

GOVERNMENTAL IMMUNITY ACT OF UTAH

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Leonard M. Blackham

LONG TITLE

General Description:

This bill enacts a new governmental immunity act.

Highlighted Provisions:

This bill:

- ▶ defines the scope of liability and immunity of Utah's state and local governments and their employees;
- ▶ defines terms;
- ▶ establishes immunity from suit for injuries that result from the exercise of a government function;
- ▶ waives government immunity from suit for certain specific governmental functions and provides exceptions to certain of those waivers;
- ▶ establishes procedures for making claims against a government entity or employee when an alleged injury has occurred;
- ▶ establishes jurisdiction and venue requirements for actions against government entities and employees;
- ▶ defines certain procedures and requirements for legal actions brought under this chapter;
- ▶ establishes a process for submitting claims for payment to a government entity and authorizes certain options that government entities may use to pay claims;
- ▶ authorizes government entities to self-insure or purchase liability insurance for potential claims against the entity and establishes procedures and requirements for



- 28 implementing those options;
- 29 ▶ establishes limits on judgments against government entities or employees;
- 30 ▶ addresses legal representation and settlement authority for claims against executive,
- 31 legislative, and judicial entities and employees;
- 32 ▶ establishes a process for defending employees generally when claims are asserted
- 33 against them and defines the scope of that representation; and
- 34 ▶ makes technical corrections.

35 Monies Appropriated in this Bill:

36 None

37 Other Special Clauses:

38 This bill provides a transition clause.

39 This bill takes effect on July 1, 2004.

40 This bill provides a coordination clause enacting Section 63-30d-203, if S.B. 9 passes

41 and certain conditions are met.

42 This bill provides a coordination clause amending Section 63-30d-401, if H.B. 111

43 passes.

44 Utah Code Sections Affected:

45 AMENDS:

46 **7-2-9**, as last amended by Chapter 177, Laws of Utah 1990

47 **17-50-401**, as enacted by Chapter 133, Laws of Utah 2000

48 **17A-2-1830**, as enacted by Chapter 216, Laws of Utah 1995

49 **31A-1-301**, as last amended by Chapters 131 and 298, Laws of Utah 2003

50 **31A-2-306**, as last amended by Chapter 161, Laws of Utah 1987

51 **31A-12-107**, as last amended by Chapter 71, Laws of Utah 2002

52 **31A-22-305**, as last amended by Chapters 76 and 218, Laws of Utah 2003

53 **63-30a-3**, as last amended by Chapter 30, Laws of Utah 1987

54 **63-56-59**, as last amended by Chapter 178, Laws of Utah 2002

55 **76-6-513**, as last amended by Chapter 291, Laws of Utah 1995

56 **78-3a-113 (Superseded 07/01/04)**, as renumbered and amended by Chapter 365, Laws

57 of Utah 1997

58 **78-3a-113 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah 2003

59 **78-3a-114 (Superseded 07/01/04)**, as renumbered and amended by Chapter 365, Laws
60 of Utah 1997

61 **78-3a-114 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah 2003

62 **78-3a-118 (Superseded 07/01/04)**, as last amended by Chapters 68, 176, 195 and 278,
63 Laws of Utah 2003

64 **78-3a-118 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah 2003

65 **78-17-3**, as enacted by Chapter 143, Laws of Utah 1986

66 **78-19-1**, as enacted by Chapter 4, Laws of Utah 1990

67 ENACTS:

68 **63-30d-101**, Utah Code Annotated 1953

69 **63-30d-102**, Utah Code Annotated 1953

70 **63-30d-201**, Utah Code Annotated 1953

71 **63-30d-202**, Utah Code Annotated 1953

72 **63-30d-301**, Utah Code Annotated 1953

73 **63-30d-302**, Utah Code Annotated 1953

74 **63-30d-401**, Utah Code Annotated 1953

75 **63-30d-402**, Utah Code Annotated 1953

76 **63-30d-403**, Utah Code Annotated 1953

77 **63-30d-501**, Utah Code Annotated 1953

78 **63-30d-502**, Utah Code Annotated 1953

79 **63-30d-601**, Utah Code Annotated 1953

80 **63-30d-602**, Utah Code Annotated 1953

81 **63-30d-603**, Utah Code Annotated 1953

82 **63-30d-604**, Utah Code Annotated 1953

83 **63-30d-701**, Utah Code Annotated 1953

84 **63-30d-702**, Utah Code Annotated 1953

85 **63-30d-703**, Utah Code Annotated 1953

86 **63-30d-704**, Utah Code Annotated 1953

87 **63-30d-801**, Utah Code Annotated 1953

88 **63-30d-802**, Utah Code Annotated 1953

89 **63-30d-803**, Utah Code Annotated 1953

- 90 **63-30d-804**, Utah Code Annotated 1953
- 91 **63-30d-805**, Utah Code Annotated 1953
- 92 **63-30d-901**, Utah Code Annotated 1953
- 93 **63-30d-902**, Utah Code Annotated 1953
- 94 **63-30d-903**, Utah Code Annotated 1953
- 95 **63-30d-904**, Utah Code Annotated 1953

96 REPEALS:

- 97 **63-30-1**, as enacted by Chapter 139, Laws of Utah 1965
- 98 **63-30-2**, as last amended by Chapter 224, Laws of Utah 2000
- 99 **63-30-3**, as last amended by Chapter 3, Laws of Utah 2003
- 100 **63-30-4**, as last amended by Chapter 206, Laws of Utah 2002
- 101 **63-30-5**, as last amended by Chapter 251, Laws of Utah 1991
- 102 **63-30-6**, as enacted by Chapter 139, Laws of Utah 1965
- 103 **63-30-7**, as amended by Statewide Initiative B, Nov. 7, 2000, Laws of Utah 2000
- 104 **63-30-8**, as last amended by Chapter 76, Laws of Utah 1991
- 105 **63-30-9**, as last amended by Chapter 76, Laws of Utah 1991
- 106 **63-30-10**, as last amended by Chapter 185, Laws of Utah 2001
- 107 **63-30-10.5**, as last amended by Chapter 76, Laws of Utah 1991
- 108 **63-30-10.6**, as last amended by Chapter 280, Laws of Utah 1992
- 109 **63-30-11**, as last amended by Chapter 157, Laws of Utah 2000
- 110 **63-30-12**, as last amended by Chapter 164, Laws of Utah 1998
- 111 **63-30-13**, as last amended by Chapter 164, Laws of Utah 1998
- 112 **63-30-14**, as enacted by Chapter 139, Laws of Utah 1965
- 113 **63-30-15**, as last amended by Chapter 75, Laws of Utah 1987
- 114 **63-30-16**, as last amended by Chapter 166, Laws of Utah 1999
- 115 **63-30-17**, as last amended by Chapter 129, Laws of Utah 1983
- 116 **63-30-18**, as last amended by Chapter 313, Laws of Utah 1995
- 117 **63-30-19**, as enacted by Chapter 139, Laws of Utah 1965
- 118 **63-30-20**, as enacted by Chapter 139, Laws of Utah 1965
- 119 **63-30-22**, as last amended by Chapter 67, Laws of Utah 1991
- 120 **63-30-23**, as last amended by Chapter 75, Laws of Utah 1987

- 121 **63-30-24**, as enacted by Chapter 139, Laws of Utah 1965
- 122 **63-30-25**, as enacted by Chapter 139, Laws of Utah 1965
- 123 **63-30-26**, as last amended by Chapter 129, Laws of Utah 1983
- 124 **63-30-27**, as last amended by Chapter 3, Laws of Utah 1988
- 125 **63-30-28**, as last amended by Chapter 203, Laws of Utah 1991
- 126 **63-30-29.5**, as last amended by Chapter 242, Laws of Utah 1985
- 127 **63-30-31**, as last amended by Chapter 129, Laws of Utah 1983
- 128 **63-30-32**, as last amended by Chapter 129, Laws of Utah 1983
- 129 **63-30-33**, as last amended by Chapter 76, Laws of Utah 1991
- 130 **63-30-34**, as last amended by Chapter 157, Laws of Utah 2000
- 131 **63-30-35**, as last amended by Chapter 97, Laws of Utah 1990
- 132 **63-30-36**, as last amended by Chapter 206, Laws of Utah 2002
- 133 **63-30-37**, as last amended by Chapter 30, Laws of Utah 1987
- 134 **63-30-38**, as enacted by Chapter 131, Laws of Utah 1983
- 135 **78-60-101**, as enacted by Chapter 180, Laws of Utah 2003
- 136 **78-60-102**, as enacted by Chapter 180, Laws of Utah 2003
- 137 **78-60-103**, as enacted by Chapter 180, Laws of Utah 2003

138 **Uncodified Material Affected:**

139 ENACTS UNCODIFIED MATERIAL

140

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

142 Section 1. Section **7-2-9** is amended to read:

143 **7-2-9. Conservatorship, receivership, or liquidation of institution -- Appointment**
144 **of receiver -- Review of actions.**

145 (1) Upon taking possession of the institution, the commissioner may appoint a receiver
146 to perform the duties of the commissioner. Subject to any limitations, conditions, or
147 requirements specified by the commissioner and approved by the court, a receiver shall have all
148 the powers and duties of the commissioner under this chapter and the laws of this state to act as
149 a conservator, receiver, or liquidator of the institution. Actions of the commissioner in
150 appointing a receiver shall be subject to review only as provided in Section 7-2-2.

151 (2) (a) If the deposits of the institution are to any extent insured by a federal deposit

152 insurance agency, the commissioner may appoint that agency as receiver. After receiving
153 notice in writing of the acceptance of the appointment, the commissioner shall file a certificate
154 of appointment in his office and with the clerk of the district court. After the filing of the
155 certificate, the possession of all assets, business, and property of the institution is considered
156 transferred from the institution and the commissioner to the agency, and title to all assets,
157 business, and property of the institution is vested in the agency without the execution of any
158 instruments of conveyance, assignment, transfer, or endorsement.

159 (b) If a federal deposit insurance agency accepts an appointment as receiver, it has all
160 the powers and privileges provided by the laws of this state and the United States with respect
161 to the conservatorship, receivership, or liquidation of an institution and the rights of its
162 depositors, and other creditors, including authority to make an agreement for the purchase of
163 assets and assumption of deposit and other liabilities by another depository institution or take
164 other action authorized by Title 12 of the United States Code to maintain the stability of the
165 banking system. Such action by a federal deposit insurance agency may be taken upon
166 approval by the court, with or without prior notice. Such actions or agreements may be
167 disapproved, amended, or rescinded only upon a finding by the court that the decisions or
168 actions of the receiver are arbitrary, capricious, fraudulent, or contrary to law. In the event of
169 any conflict between state and federal law, including provisions for adjudicating claims against
170 the institution or receiver, the receiver shall comply with the federal law and any resulting
171 violation of state law shall not by itself constitute grounds for the court to disapprove the
172 actions of the receiver or impose any penalty for such violation.

173 (c) The commissioner or any receiver appointed by him shall possess all the rights and
174 claims of the institution against any person whose breach of fiduciary duty or violations of the
175 laws of this state or the United States applicable to depository institutions may have caused or
176 contributed to a condition which resulted in any loss incurred by the institution or to its assets
177 in the possession of the commissioner or receiver. As used in this Subsection (2)(c), fiduciary
178 duty includes those duties and standards applicable under statutes and laws of this state and the
179 United States to a director, officer, or other party employed by or rendering professional
180 services to a depository institution whose deposits are insured by a federal deposit insurance
181 agency. Upon taking possession of an institution, no person other than the commissioner or
182 receiver shall have standing to assert any such right or claim of the institution, including its

183 depositors, creditors, or shareholders unless the right or claim has been abandoned by the
184 commissioner or receiver with approval of the court. Any judgment based on the rights and
185 claims of the commissioner or receiver shall have priority in payment from the assets of the
186 judgment debtors.

187 (d) For the purposes of this section, the term "federal deposit insurance agency" shall
188 include the Federal Deposit Insurance Corporation, the National Credit Union Administration
189 and any departments thereof or successors thereto, and any other federal agency authorized by
190 federal law to act as a conservator, receiver, and liquidator of a federally insured depository
191 institution, including the Resolution Trust Corporation and any department thereof or successor
192 thereto.

193 (3) The receiver may employ assistants, agents, accountants, and legal counsel. If the
194 receiver is not a federal deposit insurance agency, the compensation to be paid such assistants,
195 agents, accountants, and legal counsel shall be approved by the commissioner. All expenses
196 incident to the receivership shall be paid out of the assets of the institution. If a receiver is not
197 a federal deposit insurance agency, the receiver and any assistants and agents shall provide
198 bond or other security specified by the commissioner and approved by the court for the faithful
199 discharge of all duties and responsibilities in connection with the receivership including the
200 accounting for money received and paid. The cost of the bond shall be paid from the assets of
201 the institution. Suit may be maintained on the bond by the commissioner or by any person
202 injured by a breach of the condition of the bond.

203 (4) (a) Upon the appointment of a receiver for an institution in possession pursuant to
204 this chapter, the commissioner and the department are exempt from liability or damages for any
205 act or omission of any receiver appointed pursuant to this section.

206 (b) This section does not limit the right of the commissioner to prescribe and enforce
207 rules regulating a receiver in carrying out its duties with respect to an institution subject to the
208 jurisdiction of the department.

209 (c) Any act or omission of the commissioner or of any federal deposit insurance agency
210 as a receiver appointed by him while acting pursuant to this chapter shall be deemed to be the
211 exercise of a discretionary function within the meaning of Section [~~63-30-10~~] 63-30d-301 of
212 the laws of this state or Section 28 U.S.C. 2680(a) of the laws of the United States.

213 (5) Actions, decisions, or agreements of a receiver under this chapter, other than

214 allowance or disallowance of claims under Section 7-2-6, shall be subject to judicial review
215 only as follows:

216 (a) A petition for review shall be filed with the court having jurisdiction under Section
217 7-2-2 not more than 90 days after the date the act, decision, or agreement became effective or
218 its terms are filed with the court.

219 (b) The petition shall state in simple, concise, and direct terms the facts and principles
220 of law upon which the petitioner claims the act, decision, or agreement of the receiver was or
221 would be arbitrary, capricious, fraudulent, or contrary to law and how the petitioner is or may
222 be damaged thereby. The court shall dismiss any petition which fails to allege that the
223 petitioner would be directly injured or damaged by the act, decision, or agreement which is the
224 subject of the petition. Rule 11 of the Utah Rules of Civil Procedure shall apply to all parties
225 with respect to the allegations set forth in a petition or response.

226 (c) The receiver shall have 30 days after service of the petition within which to
227 respond.

228 (d) All further proceedings are to be conducted in accordance with the Utah Rules of
229 Civil Procedure.

230 (6) All notices required under this section shall be made in accordance with the Utah
231 Rules of Civil Procedure and served upon the attorney general of the state of Utah, the
232 commissioner of financial institutions, the receiver of the institution appointed under this
233 chapter, and upon the designated representative of any party in interest who requests in writing
234 such notice.

235 Section 2. Section **17-50-401** is amended to read:

236 **17-50-401. Review of claims by county executive -- Auditor review -- Attorney**
237 **review -- Claim requirements -- Approval or disapproval of claim.**

238 (1) Subject to Subsection (3), each county executive shall review each claim against
239 the county and disapprove or, if payment appears to the county executive to be just, lawful, and
240 properly due and owing, approve the claim.

241 (2) Upon receiving a notice of claim under Section [~~63-30-11~~] 63-30d-401, the county
242 clerk shall deliver the notice of claim to the county executive.

243 (3) (a) The county executive shall forward all claims regarding liability to the county
244 attorney, or, in a county that has a district attorney but not a county attorney, to the district

245 attorney for the attorney's review and recommendation to the county executive regarding
246 liability and payment.

247 (b) Except as provided in Section 17-50-405, the county executive shall forward all
248 claims requesting payment for goods or services to the county auditor for the auditor's review
249 and recommendation to the county executive.

250 (4) Each claim for goods or services against a county shall:

251 (a) itemize the claim, giving applicable names, dates, and particular goods provided or
252 services rendered;

253 (b) if the claim is for service of process, state the character of process served, upon
254 whom served, the number of days engaged, and the number of miles traveled;

255 (c) be duly substantiated as to its correctness and as to the fact that it is justly due;

256 (d) if the claim is for materials furnished, state to whom the materials were furnished,
257 by whom ordered, and the quantity and price agreed upon; and

258 (e) be presented to the county executive within a year after the last item of the account
259 or credit accrued.

