commercial Code;

(iii) Division of Workforce Information and Payment Services in the Department of

Workforce Services, for purposes of Title 35A, Chapter 4, Employment Security Act;

(iv) State Tax Commission; and

(v) Internal Revenue Service.

(3) In addition to the general requirements for each applicant in Subsection (1), applicants shall comply with the following requirements to be licensed in the following classifications:

(a) A journeyman plumber applicant shall produce satisfactory evidence of:

(i) successful completion of the equivalent of at least four years of full-time training and instruction as a licensed apprentice plumber under supervision of a licensed journeyman plumber and in accordance with a planned program of training approved by the division;

(ii) at least eight years of full-time experience approved by the division in collaboration with the Plumbers Licensing Board; or

(iii) satisfactory evidence of meeting the qualifications determined by the board to be equivalent to Subsection (3)(a)(i) or (a)(ii).

(b) A residential journeyman plumber shall produce satisfactory evidence of:

(i) completion of the equivalent of at least three years of full-time training and instruction as a licensed apprentice plumber under the supervision of a licensed residential journeyman plumber or licensed journeyman plumber in accordance with a planned program of training approved by the division;

(ii) completion of at least six years of full-time experience in a maintenance or repair trade involving substantial plumbing work; or

(iii) meeting the qualifications determined by the board to be equivalent to Subsection (3)(b)(i) or (b)(ii).

(c) A master electrician applicant shall produce satisfactory evidence that the applicant:

(i) is a graduate electrical engineer of an accredited college or university approved by the division and has one year of practical electrical experience as a licensed apprentice electrician;

(ii) is a graduate of an electrical trade school, having received an associate of applied sciences degree following successful completion of a course of study approved by the division, and has two years of practical experience as a licensed journeyman electrician;

(iii) is a graduate of an electrical trade school, having received a certificate of completion following successful completion of a course of study approved by the division, and has four years of practical experience as a journeyman electrician;

(iv) has at least eight years of practical experience under the supervision of a licensed journeyman or master electrician; or

(v) meets the qualifications determined by the board to be equivalent to these qualifications.

(d) A master residential electrician applicant shall produce satisfactory evidence that the applicant:

(i) has at least two years of practical experience as a residential journeyman electrician; or

(ii) meets the qualifications determined by the board to be equivalent to this practical experience.

(e) A journeyman electrician applicant shall produce satisfactory evidence that the applicant:

(i) has successfully completed at least four years of full-time training and instruction as a licensed apprentice electrician under the supervision of a master electrician or journeyman electrician and in accordance with a planned training program approved by the division;

(ii) has six years of practical experience in wiring, installing, and repairing electrical apparatus and equipment for light, heat, and power under the supervision of a licensed master or journeyman electrician; or

(iii) meets the qualifications determined by the board to be equivalent to these qualifications.

(f) A residential journeyman electrician applicant shall produce satisfactory evidence that the applicant:

(i) has successfully completed two years of training in an electrical training program approved by the division;

(ii) has four years of practical experience in wiring, installing, and repairing electrical apparatus and equipment for light, heat, and power under the supervision of a licensed master,

journeyman, residential master, or residential journeyman electrician; or

(iii) meets the qualifications determined by the division and applicable board to be equivalent to Subsection (3)(f)(i) or (f)(ii).

(g) The conduct of licensed apprentice electricians and their licensed supervisors shall be in accordance with the following:

(i) A licensed apprentice electrician shall be under the immediate supervision of a licensed master, journeyman, residential master, or residential journeyman electrician. An apprentice in the fourth year of training may work without supervision for a period not to exceed eight hours in any 24-hour period.

(ii) A licensed master, journeyman, residential master, or residential journeyman electrician may have under immediate supervision on a residential project up to three licensed apprentice electricians.

(iii) A licensed master or journeyman electrician may have under immediate supervision on nonresidential projects only one licensed apprentice electrician.

(h) An alarm company applicant shall:

(i) have a qualifying agent who is an officer, director, partner, proprietor, or manager of the applicant who:

(A) demonstrates 6,000 hours of experience in the alarm company business;

(B) demonstrates 2,000 hours of experience as a manager or administrator in the alarm company business or in a construction business; and

(C) passes an examination component established by rule by the commission with the concurrence of the director;

(ii) if a corporation, provide:

(A) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards of all corporate officers, directors, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state; and

(B) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards of all shareholders owning 5% or more of the outstanding shares of the corporation, except this shall

not be required if the stock is publicly listed and traded;

(iii) if a limited liability company, provide:

(A) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards of all company officers, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state; and

(B) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards of all individuals owning 5% or more of the equity of the company;

(iv) if a partnership, the names, addresses, dates of birth, Social Security numbers, and fingerprint cards of all general partners, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;

(v) if a proprietorship, the names, addresses, dates of birth, Social Security numbers, and fingerprint cards of the proprietor, and those responsible management personnel employed within the state or having direct responsibility for managing operations of the applicant within the state;

(vi) be of good moral character in that officers, directors, shareholders described in Subsection (3)(h)(ii)(B), partners, proprietors, and responsible management personnel have not been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that when considered with the duties and responsibilities of an alarm company is considered by the board to indicate that the best interests of the public are served by granting the applicant a license;

(vii) document that none of the applicant's officers, directors, shareholders described in Subsection (3)(h)(ii)(B), partners, proprietors, and responsible management personnel have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored;

(viii) document that none of the applicant's officers, directors, shareholders described in Subsection (3)(h)(ii)(B), partners, proprietors, and responsible management personnel are currently suffering from habitual drunkenness or from drug addiction or dependence;

(ix) file and maintain with the division evidence of:

(A) comprehensive general liability insurance in form and in amounts to be established by

rule by the commission with the concurrence of the director;

(B) workers' compensation insurance that covers employees of the applicant in accordance with applicable Utah law; and

(C) registration as is required by applicable law with the:

(I) Division of Corporations and Commercial Code;

(II) Division of Workforce Information and Payment Services in the Department of Workforce Services, for purposes of Title 35A, Chapter 4, Employment Security Act;

(III) State Tax Commission; and

(IV) Internal Revenue Service; and

(x) meet with the division and board.

(i) Each applicant for licensure as an alarm company agent shall:

(i) submit an application in a form prescribed by the division accompanied by fingerprint cards;

(ii) pay a fee determined by the department under Section 63-38-3.2;

(iii) be of good moral character in that the applicant has not been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that when considered with the duties and responsibilities of an alarm company agent is considered by the board to indicate that the best interests of the public are served by granting the applicant a license;

(iv) not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease and not been restored;

(v) not be currently suffering from habitual drunkenness or from drug addiction or dependence; and

(vi) meet with the division and board if requested by the division or the board.

(4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the division may make rules establishing when Federal Bureau of Investigation records shall be checked for applicants as an alarm company or alarm company agent.

(5) To determine if an applicant meets the qualifications of Subsections (3)(h)(vi) and (3)(i)(iii), the division shall provide an appropriate number of copies of fingerprint cards to the

Department of Public Safety with the division's request to:

(a) conduct a search of records of the Department of Public Safety for criminal history information relating to each applicant for licensure as an alarm company or alarm company agent and each applicant's officers, directors, shareholders described in Subsection (3)(h)(ii)(B), partners, proprietors, and responsible management personnel; and

(b) forward to the Federal Bureau of Investigation a fingerprint card of each applicant requiring a check of records of the F.B.I. for criminal history information under this section.

(6) The Department of Public Safety shall send to the division:

(a) a written record of criminal history, or certification of no criminal history record, as contained in the records of the Department of Public Safety in a timely manner after receipt of a fingerprint card from the division and a request for review of Department of Public Safety records; and

(b) the results of the F.B.I. review concerning an applicant in a timely manner after receipt of information from the F.B.I.

(7) (a) The division shall charge each applicant for licensure as an alarm company or alarm company agent a fee, in accordance with Section 63-38-3.2, equal to the cost of performing the records reviews under this section.

(b) The division shall pay the Department of Public Safety the costs of all records reviews, and the Department of Public Safety shall pay the F.B.I. the costs of records reviews under this section.

(8) Information obtained by the division from the reviews of criminal history records of the Department of Public Safety and the F.B.I. shall be used or disseminated by the division only for the purpose of determining if an applicant for licensure as an alarm company or alarm company agent is qualified for licensure.

(9) (a) An application for licensure under this chapter shall be denied if:

(i) the applicant has had a previous license, which was issued under this chapter, suspended or revoked within one year prior to the date of the applicant's application;

(ii) (A) the applicant is a partnership, corporation, or limited liability company; and

(B) any corporate officer, director, shareholder holding 25% or more of the stock in the applicant, partner, member, agent acting as a qualifier, or any person occupying a similar status, performing similar functions, or directly or indirectly controlling the applicant has served in any similar capacity with any person or entity which has had a previous license, which was issued under this chapter, suspended or revoked within one year prior to the date of the applicant's application; or

(iii) (A) the applicant is an individual or sole proprietorship; and

(B) any owner or agent acting as a qualifier has served in any capacity listed in Subsection (9)(a)(ii)(B) in any entity which has had a previous license, which was issued under this chapter, suspended or revoked within one year prior to the date of the applicant's application.

(b) An application for licensure under this chapter shall be reviewed by the appropriate licensing board prior to approval if:

(i) the applicant has had a previous license, which was issued under this chapter, suspended or revoked more than one year prior to the date of the applicant's application;

(ii) (A) the applicant is a partnership, corporation, or limited liability company; and

(B) any corporate officer, director, shareholder holding 25% or more of the stock in the applicant, partner, member, agent acting as a qualifier, or any person occupying a similar status, performing similar functions, or directly or indirectly controlling the applicant has served in any similar capacity with any person or entity which has had a previous license, which was issued under this chapter, suspended or revoked more than one year prior to the date of the applicant's application; or

(iii) (A) the applicant is an individual or sole proprietorship; and

(B) any owner or agent acting as a qualifier has served in any capacity listed in Subsection (9)(b)(ii)(B) in any entity which has had a previous license, which was issued under this chapter, suspended or revoked more than one year prior to the date of the applicant's application.

Section 59. Section **58-63-102** is amended to read:

58-63-102. Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

(1) "Armed courier service" means a person engaged in business as a contract security company who transports or offers to transport tangible personal property from one place or point to another under the control of an armed security officer employed by that service.

(2) "Armed private security officer" means an individual:

(a) employed by a contract security company;

(b) whose primary duty is that of guarding personal or real property, or providing protection or security to the life and well being of humans or animals; and

(c) who wears, carries, possesses, or has immediate access to a firearm at any time in the performance of the individual's duties.