260 (5) If the county executive refuses to hear or consider a claim because it is not properly
261 made out, the county executive shall cause notice of the refusal to be given to the claimant or
262 the claimant's agent and shall allow a reasonable amount of time for the claim to be properly
263 itemized and substantiated.

264 (6) Nothing in this section may be construed to modify the requirements of Section
265 ~~[63-30-11]~~ 63-30d-401.

266 Section 3. Section **17A-2-1830** is amended to read:

267 **17A-2-1830. Limitation of liability.**

268 (1) The members of the board of trustees, or any person acting in behalf of the board,
269 while acting within the scope of their authority, are not subject to any personal liability
270 resulting from carrying out any of the powers of this part.

271 (2) The provisions of Section ~~[63-30-36]~~ 63-30d-902 shall apply to members of the
272 board of trustees, officers, employees, authorized volunteers, and agents of the regional service
273 area in connection with any claims, demands, suits, actions, or proceedings that may be made
274 or brought against any of them arising out of any determination made or actions taken or
275 omitted to be taken in compliance with any obligations under the terms of this part.

276 (3) The regional service area or any member of the board of trustees, officer, employee,
277 authorized volunteer, or its agent is not liable to any person, for personal injury or property
278 damage or otherwise, arising from the operation of facilities for sports competitions by any
279 person or organization other than the regional service area. Nothing contained in this
280 Subsection (3) shall relieve the regional service area or any person from liability or
281 responsibility for its or their own contracts, conduct, or omissions.

282 Section 4. Section **31A-1-301** is amended to read:

283 **31A-1-301. Definitions.**

284 As used in this title, unless otherwise specified:

285 (1) (a) "Accident and health insurance" means insurance to provide protection against
286 economic losses resulting from:

287 (i) a medical condition including:

288 (A) medical care expenses; or

289 (B) the risk of disability;

290 (ii) accident; or

291 (iii) sickness.

292 (b) "Accident and health insurance":

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

294 (A) an income replacement contract;

295 (B) a health care contract;

296 (C) an expense reimbursement contract;

297 (D) a credit accident and health contract;

298 (E) a continuing care contract; and

299 (F) long-term care contracts; and

300 (ii) may provide:

301 (A) hospital coverage;

302 (B) surgical coverage;

303 (C) medical coverage; or

304 (D) loss of income coverage.

305 (c) "Accident and health insurance" does not include workers' compensation insurance.

306 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title

307 63, Chapter 46a, Utah Administrative Rulemaking Act.

308 (3) "Administrator" is defined in Subsection (149).

309 (4) "Adult" means a natural person who has attained the age of at least 18 years.

310 (5) "Affiliate" means any person who controls, is controlled by, or is under common
311 control with, another person. A corporation is an affiliate of another corporation, regardless of
312 ownership, if substantially the same group of natural persons manages the corporations.

313 (6) "Agency" means:

314 (a) a person other than an individual, including a sole proprietorship by which a natural
315 person does business under an assumed name; and

316 (b) an insurance organization licensed or required to be licensed under Section
317 31A-23a-301.

318 (7) "Alien insurer" means an insurer domiciled outside the United States.

319 (8) "Amendment" means an endorsement to an insurance policy or certificate.

320 (9) "Annuity" means an agreement to make periodical payments for a period certain or
321 over the lifetime of one or more natural persons if the making or continuance of all or some of
322 the series of the payments, or the amount of the payment, is dependent upon the continuance of
323 human life.

324 (10) "Application" means a document:

325 (a) completed by an applicant to provide information about the risk to be insured; and

326 (b) that contains information that is used by the insurer to:

327 (i) evaluate risk; and

328 (ii) decide whether to:

329 (A) insure the risk under:

330 (I) the coverages as originally offered; or

331 (II) a modification of the coverage as originally offered; or

332 (B) decline to insure the risk.

333 (11) "Articles" or "articles of incorporation" means the original articles, special laws,
334 charters, amendments, restated articles, articles of merger or consolidation, trust instruments,
335 and other constitutive documents for trusts and other entities that are not corporations, and
336 amendments to any of these.

337 (12) "Bail bond insurance" means a guarantee that a person will attend court when

338 required, or will obey the orders or judgment of the court, as a condition to the release of that
339 person from confinement.

340 (13) "Binder" is defined in Section 31A-21-102.

341 (14) "Board," "board of trustees," or "board of directors" means the group of persons
342 with responsibility over, or management of, a corporation, however designated.

343 (15) "Business entity" means a corporation, association, partnership, limited liability
344 company, limited liability partnership, or other legal entity.

345 (16) "Business of insurance" is defined in Subsection (80).

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

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

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

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

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

355 (19) "Captive insurance company" means:

356 (a) an insurance company:

357 (i) owned by another organization; and

358 (ii) whose exclusive purpose is to insure risks of the parent organization and affiliated
359 companies; or

360 (b) in the case of groups and associations, an insurance organization:

361 (i) owned by the insureds; and

362 (ii) whose exclusive purpose is to insure risks of:

363 (A) member organizations;

364 (B) group members; and

365 (C) affiliates of:

366 (I) member organizations; or

367 (II) group members.

368 (20) "Casualty insurance" means liability insurance as defined in Subsection (90).

- 369 (21) "Certificate" means evidence of insurance given to:
370 (a) an insured under a group insurance policy; or
371 (b) a third party.
- 372 (22) "Certificate of authority" is included within the term "license."
373 (23) "Claim," unless the context otherwise requires, means a request or demand on an
374 insurer for payment of benefits according to the terms of an insurance policy.
- 375 (24) "Claims-made coverage" means an insurance contract or provision limiting
376 coverage under a policy insuring against legal liability to claims that are first made against the
377 insured while the policy is in force.
- 378 (25) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance
379 commissioner.
- 380 (b) When appropriate, the terms listed in Subsection (25)(a) apply to the equivalent
381 supervisory official of another jurisdiction.
- 382 (26) (a) "Continuing care insurance" means insurance that:
383 (i) provides board and lodging;
384 (ii) provides one or more of the following services:
385 (A) personal services;
386 (B) nursing services;
387 (C) medical services; or
388 (D) other health-related services; and
389 (iii) provides the coverage described in Subsection (26)(a)(i) under an agreement
390 effective:
391 (A) for the life of the insured; or
392 (B) for a period in excess of one year.
- 393 (b) Insurance is continuing care insurance regardless of whether or not the board and
394 lodging are provided at the same location as the services described in Subsection (26)(a)(ii).
- 395 (27) (a) "Control," "controlling," "controlled," or "under common control" means the
396 direct or indirect possession of the power to direct or cause the direction of the management
397 and policies of a person. This control may be:
398 (i) by contract;
399 (ii) by common management;

400 (iii) through the ownership of voting securities; or
401 (iv) by a means other than those described in Subsections (27)(a)(i) through (iii).
402 (b) There is no presumption that an individual holding an official position with another
403 person controls that person solely by reason of the position.
404 (c) A person having a contract or arrangement giving control is considered to have
405 control despite the illegality or invalidity of the contract or arrangement.
406 (d) There is a rebuttable presumption of control in a person who directly or indirectly
407 owns, controls, holds with the power to vote, or holds proxies to vote 10% or more of the
408 voting securities of another person.
409 (28) "Controlled insurer" means a licensed insurer that is either directly or indirectly
410 controlled by a producer.
411 (29) "Controlling person" means any person, firm, association, or corporation that
412 directly or indirectly has the power to direct or cause to be directed, the management, control,
413 or activities of a reinsurance intermediary.
414 (30) "Controlling producer" means a producer who directly or indirectly controls an
415 insurer.
416 (31) (a) "Corporation" means insurance corporation, except when referring to:
417 (i) a corporation doing business as an insurance producer, limited line producer,
418 consultant, managing general agent, reinsurance intermediary, third party administrator, or
419 adjuster under:
420 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
421 Reinsurance Intermediaries;
422 (B) Chapter 25, Third Party Administrators; and
423 (C) Chapter 26, Insurance Adjusters; or
424 (ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance
425 Holding Companies.
426 (b) "Stock corporation" means stock insurance corporation.
427 (c) "Mutual" or "mutual corporation" means a mutual insurance corporation.
428 (32) "Credit accident and health insurance" means insurance on a debtor to provide
429 indemnity for payments coming due on a specific loan or other credit transaction while the
430 debtor is disabled.

431 (33) (a) "Credit insurance" means insurance offered in connection with an extension of
432 credit that is limited to partially or wholly extinguishing that credit obligation.

433 (b) "Credit insurance" includes:

- 434 (i) credit accident and health insurance;
- 435 (ii) credit life insurance;
- 436 (iii) credit property insurance;
- 437 (iv) credit unemployment insurance;
- 438 (v) guaranteed automobile protection insurance;
- 439 (vi) involuntary unemployment insurance;
- 440 (vii) mortgage accident and health insurance;
- 441 (viii) mortgage guaranty insurance; and
- 442 (ix) mortgage life insurance.

443 (34) "Credit life insurance" means insurance on the life of a debtor in connection with
444 an extension of credit that pays a person if the debtor dies.

445 (35) "Credit property insurance" means insurance:

- 446 (a) offered in connection with an extension of credit; and
- 447 (b) that protects the property until the debt is paid.

448 (36) "Credit unemployment insurance" means insurance:

- 449 (a) offered in connection with an extension of credit; and
- 450 (b) that provides indemnity if the debtor is unemployed for payments coming due on a:
 - 451 (i) specific loan; or
 - 452 (ii) credit transaction.

453 (37) "Creditable coverage" is as defined in 45 C.F.R. 146.113(a).

454 (38) "Creditor" means a person, including an insured, having any claim, whether:

- 455 (a) matured;
- 456 (b) unmatured;
- 457 (c) liquidated;
- 458 (d) unliquidated;
- 459 (e) secured;
- 460 (f) unsecured;
- 461 (g) absolute;

462 (h) fixed; or

463 (i) contingent.

464 (39) (a) "Customer service representative" means a person that provides insurance
465 services and insurance product information:

466 (i) for the customer service representative's producer or consultant employer; and

467 (ii) to the customer service representative's employer's customer, client, or
468 organization.

469 (b) A customer service representative may only operate within the scope of authority of
470 the customer service representative's producer or consultant employer.

471 (40) "Deadline" means the final date or time:

472 (a) imposed by:

473 (i) statute;

474 (ii) rule; or

475 (iii) order; and

476 (b) by which a required filing or payment must be received by the department.

477 (41) "Deemer clause" means a provision under this title under which upon the
478 occurrence of a condition precedent, the commissioner is deemed to have taken a specific
479 action. If the statute so provides, the condition precedent may be the commissioner's failure to
480 take a specific action.

481 (42) "Degree of relationship" means the number of steps between two persons
482 determined by counting the generations separating one person from a common ancestor and
483 then counting the generations to the other person.

484 (43) "Department" means the Insurance Department.

485 (44) "Director" means a member of the board of directors of a corporation.

486 (45) "Disability" means a physiological or psychological condition that partially or
487 totally limits an individual's ability to:

488 (a) perform the duties of:

489 (i) that individual's occupation; or

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

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

- 493 (i) eating;
- 494 (ii) toileting;
- 495 (iii) transferring;
- 496 (iv) bathing; or
- 497 (v) dressing.
- 498 (46) "Disability income insurance" is defined in Subsection (71).
- 499 (47) "Domestic insurer" means an insurer organized under the laws of this state.
- 500 (48) "Domiciliary state" means the state in which an insurer:
- 501 (a) is incorporated;
- 502 (b) is organized; or
- 503 (c) in the case of an alien insurer, enters into the United States.
- 504 (49) (a) "Eligible employee" means:
- 505 (i) an employee who:
- 506 (A) works on a full-time basis; and
- 507 (B) has a normal work week of 30 or more hours; or
- 508 (ii) a person described in Subsection (49)(b).
- 509 (b) "Eligible employee" includes, if the individual is included under a health benefit
- 510 plan of a small employer:
- 511 (i) a sole proprietor;
- 512 (ii) a partner in a partnership; or
- 513 (iii) an independent contractor.
- 514 (c) "Eligible employee" does not include, unless eligible under Subsection (49)(b):
- 515 (i) an individual who works on a temporary or substitute basis for a small employer;
- 516 (ii) an employer's spouse; or
- 517 (iii) a dependent of an employer.
- 518 (50) "Employee" means any individual employed by an employer.
- 519 (51) "Employee benefits" means one or more benefits or services provided to:
- 520 (a) employees; or
- 521 (b) dependents of employees.
- 522 (52) (a) "Employee welfare fund" means a fund:
- 523 (i) established or maintained, whether directly or through trustees, by:

524 (A) one or more employers;
525 (B) one or more labor organizations; or
526 (C) a combination of employers and labor organizations; and
527 (ii) that provides employee benefits paid or contracted to be paid, other than income
528 from investments of the fund, by or on behalf of an employer doing business in this state or for
529 the benefit of any person employed in this state.

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

532 (53) "Endorsement" means a written agreement attached to a policy or certificate to
533 modify one or more of the provisions of the policy or certificate.

534 (54) (a) "Escrow" means:

535 (i) a real estate settlement or real estate closing conducted by a third party pursuant to
536 the requirements of a written agreement between the parties in a real estate transaction; or

537 (ii) a settlement or closing involving:

538 (A) a mobile home;

539 (B) a grazing right;

540 (C) a water right; or

541 (D) other personal property authorized by the commissioner.

542 (b) "Escrow" includes the act of conducting a:

543 (i) real estate settlement; or

544 (ii) real estate closing.

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

547 (56) "Expense reimbursement insurance" means insurance:

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

550 (b) written:

551 (i) as a daily limit for a specific number of days in a hospital; and

552 (ii) to have a one or two day waiting period following a hospitalization.

553 (57) "Fidelity insurance" means insurance guaranteeing the fidelity of persons holding
554 positions of public or private trust.

555 (58) (a) "Filed" means that a filing is:

556 (i) submitted to the department as required by and in accordance with any applicable
557 statute, rule, or filing order;

558 (ii) received by the department within the time period provided in the applicable
559 statute, rule, or filing order; and

560 (iii) accompanied by the appropriate fee in accordance with:

561 (A) Section 31A-3-103; or

562 (B) rule.

563 (b) "Filed" does not include a filing that is rejected by the department because it is not
564 submitted in accordance with Subsection (58)(a).

565 (59) "Filing," when used as a noun, means an item required to be filed with the
566 department including:

567 (a) a policy;

568 (b) a rate;

569 (c) a form;

570 (d) a document;

571 (e) a plan;

572 (f) a manual;

573 (g) an application;

574 (h) a report;

575 (i) a certificate;

576 (j) an endorsement;

577 (k) an actuarial certification;

578 (l) a licensee annual statement;

579 (m) a licensee renewal application; or

580 (n) an advertisement.

581 (60) "First party insurance" means an insurance policy or contract in which the insurer
582 agrees to pay claims submitted to it by the insured for the insured's losses.

583 (61) "Foreign insurer" means an insurer domiciled outside of this state, including an
584 alien insurer.

585 (62) (a) "Form" means one of the following prepared for general use:

586 (i) a policy;
587 (ii) a certificate;
588 (iii) an application; or
589 (iv) an outline of coverage.
590 (b) "Form" does not include a document specially prepared for use in an individual
591 case.

592 (63) "Franchise insurance" means individual insurance policies provided through a
593 mass marketing arrangement involving a defined class of persons related in some way other
594 than through the purchase of insurance.

595 (64) "General lines of authority" include:

- 596 (a) the general lines of insurance in Subsection (65);
- 597 (b) title insurance under one of the following sublines of authority:
 - 598 (i) search, including authority to act as a title marketing representative;
 - 599 (ii) escrow, including authority to act as a title marketing representative;
 - 600 (iii) search and escrow, including authority to act as a title marketing representative;

601 and

- 602 (iv) title marketing representative only;
- 603 (c) surplus lines;
- 604 (d) workers' compensation; and
- 605 (e) any other line of insurance that the commissioner considers necessary to recognize
606 in the public interest.

607 (65) "General lines of insurance" include:

- 608 (a) accident and health;
- 609 (b) casualty;
- 610 (c) life;
- 611 (d) personal lines;
- 612 (e) property; and
- 613 (f) variable contracts, including variable life and annuity.

614 (66) "Group health plan" means an employee welfare benefit plan to the extent that the
615 plan provides medical care:

- 616 (a) (i) to employees; or

- 617 (ii) to a dependent of an employee; and
- 618 (b) (i) directly;
- 619 (ii) through insurance reimbursement; or
- 620 (iii) through any other method.

621 (67) "Guaranteed automobile protection insurance" means insurance offered in
622 connection with an extension of credit that pays the difference in amount between the
623 insurance settlement and the balance of the loan if the insured automobile is a total loss.

624 (68) "Health benefit plan" means a policy or certificate for health care insurance,
625 except that health benefit plan does not include coverage:

- 626 (a) solely for:
 - 627 (i) accident;
 - 628 (ii) dental;
 - 629 (iii) vision;
 - 630 (iv) Medicare supplement;
 - 631 (v) long-term care; or
 - 632 (vi) income replacement; or
- 633 (b) that is:
 - 634 (i) offered and marketed as supplemental health insurance;
 - 635 (ii) not offered or marketed as a substitute for:
 - 636 (A) hospital or medical expense insurance; or
 - 637 (B) major medical expense insurance; and
 - 638 (iii) solely for:
 - 639 (A) a specified disease;
 - 640 (B) hospital confinement indemnity; or
 - 641 (C) limited benefit plan.

642 (69) "Health care" means any of the following intended for use in the diagnosis,
643 treatment, mitigation, or prevention of a human ailment or impairment:

- 644 (a) professional services;
- 645 (b) personal services;
- 646 (c) facilities;
- 647 (d) equipment;

- 648 (e) devices;
- 649 (f) supplies; or
- 650 (g) medicine.
- 651 (70) (a) "Health care insurance" or "health insurance" means insurance providing:
- 652 (i) health care benefits; or
- 653 (ii) payment of incurred health care expenses.
- 654 (b) "Health care insurance" or "health insurance" does not include accident and health
- 655 insurance providing benefits for:
- 656 (i) replacement of income;
- 657 (ii) short-term accident;
- 658 (iii) fixed indemnity;
- 659 (iv) credit accident and health;
- 660 (v) supplements to liability;
- 661 (vi) workers' compensation;
- 662 (vii) automobile medical payment;
- 663 (viii) no-fault automobile;
- 664 (ix) equivalent self-insurance; or
- 665 (x) any type of accident and health insurance coverage that is a part of or attached to
- 666 another type of policy.
- 667 (71) "Income replacement insurance" or "disability income insurance" means insurance
- 668 written to provide payments to replace income lost from accident or sickness.
- 669 (72) "Indemnity" means the payment of an amount to offset all or part of an insured
- 670 loss.
- 671 (73) "Independent adjuster" means an insurance adjuster required to be licensed under
- 672 Section 31A-26-201 who engages in insurance adjusting as a representative of insurers.
- 673 (74) "Independently procured insurance" means insurance procured under Section
- 674 31A-15-104.
- 675 (75) "Individual" means a natural person.
- 676 (76) "Inland marine insurance" includes insurance covering:
- 677 (a) property in transit on or over land;
- 678 (b) property in transit over water by means other than boat or ship;

- 679 (c) bailee liability;
- 680 (d) fixed transportation property such as bridges, electric transmission systems, radio
- 681 and television transmission towers and tunnels; and
- 682 (e) personal and commercial property floaters.
- 683 (77) "Insolvency" means that:
- 684 (a) an insurer is unable to pay its debts or meet its obligations as they mature;
- 685 (b) an insurer's total adjusted capital is less than the insurer's mandatory control level
- 686 RBC under Subsection 31A-17-601(8)(c); or
- 687 (c) an insurer is determined to be hazardous under this title.
- 688 (78) (a) "Insurance" means:
- 689 (i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more
- 690 persons to one or more other persons; or
- 691 (ii) an arrangement, contract, or plan for the distribution of a risk or risks among a
- 692 group of persons that includes the person seeking to distribute that person's risk.
- 693 (b) "Insurance" includes:
- 694 (i) risk distributing arrangements providing for compensation or replacement for
- 695 damages or loss through the provision of services or benefits in kind;
- 696 (ii) contracts of guaranty or suretyship entered into by the guarantor or surety as a
- 697 business and not as merely incidental to a business transaction; and
- 698 (iii) plans in which the risk does not rest upon the person who makes the arrangements,
- 699 but with a class of persons who have agreed to share it.
- 700 (79) "Insurance adjuster" means a person who directs the investigation, negotiation, or
- 701 settlement of a claim under an insurance policy other than life insurance or an annuity, on
- 702 behalf of an insurer, policyholder, or a claimant under an insurance policy.
- 703 (80) "Insurance business" or "business of insurance" includes:
- 704 (a) providing health care insurance, as defined in Subsection (70), by organizations that
- 705 are or should be licensed under this title;
- 706 (b) providing benefits to employees in the event of contingencies not within the control
- 707 of the employees, in which the employees are entitled to the benefits as a right, which benefits
- 708 may be provided either:
- 709 (i) by single employers or by multiple employer groups; or

- 710 (ii) through trusts, associations, or other entities;
- 711 (c) providing annuities, including those issued in return for gifts, except those provided
- 712 by persons specified in Subsections 31A-22-1305(2) and (3);
- 713 (d) providing the characteristic services of motor clubs as outlined in Subsection (106);
- 714 (e) providing other persons with insurance as defined in Subsection (78);
- 715 (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor,
- 716 or surety, any contract or policy of title insurance;
- 717 (g) transacting or proposing to transact any phase of title insurance, including
- 718 solicitation, negotiation preliminary to execution, execution of a contract of title insurance,
- 719 insuring, and transacting matters subsequent to the execution of the contract and arising out of
- 720 it, including reinsurance; and
- 721 (h) doing, or proposing to do, any business in substance equivalent to Subsections
- 722 (80)(a) through (g) in a manner designed to evade the provisions of this title.
- 723 (81) "Insurance consultant" or "consultant" means a person who:
- 724 (a) advises other persons about insurance needs and coverages;
- 725 (b) is compensated by the person advised on a basis not directly related to the insurance
- 726 placed; and
- 727 (c) except as provided in Section 31A-23a-501, is not compensated directly or
- 728 indirectly by an insurer or producer for advice given.
- 729 (82) "Insurance holding company system" means a group of two or more affiliated
- 730 persons, at least one of whom is an insurer.
- 731 (83) (a) "Insurance producer" or "producer" means a person licensed or required to be
- 732 licensed under the laws of this state to sell, solicit, or negotiate insurance.
- 733 (b) With regards to the selling, soliciting, or negotiating of an insurance product to an
- 734 insurance customer or an insured:
- 735 (i) "producer for the insurer" means a producer who is compensated directly or
- 736 indirectly by an insurer for selling, soliciting, or negotiating any product of that insurer; and
- 737 (ii) "producer for the insured" means a producer who:
- 738 (A) is compensated directly and only by an insurance customer or an insured; and
- 739 (B) receives no compensation directly or indirectly from an insurer for selling,
- 740 soliciting, or negotiating any product of that insurer to an insurance customer or insured.

741 (84) (a) "Insured" means a person to whom or for whose benefit an insurer makes a
742 promise in an insurance policy and includes:

- 743 (i) policyholders;
- 744 (ii) subscribers;
- 745 (iii) members; and
- 746 (iv) beneficiaries.

747 (b) The definition in Subsection (84)(a):

- 748 (i) applies only to this title; and
- 749 (ii) does not define the meaning of this word as used in insurance policies or
750 certificates.

751 (85) (a) (i) "Insurer" means any person doing an insurance business as a principal
752 including:

- 753 (A) fraternal benefit societies;
- 754 (B) issuers of gift annuities other than those specified in Subsections 31A-22-1305(2)
755 and (3);
- 756 (C) motor clubs;
- 757 (D) employee welfare plans; and
- 758 (E) any person purporting or intending to do an insurance business as a principal on
759 that person's own account.

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

762 (b) "Admitted insurer" is defined in Subsection (153)(b).

763 (c) "Alien insurer" is defined in Subsection (7).

764 (d) "Authorized insurer" is defined in Subsection (153)(b).

765 (e) "Domestic insurer" is defined in Subsection (47).

766 (f) "Foreign insurer" is defined in Subsection (61).

767 (g) "Nonadmitted insurer" is defined in Subsection (153)(a).

768 (h) "Unauthorized insurer" is defined in Subsection (153)(a).

769 (86) "Interinsurance exchange" is defined in Subsection (135).

770 (87) "Involuntary unemployment insurance" means insurance:

- 771 (a) offered in connection with an extension of credit;

772 (b) that provides indemnity if the debtor is involuntarily unemployed for payments
773 coming due on a:

- 774 (i) specific loan; or
- 775 (ii) credit transaction.

776 (88) "Large employer," in connection with a health benefit plan, means an employer
777 who, with respect to a calendar year and to a plan year:

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

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

781 (89) (a) Except for a retainer contract or legal assistance described in Section
782 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for
783 specified legal expenses.

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

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

788 (90) (a) "Liability insurance" means insurance against liability:

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

- 791 (A) Subsection (100) for medical malpractice insurance;
- 792 (B) Subsection (127) for professional liability insurance; and
- 793 (C) Subsection (157) for workers' compensation insurance;

794 (ii) for medical, hospital, surgical, and funeral benefits to persons other than the
795 insured who are injured, irrespective of legal liability of the insured, when issued with or
796 supplemental to insurance against legal liability for the death, injury, or disability of human
797 beings, exclusive of the coverages under:

- 798 (A) Subsection (100) for medical malpractice insurance;
- 799 (B) Subsection (127) for professional liability insurance; and
- 800 (C) Subsection (157) for workers' compensation insurance;

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

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

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

808 (b) "Liability insurance" includes:

809 (i) vehicle liability insurance as defined in Subsection (155);

810 (ii) residential dwelling liability insurance as defined in Subsection (138); and

811 (iii) making inspection of, and issuing certificates of inspection upon, elevators,
812 boilers, machinery, and apparatus of any kind when done in connection with insurance on
813 them.

814 (91) (a) "License" means the authorization issued by the commissioner to engage in
815 some activity that is part of or related to the insurance business.

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

817 (92) (a) "Life insurance" means insurance on human lives and insurances pertaining to
818 or connected with human life.

819 (b) The business of life insurance includes:

820 (i) granting death benefits;

821 (ii) granting annuity benefits;

822 (iii) granting endowment benefits;

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

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

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

827 (93) "Limited license" means a license that:

828 (a) is issued for a specific product of insurance; and

829 (b) limits an individual or agency to transact only for that product or insurance.

830 (94) "Limited line credit insurance" includes the following forms of insurance:

831 (a) credit life;

832 (b) credit accident and health;

833 (c) credit property;

- 834 (d) credit unemployment;
- 835 (e) involuntary unemployment;
- 836 (f) mortgage life;
- 837 (g) mortgage guaranty;
- 838 (h) mortgage accident and health;
- 839 (i) guaranteed automobile protection; and
- 840 (j) any other form of insurance offered in connection with an extension of credit that:
- 841 (i) is limited to partially or wholly extinguishing the credit obligation; and
- 842 (ii) the commissioner determines by rule should be designated as a form of limited line
- 843 credit insurance.

844 (95) "Limited line credit insurance producer" means a person who sells, solicits, or

845 negotiates one or more forms of limited line credit insurance coverage to individuals through a

846 master, corporate, group, or individual policy.

847 (96) "Limited line insurance" includes:

- 848 (a) bail bond;
- 849 (b) limited line credit insurance;
- 850 (c) legal expense insurance;
- 851 (d) motor club insurance;
- 852 (e) rental car-related insurance;
- 853 (f) travel insurance; and
- 854 (g) any other form of limited insurance that the commissioner determines by rule
- 855 should be designated a form of limited line insurance.

856 (97) "Limited lines authority" includes:

- 857 (a) the lines of insurance listed in Subsection (96); and
- 858 (b) a customer service representative.

859 (98) "Limited lines producer" means a person who sells, solicits, or negotiates limited

860 lines insurance.

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

862 marketed, offered, or designated to provide coverage:

- 863 (i) in a setting other than an acute care unit of a hospital;
- 864 (ii) for not less than 12 consecutive months for each covered person on the basis of:

- 865 (A) expenses incurred;
- 866 (B) indemnity;
- 867 (C) prepayment; or
- 868 (D) another method;
- 869 (iii) for one or more necessary or medically necessary services that are:
- 870 (A) diagnostic;
- 871 (B) preventative;
- 872 (C) therapeutic;
- 873 (D) rehabilitative;
- 874 (E) maintenance; or
- 875 (F) personal care; and
- 876 (iv) that may be issued by:
- 877 (A) an insurer;
- 878 (B) a fraternal benefit society;
- 879 (C) (I) a nonprofit health hospital; and
- 880 (II) a medical service corporation;
- 881 (D) a prepaid health plan;
- 882 (E) a health maintenance organization; or
- 883 (F) an entity similar to the entities described in Subsections (99)(a)(iv)(A) through (E)
- 884 to the extent that the entity is otherwise authorized to issue life or health care insurance.
- 885 (b) "Long-term care insurance" includes:
- 886 (i) any of the following that provide directly or supplement long-term care insurance:
- 887 (A) a group or individual annuity or rider; or
- 888 (B) a life insurance policy or rider;
- 889 (ii) a policy or rider that provides for payment of benefits based on:
- 890 (A) cognitive impairment; or
- 891 (B) functional capacity; or
- 892 (iii) a qualified long-term care insurance contract.
- 893 (c) "Long-term care insurance" does not include:
- 894 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
- 895 (ii) basic hospital expense coverage;

- 896 (iii) basic medical/surgical expense coverage;
- 897 (iv) hospital confinement indemnity coverage;
- 898 (v) major medical expense coverage;
- 899 (vi) income replacement or related asset-protection coverage;
- 900 (vii) accident only coverage;
- 901 (viii) coverage for a specified:
 - 902 (A) disease; or
 - 903 (B) accident;
- 904 (ix) limited benefit health coverage; or
- 905 (x) a life insurance policy that accelerates the death benefit to provide the option of a
- 906 lump sum payment:
 - 907 (A) if the following are not conditioned on the receipt of long-term care:
 - 908 (I) benefits; or
 - 909 (II) eligibility; and
 - 910 (B) the coverage is for one or more the following qualifying events:
 - 911 (I) terminal illness;
 - 912 (II) medical conditions requiring extraordinary medical intervention; or
 - 913 (III) permanent institutional confinement.
- 914 (100) "Medical malpractice insurance" means insurance against legal liability incident
- 915 to the practice and provision of medical services other than the practice and provision of dental
- 916 services.
- 917 (101) "Member" means a person having membership rights in an insurance
- 918 corporation.
- 919 (102) "Minimum capital" or "minimum required capital" means the capital that must be
- 920 constantly maintained by a stock insurance corporation as required by statute.
- 921 (103) "Mortgage accident and health insurance" means insurance offered in connection
- 922 with an extension of credit that provides indemnity for payments coming due on a mortgage
- 923 while the debtor is disabled.
- 924 (104) "Mortgage guaranty insurance" means surety insurance under which mortgagees
- 925 and other creditors are indemnified against losses caused by the default of debtors.
- 926 (105) "Mortgage life insurance" means insurance on the life of a debtor in connection

- 927 with an extension of credit that pays if the debtor dies.
- 928 (106) "Motor club" means a person:
- 929 (a) licensed under:
- 930 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;
- 931 (ii) Chapter 11, Motor Clubs; or
- 932 (iii) Chapter 14, Foreign Insurers; and
- 933 (b) that promises for an advance consideration to provide for a stated period of time:
- 934 (i) legal services under Subsection 31A-11-102(1)(b);
- 935 (ii) bail services under Subsection 31A-11-102(1)(c); or
- 936 (iii) trip reimbursement, towing services, emergency road services, stolen automobile
- 937 services, a combination of these services, or any other services given in Subsections
- 938 31A-11-102(1)(b) through (f).
- 939 (107) "Mutual" means mutual insurance corporation.
- 940 (108) "Network plan" means health care insurance:
- 941 (a) that is issued by an insurer; and
- 942 (b) under which the financing and delivery of medical care is provided, in whole or in
- 943 part, through a defined set of providers under contract with the insurer, including the financing
- 944 and delivery of items paid for as medical care.
- 945 (109) "Nonparticipating" means a plan of insurance under which the insured is not
- 946 entitled to receive dividends representing shares of the surplus of the insurer.
- 947 (110) "Ocean marine insurance" means insurance against loss of or damage to:
- 948 (a) ships or hulls of ships;
- 949 (b) goods, freight, cargoes, merchandise, effects, disbursements, profits, moneys,
- 950 securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia
- 951 interests, or other cargoes in or awaiting transit over the oceans or inland waterways;
- 952 (c) earnings such as freight, passage money, commissions, or profits derived from
- 953 transporting goods or people upon or across the oceans or inland waterways; or
- 954 (d) a vessel owner or operator as a result of liability to employees, passengers, bailors,
- 955 owners of other vessels, owners of fixed objects, customs or other authorities, or other persons
- 956 in connection with maritime activity.
- 957 (111) "Order" means an order of the commissioner.