(3) "Armored car service" means a person engaged in business as a contract security company who transports or offers to transport tangible personal property from one place or point to another under the control of an armed or unarmed private security officer employed by the company using a specially equipped motor vehicle offering a high degree of security.

(4) "Board" means the Security Services Licensing Board created in Section 58-63-201.

(5) "Contract security company" means a person engaged in business to provide security or guard services to another person for the purpose of protecting tangible personal property, real property, or the life and well being of human or animal life by assignment of security officers employed by the company and the use of specialized resources, motor vehicles, or equipment.

(6) "Identification card" means a personal pocket or wallet size card issued by the division to each security officer licensed under this chapter.

(7) "Officer" means a president, vice president, secretary, treasurer, or other officer of a corporation or limited liability company listed as an officer in the files with the Division of Corporations and Commercial Code.

(8) "Owner" means a proprietor or general partner of a proprietorship or partnership.

(9) "Peace officer" means a person who:

(a) is a certified peace officer as defined in Title 53, Chapter [~~6~~] 13, Peace Officer [~~Standards and Training Act~~] Classifications; and

(b) derives total or special law enforcement powers from, and is an employee of the

federal government, the state, or any political subdivision, agency, department, branch, or service of either, of any municipality, or of any other unit of local government.

(10) "Regular basis" means 20 or more hours per month.

(11) (a) "Security officer" means an individual who:

(i) is employed by a contract security company securing, guarding, or otherwise protecting tangible personal property, real property, or the life and well being of human or animal life against:

(A) trespass or other unlawful intrusion or entry;

(B) larceny;

(C) vandalism or other abuse;

(D) arson or any other criminal activity; or

(E) personal injury caused by another person or as a result of acts or omissions by another person;

(ii) is controlling, regulating, or directing the flow of movements of individuals or vehicles; or

(iii) providing street patrol service.

(b) "Security officer" does not include an individual whose duties are limited to custodial or other services even though the presence of that individual may act to provide some of the services set forth under Subsection (11)(a).

(12) "Security system" means equipment, devices, or instruments installed for the purpose of:

(a) detecting and signaling entry or intrusion by some individual into or onto, or exit from the premises protected by the system; or

(b) signaling the commission of a robbery or other criminal activity at the election of an individual having control of the features of the security system.

(13) "Street patrol service" means a person engaged in business as a contract security company who provides patrols by means of foot, vehicle, or other method of transportation using public streets, thoroughfares, or property in the performance of their duties and responsibilities.

(14) "Unarmed private security officer" means an individual:

(a) employed by a contract security company;

(b) whose primary duty is that of guarding personal or real property, or providing protection or security to the life and well being of humans or animals;

(c) who never wears, carries, possesses, or has immediate access to a firearm at any time in the performance of his duties; and

(d) who wears clothing of distinctive design or fashion bearing any symbol, badge, emblem, insignia, or other device that identifies or tends to identify the wearer as a security officer.

(15) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-63-501.

(16) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-63-502 and as may be further defined by rule.

Section 60. Section **59-2-103** is amended to read:

59-2-103. Rate of assessment of property -- Residential property.

(1) All tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

(2) Beginning January 1, 1995, the fair market value of residential property shall be reduced by 45%, representing a residential exemption allowed under Utah Constitution Article XIII, Section 2[~~, Utah Constitution~~].

(3) No more than one acre of land per residential unit may qualify for the residential exemption.

Section 61. Section **59-7-605** is amended to read:

59-7-605. Definitions -- Tax credit -- Cleaner burning fuels.

(1) As used in this section:

(a) "Board" means the Air Quality Board created under Title 19, Chapter 2, Air Conservation Act.

(b) "Certified by the board" means that:

(i) a motor vehicle on which conversion equipment has been installed meets the following

criteria:

(A) before the installation of conversion equipment, the vehicle does not exceed the emission cut points for a transient test driving cycle, as specified in 40 C.F.R. Part 51, Appendix E to Subpart S, or an equivalent test for the make, model, and year of the vehicle;

(B) the motor vehicle's emissions of regulated pollutants, when operating on fuels listed in Subsection (2)(b), is less than the emissions were before the installation of conversion equipment; and

(C) a reduction in emissions under Subsection (1)(b)(i)(B) is demonstrated by:

(I) certification of the conversion equipment by the federal Environmental Protection Agency or by a state whose certification standards are recognized by the board;

(II) testing the motor vehicle, before and after installation of the conversion equipment, in accordance with 40 C.F.R. Part 86, Control of Emissions from New and In-use Highway Vehicles and Engines, using all fuel the motor vehicle is capable of using; or

(III) any other test or standard recognized by board rule; or

(ii) special mobile equipment on which conversion equipment has been installed meets the following criteria:

(A) the special mobile equipment's emissions of regulated pollutants, when operating on fuels listed in Subsection (2)(c), is less than the emissions were before the installation of conversion equipment; and

(B) a reduction in emissions under Subsection (1)(b)(ii)(A) is demonstrated by:

(I) certification of the conversion equipment by the federal Environmental Protection Agency or by a state whose certification standards are recognized by the board; or

(II) any other test or standard recognized by board rule.

(c) "Clean fuel grant" means a grant awarded under Title [~~9~~] 63, Chapter [~~1~~] 34, Part [~~7~~] 2, Clean Fuels Conversion Program Act, for reimbursement of a portion of the incremental cost of an OEM vehicle or the cost of conversion equipment.

(d) "Conversion equipment" means equipment referred to in Subsection (2)(b) or (2)(c).

(e) "Incremental cost" has the same meaning as in Section 63-34-202.

(f) "OEM vehicle" has the same meaning as in Section 63-34-202.

(g) "Special mobile equipment":

(i) means any mobile equipment or vehicle that is not designed or used primarily for the transportation of persons or property; and

(ii) includes construction or maintenance equipment.

(2) For taxable years beginning on or after January 1, 2001, but beginning on or before December 31, 2005, a taxpayer may claim a tax credit against tax otherwise due under this chapter or Chapter 8, Gross Receipts Tax on Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, in an amount equal to:

(a) 50% of the incremental cost of an OEM vehicle registered in Utah minus the amount of any clean fuel grant received, up to a maximum tax credit of $3,000 per vehicle, if the vehicle:

(i) is fueled by propane, natural gas, or electricity;

(ii) is fueled by other fuel the board determines annually on or before July 1 to be at least as effective in reducing air pollution as fuels under Subsection (2)(a)(i); or

(iii) meets the clean-fuel vehicle standards in the federal Clean Air Act Amendments of 1990, 42 U.S.C. Sec. 7521 et seq.;

(b) 50% of the cost of equipment for conversion, if certified by the board, of a motor vehicle registered in Utah minus the amount of any clean fuel grant received, up to a maximum tax credit of $2,500 per motor vehicle, if the motor vehicle is to:

(i) be fueled by propane, natural gas, or electricity;

(ii) be fueled by other fuel the board determines annually on or before July 1 to be at least as effective in reducing air pollution as fuels under Subsection (2)(b)(i); or

(iii) meet the federal clean-fuel vehicle standards in the federal Clean Air Act Amendments of 1990, 42 U.S.C. Sec. 7521 et seq.; and

(c) 50% of the cost of equipment for conversion, if certified by the board, of a special mobile equipment engine minus the amount of any clean fuel grant received, up to a maximum tax credit of $1,000 per special mobile equipment engine, if the special mobile equipment is to be fueled by:

(i) propane, natural gas, or electricity; or

(ii) other fuel the board determines annually on or before July 1 to be:

(A) at least as effective in reducing air pollution as the fuels under Subsection (2)(c)(i); or

(B) substantially more effective in reducing air pollution than the fuel for which the engine was originally designed.

(3) A taxpayer shall provide proof of the purchase of an item for which a tax credit is allowed under this section by:

(a) providing proof to the board in the form the board requires by rule;

(b) receiving a written statement from the board acknowledging receipt of the proof; and

(c) retaining the written statement described in Subsection (3)(b).

(4) Except as provided by Subsection (5), the tax credit under this section is allowed only:

(a) against any Utah tax owed in the taxable year by the taxpayer;

(b) in the taxable year in which the item is purchased for which the tax credit is claimed; and

(c) once per vehicle.

(5) If the amount of a tax credit claimed by a taxpayer under this section exceeds the taxpayer's tax liability under this chapter for a taxable year, the amount of the tax credit exceeding the tax liability may be carried forward for a period that does not exceed the next five taxable years.

Section 62. Section **59-10-127** is amended to read:

59-10-127. Definitions -- Tax credit -- Cleaner burning fuels.

(1) As used in this section:

(a) "Board" means the Air Quality Board created in Title 19, Chapter 2, Air Conservation Act.

(b) "Certified by the board" means that:

(i) a motor vehicle on which conversion equipment has been installed meets the following criteria:

(A) before the installation of conversion equipment, the vehicle does not exceed the emission cut points for a transient test driving cycle, as specified in 40 C.F.R. Part 51, Appendix E to Subpart S, or an equivalent test for the make, model, and year of the vehicle;

(B) the motor vehicle's emissions of regulated pollutants, when operating on fuels listed in Subsection (2)(b), is less than the emissions were before the installation of conversion equipment; and

(C) a reduction in emissions under Subsection (1)(b)(i)(B) is demonstrated by:

(I) certification of the conversion equipment by the federal Environmental Protection Agency or by a state whose certification standards are recognized by the board;

(II) testing the motor vehicle, before and after installation of the conversion equipment, in accordance with 40 C.F.R. Part 86, Control Emissions from New and In-use Highway Vehicles and Engines, using all fuels the motor vehicle is capable of using; or

(III) any other test or standard recognized by board rule; or

(ii) special mobile equipment on which conversion equipment has been installed meets the following criteria:

(A) the special mobile equipment's emissions of regulated pollutants, when operating on fuels listed in Subsection (2)(c), is less than the emissions were before the installation of conversion equipment; and

(B) a reduction in emissions under Subsection (1)(b)(ii)(A) is demonstrated by:

(I) certification of the conversion equipment by the federal Environmental Protection Agency or by a state whose certification standards are recognized by the board; or

(II) any other test or standard recognized by the board.

(c) "Clean fuel grant" means a grant the taxpayer receives under Title [~~9~~] 63, Chapter [~~1~~] 34, Part [~~7~~] 2, Clean Fuels Conversion Program Act, for reimbursement of a portion of the incremental cost of the OEM vehicle or the cost of conversion equipment.