958 (112) "Outline of coverage" means a summary that explains an accident and health
959 insurance policy.

960 (113) "Participating" means a plan of insurance under which the insured is entitled to
961 receive dividends representing shares of the surplus of the insurer.

962 (114) "Participation," as used in a health benefit plan, means a requirement relating to
963 the minimum percentage of eligible employees that must be enrolled in relation to the total
964 number of eligible employees of an employer reduced by each eligible employee who
965 voluntarily declines coverage under the plan because the employee has other health care
966 insurance coverage.

967 (115) "Person" includes an individual, partnership, corporation, incorporated or
968 unincorporated association, joint stock company, trust, reciprocal, syndicate, or any similar
969 entity or combination of entities acting in concert.

970 (116) "Personal lines insurance" means property and casualty insurance coverage sold
971 for primarily noncommercial purposes to:

972 (a) individuals; and

973 (b) families.

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

975 (118) "Plan year" means:

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

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

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

979 (b) if the plan document or summary plan description does not designate a plan year or

980 there is no plan document or summary plan description:

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

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

983 or

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

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

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

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

988 (c) in a case not described in Subsection (118)(a) or (b), the calendar year.

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

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

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

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

995 (C) a corporation licensed under:

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

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

998 (iii) "Policy" does not include:

999 (A) a certificate under a group insurance contract; or

1000 (B) a document that does not purport to have legal effect.

1001 (b) (i) "Group insurance policy" means a policy covering a group of persons that is
1002 issued to a policyholder on behalf of the group, for the benefit of group members who are
1003 selected under procedures defined in the policy or in agreements which are collateral to the
1004 policy.

1005 (ii) A group insurance policy may include members of the policyholder's family or
1006 dependents.

1007 (c) "Blanket insurance policy" means a group policy covering classes of persons
1008 without individual underwriting, where the persons insured are determined by definition of the
1009 class with or without designating the persons covered.

1010 (120) "Policyholder" means the person who controls a policy, binder, or oral contract
1011 by ownership, premium payment, or otherwise.

1012 (121) "Policy illustration" means a presentation or depiction that includes
1013 nonguaranteed elements of a policy of life insurance over a period of years.

1014 (122) "Policy summary" means a synopsis describing the elements of a life insurance
1015 policy.

1016 (123) "Preexisting condition," in connection with a health benefit plan, means:

1017 (a) a condition for which medical advice, diagnosis, care, or treatment was

1018 recommended or received during the six months immediately preceding the earlier of:

1019 (i) the enrollment date; or

1020 (ii) the effective date of coverage; or

1021 (b) for an individual insurance policy, a pregnancy existing on the effective date of
1022 coverage.

1023 (124) (a) "Premium" means the monetary consideration for an insurance policy, and
1024 includes assessments, membership fees, required contributions, or monetary consideration,
1025 however designated.

1026 (b) Consideration paid to third party administrators for their services is not "premium,"
1027 though amounts paid by third party administrators to insurers for insurance on the risks
1028 administered by the third party administrators are "premium."

1029 (125) "Principal officers" of a corporation means the officers designated under
1030 Subsection 31A-5-203(3).

1031 (126) "Proceedings" includes actions and special statutory proceedings.

1032 (127) "Professional liability insurance" means insurance against legal liability incident
1033 to the practice of a profession and provision of any professional services.

1034 (128) "Property insurance" means insurance against loss or damage to real or personal
1035 property of every kind and any interest in that property, from all hazards or causes, and against
1036 loss consequential upon the loss or damage including vehicle comprehensive and vehicle
1037 physical damage coverages, but excluding inland marine insurance and ocean marine insurance
1038 as defined under Subsections (76) and (110).

1039 (129) "Qualified long-term care insurance contract" or "federally tax qualified
1040 long-term care insurance contract" means:

1041 (a) an individual or group insurance contract that meets the requirements of Section
1042 7702B(b), Internal Revenue Code; or

1043 (b) the portion of a life insurance contract that provides long-term care insurance:

1044 (i) (A) by rider; or

1045 (B) as a part of the contract; and

1046 (ii) that satisfies the requirements of Section 7702B(b) and (e), Internal Revenue Code.

1047 (130) "Qualified United States financial institution" means an institution that:

1048 (a) is:

1049 (i) organized under the laws of the United States or any state; or

1050 (ii) in the case of a United States office of a foreign banking organization, licensed

1051 under the laws of the United States or any state;

1052 (b) is regulated, supervised, and examined by United States federal or state authorities

1053 having regulatory authority over banks and trust companies; and

1054 (c) meets the standards of financial condition and standing that are considered

1055 necessary and appropriate to regulate the quality of financial institutions whose letters of credit

1056 will be acceptable to the commissioner as determined by:

1057 (i) the commissioner by rule; or

1058 (ii) the Securities Valuation Office of the National Association of Insurance

1059 Commissioners.

1060 (131) (a) "Rate" means:

1061 (i) the cost of a given unit of insurance; or

1062 (ii) for property-casualty insurance, that cost of insurance per exposure unit either

1063 expressed as:

1064 (A) a single number; or

1065 (B) a pure premium rate, adjusted before any application of individual risk variations

1066 based on loss or expense considerations to account for the treatment of:

1067 (I) expenses;

1068 (II) profit; and

1069 (III) individual insurer variation in loss experience.

1070 (b) "Rate" does not include a minimum premium.

1071 (132) (a) Except as provided in Subsection (132)(b), "rate service organization" means

1072 any person who assists insurers in rate making or filing by:

1073 (i) collecting, compiling, and furnishing loss or expense statistics;

1074 (ii) recommending, making, or filing rates or supplementary rate information; or

1075 (iii) advising about rate questions, except as an attorney giving legal advice.

1076 (b) "Rate service organization" does not mean:

1077 (i) an employee of an insurer;

1078 (ii) a single insurer or group of insurers under common control;

1079 (iii) a joint underwriting group; or

1080 (iv) a natural person serving as an actuarial or legal consultant.

1081 (133) "Rating manual" means any of the following used to determine initial and

1082 renewal policy premiums:
1083 (a) a manual of rates;
1084 (b) classifications;
1085 (c) rate-related underwriting rules; and
1086 (d) rating formulas that describe steps, policies, and procedures for determining initial
1087 and renewal policy premiums.

1088 (134) "Received by the department" means:

1089 (a) except as provided in Subsection (134)(b), the date delivered to and stamped
1090 received by the department, whether delivered:

1091 (i) in person; or

1092 (ii) electronically; and

1093 (b) if delivered to the department by a delivery service, the delivery service's postmark
1094 date or pick-up date unless otherwise stated in:

1095 (i) statute;

1096 (ii) rule; or

1097 (iii) a specific filing order.

1098 (135) "Reciprocal" or "interinsurance exchange" means any unincorporated association
1099 of persons:

1100 (a) operating through an attorney-in-fact common to all of them; and

1101 (b) exchanging insurance contracts with one another that provide insurance coverage
1102 on each other.

1103 (136) "Reinsurance" means an insurance transaction where an insurer, for
1104 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to
1105 reinsurance transactions, this title sometimes refers to:

1106 (a) the insurer transferring the risk as the "ceding insurer"; and

1107 (b) the insurer assuming the risk as the:

1108 (i) "assuming insurer"; or

1109 (ii) "assuming reinsurer."

1110 (137) "Reinsurer" means any person, firm, association, or corporation licensed in this
1111 state as an insurer with the authority to assume reinsurance.

1112 (138) "Residential dwelling liability insurance" means insurance against liability

1113 resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is
1114 a detached single family residence or multifamily residence up to four units.

1115 (139) "Retrocession" means reinsurance with another insurer of a liability assumed
1116 under a reinsurance contract. A reinsurer "retrocedes" when it reinsures with another insurer
1117 part of a liability assumed under a reinsurance contract.

1118 (140) "Rider" means an endorsement to:

1119 (a) an insurance policy; or

1120 (b) an insurance certificate.

1121 (141) (a) "Security" means any:

1122 (i) note;

1123 (ii) stock;

1124 (iii) bond;

1125 (iv) debenture;

1126 (v) evidence of indebtedness;

1127 (vi) certificate of interest or participation in any profit-sharing agreement;

1128 (vii) collateral-trust certificate;

1129 (viii) preorganization certificate or subscription;

1130 (ix) transferable share;

1131 (x) investment contract;

1132 (xi) voting trust certificate;

1133 (xii) certificate of deposit for a security;

1134 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
1135 payments out of production under such a title or lease;

1136 (xiv) commodity contract or commodity option;

1137 (xv) any certificate of interest or participation in, temporary or interim certificate for,
1138 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed
1139 in Subsections (141)(a)(i) through (xiv); or

1140 (xvi) any other interest or instrument commonly known as a security.

1141 (b) "Security" does not include:

1142 (i) any insurance or endowment policy or annuity contract under which an insurance
1143 company promises to pay money in a specific lump sum or periodically for life or some other

1144 specified period; or

1145 (ii) a burial certificate or burial contract.

1146 (142) "Self-insurance" means any arrangement under which a person provides for
1147 spreading its own risks by a systematic plan.

1148 (a) Except as provided in this Subsection (142), self-insurance does not include an
1149 arrangement under which a number of persons spread their risks among themselves.

1150 (b) Self-insurance does include an arrangement by which a governmental entity[~~as~~
1151 ~~defined in Section 63-30-2;~~] undertakes to indemnify its employees for liability arising out of
1152 the employees' employment.

1153 (c) Self-insurance does include an arrangement by which a person with a managed
1154 program of self-insurance and risk management undertakes to indemnify its affiliates,
1155 subsidiaries, directors, officers, or employees for liability or risk which is related to the
1156 relationship or employment.

1157 (d) Self-insurance does not include any arrangement with independent contractors.

1158 (143) "Sell" means to exchange a contract of insurance:

1159 (a) by any means;

1160 (b) for money or its equivalent; and

1161 (c) on behalf of an insurance company.

1162 (144) "Short-term care insurance" means any insurance policy or rider advertised,
1163 marketed, offered, or designed to provide coverage that is similar to long-term care insurance
1164 but that provides coverage for less than 12 consecutive months for each covered person.

1165 (145) "Small employer," in connection with a health benefit plan, means an employer
1166 who, with respect to a calendar year and to a plan year:

1167 (a) employed an average of at least two employees but not more than 50 eligible
1168 employees on each business day during the preceding calendar year; and

1169 (b) employs at least two employees on the first day of the plan year.

1170 (146) (a) "Subsidiary" of a person means an affiliate controlled by that person either
1171 directly or indirectly through one or more affiliates or intermediaries.

1172 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting
1173 shares are owned by that person either alone or with its affiliates, except for the minimum
1174 number of shares the law of the subsidiary's domicile requires to be owned by directors or

1175 others.

1176 (147) Subject to Subsection (78)(b), "surety insurance" includes:

1177 (a) a guarantee against loss or damage resulting from failure of principals to pay or
1178 perform their obligations to a creditor or other obligee;

1179 (b) bail bond insurance; and

1180 (c) fidelity insurance.

1181 (148) (a) "Surplus" means the excess of assets over the sum of paid-in capital and
1182 liabilities.

1183 (b) (i) "Permanent surplus" means the surplus of a mutual insurer that has been
1184 designated by the insurer as permanent.

1185 (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-209 require
1186 that mutuals doing business in this state maintain specified minimum levels of permanent
1187 surplus.

1188 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is
1189 essentially the same as the minimum required capital requirement that applies to stock insurers.

1190 (c) "Excess surplus" means:

1191 (i) for life or accident and health insurers, health organizations, and property and
1192 casualty insurers as defined in Section 31A-17-601, the lesser of:

1193 (A) that amount of an insurer's or health organization's total adjusted capital, as defined
1194 in Subsection (151), that exceeds the product of:

1195 (I) 2.5; and

1196 (II) the sum of the insurer's or health organization's minimum capital or permanent
1197 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

1198 (B) that amount of an insurer's or health organization's total adjusted capital, as defined
1199 in Subsection (151), that exceeds the product of:

1200 (I) 3.0; and

1201 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

1202 (ii) for monoline mortgage guaranty insurers, financial guaranty insurers, and title
1203 insurers, that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

1204 (A) 1.5; and

1205 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).

1206 (149) "Third party administrator" or "administrator" means any person who collects
1207 charges or premiums from, or who, for consideration, adjusts or settles claims of residents of
1208 the state in connection with insurance coverage, annuities, or service insurance coverage,
1209 except:

1210 (a) a union on behalf of its members;

1211 (b) a person administering any:

1212 (i) pension plan subject to the federal Employee Retirement Income Security Act of
1213 1974;

1214 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or

1215 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;

1216 (c) an employer on behalf of the employer's employees or the employees of one or
1217 more of the subsidiary or affiliated corporations of the employer;

1218 (d) an insurer licensed under Chapter 5, 7, 8, 9, or 14, but only for a line of insurance
1219 for which the insurer holds a license in this state; or

1220 (e) a person licensed or exempt from licensing under Chapter 23a, Insurance Marketing
1221 - Licensing Producers, Consultants, and Reinsurance Intermediaries, or Chapter 26, Insurance
1222 Adjusters, whose activities are limited to those authorized under the license the person holds or
1223 for which the person is exempt.

1224 (150) "Title insurance" means the insuring, guaranteeing, or indemnifying of owners of
1225 real or personal property or the holders of liens or encumbrances on that property, or others
1226 interested in the property against loss or damage suffered by reason of liens or encumbrances
1227 upon, defects in, or the unmarketability of the title to the property, or invalidity or
1228 unenforceability of any liens or encumbrances on the property.

1229 (151) "Total adjusted capital" means the sum of an insurer's or health organization's
1230 statutory capital and surplus as determined in accordance with:

1231 (a) the statutory accounting applicable to the annual financial statements required to be
1232 filed under Section 31A-4-113; and

1233 (b) any other items provided by the RBC instructions, as RBC instructions is defined in
1234 Section 31A-17-601.

1235 (152) (a) "Trustee" means "director" when referring to the board of directors of a
1236 corporation.

1237 (b) "Trustee," when used in reference to an employee welfare fund, means an
1238 individual, firm, association, organization, joint stock company, or corporation, whether acting
1239 individually or jointly and whether designated by that name or any other, that is charged with
1240 or has the overall management of an employee welfare fund.

1241 (153) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer"
1242 means an insurer:

1243 (i) not holding a valid certificate of authority to do an insurance business in this state;

1244 or

1245 (ii) transacting business not authorized by a valid certificate.

1246 (b) "Admitted insurer" or "authorized insurer" means an insurer:

1247 (i) holding a valid certificate of authority to do an insurance business in this state; and

1248 (ii) transacting business as authorized by a valid certificate.

1249 (154) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

1250 (155) "Vehicle liability insurance" means insurance against liability resulting from or
1251 incident to ownership, maintenance, or use of any land vehicle or aircraft, exclusive of vehicle
1252 comprehensive and vehicle physical damage coverages under Subsection (128).

1253 (156) "Voting security" means a security with voting rights, and includes any security
1254 convertible into a security with a voting right associated with it.

1255 (157) "Workers' compensation insurance" means:

1256 (a) insurance for indemnification of employers against liability for compensation based
1257 on:

1258 (i) compensable accidental injuries; and

1259 (ii) occupational disease disability;

1260 (b) employer's liability insurance incidental to workers' compensation insurance and
1261 written in connection with it; and

1262 (c) insurance assuring to the persons entitled to workers' compensation benefits the
1263 compensation provided by law.