(d) "Conversion equipment" means equipment referred to in Subsection (2)(b) or (2)(c).

(e) "Incremental cost" has the same meaning as in Section 63-34-202.

(f) "OEM vehicle" has the same meaning as in Section 63-34-202.

(g) "Special mobile equipment":

(i) means any mobile equipment or vehicle not designed or used primarily for the transportation of persons or property; and

(ii) includes construction or maintenance equipment.

(2) For taxable years beginning on or after January 1, 2001, but beginning on or before December 31, 2005, a taxpayer may claim a tax credit against tax otherwise due under this chapter in an amount equal to:

(a) 50% of the incremental cost of an OEM vehicle registered in Utah minus the amount of any clean fuel grant received, up to a maximum tax credit of $3,000 per vehicle, if the vehicle:

(i) is fueled by propane, natural gas, or electricity;

(ii) is fueled by other fuel the board determines annually on or before July 1 to be at least as effective in reducing air pollution as fuels under Subsection (2)(a)(i); or

(iii) meets the clean-fuel vehicle standards in the federal Clean Air Act Amendments of 1990, 42 U.S.C. Sec. 7521 et seq.;

(b) 50% of the cost of equipment for conversion, if certified by the board, of a motor vehicle registered in Utah minus the amount of any clean fuel conversion grant received, up to a maximum tax credit of $2,500 per vehicle, if the motor vehicle:

(i) is to be fueled by propane, natural gas, or electricity;

(ii) is to be fueled by other fuel the board determines annually on or before July 1 to be at least as effective in reducing air pollution as fuels under Subsection (2)(b)(i); or

(iii) will meet the federal clean fuel vehicle standards in the federal Clean Air Act Amendments of 1990, 42 U.S.C. Sec. 7521 et seq.; and

(c) 50% of the cost of equipment for conversion, if certified by the board, of a special mobile equipment engine minus the amount of any clean fuel conversion grant received, up to a maximum tax credit of $1,000 per special mobile equipment engine, if the special mobile equipment is to be fueled by:

(i) propane, natural gas, or electricity; or

(ii) other fuel the board determines annually on or before July 1 to be:

(A) at least as effective in reducing air pollution as the fuels under Subsection (2)(c)(i); or

(B) substantially more effective in reducing air pollution than the fuel for which the engine was originally designed.

(3) An individual shall provide proof of the purchase of an item for which a tax credit is allowed under this section by:

(a) providing proof to the board in the form the board requires by rule;

(b) receiving a written statement from the board acknowledging receipt of the proof; and

(c) retaining the written statement described in Subsection (3)(b).

(4) Except as provided by Subsection (5), the tax credit under this section is allowed only:

(a) against any Utah tax owed in the taxable year by the taxpayer;

(b) in the taxable year in which the item is purchased for which the tax credit is claimed; and

(c) once per vehicle.

(5) If the amount of a tax credit claimed by a taxpayer under this section exceeds the taxpayer's tax liability under this chapter for a taxable year, the amount of the tax credit exceeding the tax liability may be carried forward for a period that does not exceed the next five taxable years.

Section 63. Section **59-12-1503** is amended to read:

59-12-1503. Opinion question election -- Imposition of tax -- Use of tax revenues -- Administration, collection, and enforcement of tax by commission -- Administrative fee -- Enactment or repeal of tax -- Annexation -- Notice.

(1) (a) Beginning on or after April 1, 2004, and subject to the other provisions of this part, the county legislative body of a qualifying county may impose a sales and use tax of .25%:

(i) except as provided in Subsection (1)(b), on the transactions:

(A) described in Subsection 59-12-103(1); and

(B) within the county, including the cities and towns within the county;

(ii) for the purposes determined by the county legislative body in accordance with

Subsection (2); and

(iii) in addition to any other sales and use tax authorized under this chapter.

(b) Notwithstanding Subsection (1)(a)(i), a county legislative body may not impose a tax under this section on:

(i) the sales and uses described in Section 59-12-104 to the extent the sales and uses are exempt from taxation under Section 59-12-104; and

(ii) any amount paid or charged by a vendor that collects a tax under Subsection 59-12-107(1)(b).

(2) (a) Subject to Subsection (2)(b), before obtaining the approval required by Subsection (3), a county legislative body shall adopt a resolution specifying the percentage of revenues the county will receive from the tax under this part that will be allocated to fund one or more of the following:

(i) a project or service relating to a fixed guideway system:

(A) for the portion of the project or service that is performed within the county; and

(B) if the fixed guideway system is owned and operated by a public transit district organized under Title 17A, Chapter 2, Part 10, Utah Public Transit District Act;

(ii) a project or service relating to a system for public transit:

(A) for the portion of the project or service that is performed within the county; and

(B) if the system for public transit is owned and operated by a public transit district organized under Title 17A, Chapter 2, Part 10, Utah Public Transit District Act; or

(iii) the following relating to a state highway within the county:

(A) a project beginning on or after the day on which a county legislative body imposes a tax under this part only within the county involving:

(I) new construction;

(II) a renovation;

(III) an improvement; or

(IV) an environmental study;

(B) debt service on a project described in Subsections (2)(a)(iii)(A)(I) through (IV); or

(C) bond issuance costs relating to a project described in Subsections (2)(a)(iii)(A)(I) through (IV).

(b) (i) A county legislative body shall in the resolution required by Subsection (2)(a) allocate as required by Subsection (2)(a) 100% of the revenues the county will receive from the tax under this part.

(ii) For purposes of this Subsection (2)(b), the revenues a county will receive from the tax under this part do not include amounts retained by the commission in accordance with Subsection (8).

(3) (a) Before imposing a tax under this part, a county legislative body shall:

(i) obtain approval from a majority of the members of the county legislative body to:

(A) impose the tax; and

(B) allocate the revenues the county will receive from the tax in accordance with the resolution adopted in accordance with Subsection (2); and

(ii) subject to Subsection (3)(b), submit an opinion question to the county's registered voters voting on the imposition of the tax so that each registered voter has the opportunity to express the registered voter's opinion on whether a tax should be imposed under this part.

(b) The opinion question required by Subsection (3)(a)(ii) shall state the allocations specified in the resolution:

(i) adopted in accordance with Subsection (2); and

(ii) approved by the county legislative body in accordance with Subsection (3)(a).

(c) The election required by this Subsection (3) shall be held:

(i) (A) at a regular general election; and

(B) in accordance with the procedures and requirements of Title 20A, Election Code, governing regular general elections; or

(ii) (A) at a special election called by the county legislative body;

(B) only on the date of a municipal general election provided in Subsection 20A-1-202(1); and

(C) in accordance with the procedures and requirements of Section [~~20A-a-203~~]

20A-1-203.

(4) (a) Subject to Subsection (8), if a county legislative body determines that a majority of the county's registered voters voting on the imposition of the tax have voted in favor of the imposition of the tax in accordance with Subsection (3), the county legislative body may impose the tax by a majority vote of all of the members of the county legislative body.

(b) If a county legislative body imposes a tax under Subsection (4)(a), the revenues generated by the tax shall be:

(i) allocated in accordance with the allocations specified in the resolution under Subsection (2); and

(ii) expended as provided in this part.

(5) If a county legislative body allocates revenues generated by the tax for a project described in Subsection (2)(a)(iii)(A), before beginning the project the county legislative body shall:

(a) obtain approval from the Transportation Commission to complete the project; and

(b) enter into an interlocal agreement:

(i) established in accordance with Title 11, Chapter 13, Interlocal Cooperation Act;

(ii) with the Department of Transportation; and

(iii) to complete the project.

(6) (a) If after a county legislative body imposes a tax under Subsection (4) the county legislative body seeks to change the allocation of the tax specified in the resolution under Subsection (2), the county legislative body may change the allocation of the tax by:

(i) adopting a resolution in accordance with Subsection (2) specifying the percentage of revenues the county will receive from the tax under this part that will be allocated to fund one or more of the systems or projects described in Subsection (2);

(ii) obtaining approval to change the allocation of the tax from a majority of the members of the county legislative body; and

(iii) (A) submitting an opinion question to the county's registered voters voting on changing the allocation of the tax so that each registered voter has the opportunity to express the

registered voter's opinion on whether the allocation of the tax should be changed; and

(B) obtaining approval to change the allocation of the tax from a majority of the county's registered voters voting on changing the allocation of the tax.

(b) (i) The opinion question required by Subsection (6)(a)(iii) shall state the allocations specified in the resolution:

(A) adopted in accordance with Subsection (6)(a)(i); and

(B) approved by the county legislative body in accordance with Subsection (6)(a)(ii).

(ii) The election required by Subsection (6)(a)(iii) shall follow the procedures and requirements of Title 11, Chapter 14, Utah Municipal Bond Act.

(7) (a) (i) Except as provided in Subsection (7)(a)(ii), revenues generated by a tax under this part that are allocated for a purpose described in Subsection (2)(a)(i) or (ii) shall be transmitted:

(A) by the commission;

(B) to the county;

(C) monthly; and

(D) by electronic funds transfer.

(ii) Notwithstanding Subsection (7)(a)(i), a county may request that the commission transfer the revenues described in Subsection (7)(a)(i):

(A) directly to a public transit district:

(I) organized under Title 17A, Chapter 2, Part 10, Utah Public Transit District Act; and

(II) designated by the county; and

(B) by providing written notice to the commission:

(I) requesting the revenues to be transferred directly to a public transit district as provided in Subsection (7)(a)(ii)(A); and

(II) designating the public transit district to which the revenues are requested to be transferred.

(b) Revenues generated by a tax under this part that are allocated for a purpose described in Subsection (2)(a)(iii) shall be:

(i) deposited into the State Highway Projects Within Counties Fund created by Section 72-2-121.1; and

(ii) expended as provided in Section 72-2-121.1.

(8) (a) The commission shall administer, collect, and enforce the tax under this part in accordance with the procedures outlined in:

(i) Part 1, Tax Collection, for the administration, collection, and enforcement of the state sales and use tax; and

(ii) Chapter 1, General Taxation Policies.

(b) (i) The commission may retain an amount of tax collected under this part of not to exceed the lesser of:

(A) 1.5%; or

(B) an amount equal to the cost to the commission of administering this part.

(ii) Any amount the commission retains under Subsection (8)(b)(i) shall be:

(A) placed in the Sales and Use Tax Administrative Fees Account; and

(B) used as provided in Subsection 59-12-206(2).

(9) (a) (i) If, on or after April 1, 2004, a county enacts or repeals a tax under this part, the enactment or repeal shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 75-day period beginning on the date the commission receives notice meeting the requirements of Subsection (9)(a)(ii) from the county.

(ii) The notice described in Subsection (9)(a)(i)(B) shall state:

(A) that the county will enact or repeal a tax under this part;

(B) the statutory authority for the tax described in Subsection (9)(a)(ii)(A);

(C) the effective date of the tax described in Subsection (9)(a)(ii)(A); and

(D) if the county enacts the tax described in Subsection (9)(a)(ii)(A), the rate of the tax.

(b) (i) If, for an annexation that occurs on or after April 1, 2004, the annexation will result in the enactment or repeal of a tax under this part for an annexing area, the enactment or repeal shall take effect:

(A) on the first day of a calendar quarter; and

(B) after a 75-day period beginning on the date the commission receives notice meeting the requirements of Subsection (9)(b)(ii) from the county that annexes the annexing area.

(ii) The notice described in Subsection (9)(b)(i)(B) shall state:

(A) that the annexation described in Subsection (9)(b)(i)(B) will result in an enactment or repeal of a tax under this part for the annexing area;

(B) the statutory authority for the tax described in Subsection (9)(b)(ii)(A);

(C) the effective date of the tax described in Subsection (9)(b)(ii)(A); and

(D) the rate of the tax described in Subsection (9)(b)(ii)(A).

Section 64. Section **61-1-4** is amended to read:

61-1-4. Licensing and notice filing procedure.

(1) (a) A broker-dealer, agent, investment adviser, or investment adviser representative must obtain an initial or renewal license by filing with the division or its designee an application together with a consent to service of process under Section 61-1-26.

(b) (i) The application shall contain the applicant's Social Security number and whatever information the division by rule requires concerning such matters as:

(A) the applicant's form and place of organization;

(B) the applicant's proposed method of doing business;

(C) the qualifications and business history of the applicant; in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser;

(D) any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and

(E) the applicant's financial condition and history.

(ii) An applicant's Social Security number is a private record under Subsection 63-2-302(1)[~~(g)~~](h).

(c) The division may, by rule or order, require an applicant for an initial license to publish

an announcement of the application in one or more specified newspapers published in this state.

(d) Licenses or notice filings of broker-dealers, agents, investment advisers, and investment adviser representatives shall expire on December 31 of each year.

(e) (i) If no denial order is in effect and no proceeding is pending under Section 61-1-6, a license becomes effective at noon of the 30th day after an application is filed.

(ii) The division may by rule or order specify an earlier effective date and may by order defer the effective date until noon of the 30th day after the filing of any amendment.

(iii) Licensing of a broker-dealer automatically constitutes licensing of only one partner, officer, director, or a person occupying a similar status or performing similar functions as a licensed agent of the broker-dealer.

(iv) Licensing of an investment adviser automatically constitutes licensing of only one partner, officer, director, or a person occupying a similar status or performing similar functions.

(2) Except with respect to federal covered advisers whose only clients are those described in Subsection 61-1-3(3)(b) or (c), a federal covered adviser shall file with the division, prior to acting as a federal covered adviser in this state, a notice filing consisting of such documents as have been filed with the Securities and Exchange Commission as the division by rule or order may require.

(3) (a) Any applicant for an initial or renewal license as a broker-dealer or agent shall pay a reasonable filing fee as determined under Section 61-1-18.4.

(b) Any applicant for an initial or renewal license as an investment adviser or investment adviser representative who is subject to licensing under this chapter shall pay a reasonable filing fee as determined under Section 61-1-18.4.

(c) Any person acting as a federal covered adviser in this state shall pay an initial and renewal notice filing fee as determined under Section 61-1-18.4.

(d) If the license or renewal is not granted or the application is withdrawn, the division shall retain the fee.

(4) A licensed broker-dealer or investment adviser may file an application for licensing of a successor for the unexpired portion of the year. There shall be no filing fee.

(5) The division may by rule or order require a minimum capital for licensed broker-dealers, subject to the limitations of Section 15 of the Securities Exchange Act of 1934, and establish minimum financial requirements for investment advisers, subject to the limitations of Section 222 of the Investment Advisers Act of 1940, which may include different requirements for those investment advisers who maintain custody of or have discretionary authority over client funds or securities and those investment advisers who do not.

(6) (a) The division may by rule or order require licensed broker-dealers and investment advisers who have custody of or discretionary authority over client funds or securities to post bonds in amounts as the division may prescribe, subject to the limitations of Section 15 of the Securities Exchange Act of 1934 for broker-dealers and Section 222 of the Investment Advisers Act of 1940 for investment advisers, and may determine their conditions.

(b) Any appropriate deposit of cash or securities may be accepted in lieu of any required bond.

(c) No bond may be required of any licensee whose net capital, or in the case of an investment adviser whose minimum financial requirements, which may be defined by rule, exceeds the amounts required by the division.

(d) Every bond shall provide for suit on the bond by any person who has a cause of action under Section 61-1-22 and, if the division by rule or order requires, by any person who has a cause of action not arising under this chapter.

(e) Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought before the expiration of four years after the act or transaction constituting the violation or the expiration of two years after the discovery by the plaintiff of the facts constituting the violation, whichever expires first.

Section 65. Section **61-2-6** is amended to read:

61-2-6. Licensing procedures and requirements.

(1) The Real Estate Commission shall determine the qualifications and requirements of applicants for a principal broker, associate broker, or sales agent license. The division, with the concurrence of the commission, shall require and pass upon proof necessary to determine the

honesty, integrity, truthfulness, reputation, and competency of each applicant for an initial license or for renewal of an existing license. The division, with the concurrence of the commission, shall require an applicant for a sales agent license to complete an approved educational program not to exceed 90 hours, and an applicant for an associate broker or principal broker license to complete an approved educational program not to exceed 120 hours. The hours required by this section mean 50 minutes of instruction in each 60 minutes; and the maximum number of program hours available to an individual is ten hours per day. The division, with the concurrence of the commission, shall require the applicant to pass an examination approved by the commission covering the fundamentals of the English language, arithmetic, bookkeeping, real estate principles and practices, the provisions of this chapter, the rules established by the Real Estate Commission, and any other aspect of Utah real estate license law considered appropriate. Three years' full-time experience as a real estate sales agent or its equivalent is required before any applicant may apply for, and secure a principal broker or associate broker license in this state. The commission shall establish by rule the criteria by which it will accept experience or special education in similar fields of business in lieu of the three years' experience.

(2) (a) The division, with the concurrence of the commission, may require an applicant to furnish a sworn statement setting forth evidence satisfactory to the division of the applicant's reputation and competency as set forth by rule.

(b) The division shall require an applicant to provide his Social Security number, which is a private record under Subsection 63-2-302(1)[~~(g)~~](h).

(3) A nonresident principal broker may be licensed in this state by conforming to all the provisions of this chapter except that of residency. A nonresident associate broker or sales agent may become licensed in this state by conforming to all the provisions of this chapter except that of residency and by being employed or engaged as an independent contractor by or on behalf of a nonresident or resident principal broker who is licensed in this state.

(4) An applicant who has had a real estate license revoked shall be relicensed as prescribed for an original application, but may not apply for a new license until at least five years after the revocation. In the case of an applicant for a new license as a principal broker or

associate broker, the applicant is not entitled to credit for experience gained prior to the revocation of license.

Section 66. Section **63-2-301** is amended to read:

63-2-301. Records that must be disclosed.

(1) The following records are public except to the extent they contain information expressly permitted to be treated confidentially under the provisions of Subsections 63-2-201(3)(b) and (6)(a):

(a) laws;

(b) names, gender, gross compensation, job titles, job descriptions, business addresses, business telephone numbers, number of hours worked per pay period, dates of employment, and relevant education, previous employment, and similar job qualifications of the governmental entity's former and present employees and officers excluding:

(i) undercover law enforcement personnel; and

(ii) investigative personnel if disclosure could reasonably be expected to impair the effectiveness of investigations or endanger any individual's safety;

(c) final opinions, including concurring and dissenting opinions, and orders that are made by a governmental entity in an administrative, adjudicative, or judicial proceeding except that if the proceedings were properly closed to the public, the opinion and order may be withheld to the extent that they contain information that is private, controlled, or protected;

(d) final interpretations of statutes or rules by a governmental entity unless classified as protected as provided in Subsections 63-2-304 (16), (17), and (18);

(e) information contained in or compiled from a transcript, minutes, or report of the open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open and Public Meetings, including the records of all votes of each member of the governmental entity;

(f) judicial records unless a court orders the records to be restricted under the rules of civil or criminal procedure or unless the records are private under this chapter;

(g) unless otherwise classified as private under Section 63-2-302.5, records or parts of records filed with or maintained by county recorders, clerks, treasurers, surveyors, zoning

commissions, the Division of Forestry, Fire and State Lands, the School and Institutional Trust Lands Administration, the Division of Oil, Gas and Mining, the Division of Water Rights, or other governmental entities that give public notice of:

(i) titles or encumbrances to real property;

(ii) restrictions on the use of real property;

(iii) the capacity of persons to take or convey title to real property; or

(iv) tax status for real and personal property;

(h) records of the Department of Commerce that evidence incorporations, mergers, name changes, and uniform commercial code filings;

(i) data on individuals that would otherwise be private under this chapter if the individual who is the subject of the record has given the governmental entity written permission to make the records available to the public;

(j) documentation of the compensation that a governmental entity pays to a contractor or private provider;

(k) summary data; and

(l) voter registration records, including an individual's voting history, except for those parts of the record that are classified as private in Subsection 63-2-302(1)[~~(h)~~](i).