1264 Section 5. Section **31A-2-306** is amended to read:

1265 **31A-2-306. Judicial review -- Costs.**

1266 (1) A person aggrieved by a rule or order of the commissioner, or aggrieved by the
1267 commissioner's failure to act when he has a duty to act, may obtain judicial review.

1268 (2) The court reviewing agency actions governed by this title shall give priority to
1269 those actions and shall hear and determine them promptly.

1270 (3) Costs shall be awarded as in civil cases. If the court finds that the appeal from
1271 action or inaction stemmed from the bad faith or malice of the commissioner, the court may
1272 award reasonable attorney's fees to the prevailing petitioner. Section [~~63-30-23~~] 63-30d-701
1273 applies to the extent the attorney's fees awarded under this subsection exceed \$10,000 for any
1274 one appeal.

1275 Section 6. Section **31A-12-107** is amended to read:

1276 **31A-12-107. Governmental immunity.**

1277 Notwithstanding any other provision of this title, a governmental entity[~~, as defined in~~
1278 ~~Section 63-30-2,~~] is not an insurer for purposes of this title and is not engaged in the business
1279 of insurance to the extent that it is:

1280 (1) covering its own liabilities under Title 63, Chapter [~~30~~] 30d, Governmental
1281 Immunity Act of Utah; or

1282 (2) engaging in other related risk management activities related to the normal course of
1283 its activities.

1284 Section 7. Section **31A-22-305** is amended to read:

1285 **31A-22-305. Uninsured and underinsured motorist coverage.**

1286 (1) As used in this section, "covered persons" includes:

1287 (a) the named insured;

1288 (b) persons related to the named insured by blood, marriage, adoption, or guardianship,
1289 who are residents of the named insured's household, including those who usually make their
1290 home in the same household but temporarily live elsewhere;

1291 (c) any person occupying or using a motor vehicle:

1292 (i) referred to in the policy; or

1293 (ii) owned by a self-insurer; and

1294 (d) any person who is entitled to recover damages against the owner or operator of the
1295 uninsured or underinsured motor vehicle because of bodily injury to or death of persons under
1296 Subsection (1)(a), (b), or (c).

1297 (2) As used in this section, "uninsured motor vehicle" includes:

1298 (a) (i) a motor vehicle, the operation, maintenance, or use of which is not covered

1299 under a liability policy at the time of an injury-causing occurrence; or

1300 (ii) (A) a motor vehicle covered with lower liability limits than required by Section
1301 31A-22-304; and

1302 (B) the motor vehicle described in Subsection (2)(a)(ii)(A) is uninsured to the extent of
1303 the deficiency;

1304 (b) an unidentified motor vehicle that left the scene of an accident proximately caused
1305 by the motor vehicle operator;

1306 (c) a motor vehicle covered by a liability policy, but coverage for an accident is
1307 disputed by the liability insurer for more than 60 days or continues to be disputed for more than
1308 60 days; or

1309 (d) (i) an insured motor vehicle if, before or after the accident, the liability insurer of
1310 the motor vehicle is declared insolvent by a court of competent jurisdiction; and

1311 (ii) the motor vehicle described in Subsection (2)(d)(i) is uninsured only to the extent
1312 that the claim against the insolvent insurer is not paid by a guaranty association or fund.

1313 (3) (a) Uninsured motorist coverage under Subsection 31A-22-302(1)(b) provides
1314 coverage for covered persons who are legally entitled to recover damages from owners or
1315 operators of uninsured motor vehicles because of bodily injury, sickness, disease, or death.

1316 (b) For new policies written on or after January 1, 2001, the limits of uninsured
1317 motorist coverage shall be equal to the lesser of the limits of the insured's motor vehicle
1318 liability coverage or the maximum uninsured motorist coverage limits available by the insurer
1319 under the insured's motor vehicle policy, unless the insured purchases coverage in a lesser
1320 amount by signing an acknowledgment form provided by the insurer that:

1321 (i) waives the higher coverage;

1322 (ii) reasonably explains the purpose of uninsured motorist coverage; and

1323 (iii) discloses the additional premiums required to purchase uninsured motorist
1324 coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability
1325 coverage or the maximum uninsured motorist coverage limits available by the insurer under the
1326 insured's motor vehicle policy.

1327 (c) Self-insurers, including governmental entities, may elect to provide uninsured
1328 motorist coverage in an amount that is less than their maximum self-insured retention under
1329 Subsections (3)(b) and (4)(a) by issuing a declaratory memorandum or policy statement from

1330 the chief financial officer or chief risk officer that declares the:

1331 (i) self-insured entity's coverage level; and

1332 (ii) process for filing an uninsured motorist claim.

1333 (d) Uninsured motorist coverage may not be sold with limits that are less than the
1334 minimum bodily injury limits for motor vehicle liability policies under Section 31A-22-304.

1335 (e) The acknowledgment under Subsection (3)(b) continues for that issuer of the
1336 uninsured motorist coverage until the insured, in writing, requests different uninsured motorist
1337 coverage from the insurer.

1338 (f) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for
1339 policies existing on that date, the insurer shall disclose in the same medium as the premium
1340 renewal notice, an explanation of the purpose of uninsured motorist coverage and the costs
1341 associated with increasing the coverage in amounts up to and including the maximum amount
1342 available by the insurer under the insured's motor vehicle policy.

1343 (ii) The disclosure shall be sent to all insureds that carry uninsured motorist coverage
1344 limits in an amount less than the insured's motor vehicle liability policy limits or the maximum
1345 uninsured motorist coverage limits available by the insurer under the insured's motor vehicle
1346 policy.

1347 (4) (a) (i) Except as provided in Subsection (4)(b), the named insured may reject
1348 uninsured motorist coverage by an express writing to the insurer that provides liability
1349 coverage under Subsection 31A-22-302(1)(a).

1350 (ii) This rejection shall be on a form provided by the insurer that includes a reasonable
1351 explanation of the purpose of uninsured motorist coverage.

1352 (iii) This rejection continues for that issuer of the liability coverage until the insured in
1353 writing requests uninsured motorist coverage from that liability insurer.

1354 (b) (i) All persons, including governmental entities, that are engaged in the business of,
1355 or that accept payment for, transporting natural persons by motor vehicle, and all school
1356 districts that provide transportation services for their students, shall provide coverage for all
1357 motor vehicles used for that purpose, by purchase of a policy of insurance or by self-insurance,
1358 uninsured motorist coverage of at least \$25,000 per person and \$500,000 per accident.

1359 (ii) This coverage is secondary to any other insurance covering an injured covered
1360 person.

- 1361 (c) Uninsured motorist coverage:
- 1362 (i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers'
- 1363 Compensation Act;
- 1364 (ii) may not be subrogated by the Workers' Compensation insurance carrier;
- 1365 (iii) may not be reduced by any benefits provided by Workers' Compensation
- 1366 insurance;
- 1367 (iv) may be reduced by health insurance subrogation only after the covered person has
- 1368 been made whole;
- 1369 (v) may not be collected for bodily injury or death sustained by a person:
- 1370 (A) while committing a violation of Section 41-1a-1314;
- 1371 (B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated
- 1372 in violation of Section 41-1a-1314; or
- 1373 (C) while committing a felony; and
- 1374 (vi) notwithstanding Subsection (4)(c)(v), may be recovered:
- 1375 (A) for a person under 18 years of age who is injured within the scope of Subsection
- 1376 (4)(c)(v) but limited to medical and funeral expenses; or
- 1377 (B) by a law enforcement officer as defined in Section 53-13-103, who is injured
- 1378 within the course and scope of the law enforcement officer's duties.
- 1379 (d) As used in this Subsection (4)[~~:(i) "Governmental entity" has the same meaning as~~
- 1380 ~~under Section 63-30-2. (ii) "Motor", "motor vehicle" has the same meaning as under Section~~
- 1381 41-1a-102.
- 1382 (5) When a covered person alleges that an uninsured motor vehicle under Subsection
- 1383 (2)(b) proximately caused an accident without touching the covered person or the motor
- 1384 vehicle occupied by the covered person, the covered person must show the existence of the
- 1385 uninsured motor vehicle by clear and convincing evidence consisting of more than the covered
- 1386 person's testimony.
- 1387 (6) (a) The limit of liability for uninsured motorist coverage for two or more motor
- 1388 vehicles may not be added together, combined, or stacked to determine the limit of insurance
- 1389 coverage available to an injured person for any one accident.
- 1390 (b) (i) Subsection (6)(a) applies to all persons except a covered person as defined under
- 1391 Subsection (7)(b)(ii).

1392 (ii) A covered person as defined under Subsection (7)(b)(ii) is entitled to the highest
1393 limits of uninsured motorist coverage afforded for any one motor vehicle that the covered
1394 person is the named insured or an insured family member.

1395 (iii) This coverage shall be in addition to the coverage on the motor vehicle the covered
1396 person is occupying.

1397 (iv) Neither the primary nor the secondary coverage may be set off against the other.

1398 (c) Coverage on a motor vehicle occupied at the time of an accident shall be primary
1399 coverage, and the coverage elected by a person described under Subsections (1)(a) and (b) shall
1400 be secondary coverage.

1401 (7) (a) Uninsured motorist coverage under this section applies to bodily injury,
1402 sickness, disease, or death of covered persons while occupying or using a motor vehicle only if
1403 the motor vehicle is described in the policy under which a claim is made, or if the motor
1404 vehicle is a newly acquired or replacement motor vehicle covered under the terms of the policy.
1405 Except as provided in Subsection (6) or this Subsection (7), a covered person injured in a
1406 motor vehicle described in a policy that includes uninsured motorist benefits may not elect to
1407 collect uninsured motorist coverage benefits from any other motor vehicle insurance policy
1408 under which he is a covered person.

1409 (b) Each of the following persons may also recover uninsured motorist benefits under
1410 any one other policy in which they are described as a "covered person" as defined in Subsection
1411 (1):

1412 (i) a covered person injured as a pedestrian by an uninsured motor vehicle; and

1413 (ii) except as provided in Subsection (7)(c), a covered person injured while occupying
1414 or using a motor vehicle that is not owned, leased, or furnished, to the covered person, to the
1415 covered person's spouse, or to the covered person's resident parent or resident sibling.

1416 (c) (i) A covered person may recover benefits from no more than two additional
1417 policies, one additional policy from each parent's household if the covered person is:

1418 (A) a dependent minor of parents who reside in separate households; and

1419 (B) injured while occupying or using a motor vehicle that is not owned, leased, or
1420 furnished to the covered person, the covered person's resident parent, or to the covered person's
1421 resident sibling.

1422 (ii) Each parent's policy under this Subsection (7)(c) is liable only for the percentage of

1423 the damages that the limit of liability of each parent's policy of uninsured motorist coverage
1424 bears to the total of all uninsured coverage applicable to the accident.

1425 (d) A covered person's recovery under any available policies may not exceed the full
1426 amount of damages.

1427 (e) A covered person in Subsection (7)(b) is not barred against making subsequent
1428 elections if recovery is unavailable under previous elections.

1429 (8) (a) As used in this section, "underinsured motor vehicle" includes a motor vehicle,
1430 the operation, maintenance, or use of which is covered under a liability policy at the time of an
1431 injury-causing occurrence, but which has insufficient liability coverage to compensate fully the
1432 injured party for all special and general damages.

1433 (b) The term "underinsured motor vehicle" does not include:

1434 (i) a motor vehicle that is covered under the liability coverage of the same policy that
1435 also contains the underinsured motorist coverage;

1436 (ii) an uninsured motor vehicle as defined in Subsection (2); or

1437 (iii) a motor vehicle owned or leased by the named insured, the named insured's
1438 spouse, or any dependant of the named insured.

1439 (9) (a) (i) Underinsured motorist coverage under Subsection 31A-22-302(1)(c)
1440 provides coverage for covered persons who are legally entitled to recover damages from
1441 owners or operators of underinsured motor vehicles because of bodily injury, sickness, disease,
1442 or death.

1443 (ii) A covered person occupying or using a motor vehicle owned, leased, or furnished
1444 to the covered person, the covered person's spouse, or covered person's resident relative may
1445 recover underinsured benefits only if the motor vehicle is:

1446 (A) described in the policy under which a claim is made; or

1447 (B) a newly acquired or replacement motor vehicle covered under the terms of the
1448 policy.

1449 (b) For new policies written on or after January 1, 2001, the limits of underinsured
1450 motorist coverage shall be equal to the lesser of the limits of the insured's motor vehicle
1451 liability coverage or the maximum underinsured motorist coverage limits available by the
1452 insurer under the insured's motor vehicle policy, unless the insured purchases coverage in a
1453 lesser amount by signing an acknowledgment form provided by the insurer that:

1454 (i) waives the higher coverage;
1455 (ii) reasonably explains the purpose of underinsured motorist coverage; and
1456 (iii) discloses the additional premiums required to purchase underinsured motorist
1457 coverage with limits equal to the lesser of the limits of the insured's motor vehicle liability
1458 coverage or the maximum underinsured motorist coverage limits available by the insurer under
1459 the insured's motor vehicle policy.

1460 (c) Self-insurers, including governmental entities, may elect to provide underinsured
1461 motorist coverage in an amount that is less than their maximum self-insured retention under
1462 Subsections (9)(b) and (9)(g) by issuing a declaratory memorandum or policy statement from
1463 the chief financial officer or chief risk officer that declares the:

1464 (i) self-insured entity's coverage level; and
1465 (ii) process for filing an underinsured motorist claim.

1466 (d) Underinsured motorist coverage may not be sold with limits that are less than
1467 \$10,000 for one person in any one accident and at least \$20,000 for two or more persons in any
1468 one accident.

1469 (e) The acknowledgment under Subsection (9)(b) continues for that issuer of the
1470 underinsured motorist coverage until the insured, in writing, requests different underinsured
1471 motorist coverage from the insurer.

1472 (f) The named insured's underinsured motorist coverage, as described in Subsection
1473 (9)(a), is secondary to the liability coverage of an owner or operator of an underinsured motor
1474 vehicle, as described in Subsection (8). Underinsured motorist coverage may not be set off
1475 against the liability coverage of the owner or operator of an underinsured motor vehicle, but
1476 shall be added to, combined with, or stacked upon the liability coverage of the owner or
1477 operator of the underinsured motor vehicle to determine the limit of coverage available to the
1478 injured person.

1479 (g) (i) A named insured may reject underinsured motorist coverage by an express
1480 writing to the insurer that provides liability coverage under Subsection 31A-22-302(1)(a).

1481 (ii) This written rejection shall be on a form provided by the insurer that includes a
1482 reasonable explanation of the purpose of underinsured motorist coverage and when it would be
1483 applicable.

1484 (iii) This rejection continues for that issuer of the liability coverage until the insured in

1485 writing requests underinsured motorist coverage from that liability insurer.

1486 (h) (i) In conjunction with the first two renewal notices sent after January 1, 2001, for
1487 policies existing on that date, the insurer shall disclose in the same medium as the premium
1488 renewal notice, an explanation of the purpose of underinsured motorist coverage and the costs
1489 associated with increasing the coverage in amounts up to and including the maximum amount
1490 available by the insurer under the insured's motor vehicle policy.

1491 (ii) The disclosure shall be sent to all insureds that carry underinsured motorist
1492 coverage limits in an amount less than the insured's motor vehicle liability policy limits or the
1493 maximum underinsured motorist coverage limits available by the insurer under the insured's
1494 motor vehicle policy.

1495 (10) (a) (i) Except as provided in this Subsection (10), a covered person injured in a
1496 motor vehicle described in a policy that includes underinsured motorist benefits may not elect
1497 to collect underinsured motorist coverage benefits from any other motor vehicle insurance
1498 policy.

1499 (ii) The limit of liability for underinsured motorist coverage for two or more motor
1500 vehicles may not be added together, combined, or stacked to determine the limit of insurance
1501 coverage available to an injured person for any one accident.

1502 (iii) Subsection (10)(a)(ii) applies to all persons except a covered person as defined
1503 under Subsections (10)(b)(i) and (ii).

1504 (b) (i) Except as provided in Subsection (10)(b)(ii), a covered person injured while
1505 occupying, using, or maintaining a motor vehicle that is not owned, leased, or furnished to the
1506 covered person, the covered person's spouse, or the covered person's resident parent or resident
1507 sibling, may also recover benefits under any one other policy under which they are a covered
1508 person.