(2) The following records are normally public, but to the extent that a record is expressly exempt from disclosure, access may be restricted under Subsection 63-2-201(3)(b), Section 63-2-302, 63-2-303, or 63-2-304:

(a) administrative staff manuals, instructions to staff, and statements of policy;

(b) records documenting a contractor's or private provider's compliance with the terms of a contract with a governmental entity;

(c) records documenting the services provided by a contractor or a private provider to the extent the records would be public if prepared by the governmental entity;

(d) contracts entered into by a governmental entity;

(e) any account, voucher, or contract that deals with the receipt or expenditure of funds by a governmental entity;

(f) records relating to government assistance or incentives publicly disclosed, contracted for, or given by a governmental entity, encouraging a person to expand or relocate a business in Utah, except as provided in Subsection 63-2-304 (35);

(g) chronological logs and initial contact reports;

(h) correspondence by and with a governmental entity in which the governmental entity determines or states an opinion upon the rights of the state, a political subdivision, the public, or any person;

(i) empirical data contained in drafts if:

(i) the empirical data is not reasonably available to the requester elsewhere in similar form; and

(ii) the governmental entity is given a reasonable opportunity to correct any errors or make nonsubstantive changes before release;

(j) drafts that are circulated to anyone other than:

(i) a governmental entity;

(ii) a political subdivision;

(iii) a federal agency if the governmental entity and the federal agency are jointly responsible for implementation of a program or project that has been legislatively approved;

(iv) a government-managed corporation; or

(v) a contractor or private provider;

(k) drafts that have never been finalized but were relied upon by the governmental entity in carrying out action or policy;

(l) original data in a computer program if the governmental entity chooses not to disclose the program;

(m) arrest warrants after issuance, except that, for good cause, a court may order restricted access to arrest warrants prior to service;

(n) search warrants after execution and filing of the return, except that a court, for good cause, may order restricted access to search warrants prior to trial;

(o) records that would disclose information relating to formal charges or disciplinary

actions against a past or present governmental entity employee if:

(i) the disciplinary action has been completed and all time periods for administrative appeal have expired; and

(ii) the charges on which the disciplinary action was based were sustained;

(p) records maintained by the Division of Forestry, Fire and State Lands, the School and Institutional Trust Lands Administration, or the Division of Oil, Gas and Mining that evidence mineral production on government lands;

(q) final audit reports;

(r) occupational and professional licenses;

(s) business licenses; and

(t) a notice of violation, a notice of agency action under Section 63-46b-3, or similar records used to initiate proceedings for discipline or sanctions against persons regulated by a governmental entity, but not including records that initiate employee discipline.

(3) The list of public records in this section is not exhaustive and should not be used to limit access to records.

Section 67. Section **63-2-302** is amended to read:

63-2-302. Private records.

(1) The following records are private:

(a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

(b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

(c) records of publicly funded libraries that when examined alone or with other records identify a patron;

(d) records received or generated for a Senate or House Ethics Committee concerning any alleged violation of the rules on legislative ethics, prior to the meeting, and after the meeting, if the ethics committee meeting was closed to the public;

(e) records received or generated for a Senate confirmation committee concerning

character, professional competence, or physical or mental health of an individual:

(i) if prior to the meeting, the chair of the committee determines release of the records:

(A) reasonably could be expected to interfere with the investigation undertaken by the committee; or

(B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing; and

(ii) after the meeting, if the meeting was closed to the public;

(f) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions;

(g) records or parts of records under Section 63-2-302.5 that a current or former employee identifies as private according to the requirements of that section;

(h) that part of a record indicating a person's Social Security number or federal employer identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202, 58-1-301, 61-1-4, or 61-2-6;

(i) that part of a voter registration record identifying a voter's driver license or identification card number, Social Security number, or last four digits of the Social Security number;

(j) a record that:

(i) contains information about an individual;

(ii) is voluntarily provided by the individual; and

(iii) goes into an electronic database that:

(A) is designated by and administered under the authority of the Chief Information Officer; and

(B) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency;

(k) information provided to the Commissioner of Insurance under Subsection

31A-23a-115(2)(a); and

(l) information obtained through a criminal background check under Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems.

(2) The following records are private if properly classified by a governmental entity:

(a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63-2-301(1)(b) or 63-2-301(2)(o), or private under Subsection (1)(b);

(b) records describing an individual's finances, except that the following are public:

(i) records described in Subsection 63-2-301(1);

(ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or

(iii) records that must be disclosed in accordance with another statute;

(c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;

(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy; and

(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it.

(3) (a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.

(b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63-2-303 when the records are sought:

(i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or

(ii) after a patient's death, in any legal or administrative proceeding in which any party

relies upon the condition as an element of the claim or defense.

(c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

Section 68. Section **63-34-13** is amended to read:

63-34-13. Private property ombudsman -- Powers -- Arbitration procedures.

(1) As used in this section:

(a) "Constitutional taking" or "taking" means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by:

(i) the Fifth or Fourteenth Amendment of the Constitution of the United States; or

(ii) Utah Constitution Article I, Section 22.

(b) "Takings law" means the provisions of the federal and state constitutions, the case law interpreting those provisions, and any relevant statutory provisions that require a governmental unit to compensate a private property owner for a constitutional taking.

(2) (a) There is created a private property ombudsman in the Department of Natural Resources.

(b) The executive director of the Department of Natural Resources shall hire a person with background or expertise in takings law to fill the position.

(c) The person hired to fill the position is an exempt employee.

(d) The executive director of the Department of Natural Resources may hire clerks, interns, or other personnel to assist the private property ombudsman.

(3) The private property ombudsman shall:

(a) develop and maintain expertise in and understanding of takings law;

(b) assist state agencies and local governments in developing the guidelines required by this chapter and, Chapter 90a, Constitutional Taking Issues;

(c) at the request of a state agency or local government, assist the state agency or local government in analyzing actions with potential takings implications;

(d) advise private property owners who have a legitimate potential or actual takings claim

against a state or local government entity;

(e) identify state or local government actions that have potential takings implications and, if appropriate, advise those state or local government entities about those implications;

(f) provide information to private citizens, civic groups, government entities, and other interested parties about takings law and their rights and responsibilities under it;

(g) if appropriate and requested to do so by the private property owner, mediate or conduct or arrange arbitration for disputes between private property owners and government entities that involve:

(i) takings issues law;

(ii) actions for eminent domain under Title 78, Chapter 34, Eminent Domain; or

(iii) disputes about relocation assistance under Title 57, Chapter 12, Utah Relocation Assistance Act; and

(h) if arbitration or mediation is requested by the private property owner under this section, Section 78-34-21, or 57-12-14, and arranged by the private property ombudsman, the government entity or condemning entity shall participate in the mediation or arbitration as if the matter were ordered to arbitration by a court.

(4) (a) (i) In conducting or arranging for arbitration, the private property ombudsman shall follow the procedures and requirements of Title 78, Chapter 31a, Utah Uniform Arbitration Act.

(ii) In applying [~~the~~] Title 78, Chapter 31a, Utah Uniform Arbitration Act, the arbitrator and parties shall treat the matter as if:

(A) it were ordered to arbitration by a court; and

(B) the private property ombudsman or other arbitrator chosen as provided for in this section was appointed as arbitrator by the court.

(iii) For the purpose of arbitrations conducted under this section, if the dispute to be arbitrated is not already the subject of legal action, the district court having jurisdiction over the county where the private property involved in the dispute is located shall act as the court referred to in Title 78, Chapter 31a, Utah Uniform Arbitration Act.

(iv) The award from an arbitration conducted under this chapter may not be vacated under the provisions of Subsection [~~78-31a-14(1)(e), Utah Arbitration Act,~~] 78-31a-124(1)(e) because of the lack of an arbitration agreement between the parties.

(b) The private property ombudsman shall issue a written statement declining to arbitrate or to appoint an arbitrator when, in the opinion of the private property ombudsman:

(i) the issues are not ripe for review;

(ii) assuming the alleged facts are true, no cause of action exists under United States or Utah law;

(iii) all issues raised are beyond the scope of the ombudsman's statutory duty to review; or

(iv) the arbitration is otherwise not appropriate.

(c) (i) The private property ombudsman shall appoint another person to arbitrate a dispute when:

(A) either party objects to the private property ombudsman serving as the arbitrator and agrees to pay for the services of another arbitrator;

(B) the private property ombudsman declines to arbitrate the dispute for a reason other than those stated in Subsection (4)(b) and one or both parties are willing to pay for the services of another arbitrator; or

(C) the private property ombudsman determines that it is appropriate to appoint another person to arbitrate the dispute with no charge to the parties for the services of the appointed arbitrator.

(ii) In appointing another person to arbitrate a dispute, the private property ombudsman shall appoint an arbitrator who is:

(A) agreeable to both parties; or

(B) agreeable to the party paying for the arbitrator and the private property ombudsman.

(iii) The private property ombudsman may, on the initiative of the private property ombudsman or upon agreement of both parties, appoint a panel of arbitrators to conduct the arbitration.

(iv) The Department of Natural Resources may provide an arbitrator per diem and

reimburse expenses incurred in the performance of the arbitrator's duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(d) In arbitrating a dispute, the arbitrator shall apply the relevant statutes, case law, regulations, and rules of Utah and the United States in conducting the arbitration and in determining the award.

(e) The property owner and government entity may agree in advance of arbitration that the arbitration shall be binding and that no de novo review may occur.

(f) Arbitration by or through the private property ombudsman is not necessary before bringing legal action to adjudicate any claim.

(g) The lack of arbitration by or through the private property ombudsman does not constitute, and may not be interpreted as constituting, a failure to exhaust available administrative remedies or as a bar to bringing legal action.

(h) Arbitration under this section is not subject to Chapter 46b, Administrative Procedures Act, or Title 78, Chapter 31b, Alternative Dispute Resolution Act.

(i) Within 30 days after the arbitrator issues the final award and except as provided in Subsection (4)(e), any party may submit the award or any issue upon which the award is based to the district court for de novo review.

(5) The filing with the private property ombudsman of a request for mediation or arbitration of a constitutional taking issue does not stay any county or municipal land use decision, including the decision of a board of adjustment.

(6) The private property ombudsman may not be compelled to testify in a civil action filed with regard to the subject matter of any review or arbitration by the ombudsman.

(7) (a) Except as provided in Subsection (7)(b), evidence of a review by the private property ombudsman and his opinions, writings, findings, and determinations are not admissible as evidence in an action subsequently brought in court and dealing with the same dispute.

(b) Subsection (7)(a) does not apply to:

(i) actions brought under authority of Title 78, Chapter 6, Small Claims Courts;

(ii) a judicial confirmation or review of the arbitration itself as authorized in Title 78,

Chapter 31a, Utah Uniform Arbitration Act; or

(iii) actions for de novo review of an arbitration award or issue brought under the authority of Subsection (4)(i).

(8) The private property ombudsman may not represent private property owners, state agencies, or local governments in court or in adjudicative proceedings under Chapter 46b, Administrative Procedures Act.

Section 69. Section **63-55-209** is amended to read:

63-55-209. Repeal dates, Title 9.

(1) Title 9, Chapter 1, Part 8, Commission on National and Community Service Act, is repealed July 1, 2004.

(2) Title 9, Chapter 2, Part 4, Enterprise Zone Act, is repealed July 1, 2008.

(3) (a) Title 9, Chapter 2, Part 16, Recycling Market Development Zone Act, is repealed July 1, 2010.

(b) Sections 59-7-610 and 59-10-108.7, regarding tax credits for certain persons in recycling market development zones, are repealed for taxable years beginning on or after January 1, 2011.