1509 (ii) (A) A covered person may recover benefits from no more than two additional
1510 policies, one additional policy from each parent's household if the covered person is:

1511 (I) a dependent minor of parents who reside in separate households; and

1512 (II) injured while occupying or using a motor vehicle that is not owned, leased, or
1513 furnished to the covered person, the covered person's resident parent, or the covered person's
1514 resident sibling.

1515 (B) Each parent's policy under this Subsection (10)(b)(ii) is liable only for the

1516 percentage of the damages that the limit of liability of each parent's policy of underinsured
1517 motorist coverage bears to the total of all underinsured coverage applicable to the accident.

1518 (iii) A covered person's recovery under any available policies may not exceed the full
1519 amount of damages.

1520 (iv) Underinsured coverage on a motor vehicle occupied at the time of an accident shall
1521 be primary coverage, and the coverage elected by a person described under Subsections (1)(a)
1522 and (b) shall be secondary coverage.

1523 (v) The primary and the secondary coverage may not be set off against the other.

1524 (vi) A covered person as defined under Subsection (10)(b)(i) is entitled to the highest
1525 limits of underinsured motorist coverage under only one additional policy per household
1526 applicable to that covered person as a named insured, spouse, or relative.

1527 (vii) A covered injured person is not barred against making subsequent elections if
1528 recovery is unavailable under previous elections.

1529 (c) Underinsured motorist coverage:

1530 (i) is secondary to the benefits provided by Title 34A, Chapter 2, Workers'
1531 Compensation Act;

1532 (ii) may not be subrogated by the Workers' Compensation insurance carrier;

1533 (iii) may not be reduced by any benefits provided by Workers' Compensation
1534 insurance;

1535 (iv) may be reduced by health insurance subrogation only after the covered person has
1536 been made whole;

1537 (v) may not be collected for bodily injury or death sustained by a person:

1538 (A) while committing a violation of Section 41-1a-1314;

1539 (B) who, as a passenger in a vehicle, has knowledge that the vehicle is being operated
1540 in violation of Section 41-1a-1314; or

1541 (C) while committing a felony; and

1542 (vi) notwithstanding Subsection (10)(c)(v), may be recovered:

1543 (A) for a person under 18 years of age who is injured within the scope of Subsection
1544 (10)(c)(v) but limited to medical and funeral expenses; or

1545 (B) by a law enforcement officer as defined in Section 53-13-103, who is injured
1546 within the course and scope of the law enforcement officer's duties.

1547 (11) The inception of the loss under Subsection 31A-21-313(1) for underinsured
1548 motorist claims occurs upon the date of the last liability policy payment.

1549 (12) (a) Within five business days after notification in a manner specified by the
1550 department that all liability insurers have tendered their liability policy limits, the underinsured
1551 carrier shall either:

1552 (i) waive any subrogation claim the underinsured carrier may have against the person
1553 liable for the injuries caused in the accident; or

1554 (ii) pay the insured an amount equal to the policy limits tendered by the liability carrier.

1555 (b) If neither option is exercised under Subsection (12)(a), the subrogation claim is
1556 deemed to be waived by the underinsured carrier.

1557 (13) Except as otherwise provided in this section, a covered person may seek, subject
1558 to the terms and conditions of the policy, additional coverage under any policy:

1559 (a) that provides coverage for damages resulting from motor vehicle accidents; and

1560 (b) that is not required to conform to Section 31A-22-302.

1561 Section 8. Section **63-30a-3** is amended to read:

1562 **63-30a-3. Payment of reimbursement of attorneys' fees and court costs.**

1563 (1) A request for reimbursement of attorneys' fees and court costs shall be filed in the
1564 manner provided in Sections [~~63-30-36 and 63-30-37~~] 63-30d-902 and 63-30d-903.

1565 (2) (a) Any reimbursement of attorneys' fees and court costs filed on behalf of an
1566 officer or employee of the state shall be paid from funds appropriated to the department or
1567 division that employed the officer or employee at the time of the act or omission that gave rise
1568 to the indictment or information.

1569 (b) If those funds are unavailable, the reimbursement shall be paid from the General
1570 Fund upon approval by the Board of Examiners and legislative appropriation.

1571 Section 9. Section **63-30d-101** is enacted to read:

1572 **CHAPTER 30d. GOVERNMENTAL IMMUNITY ACT OF UTAH**

1573 **Part 1. General Provisions**

1574 **63-30d-101. Title, scope, and intent.**

1575 (1) This chapter is known as the "Governmental Immunity Act of Utah."

1576 (2) (a) The waivers and retentions of immunity found in this chapter apply to all
1577 functions of government, no matter how labeled.

1578 (b) This single, comprehensive chapter, governs all claims against governmental
1579 entities or against their employees or agents arising out of the performance of the employee's
1580 duties, within the scope of employment, or under color of authority.

1581 Section 10. Section **63-30d-102** is enacted to read:

1582 **63-30d-102. Definitions.**

1583 As used in this chapter:

1584 (1) "Claim" means any asserted demand for or cause of action for money or damages,
1585 whether arising under the common law, under state constitutional provisions, or under state
1586 statutes, against a governmental entity or against an employee in the employee's personal
1587 capacity.

1588 (2) (a) "Employee" includes:

1589 (i) a governmental entity's officers, employees, servants, trustees, or commissioners;

1590 (ii) members of a governing body;

1591 (iii) members of a government entity board;

1592 (iv) members of a government entity commission;

1593 (v) members of an advisory body, officers, and employees of a Children's Justice

1594 Center created in accordance with Section 67-5b-104;

1595 (vi) student teachers holding a letter of authorization in accordance with Sections
1596 53A-6-103 and 53A-6-104;

1597 (vii) educational aides;

1598 (viii) students engaged in providing services to members of the public in the course of
1599 an approved medical, nursing, or other professional health care clinical training program;

1600 (ix) volunteers as defined by Subsection 67-20-2(3); and

1601 (x) tutors.

1602 (b) "Employee" includes all of the positions identified in Subsection (2)(a), whether or
1603 not the individual holding that position receives compensation.

1604 (c) "Employee" does not include an independent contractor.

1605 (3) "Governmental entity" means the state and its political subdivisions as both are
1606 defined in this section.

1607 (4) (a) "Governmental function" means each activity, undertaking, or operation of a
1608 governmental entity.

1609 **(b) "Governmental function" includes each activity, undertaking, or operation**
1610 **performed by a department, agency, employee, agent, or officer of a governmental entity.**

1611 **(c) "Governmental function" includes a governmental entity's failure to act.**

1612 **(5) "Injury" means death, injury to a person, damage to or loss of property, or any other**
1613 **injury that a person may suffer to his person or estate, that would be actionable if inflicted by a**
1614 **private person or his agent.**

1615 **(6) "Personal injury" means an injury of any kind other than property damage.**

1616 **(7) "Political subdivision" means any county, city, town, school district, public transit**
1617 **district, redevelopment agency, special improvement or taxing district, special district, an entity**
1618 **created by an interlocal agreement adopted under Title 11, Chapter 13, Interlocal Cooperation**
1619 **Act, or other governmental subdivision or public corporation.**

1620 **(8) "Property damage" means injury to, or loss of, any right, title, estate, or interest in**
1621 **real or personal property.**

1622 **(9) "State" means the state of Utah, and includes each office, department, division,**
1623 **agency, authority, commission, board, institution, hospital, college, university, children's**
1624 **justice center, or other instrumentality of the state.**

1625 **(10) "Willful misconduct" means the intentional doing of a wrongful act, or the**
1626 **wrongful failure to act, without just cause or excuse, where the actor is aware that his conduct**
1627 **will probably result in injury.**

1628 Section 11. Section **63-30d-201** is enacted to read:

1629 **Part 2. Governmental Immunity -- Statement, Scope, and Effect.**

1630 **63-30d-201. Immunity of governmental entities from suit.**

1631 **(1) Except as may be otherwise provided in this chapter, each governmental entity and**
1632 **each employee of a governmental entity are immune from suit for any injury that results from**
1633 **the exercise of a governmental function.**

1634 **(2) Notwithstanding the waiver of immunity provisions of Section 63-30d-301, a**
1635 **governmental entity, its officers, and its employees are immune from suit for any injury or**
1636 **damage resulting from the implementation of or the failure to implement measures to:**

1637 **(a) control the causes of epidemic and communicable diseases and other conditions**
1638 **significantly affecting the public health or necessary to protect the public health as set out in**
1639 **Title 26A, Chapter 1, Local Health Departments;**

1640 (b) investigate and control suspected bioterrorism and disease as set out in Title 26,
1641 Chapter 23b, Detection of Public Health Emergencies Act; and

1642 (c) respond to a national, state, or local emergency, a public health emergency as
1643 defined in Section 26-23b-102, or a declaration by the President of the United States or other
1644 federal official requesting public health-related activities.

1645 Section 12. Section **63-30d-202** is enacted to read:

1646 **63-30d-202. Act provisions not construed as admission or denial of liability --**

1647 **Effect of waiver of immunity -- Exclusive remedy -- Joinder of employee -- Limitations on**
1648 **personal liability.**

1649 (1) (a) Nothing contained in this chapter, unless specifically provided, may be
1650 construed as an admission or denial of liability or responsibility by or for a governmental entity
1651 or its employees.

1652 (b) If immunity from suit is waived by this chapter, consent to be sued is granted, and
1653 liability of the entity shall be determined as if the entity were a private person.

1654 (c) No cause of action or basis of liability is created by any waiver of immunity in this
1655 chapter, nor may any provision of this chapter be construed as imposing strict liability or
1656 absolute liability.

1657 (2) Nothing in this chapter may be construed as adversely affecting any immunity from
1658 suit that a governmental entity or employee may otherwise assert under state or federal law.

1659 (3) (a) Except as provided in Subsection (3)(c), an action under this chapter against a
1660 governmental entity for an injury caused by an act or omission that occurs during the
1661 performance of an employee's duties, within the scope of employment, or under color of
1662 authority is a plaintiff's exclusive remedy.

1663 (b) Judgment under this chapter against a governmental entity is a complete bar to any
1664 action by the claimant, based upon the same subject matter, against the employee whose act or
1665 omission gave rise to the claim.

1666 (c) A plaintiff may not bring or pursue any civil action or proceeding based upon the
1667 same subject matter against the employee or the estate of the employee whose act or omission
1668 gave rise to the claim, unless:

1669 (i) the employee acted or failed to act through fraud or willful misconduct;

1670 (ii) the injury or damage resulted from the employee driving a vehicle, or being in

1671 actual physical control of a vehicle:

1672 (A) with a blood alcohol content equal to or greater by weight than the established
1673 legal limit;

1674 (B) while under the influence of alcohol or any drug to a degree that rendered the
1675 person incapable of safely driving the vehicle; or

1676 (C) while under the combined influence of alcohol and any drug to a degree that
1677 rendered the person incapable of safely driving the vehicle;

1678 (iii) injury or damage resulted from the employee being physically or mentally
1679 impaired so as to be unable to reasonably perform his or her job function because of:

1680 (A) the use of alcohol;

1681 (B) the nonprescribed use of a controlled substance as defined in Section 58-37-4; or

1682 (C) the combined influence of alcohol and a nonprescribed controlled substance as
1683 defined by Section 58-37-4; or

1684 (iv) in a judicial or administrative proceeding, the employee intentionally or knowingly
1685 gave, upon a lawful oath or in any form allowed by law as a substitute for an oath, false
1686 testimony material to the issue or matter of inquiry under this section.

1687 (4) Except as permitted in Subsection (3)(c), no employee may be joined or held
1688 personally liable for acts or omissions occurring:

1689 (a) during the performance of the employee's duties;

1690 (b) within the scope of employment; or

1691 (c) under color of authority.

1692 Section 13. Section **63-30d-301** is enacted to read:

1693 **Part 3. Waivers of Immunity**

1694 **63-30d-301. Waivers of immunity -- Exceptions.**

1695 (1) (a) Immunity from suit of each governmental entity is waived as to any contractual
1696 obligation.

1697 (b) Actions arising out of contractual rights or obligations are not subject to the
1698 requirements of Sections 63-30d-401, 63-30d-402, 63-30d-403, or 63-30d-601.

1699 (c) The Division of Water Resources is not liable for failure to deliver water from a
1700 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development
1701 Act, if the failure to deliver the contractual amount of water is due to drought, other natural

1702 condition, or safety condition that causes a deficiency in the amount of available water.

1703 (2) Immunity from suit of each governmental entity is waived:

1704 (a) as to any action brought to recover, obtain possession of, or quiet title to real or
1705 personal property;

1706 (b) as to any action brought to foreclose mortgages or other liens on real or personal
1707 property, to determine any adverse claim on real or personal property, or to obtain an
1708 adjudication about any mortgage or other lien that the governmental entity may have or claim
1709 on real or personal property;

1710 (c) as to any action based on the negligent destruction, damage, or loss of goods,
1711 merchandise, or other property while it is in the possession of any governmental entity or
1712 employee, if the property was seized for the purpose of forfeiture under any provision of state
1713 law;

1714 (d) subject to Subsection 63-30d-302(1), as to any action brought under the authority of
1715 Article I, Section 22 of the Utah Constitution, for the recovery of compensation from the
1716 governmental entity when the governmental entity has taken or damaged private property for
1717 public uses without just compensation;

1718 (e) subject to Subsection 63-30d-302(2), as to any action brought to recover attorneys'
1719 fees under Sections 63-2-405 and 63-2-802; or

1720 (f) for actual damages under Title 67, Chapter 21, Utah's Protection of Public
1721 Employees Act.

1722 (3) (a) Except as provided in Subsection (3)(b), immunity from suit of each
1723 governmental entity is waived as to any injury caused by:

1724 (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,
1725 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

1726 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,
1727 or other public improvement.

1728 (b) Immunity is not waived if the injury arises out of, in connection with, or results
1729 from:

1730 (i) a latent dangerous or latent defective condition of any highway, road, street, alley,
1731 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

1732 (ii) a latent dangerous or latent defective condition of any public building, structure,

1733 dam, reservoir, or other public improvement.

1734 (4) Immunity from suit of each governmental entity is waived as to any injury
1735 proximately caused by a negligent act or omission of an employee committed within the scope
1736 of employment.

1737 (5) Immunity is not waived under Subsections (3) and (4) if the injury arises out of, in
1738 connection with, or results from:

1739 (a) the exercise or performance, or the failure to exercise or perform, a discretionary
1740 function, whether or not the discretion is abused;

1741 (b) assault, battery, false imprisonment, false arrest, malicious prosecution, intentional
1742 trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of
1743 mental anguish, or violation of civil rights;

1744 (c) the issuance, denial, suspension, or revocation of or by the failure or refusal to
1745 issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar
1746 authorization;

1747 (d) a failure to make an inspection or by making an inadequate or negligent inspection;

1748 (e) the institution or prosecution of any judicial or administrative proceeding, even if
1749 malicious or without probable cause;

1750 (f) a misrepresentation by an employee whether or not it is negligent or intentional;

1751 (g) riots, unlawful assemblies, public demonstrations, mob violence, and civil
1752 disturbances;

1753 (h) the collection of and assessment of taxes;

1754 (i) the activities of the Utah National Guard;

1755 (j) the incarceration of any person in any state prison, county or city jail, or other place
1756 of legal confinement;

1757 (k) any natural condition on publicly owned or controlled lands, any condition existing
1758 in connection with an abandoned mine or mining operation, or any activity authorized by the
1759 School and Institutional Trust Lands Administration or the Division of Forestry, Fire and State
1760 Lands;

1761 (l) research or implementation of cloud management or seeding for the clearing of fog;

1762 (m) the management of flood waters, earthquakes, or natural disasters;

1763 (n) the construction, repair, or operation of flood or storm systems;

1764 (o) the operation of an emergency vehicle, while being driven in accordance with the
1765 requirements of Section 41-6-14;

1766 (p) the activities of:

1767 (i) providing emergency medical assistance;

1768 (ii) fighting fire;

1769 (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;

1770 (iv) emergency evacuations;

1771 (v) transporting or removing injured persons to a place where emergency medical
1772 assistance can be rendered or where the person can be transported by a licensed ambulance
1773 service; or

1774 (vi) intervening during dam emergencies;

1775 (q) the exercise or performance, or the failure to exercise or perform, any function
1776 pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources; or

1777 (r) unauthorized access to government records, data, or electronic information systems
1778 by any person or entity.

1779 Section 14. Section **63-30d-302** is enacted to read:

1780 **63-30d-302. Specific remedies -- "Takings" actions -- Government Records Access**
1781 **and Management Actions.**

1782 (1) In any action brought under the authority of Article I, Section 22 of the Utah
1783 Constitution for the recovery of compensation from the governmental entity when the
1784 governmental entity has taken or damaged private property for public uses without just
1785 compensation, compensation and damages shall be assessed according to the requirements of
1786 Title 78, Chapter 34, Eminent Domain.

1787 (2) (a) Notwithstanding Section 63-30d-401, a notice of claim for attorneys' fees under
1788 Subsection 63-30d-301(2)(e) may be filed contemporaneously with a petition for review under
1789 Section 63-2-404.

1790 (b) The provisions of Subsection 63-30d-403(1), relating to the governmental entity's
1791 response to a claim, and the provisions of 63-30d-601, requiring an undertaking, do not apply
1792 to a notice of claim for attorneys' fees filed contemporaneously with a petition for review under
1793 Section 63-2-404.

1794 (c) Any other claim under this chapter that is related to a claim for attorneys' fees under

1795 Subsection 63-30d-301(2)(e) may be brought contemporaneously with the claim for attorneys'
1796 fees or in a subsequent action.

1797 Section 15. Section **63-30d-401** is enacted to read:

1798 **Part 4. Notice of Claim Against a Governmental Entity or a Government Employee.**

1799 **63-30d-401. Claim for injury -- Notice -- Contents -- Service -- Legal disability --**
1800 **Appointment of guardian ad litem.**

1801 (1) (a) Except as provided in Subsection (1)(b), a claim arises when the statute of
1802 limitations that would apply if the claim were against a private person begins to run.

1803 (b) The statute of limitations does not begin to run until a claimant knew, or with the
1804 exercise of reasonable diligence should have known:

1805 (i) that the claimant had a claim against the governmental entity or its employee; and

1806 (ii) the identity of the governmental entity or the name of the employee.

1807 (c) The burden to prove the exercise of reasonable diligence is upon the claimant.

1808 (2) Any person having a claim against a governmental entity, or against its employee
1809 for an act or omission occurring during the performance of the employee's duties, within the
1810 scope of employment, or under color of authority shall file a written notice of claim with the
1811 entity before maintaining an action, regardless of whether or not the function giving rise to the
1812 claim is characterized as governmental.

1813 (3) (a) The notice of claim shall set forth:

1814 (i) a brief statement of the facts;

1815 (ii) the nature of the claim asserted;

1816 (iii) the damages incurred by the claimant so far as they are known; and

1817 (iv) if the claim is being pursued against a governmental employee individually as
1818 provided in Subsection 63-30d-202(3)(c), the name of the employee.

1819 (b) The notice of claim shall be:

1820 (i) signed by the person making the claim or that person's agent, attorney, parent, or
1821 legal guardian; and

1822 (ii) directed and delivered by hand or by mail according to the requirements of Section
1823 68-3-8.5 to the office of:

1824 (A) the city recorder or town clerk/recorder, when the claim is against an incorporated
1825 city or town;

- 1826 (B) the county clerk, when the claim is against a county;
1827 (C) the superintendent or business administrator of the board, when the claim is against
1828 a school district or board of education;
1829 (D) the president or secretary of the board, when the claim is against a special district;
1830 (E) the attorney general, when the claim is against the State of Utah;
1831 (F) a member of the governing board, the executive director, or executive secretary,
1832 when the claim is against any other public board, commission, or body; or
1833 (G) the agent authorized by a governmental entity to receive the notice of claim by the
1834 governmental entity under Subsection (5)(e).
- 1835 (4) (a) If an injury that may reasonably be expected to result in a claim against a
1836 governmental entity is sustained by a claimant who is under the age of majority or mentally
1837 incompetent, that governmental entity may file a request with the court for the appointment of a
1838 guardian ad litem for the potential claimant.
- 1839 (b) If a guardian ad litem is appointed, the time for filing a claim under Section
1840 63-30d-402 begins when the order appointing the guardian is issued.
- 1841 (5) (a) Each governmental entity subject to suit under this chapter shall file a statement
1842 with the lieutenant governor containing:
- 1843 (i) the name and address of the governmental entity;
1844 (ii) the office or agent designated to receive a notice of claim; and
1845 (iii) the address at which it is to be directed and delivered.
- 1846 (b) Each governmental entity shall update its statement as necessary to ensure that the
1847 information is accurate.
- 1848 (c) The lieutenant governor shall develop a form for governmental entities to complete
1849 that provides the information required by Subsection (5)(a).
- 1850 (d) Newly incorporated entities shall file the statement required by Subsection (5)(a) at
1851 the time that the statement of incorporation and boundaries is filed with the lieutenant governor
1852 under Sections 10-1-106 and 17A-1-102.
- 1853 (e) A governmental entity may, in its statement, identify an agent authorized by the
1854 entity to accept notices of claim on its behalf.
- 1855 (6) The lieutenant governor shall:
1856 (a) maintain an index of the statements required by this section arranged both

1857 alphabetically by entity and by county of operation; and

1858 (b) make the indices available to the public both electronically and via hard copy.

1859 (7) A governmental entity may not challenge the validity of a notice of claim on the
1860 grounds that it was not directed and delivered to the proper office or agent if the error is caused
1861 by the governmental entity's failure to file or update the statement required by Subsection (5).

1862 Section 16. Section **63-30d-402** is enacted to read:

1863 **63-30d-402. Time for filing notice of claim.**

1864 A claim against a governmental entity, or against an employee for an act or omission
1865 occurring during the performance of the employee's duties, within the scope of employment, or
1866 under color of authority, is barred unless notice of claim is filed with the person and according
1867 to the requirements of Section 63-30d-401 within one year after the claim arises regardless of
1868 whether or not the function giving rise to the claim is characterized as governmental.

1869 Section 17. Section **63-30d-403** is enacted to read:

1870 **63-30d-403. Notice of Claim -- Approval or denial by governmental entity or**
1871 **insurance carrier within 60 days -- remedies for denial of claim.**

1872 (1) (a) Within 60 days of the filing of a notice of claim, the governmental entity or its
1873 insurance carrier shall inform the claimant in writing that the claim has either been approved or
1874 denied.

1875 (b) A claim is considered to be denied if, at the end of the 60-day period, the
1876 governmental entity or its insurance carrier has failed to approve or deny the claim.

1877 (2) (a) If the claim is denied, a claimant may institute an action in the district court
1878 against the governmental entity or an employee of the entity.

1879 (b) The claimant shall begin the action within one year after denial of the claim or
1880 within one year after the denial period specified in this chapter has expired, regardless of
1881 whether or not the function giving rise to the claim is characterized as governmental.

1882 Section 18. Section **63-30d-501** is enacted to read:

1883 **Part 5. Legal Actions Under This Chapter -- Jurisdiction and Venue**

1884 **63-30d-501. Jurisdiction of district courts over actions.**

1885 (1) The district courts have exclusive, original jurisdiction over any action brought
1886 under this chapter.

1887 (2) An action brought under this chapter may not be tried as a small claims action.

1888 Section 19. Section **63-30d-502** is enacted to read:

1889 **63-30d-502. Venue of actions.**

1890 (1) Actions against the state may be brought in the county in which the claim arose or
1891 in Salt Lake County.

1892 (2) (a) Actions against a county may be brought in the county in which the claim arose,
1893 or in the defendant county, or, upon leave granted by a district court judge of the defendant
1894 county, in any county contiguous to the defendant county.

1895 (b) Leave may be granted ex parte.

1896 (3) Actions against all other political subdivisions, including cities and towns, shall be
1897 brought in the county in which the political subdivision is located or in the county in which the
1898 claim arose.

1899 Section 20. Section **63-30d-601** is enacted to read:

1900 **Part 6. Legal Actions Under This Chapter -- Procedures, Requirements, Damages, and**
1901 **Limitations on Judgments**

1902 **63-30d-601. Actions governed by Utah Rules of Civil Procedure -- Undertaking**
1903 **required.**

1904 (1) An action brought under this chapter shall be governed by the Utah Rules of Civil
1905 Procedure to the extent that they are consistent with this chapter.

1906 (2) At the time the action is filed, the plaintiff shall file an undertaking in a sum fixed
1907 by the court that is:

1908 (a) not less than \$300; and

1909 (b) conditioned upon payment by the plaintiff of taxable costs incurred by the
1910 governmental entity in the action if the plaintiff fails to prosecute the action or fails to recover
1911 judgment.

1912 Section 21. Section **63-30d-602** is enacted to read:

1913 **63-30d-602. Compromise and settlement of claims.**

1914 (1) A political subdivision, after conferring with its legal officer or other legal counsel
1915 if it does not have a legal officer, may compromise and settle any action as to the damages or
1916 other relief sought.

1917 (2) The risk manager in the Department of Administrative Services may compromise
1918 and settle any action against the state for which the Risk Management Fund may be liable:

1919 (a) on the risk manager's own authority, if the amount of the settlement is \$25,000 or
1920 less;

1921 (b) with the concurrence of the attorney general or the attorney general's representative
1922 and the executive director of the Department of Administrative Services if the amount of the
1923 settlement is \$25,000.01 to \$100,000; or

1924 (c) by complying with the procedures and requirements of Title 63, Chapter 38b, State
1925 Settlement Agreements, if the amount of the settlement is more than \$100,000.

1926 Section 22. Section **63-30d-603** is enacted to read:

1927 **63-30d-603. Exemplary or punitive damages prohibited -- Governmental entity**
1928 **exempt from execution, attachment, or garnishment.**

1929 (1) (a) A judgment may not be rendered against a governmental entity for exemplary or
1930 punitive damages.

1931 (b) If a governmental entity would be required to pay the judgment under Section
1932 63-30d-902 or 63-30d-903, the governmental entity shall pay any judgment or portion of any
1933 judgment entered against its employee in the employee's personal capacity even if the judgment
1934 is for or includes exemplary or punitive damages.

1935 (2) Execution, attachment, or garnishment may not issue against a governmental entity.

1936 Section 23. Section **63-30d-604** is enacted to read:

1937 **63-30d-604. Limitation of judgments against governmental entity or employee --**
1938 **Process for adjustment of limits.**

1939 (1) (a) Except as provided in Subsections (2) and (3), if a judgment for damages for
1940 personal injury against a governmental entity, or an employee whom a governmental entity has
1941 a duty to indemnify, exceeds \$553,500 for one person in any one occurrence, or \$1,107,000 for
1942 two or more persons in any one occurrence, the court shall reduce the judgment to that amount.

1943 (b) A court may not award judgment of more than \$553,500 for injury or death to one
1944 person regardless of whether or not the function giving rise to the injury is characterized as
1945 governmental.

1946 (c) Except as provided in Subsection (2), if a judgment for property damage against a
1947 governmental entity, or an employee whom a governmental entity has a duty to indemnify,
1948 exceeds \$221,400 in any one occurrence, the court shall reduce the judgment to that amount,
1949 regardless of whether or not the function giving rise to the damage is characterized as

1950 governmental.

1951 (2) The damage limits established in this section do not apply to damages awarded as
1952 compensation when a governmental entity has taken or damaged private property for public use
1953 without just compensation.

1954 (3) The limitations of judgments established in Subsection (1) shall be adjusted
1955 according to the methodology set forth in Subsection (4).

1956 (4) (a) Each year, the risk manager shall:

1957 (i) calculate the consumer price index as provided in Sections 1(f)(4) and 1(f)(5),

1958 Internal Revenue Code;

1959 (ii) calculate the increase or decrease in the limitation of judgment amounts established
1960 in this section as a percentage equal to the percentage difference between the consumer price
1961 index for the preceding calendar year and the consumer price index for calendar year 2003; and

1962 (iii) after making an increase or decrease under Subsection (4)(a)(ii), round up the
1963 limitation of judgment amounts established in Subsection (1) to the nearest \$100.

1964 (b) Each even-numbered year after 2004, the risk manager shall make rules, which
1965 become effective no later than July 1, that establish the new limitation of judgment amounts.

1966 (c) Adjustments made by the risk manager to the limitation of judgment amounts
1967 established by this section have prospective effect only from the date the rules establishing the
1968 new limitation of judgment take effect and those adjusted limitations of judgment apply only to
1969 claims for injuries or losses that occur after the effective date of the rules that establish those
1970 new limitations of judgement.

1971 Section 24. Section **63-30d-701** is enacted to read:

1972 **Part 7. Payment Process and Sources for Paying Proved Claims**

1973 **Against Governmental Entities**

1974 **63-30d-701. Payment of claim or judgment against state -- Presentment for**
1975 **payment.**

1976 (1) (a) Each claim, as defined by Subsection 63-30d-102(1), that is approved by the
1977 state or any final judgment obtained against the state shall be presented for payment to:

1978 (i) the state risk manager; or

1979 (ii) the office, agency, institution, or other instrumentality involved, if payment by that
1980 instrumentality is otherwise permitted by law.

1981 (b) If payment of the claim is not authorized by law, the judgment or claim shall be
1982 presented to the board of examiners for action as provided in Section 63-6-10.

1983 (c) If a judgment against the state is reduced by the operation of Section 63-30d-604,
1984 the claimant may submit the excess claim to the board of examiners.

1985 Section 25. Section **63-30d-702** is enacted to read:

1986 **63-30d-702. Payment of claim or judgment against political subdivision --**
1987 **Procedure by governing body -- payment options.**

1988 (1) (a) Each claim approved by a political subdivision or any final judgment obtained
1989 against a political subdivision shall be submitted to the governing body of the political
1990 subdivision.

1991 (b) The governing body shall pay the claim immediately from the general funds of the
1992 political subdivision unless:

1993 (i) the funds are appropriated to some other use or restricted by law or contract for
1994 other purposes; or

1995 (ii) the political subdivision opts to pay the claim or award in installments under
1996 Subsection (2).

1997 (2) If the subdivision is unable to pay the claim or award during the current fiscal year,
1998 it may pay the claim or award in not more than ten ensuing annual installments of equal size or
1999 in whatever other installments that are agreeable to the claimant.

2000 Section 26. Section **63-30d-703** is enacted to read:

2001 **63-30d-703. Reserve funds for payment of claims or purchase of insurance**
2002 **created by political subdivisions.**

2003 Any political subdivision may create and maintain a reserve fund or, may jointly with
2004 one or more other political subdivisions, make contributions to a joint reserve fund, for the
2005 purpose of:

2006 (1) making payment of claims against the cooperating subdivisions when they become
2007 payable under this chapter; or

2008 (2) for the purpose of purchasing liability insurance to protect the cooperating
2009 subdivisions from any or all risks created by this chapter.

2010 Section 27. Section **63-30d-704** is enacted to read:

2011 **63-30d-704. Tax levy by political subdivisions for payment of claims, judgments,**

2012 **or insurance premiums.**

2013 (1) Notwithstanding any provision of law to the contrary, a political subdivision may
2014 levy an annual property tax sufficient to pay:

2015 (a) any claim, settlement, or judgment;

2016 (b) the costs to defend against any claim, settlement, or judgment; or

2017 (c) for the establishment and maintenance of a reserve fund for the payment of claims,
2018 settlements, or judgments that may be reasonably anticipated.

2019 (2) (a) The payments authorized to pay for punitive damages or to pay the premium for
2020 authorized insurance is money spent for a public purpose within the meaning of this section
2021 and Article XIII, Sec. 5, Utah Constitution, even though, as a result of the levy, the maximum
2022 levy as otherwise restricted by law is exceeded.

2023 (b) No levy under this section may exceed .0001 per dollar of taxable value of taxable
2024 property.

2025 (c) The revenues derived from this levy may not be used for any purpose other than
2026 those specified in this section.

2027 Section 28. Section **63-30d-801** is enacted to read:

2028 **Part 8. Self-insurance and Purchase of Liability Insurance by Governmental Entities**

2029 **63-30d-801. Insurance -- Self-insurance or purchase of liability insurance by**
2030 **governmental entity authorized -- Establishment of trust accounts for self-insurance.**

2031 (1) Any governmental entity within the state may self-insure, purchase commercial
2032 insurance, or self-insure and purchase excess commercial insurance in excess of the statutory
2033 limits of this chapter against:

2034 (a) any risk created or recognized by this chapter; or

2035 (b) any action for which a governmental entity or its employee may be held liable.

2036 (2) (a) In addition to any other reasonable means of self-insurance, a governmental
2037 entity may self-insure with respect to specified classes of claims by establishing a trust account.