(c) Notwithstanding Subsection (3)(b), a person may not claim a tax credit under Section 59-7-610 or 59-10-108.7:

(i) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-108.7 if the machinery or equipment is purchased on or after July 1, 2010; or

(ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-108.7(1)(b), if the expenditure is made on or after July 1, 2010.

(d) Notwithstanding Subsections (3)(b) and (c), a person may carry forward a tax credit in accordance with Section 59-7-610 or 59-10-108.7 if:

(i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-108.7; and

(ii) (A) for the purchase price of machinery or equipment described in Section 59-7-610 or 59-10-108.7, the machinery or equipment is purchased on or before June 30, 2010; or

(B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-108.7(1)(b), the

expenditure is made on or before June 30, 2010.

(4) Title 9, Chapter 2, Part 19, Utah Venture Capital Enhancement Act, is repealed July 1, 2008.

(5) Title 9, Chapter 3, Part 3, Heber Valley Historic Railroad Authority, is repealed July 1, 2009.

(6) Title 9, Chapter 4, Part 9, Utah Housing Corporation Act, is repealed July 1, 2006.

[~~(7) Title 9, Chapter 13, Utah Technology and Small Business Finance Act, is repealed July 1, 2002.~~]

Section 70. Section **63-55-210** is amended to read:

63-55-210. Repeal dates, Title 10.

[~~Section 10-3-703.5 is repealed July 1, 2002.~~]

Section 71. Section **63-55-223** is amended to read:

63-55-223. Repeal dates, Title 23.

[~~Title 23, Chapter 26, Wildlife Heritage Act, is repealed December 31, 2003.~~]

Section 72. Section **63-55-241** is amended to read:

63-55-241. Repeal dates, Title 41.

The following provisions of Title 41 are repealed on the following dates:

(1) Title 41, Chapter 12a, Part [~~VIII~~] 8, Uninsured Motorist Identification Database Program, is repealed July 1, 2010.

(2) The HOV lane exception for clean fuel special group license plate vehicles in Subsection 41-6-53.5(5) is repealed December 31, 2005.

Section 73. Section **63-55-253** is amended to read:

63-55-253. Repeal dates, Title 53A.

The following provisions of Title 53A are repealed on the following dates:

[~~(1) Title 53A, Chapter 1a, Part 2, Strategic Planning for Public and Higher Education Committee is repealed July 1, 2002.~~]

[~~(2)~~] (1) Title 53A, Chapter 1a, Part 6, Public Education Job Enhancement Program is repealed July 1, 2005.

[~~(3)~~] (2) The State Instructional Materials Commission, created in Section 53A-14-101, is repealed July 1, 2011.

[~~(4)~~] (3) Title 53A, Chapter 20a, Public Education Revenue Bond Act, is repealed July 1, 2007.

Section 74. Section **63-55-263** is amended to read:

63-55-263. Repeal dates, Titles 63 and 63A.

(1) (a) Title 63, Chapter 25a, Part 1, Commission on Criminal and Juvenile Justice, is repealed July 1, 2004.

(b) Title 63, Chapter 25a, Part 3, Sentencing Commission, is repealed January 1, 2012.

(2) The Crime Victims' Reparations Board, created in Section 63-25a-404, is repealed July 1, 2007.

(3) The Resource Development Coordinating Committee, created in Section 63-38d-501, is repealed July 1, 2004.

(4) Title 63, Chapter 38c, State Appropriations and Tax Limitation Act, is repealed July 1, 2005.

(5) Title 63, Chapter 75, Families, Agencies, and Communities Together for Children and Youth At Risk Act, is repealed July 1, 2006.

(6) Title 63, Chapter 88, Navajo Trust Fund, is repealed July 1, 2005.

(7) Sections 63A-4-204 and 63A-4-205, authorizing the Risk Management Fund to provide coverage to nonstate entities, are repealed July 1, 2006.

[~~(8) Title 63A, Chapter 7, Utah Sports Authority Act, is repealed July 1, 2003.~~]

[~~(9)~~] (8) Title 63A, Chapter 10, State Olympic Coordination Act, is repealed July 1, 2004.

Section 75. Section **63-55-272** is amended to read:

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

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

Section 76. Section **63-55b-126** is amended to read:

63-55b-126. Repeal dates -- Title 26.

[~~(1) Section 26-4-7.1 is repealed April 1, 2002.~~]

[~~(2)~~] Title 26, Chapter 46, "Utah Health Care Workforce Financial Assistance Program," is repealed July 1, 2007.

Section 77. Section **63-55b-153** is amended to read:

63-55b-153. Repeal dates -- Titles 53, 53A, and 53B.

(1) Subsection 53-3-205(9)(a)(i)(D) is repealed July 1, 2007.

(2) Subsection 53-3-804(2)(g) is repealed July 1, 2007.

[~~(3) Title 53, Chapter 12, State Olympic Public Safety Command Act, is repealed July 1, 2003.~~]

[~~(4)~~] (3) Section 53A-1-403.5 is repealed July 1, 2007.

[~~(5)~~] (4) Section 53B-8-104.5 is repealed July 1, 2009.

Section 78. Section **63-55b-159** is amended to read:

63-55b-159. Repeal dates -- Title 59.

[~~(1) Section 59-7-604 is repealed January 1, 2002.~~]

[~~(2)~~] Section 59-9-101.3 is repealed January 1, 2005, and the Labor Commission may not impose an assessment under Section 59-9-101.3 after December 31, 2004.

Section 79. Section **63-55b-163** is amended to read:

63-55b-163. Repeal dates, Title 63.

(1) Section 63-38a-105 is repealed July 1, 2007.

(2) Section 63-56-35.9 is repealed July 1, 2005.

(3) Sections 63-63b-101 and 63-63b-102 are repealed on July 1, 2007.

[~~(4) Title 63, Chapter 95, Parts 2 and 3 are repealed July 1, 2004.~~]

Section 80. Section **63-55b-167** is amended to read:

63-55b-167. Repeal dates -- Title 67.

[~~Section 67-1-13 is repealed November 30, 2000.~~]

Section 81. Section **63-55b-176** is amended to read:

63-55b-176. Repeal dates -- Title 76.

[~~Section 76-10-531 is repealed April 1, 2002.~~]

Section 82. Section **63A-3-205** is amended to read:

63A-3-205. Revolving loan funds -- Standards and procedures -- Annual report.

(1) As used in this section, "revolving loan fund" means:

(a) the Water Resources Conservation and Development Fund, created in Section 73-10-24;

(b) the Water Resources Construction Fund, created in Section 73-10-8;

(c) the Water Resources Cities Water Loan Fund, created in Section 73-10-22;

(d) the Clean Fuel Conversion Funds, created in Title [~~9~~] 63, Chapter [~~1~~] 34, Part [~~7~~] 2, Clean Fuels Conversion Program;

(e) the Water Development Security Account and its subaccounts created in Section 73-10c-5;

(f) the Agriculture Resource Development Fund, created in Section 4-18-6;

(g) the Utah Rural Rehabilitation Fund, created in Section 4-19-4;

(h) the Permanent Community Impact Fund, created in Section 9-4-303;

(i) the Petroleum Storage Tank Loan Fund, created in Section 19-6-405.3;

(j) the Uintah Basin Revitalization Fund, created in Section 9-10-102; and

(k) the Navajo Revitalization Fund, created in Section 9-11-104.

(2) The division shall for each revolving loan fund:

(a) make rules establishing standards and procedures governing:

(i) payment schedules and due dates;

(ii) interest rate effective dates;

(iii) loan documentation requirements; and

(iv) interest rate calculation requirements;

(b) make an annual report to the Legislature containing:

(i) the total dollars loaned by that fund during the last fiscal year;

(ii) a listing of each loan currently more than 90 days delinquent, in default, or that was restructured during the last fiscal year;

(iii) a description of each project that received money from that revolving loan fund;

(iv) the amount of each loan made to that project;

(v) the specific purpose for which the proceeds of the loan were to be used, if any;

(vi) any restrictions on the use of the loan proceeds;

(vii) the present value of each loan at the end of the fiscal year calculated using the interest rate paid by the state on the bonds providing the revenue on which the loan is based or, if that is unknown, on the average interest rate paid by the state on general obligation bonds issued during the most recent fiscal year in which bonds were sold; and

(viii) the financial position of each revolving loan fund, including the fund's cash investments, cash forecasts, and equity position.

Section 83. Section **63E-1-102** is amended to read:

63E-1-102. Definitions.

As used in this title:

(1) "Authorizing statute" means the statute creating an entity as an independent entity.

(2) "Committee" means the Retirement and Independent Entities Committee created in Section 63E-1-201.

(3) "Independent corporation" means a corporation incorporated in accordance with Chapter 2, Independent Corporations Act.

(4) (a) "Independent entity" means an entity having a public purpose relating to the state or its citizens that is individually created by the state or is given by the state the right to exist and conduct its affairs as an:

(i) independent state agency; or

(ii) independent corporation.

(b) "Independent entity" includes the:

(i) Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;

[~~(ii) Utah Technology Finance Corporation created in Title 9, Chapter 13, Utah Technology and Small Business Finance Act;~~]

[~~(iii)~~] (ii) Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber

Valley Historic Railroad Authority;

[~~(iv)~~] (iii) Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah Science Center Authority;

[~~(v)~~] (iv) Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing Corporation Act;

[~~(vi)~~] (v) Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State Fair Corporation Act;

[~~(vii)~~] (vi) Workers' Compensation Fund created in Title 31A, Chapter 33, Workers' Compensation Fund;

[~~(viii)~~] (vii) Utah State Retirement Office created in Title 49, Chapter 11, Utah State Retirement Systems Administration;

[~~(ix)~~] (viii) School and Institutional Trust Lands Administration created in Title 53C, Chapter 1, Part 2, School and Institutional Trust Lands Administration;

[~~(x)~~] (ix) Utah Communications Agency Network created in Title 63C, Chapter 7, Utah Communications Agency Network Act; and

[~~(xi)~~] (x) Utah Capital Investment Corporation created in Title 9, Chapter 2, Part 19, Utah Venture Capital Enhancement Act.

(c) Notwithstanding this Subsection (4), "independent entity" does not include:

(i) the Public Service Commission of Utah created in Section 54-1-1;

(ii) an institution within the state system of higher education;

(iii) a city, county, or town;

(iv) a local school district;

(v) a special district created under the authority of Title 17A, Special Districts; or

(vi) a local district created under the authority of Title 17B, Limited Purpose Local Government Entities.

(5) "Independent state agency" means an entity that is created by the state, but is independent of the governor's direct supervisory control.

(6) "Monies held in trust" means monies maintained for the benefit of:

(a) one or more private individuals, including public employees;

(b) one or more public or private entities; or

(c) the owners of a quasi-public corporation.

(7) "Public corporation" means an artificial person, public in ownership, individually created by the state as a body politic and corporate for the administration of a public purpose relating to the state or its citizens.

(8) "Quasi-public corporation" means an artificial person, private in ownership, individually created as a corporation by the state which has accepted from the state the grant of a franchise or contract involving the performance of a public purpose relating to the state or its citizens.

Section 84. Section **64-13-6** is amended to read:

64-13-6. Department duties.

(1) The department shall:

(a) protect the public through institutional care and confinement, and supervision in the community of offenders where appropriate;

(b) implement court-ordered punishment of offenders;

(c) provide program opportunities for offenders;

(d) provide treatment for sex offenders who are found to be treatable based upon criteria developed by the department;

(e) provide the results of ongoing assessment of sex offenders and objective diagnostic testing to sentencing and release authorities;

(f) manage programs that take into account the needs and interests of victims, where reasonable;

(g) supervise probationers and parolees as directed by statute and implemented by the courts and the Board of Pardons and Parole;

(h) subject to Subsection (2), investigate criminal conduct involving offenders incarcerated in a state correctional facility;

(i) cooperate and exchange information with other state, local, and federal law

enforcement agencies to achieve greater success in prevention and detection of crime and apprehension of criminals; and

(j) implement the provisions of Section 77-28c-102, Interstate Compact for Adult Offender Supervision.

(2) (a) By following the procedures in Subsection (2)(b), the department may investigate the following occurrences at state correctional facilities:

(i) criminal conduct of departmental employees;

(ii) felony crimes resulting in serious bodily injury;

(iii) death of any person; or

(iv) aggravated kidnaping.

(b) Prior to investigating any occurrence specified in Subsection (2)(a), the department shall:

(i) notify the sheriff or other appropriate law enforcement agency promptly after ascertaining facts sufficient to believe an occurrence specified in Subsection (2)(a) has occurred; and

(ii) obtain consent of the sheriff or other appropriate law enforcement agency to conduct an investigation involving an occurrence specified in Subsection (2)(a).

(3) Upon request, the department shall provide copies of investigative reports of criminal conduct to the sheriff or other appropriate law enforcement agencies.

(4) [~~In accordance with Section 63-55-264, the~~] The department shall provide data to the Commission on Criminal and Juvenile Justice to show the criteria for determining sex offender treatability, the implementation and effectiveness of sex offender treatment, and the results of ongoing assessment and objective diagnostic testing. The Commission on Criminal and Juvenile Justice will then report these data to the Judiciary Interim Committee and to the appropriate appropriations subcommittee annually.

(5) The Department of Corrections shall collect accounts receivable ordered by the district court as a result of prosecution for a criminal offense according to the requirements and during the time periods established in Subsection 77-18-1(9).

Section 85. Section **70C-6-101** is amended to read:

70C-6-101. Scope -- Relation to credit insurance -- Applicability to parties.

(1) Except as provided in Subsection (2), this chapter applies to insurance provided or to be provided in connection with any consumer credit transaction subject to this title.

(2) The provision on cancellation by a creditor under Section 70C-6-304 applies to extensions of credit, the primary purpose of which is the financing of insurance. No other provision of this chapter applies to insurance so financed.

(3) Except as provided elsewhere under this title, this chapter supplements and does not supersede Title 31A, Chapter 22, Part [~~VIII~~] 8, Credit Life and Accident and Health Insurance. The provisions of this title concerning administrative controls, liabilities, and penalties do not apply to persons acting as insurers, and the similar provisions of the Credit Insurance Act do not apply to creditors and debtors.

Section 86. Section **70C-6-203** is amended to read:

70C-6-203. Filing and approval of rates and forms.

(1) A creditor may use a form or a schedule of premium rates or charges concerning consumer credit insurance only if the form or schedule has been on file with the Insurance Department for at least 30 days and has not been disapproved by the Insurance Department or has been specifically approved by the Insurance Department at any time after filing.

(2) Except as provided in Subsection (3), all policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders relating to consumer credit insurance delivered or issued for delivery in this state, and the schedules of premium rates or charges pertaining to them, shall be filed by the insurer with the Insurance Department. Within 30 days after the filing of any form or schedule, the Insurance Department shall disapprove it if the premium rates or charges are unreasonable in relation to the benefits provided under the form, or if the form contains provisions which are unjust, unfair, inequitable, or deceptive, or encourages misrepresentation, or are contrary to any provisions of this title, or Title 31A, Chapter 22, Part [~~VIII~~] 8, Credit Life and Accident and Health Insurance, or of any rule adopted under that act or this title.

(3) If a group policy has been delivered in another state, the forms to be filed by the insurer with the Insurance Department are the group certificates and notices of proposed insurance. The Insurance Department shall approve those certificates and notices if:

(a) they provide the information that would be required if the group policy were delivered in this state; and

(b) the applicable premium rates or charges do not exceed those established by the Insurance Department's rules.

Section 87. Section **73-18c-307** is amended to read:

73-18c-307. Claims adjustment by persons with owner's or operator's security other than insurance.

(1) An owner or operator of a personal watercraft who maintains owner's or operator's security by a means other than an insurance policy under Section 73-18c-102, shall refer all bodily injury claims against the owner's or operator's security to an independent adjuster licensed under Title 31A, Chapter 26, Insurance Adjusters, or to an attorney.

(2) Unless otherwise provided by contract, any personal watercraft claim adjustment expense incurred by a person maintaining owner's or operator's security by a means other than an insurance policy under Section 73-18c-102, shall be paid by the person who maintains this type of owner's or operator's security.

(3) Owners and operators of personal watercraft maintaining owner's or operator's security by a means other than an insurance policy under Section 73-18c-102 are subject to the claim adjustment provisions of Title 31A, Chapter 26, Part [~~III, Claims~~] 3, Claim Practices, in connection with claims against persons which arise out of the ownership, maintenance, or use of a personal watercraft.

Section 88. Section **75-7-309** is amended to read:

75-7-309. Limitations on presentation of claims.

(1) All claims against a deceased settlor which arose before the death of the deceased settlor, including claims of the state and any subdivision of it, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis,

if not barred earlier by other statute of limitations, are barred against the deceased settlor's estate, the trustee, the trust estate, and the beneficiaries of the deceased settlor's trust, unless presented within the earlier of the following:

(a) one year after the settlor's death; or

(b) the time provided by Subsection [~~75-3-308~~] 75-7-308(2) for creditors who are given actual notice, and where notice is published, within the time provided in Subsection [~~75-3-308~~] 75-7-308(1) for all claims barred by publication.

(2) In all events, claims barred by the nonclaim statute at the deceased settlor's domicile are also barred in this state.

(3) All claims against a deceased settlor's estate or trust estate which arise at or after the death of the settlor, including claims of the state and any of its subdivisions, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis are barred against the deceased settlor's estate, the trustee, the trust estate, and the beneficiaries of the deceased settlor, unless presented as follows:

(a) a claim based on a contract with the trustee within three months after performance by the trustee is due; or

(b) any other claim within the later of three months after it arises, or the time specified in Subsection (1).

(4) Nothing in this section affects or prevents:

(a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the deceased settlor's estate or the trust estate;

(b) to the limits of the insurance protection only, any proceeding to establish liability of the deceased settlor or the trustee for which he is protected by liability insurance; or

(c) collection of compensation for services rendered and reimbursement for expenses advanced by the trustee or by the attorney or accountant for the trustee of the trust estate.

Section 89. Section **76-7-301** is amended to read:

76-7-301. Definitions.

As used in this part:

(1) "Abortion" means the intentional termination or attempted termination of human pregnancy after implantation of a fertilized ovum, and includes all procedures undertaken to kill a live unborn child and includes all procedures undertaken to produce a miscarriage. "Abortion" does not include removal of a dead unborn child.

(2) "Medical emergency" means that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death, or for which a delay will create serious risk of substantial and irreversible impairment of major bodily function.

(3) "Physician" means a medical doctor licensed to practice medicine and surgery under [~~the~~] Title 58, Chapter 67, Utah Medical Practice Act, a physician in the employment of the government of the United States who is similarly qualified, or an osteopathic physician licensed to practice medicine under [~~the~~] Title 58, Chapter 68, Utah Osteopathic [~~Medicine Licensing~~] Medical Practice Act.

(4) "Hospital" means a general hospital licensed by the Department of Health according to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and includes a clinic or other medical facility to the extent that such clinic or other medical facility provides equipment and personnel sufficient in quantity and quality to provide the same degree of safety to the pregnant woman and the unborn child as would be provided for the particular medical procedures undertaken by a general hospital licensed by the Department of Health. It shall be the responsibility of the Department of Health to determine if such clinic or other medical facility so qualifies and to so certify.

Section 90. Section **76-7-302** is amended to read:

76-7-302. Circumstances under which abortion authorized.

(1) An abortion may be performed in this state only by a physician licensed to practice medicine under [~~the~~] Title 58, Chapter 67, Utah Medical Practice Act or an osteopathic physician licensed to practice medicine under [~~the~~] Title 58, Chapter 68, Utah Osteopathic [~~Medicine Licensing~~] Medical Practice Act and, if performed 90 days or more after the commencement of the pregnancy as defined by competent medical practices, it shall be performed in a hospital.

(2) An abortion may be performed in this state only under the following circumstances:

(a) in the professional judgment of the pregnant woman's attending physician, the abortion is necessary to save the pregnant woman's life;

(b) the pregnancy is the result of rape or rape of a child, as defined by Sections 76-5-402 and 76-5-402.1, that was reported to a law enforcement agency prior to the abortion;

(c) the pregnancy is the result of incest, as defined by Subsection 76-5-406(10) or Section 76-7-102, and the incident was reported to a law enforcement agency prior to the abortion;

(d) in the professional judgment of the pregnant woman's attending physician, to prevent grave damage to the pregnant woman's medical health; or

(e) in the professional judgment of the pregnant woman's attending physician, to prevent the birth of a child that would be born with grave defects.

(3) After 20 weeks gestational age, measured from the date of conception, an abortion may be performed only for those purposes and circumstances described in Subsections (2)(a), (d), and (e).

(4) The name of a victim reported pursuant to Subsection (2)(b) or (c) is confidential and may not be revealed by law enforcement or any other party except upon approval of the victim. This subsection does not effect or supersede parental notification requirements otherwise provided by law.

Section 91. Section **77-13-6** is amended to read:

77-13-6. Withdrawal of plea.

(1) A plea of not guilty may be withdrawn at any time prior to conviction.

(2) (a) A plea of guilty or no contest may be withdrawn only upon leave of the court and a showing that it was not knowingly and voluntarily made.

(b) A request to withdraw a plea of guilty or no contest, except for a plea held in abeyance, shall be made by motion before sentence is announced. Sentence may not be announced unless the motion is denied. For a plea held in abeyance, a motion to withdraw the plea shall be made within 30 days of pleading guilty or no contest.

(c) Any challenge to a guilty plea not made within the time period specified in Subsection

(2)[~~(c)~~](b) shall be pursued under Title 78, Chapter 35a, Post-Conviction Remedies Act, and Rule 65C, Utah Rules of Civil Procedure.

Section 92. Section **77-32-401.5** is amended to read:

77-32-401.5. Interim board -- Members -- Administrative support -- Duties.

(1) Until the Indigent Defense Funds Board authorized by Section 77-32-401 is constituted after achieving the number of participating counties required by Sections 77-32-604 and 77-32-704, an interim board may be created within the Division of Finance composed of the following three members:

(a) a county commissioner from a county participating in the Indigent Inmate Trust Fund pursuant to Section 77-32-502 appointed by the Utah Association of Counties;

(b) a county attorney from a county participating in the Indigent Inmate Trust Fund pursuant to Section 77-32-502 appointed by the Utah Association of Counties; and

(c) a representative appointed by the Administrative Office of the Courts.

(2) The Division of Finance shall provide administrative support to the interim board.

(3) (a) Members shall serve until the Indigent Defense Funds Board is constituted.

(b) When a vacancy occurs in the membership for any reason, a replacement shall be appointed for the remaining unexpired term in the same manner as the original appointment.

(4) (a) Compensation for members shall be the same as provided in Subsection 77-32-401(6).

(b) Per diem and expenses for board members shall be paid from the Indigent Inmate Trust Fund in Section 77-32-502.

(5) Until the Indigent Defense Funds Board is constituted, the interim board shall be authorized to carry out any responsibility provided to the Indigent Defense Funds Board in statute as it relates to Chapter [~~77~~] 32, Part 5, Indigent Inmates.

(6) The action by two members present shall constitute the action of the board.

Section 93. Section **78-3a-503 (Superseded 07/01/04)** is amended to read:

78-3a-503 (Superseded 07/01/04). Citation procedure -- Citation -- Offenses -- Time limits -- Failure to appear.

(1) As used in this section, "citation" means an abbreviated referral and is sufficient to invoke the jurisdiction of the court in lieu of a petition.

(2) A citation shall be submitted to the court within five days of its issuance.

(3) Each copy of the citation shall contain:

(a) the name and address of the juvenile court before which the minor is to appear;

(b) the name of the minor cited;

(c) the statute or local ordinance that is alleged to have been violated;

(d) a brief description of the offense charged;

(e) the date, time, and location at which the offense is alleged to have occurred;

(f) the date the citation was issued;

(g) the name and badge or identification number of the peace officer or public official who issued the citation;

(h) the name of the arresting person if an arrest was made by a private party and the citation was issued in lieu of taking the arrested minor into custody as provided in Section 78-3a-113;

(i) the date and time when the minor is to appear, or a statement that the minor and parent or legal guardian are to appear when notified by the juvenile court; and

(j) the signature of the minor and the parent or legal guardian, if present, agreeing to appear at the juvenile court as designated on the citation.

(4) Each copy of the citation shall contain space for the following information to be entered if known:

(a) the minor's address;

(b) the minor's date of birth;

(c) the name and address of the minor's custodial parent or legal guardian, if different from the minor; and

(d) if there is a victim, the victim's name, address, and an estimate of loss, except that this information shall be removed from the documents the minor receives.

(5) A citation received by the court beyond the time designated in Subsection (2) shall

include a written explanation for the delay.

(6) The following offenses may be sent to the juvenile court as a citation:

(a) violations of fish and game laws;

(b) violations of boating laws;

(c) violations of curfew laws;

(d) any class B misdemeanor or less traffic violations where the person is under the age of 16;

(e) any class B or class C misdemeanor or infraction;

(f) any other infraction or misdemeanor as designated by general order of the Board of Juvenile Court Judges; and

(g) violations of Section 76-10-105 subject to the jurisdiction of the Juvenile Court.

(7) A preliminary inquiry is not required unless requested by the court.

(8) The provisions of Subsection (5) may not apply to a runaway, ungovernable, or habitually truant minor.

(9) In the case of Section 76-10-105 violations committed on school property when a citation is issued under this section, the peace officer, public official, or compliance officer shall issue one copy to the minor cited, provide the parent or legal guardian with a copy, and file a duplicate with the juvenile court specified in the citation within five days.

(10) (a) A minor receiving a citation described in this section shall appear at the juvenile court designated in the citation on the time and date specified in the citation or when notified by the juvenile court.

(b) A citation may not require a minor to appear sooner than five days following its issuance.

(11) A minor who receives a citation and willfully fails to appear before the juvenile court pursuant to a citation is subject to arrest and may be found in contempt of court. The court may proceed against the minor as provided in Section 78-3a-901 regardless of the disposition of the offense upon which the minor was originally cited.

(12) When a citation is issued under this section, bail may be posted and forfeited under

Subsection 78-3a-114[~~(10)~~](12) with the consent of the court and parent or legal guardian of the minor cited.

Section 94. Section **78-11-22** is amended to read:

78-11-22. Good Samaritan Act.

(1) A person who renders emergency care at or near the scene of, or during an emergency, gratuitously and in good faith, is not liable for any civil damages or penalties as a result of any act or omission by the person rendering the emergency care, unless the person is grossly negligent or caused the emergency. As used in this section, "emergency" means an unexpected occurrence involving injury, threat of injury, or illness to a person or the public, including motor vehicle accidents, disasters, actual or threatened discharges, removal, or disposal of hazardous materials, and other accidents or events of a similar nature. "Emergency care" includes actual assistance or advice offered to avoid, mitigate, or attempt to mitigate the effects of an emergency.

(2) A person who gratuitously, and in good faith, assists governmental agencies or political subdivisions in the activities described in Subsections (2)(a) through (c) is not liable for any civil damages or penalties as a result of any act or omission unless the person rendering assistance is grossly negligent in:

(a) [~~implementation of~~] implementing measures to control the causes of epidemic and communicable diseases and other conditions significantly affecting the public health, or necessary to protect the public health as set out in Title 26A, Chapter 1, Local Health Departments;

(b) investigating and controlling suspected bioterrorism and disease as set out in Title 26, Chapter 23b, Detection of Public Health Emergencies Act; and

(c) responding to a national, state, or local emergency, a public health emergency as defined in Section 26-23b-102, or a declaration by the President of the United States or other federal official requesting public health-related activities.

(3) The immunity in Subsection (2) is in addition to any immunity or protection in state or federal law that may apply.

Section 95. Section **78-31b-6** is amended to read:

78-31b-6. Minimum procedures for arbitration.

(1) An award in an arbitration proceeding shall be in writing and, at the discretion of the arbitrator or panel of arbitrators, may state the reasons or otherwise explain the nature or amount of the award.

(2) The award shall be final and enforceable as any other judgment in a civil action, unless:

(a) within 30 days after the filing of the award with the clerk of the court any party files with the clerk of court a demand for a trial de novo upon which the case shall be returned to the trial calendar; or

(b) any party files with the arbitrator or panel of arbitrators and serves a copy on all other parties a written request to modify the award on the grounds:

(i) there is an evident miscalculation of figures or description of persons or property referred to in the award;

(ii) the award does not dispose of all the issues presented to the arbitrator or panel of arbitrators for resolution; or

(iii) the award purports to resolve issues not submitted for resolution in the arbitration process.

(c) The period for filing a demand for trial de novo is tolled until the arbitrator or panel of arbitrators have acted on the request to modify the award, which must be completed within 30 days of the filing.

(3) The parties to an arbitration procedure may stipulate that:

(a) an award need not be filed with the court, except in those cases where the rights of third parties may be affected by the provisions of the award; and

(b) the case is dismissed in which the award was made.

(4) (a) At any time the parties may enter into a written agreement for referral of the case or of issues in the case to arbitration pursuant to Title 78, Chapter 31a, Utah Uniform Arbitration Act, or the Federal Arbitration Act, 9 U.S.C. Sec. 1 et seq., as the parties shall specify.

(b) The court may dismiss the case, or if less than all the issues are referred to arbitration,

stay the case for a reasonable period for the parties to complete a private arbitration proceeding.

Section 96. Section **78-31b-8** is amended to read:

78-31b-8. Confidentiality.

(1) ADR proceedings shall be conducted in a manner that encourages informal and confidential exchange among the persons present to facilitate resolution of the dispute or a part of the dispute. ADR proceedings shall be closed unless the parties agree that the proceedings be open. ADR proceedings shall not be recorded.

(2) No evidence concerning the fact, conduct, or result of an ADR proceeding may be subject to discovery or admissible at any subsequent trial of the same case or same issues between the same parties.

(3) No party to the case may introduce as evidence information obtained during an ADR proceeding unless the information was discovered from a source independent of the ADR proceeding.

(4) Unless all parties and the neutral agree, no person attending an ADR proceeding, including the ADR provider or ADR organization, may disclose or be required to disclose any information obtained in the course of an ADR proceeding, including any memoranda, notes, records, or work product.

(5) Except as provided, an ADR provider or ADR organization may not disclose or discuss any information about any ADR proceeding to anyone outside the proceeding, including the judge or judges to whom the case may be assigned. An ADR provider or an ADR organization may communicate information about an ADR proceeding with the director for the purposes of training, program management, or program evaluation and when consulting with a peer. In making those communications, the ADR provider or ADR organization shall render anonymous all identifying information.

(6) Nothing in this section limits or affects the responsibility to report child abuse or neglect in accordance with Section 62A-4a-403.

(7) No records of ADR proceedings under this act or under Title 78, Chapter 31a, Utah Uniform Arbitration Act, shall be subject to Title 63, Chapter 2, Government Records Access and

Management Act, except settlement agreements filed with the court after conclusion of an ADR proceeding or awards filed with the court after the period for filing a demand for trial de novo has expired.

Section 97. **Repealer.**

This bill repeals:

Section **59-1-212, Taxation studies -- Tax Commission duties.**