2038 (b) In creating the trust account, the governmental entity shall ensure that:

2039 (i) the trust account is managed by an independent private trustee; and

2040 (ii) the independent private trustee has authority, with respect to claims covered by the
2041 trust, to:

2042 (A) expend both principal and earnings of the trust account solely to pay the costs of

2043 investigation, discovery, and other pretrial and litigation expenses including attorneys' fees; and

2044 (B) pay all sums for which the governmental entity may be adjudged liable or for

2045 which a compromise settlement may be agreed upon.

2046 (c) Notwithstanding any law to the contrary, the trust agreement between the

2047 governmental entity and the trustee may authorize the trustee to:

2048 (i) employ counsel to defend actions against the entity and its employees;

2049 (ii) protect and safeguard the assets of the trust;

2050 (iii) provide for claims investigation and adjustment services;

2051 (iv) employ expert witnesses and consultants; and

2052 (v) provide other services and functions that are necessary and proper to carry out the

2053 purposes of the trust.

2054 (d) The monies and interest earned on the trust fund may be invested by following the

2055 procedures and requirements of Title 51, Chapter 7, State Money Management Act, and are

2056 subject to audit by the state auditor.

2057 Section 29. Section **63-30d-802** is enacted to read:

2058 **63-30d-802. Insurance -- Liability insurance -- Government vehicles operated by**

2059 **employees outside scope of employment.**

2060 (1) A governmental entity that owns vehicles driven by an employee of the

2061 governmental entity with the express or implied consent of the entity, but which, at the time

2062 liability is incurred as a result of an automobile accident, is not being driven and used within

2063 the course and scope of the driver's employment is, subject to Subsection (2), considered to

2064 provide the driver with the insurance coverage required by Title 41, Chapter 12a, Financial

2065 Responsibility of Motor Vehicle Owners and Operators Act.

2066 (2) The liability coverages considered provided are the minimum limits under Section

2067 31A-22-304.

2068 Section 30. Section **63-30d-803** is enacted to read:

2069 **63-30d-803. Liability insurance -- Construction of policy not in compliance with**

2070 **act.**

2071 (1) If any insurance policy, rider, or endorsement issued after June 30, 2004 that was

2072 purchased to insure against any risk that may arise as a result of the application of this chapter

2073 contains any condition or provision not in compliance with the requirements of this chapter,

2074 that policy, rider, or endorsement is not invalid, but shall be construed and applied according to
2075 the conditions and provisions that would have applied had the policy, rider, or endorsement
2076 been in full compliance with this chapter, provided that the policy is otherwise valid.

2077 (2) If any insurance policy, rider, or endorsement issued after June 30, 1966 and before
2078 July 1, 2004 that was purchased to insure against any risk that may arise as a result of the
2079 application of this chapter contains any condition or provision not in compliance with the
2080 requirements of the chapter, that policy, rider, or endorsement is not invalid, but shall be
2081 construed and applied according to the conditions and provisions that would have applied had
2082 the policy, rider, or endorsement been in full compliance with this chapter, provided that the
2083 policy is otherwise valid.

2084 Section 31. Section **63-30d-804** is enacted to read:

2085 **63-30d-804. Liability insurance -- Methods for purchase or renewal.**

2086 (1) Except as provided in Subsection (2), a contract or policy of insurance may be
2087 purchased or renewed under this chapter only upon public bid to be let to the lowest and best
2088 bidder.

2089 (2) The purchase or renewal of insurance by the state shall be conducted in accordance
2090 with the provisions of Title 63, Chapter 56, Utah Procurement Code.

2091 Section 32. Section **63-30d-805** is enacted to read:

2092 **63-30d-805. Liability insurance -- Insurance for employees authorized -- No right**
2093 **to indemnification or contribution from governmental agency.**

2094 (1) (a) A governmental entity may insure any or all of its employees against liability, in
2095 whole or in part, for injury or damage resulting from an act or omission occurring during the
2096 performance of an employee's duties, within the scope of employment, or under color of
2097 authority, regardless of whether or not that entity is immune from suit for that act or omission.

2098 (b) Any expenditure for that insurance is for a public purpose.

2099 (c) Under any contract or policy of insurance providing coverage on behalf of a
2100 governmental entity or employee for any liability defined by this section, regardless of the
2101 source of funding for the coverage, the insurer has no right to indemnification or contribution
2102 from the governmental entity or its employee for any loss or liability covered by the contract or
2103 policy.

2104 (2) Any surety covering a governmental entity or its employee under any faithful

2105 performance surety bond has no right to indemnification or contribution from the governmental
2106 entity or its employee for any loss covered by that bond based on any act or omission for which
2107 the governmental entity would be obligated to defend or indemnify under the provisions of
2108 Section 63-30d-902.

2109 Section 33. Section **63-30d-901** is enacted to read:

2110 **Part 9. Coverage and Representation of State Entities and Employees.**

2111 **63-30d-901. Expenses of attorney general, general counsel for state judiciary, and**
2112 **general counsel for the Legislature in representing the state, its branches, members, or**
2113 **employees.**

2114 (1) (a) The Office of the Attorney General has primary responsibility to provide legal
2115 representation to the judicial, executive, and legislative branches of state government in cases
2116 where coverage under the Risk Management Fund created by Section 63A-4-201 applies.

2117 (b) When the attorney general has primary responsibility to provide legal representation
2118 to the judicial or legislative branches, the attorney general shall consult with the general
2119 counsel for the state judiciary and with the general counsel for the Legislature, to solicit their
2120 assistance in defending their respective branch, and in determining strategy and making
2121 decisions concerning the disposition of those claims.

2122 (c) Notwithstanding Subsection (1)(b), the decision for settlement of monetary claims
2123 in those cases lies with the attorney general and the state risk manager.

2124 (2) (a) If the Judicial Council, after consultation with the general counsel for the state
2125 judiciary, determines that the Office of the Attorney General cannot adequately defend the state
2126 judiciary, its members, or employees because of a conflict of interest, separation of powers
2127 concerns, or other political or legal differences, the Judicial Council may direct its general
2128 counsel to separately represent and defend it.

2129 (b) If the general counsel for the state judiciary undertakes independent legal
2130 representation of the state judiciary, its members, or employees, the general counsel shall notify
2131 the state risk manager and the attorney general in writing before undertaking that
2132 representation.

2133 (c) If the state judiciary elects to be represented by its own counsel under this section,
2134 the decision for settlement of claims against the state judiciary, its members, or employees,
2135 where Risk Management Fund coverage applies, lies with the general counsel for the state

2136 judiciary and the state risk manager.

2137 (3) (a) If the Legislative Management Committee, after consultation with the general
2138 counsel for the Legislature, determines that the Office of the Attorney General cannot
2139 adequately defend the legislative branch, its members, or employees because of a conflict of
2140 interest, separation of powers concerns, or other political or legal differences, the Legislative
2141 Management Committee may direct its general counsel to separately represent and defend it.

2142 (b) If the general counsel for the Legislature undertakes independent legal
2143 representation of the Legislature, its members, or employees, the general counsel shall notify
2144 the state risk manager and the attorney general in writing before undertaking that
2145 representation.

2146 (c) If the legislative branch elects to be represented by its own counsel under this
2147 section, the decision for settlement of claims against the legislative branch, its members, or
2148 employees, where Risk Management Fund coverage applies, lies with the general counsel for
2149 the Legislature and the state risk manager.

2150 (4) (a) Notwithstanding the provisions of Section 67-5-3 or any other provision of the
2151 Utah Code, the attorney general, the general counsel for the state judiciary, and the general
2152 counsel for the Legislature may bill the Department of Administrative Services for all costs and
2153 legal fees expended by their respective offices, including attorneys' and secretarial salaries, in
2154 representing the state or any indemnified employee against any claim for which the Risk
2155 Management Fund may be liable and in advising state agencies and employees regarding any of
2156 those claims.

2157 (b) The risk manager shall draw funds from the Risk Management Fund for this
2158 purpose.

2159 Section 34. Section **63-30d-902** is enacted to read:

2160 **63-30d-902. Defending government employee -- Request -- Cooperation --**
2161 **Payment of judgment.**

2162 (1) Except as provided in Subsections (2) and (3), a governmental entity shall defend
2163 any action brought against its employee arising from an act or omission occurring:

2164 (a) during the performance of the employee's duties;

2165 (b) within the scope of the employee's employment; or

2166 (c) under color of authority.

2167 (2) (a) Before a governmental entity may defend its employee against a claim, the
2168 employee shall make a written request to the governmental entity to defend him:

2169 (i) within ten days after service of process upon him; or

2170 (ii) within a longer period that would not prejudice the governmental entity in
2171 maintaining a defense on his behalf; or

2172 (iii) within a period that would not conflict with notice requirements imposed on the
2173 entity in connection with insurance carried by the entity relating to the risk involved.

2174 (b) If the employee fails to make a request, or fails to reasonably cooperate in the
2175 defense, including the making of an offer of judgment under Rule 68, Utah Rules of Civil
2176 Procedure, Offers of Judgment, the governmental entity need not defend or continue to defend
2177 the employee, nor pay any judgment, compromise, or settlement against the employee in
2178 respect to the claim.

2179 (3) The governmental entity may decline to defend, or, subject to any court rule or
2180 order, decline to continue to defend, an action against an employee if it determines:

2181 (a) that the act or omission in question did not occur:

2182 (i) during the performance of the employee's duties;

2183 (ii) within the scope of his employment; or

2184 (iii) under color of authority; or

2185 (b) that the injury or damage on which the claim was based resulted from conditions
2186 set forth in Subsection 63-30d-202(3)(c).

2187 (4) (a) Within ten days of receiving a written request to defend an employee, the
2188 governmental entity shall inform the employee whether or not it shall provide a defense, and, if
2189 it refuses to provide a defense, the basis for its refusal.

2190 (b) A refusal by the entity to provide a defense is not admissible for any purpose in the
2191 action in which the employee is a defendant.

2192 (5) Except as provided in Subsection (6), if a governmental entity conducts the defense
2193 of an employee, the governmental entity shall pay any judgment based upon the claim.

2194 (6) A governmental entity may conduct the defense of an employee under a reservation
2195 of rights under which the governmental entity reserves the right not to pay a judgment if any of
2196 the conditions set forth in Subsection (3) are established.

2197 (7) (a) Nothing in this section or Section 63-30d-903 affects the obligation of a

2198 governmental entity to provide insurance coverage according to the requirements of Subsection
2199 41-12a-301(3) and Section 63-30d-802.

2200 (b) When a governmental entity declines to defend, or declines to continue to defend,
2201 an action against its employee under any of the conditions set forth in Subsection (3), it shall
2202 still provide coverage up to the amount specified in Sections 31A-22-304.

2203 Section 35. Section **63-30d-903** is enacted to read:

2204 **63-30d-903. Recovery of judgment paid and defense costs by government**
2205 **employee.**

2206 (1) Subject to Subsection (2), if an employee pays a judgment entered against him, or
2207 any portion of it, that the governmental entity is required to pay under Section 63-30d-902, the
2208 employee may recover from the governmental entity the amount of the payment and the
2209 reasonable costs incurred in the employee's defense.

2210 (2) (a) If a governmental entity does not conduct the defense of an employee against a
2211 claim, or conducts the defense under a reservation of rights as provided in Subsection
2212 63-30d-902(6), the employee may recover from the governmental entity under Subsection (1) if
2213 the employee can prove that none of the conditions set forth in Subsection 63-30d-202(3)(c)
2214 applied.

2215 (b) The employee has the burden of proof that none of the conditions set forth in
2216 Subsection 63-30d-202(3)(c) applied.

2217 Section 36. Section **63-30d-904** is enacted to read:

2218 **63-30d-904. Indemnification of governmental entity by employee not required.**

2219 If a governmental entity pays all or part of a judgment, compromise, or settlement based
2220 on a claim against the governmental entity or an employee, the employee is not required to
2221 indemnify the governmental entity for the payment.

2222 Section 37. Section **63-56-59** is amended to read:

2223 **63-56-59. Jurisdiction of district court.**

2224 (1) The district court shall have jurisdiction over an action, whether the action is at law
2225 or in equity, between the state and:

2226 (a) a bidder, offeror, or contractor, prospective or actual, who is aggrieved in
2227 connection with the solicitation or award of a contract;

2228 (b) a person who is subject to a suspension or debarment proceeding; and

2229 (c) a contractor, for any cause of action which arises under, or by virtue of a contract.
2230 (2) The provisions of [~~Sections 63-30-11, 63-30-12, 63-30-14, 63-30-15, and~~
2231 ~~63-30-19~~] Title 63, Chapter 30d, Part 4, Notice of Claim Against a Governmental Entity or a
2232 Government Employee, and Section 63-30d-601 do not apply to actions brought under this
2233 chapter by an aggrieved party for equitable relief or reasonable costs incurred in preparing or
2234 appealing an unsuccessful bid or offer.

2235 Section 38. Section **76-6-513** is amended to read:

2236 **76-6-513. Definitions -- Unlawful dealing of property by a fiduciary -- Penalties.**

2237 (1) As used in this section:

2238 (a) "Fiduciary" is as defined in Section 22-1-1.

2239 (b) "Financial institution" means "depository institution" and "trust company" as
2240 defined in Section 7-1-103.

2241 (c) "Governmental entity" is as defined in Section [~~63-30-2~~] 63-30d-102.

2242 (d) "Person" does not include a financial institution whose fiduciary functions are
2243 supervised by the Department of Financial Institutions or a federal regulatory agency.

2244 (e) "Property" is as defined in Section 76-6-401.

2245 (f) "Public monies" is as defined in Section 76-8-401.

2246 (2) A person is guilty of unlawfully dealing with property by a fiduciary if he deals
2247 with property that has been entrusted to him as a fiduciary, or property of a governmental
2248 entity, public monies, or of a financial institution, in a manner which he knows is a violation
2249 of his duty and which involves substantial risk of loss or detriment to the owner or to a person
2250 for whose benefit the property was entrusted. A violation of this Subsection (2) is punishable
2251 under Section 76-6-412.

2252 (3) (a) A person acting as a fiduciary is guilty of a violation of this subsection if,
2253 without permission of the owner of the property or some other person with authority to give
2254 permission, he pledges as collateral for a personal loan, or as collateral for the benefit of some
2255 party, other than the owner or the person for whose benefit the property was entrusted, the
2256 property that has been entrusted to the fiduciary.

2257 (b) An offense under Subsection (3)(a) is punishable as:

2258 (i) a felony of the second degree if the value of the property wrongfully pledged is or
2259 exceeds \$5,000;

2260 (ii) a felony of the third degree if the value of the property wrongfully pledged is or
2261 exceeds \$1,000 but is less than \$5,000;

2262 (iii) a class A misdemeanor if the value of the property is or exceeds \$300, but is less
2263 than \$1,000 or the actor has been twice before convicted of theft, robbery, burglary with intent
2264 to commit theft, or unlawful dealing with property by a fiduciary; or

2265 (iv) a class B misdemeanor if the value of the property is less than \$300.

2266 Section 39. Section **78-3a-113 (Superseded 07/01/04)** is amended to read:

2267 **78-3a-113 (Superseded 07/01/04). Minor taken into custody by peace officer,**
2268 **private citizen, or probation officer -- Grounds -- Notice requirements -- Release or**
2269 **detention -- Grounds for peace officer to take adult into custody.**

2270 (1) A minor may be taken into custody by a peace officer without order of the court if:

2271 (a) in the presence of the officer the minor has violated a state law, federal law, local
2272 law, or municipal ordinance;

2273 (b) there are reasonable grounds to believe the minor has committed an act which if
2274 committed by an adult would be a felony;

2275 (c) the minor is seriously endangered in his surroundings or if the minor seriously
2276 endangers others, and immediate removal appears to be necessary for his protection or the
2277 protection of others;

2278 (d) there are reasonable grounds to believe the minor has run away or escaped from his
2279 parents, guardian, or custodian; or

2280 (e) there is reason to believe the minor is subject to the state's compulsory education
2281 law and that the minor is absent from school without legitimate or valid excuse, subject to
2282 Section 53A-11-105.

2283 (2) (a) A private citizen or a probation officer may take a minor into custody if under
2284 the circumstances he could make a citizen's arrest if the minor was an adult.

2285 (b) A probation officer may also take a minor into custody under Subsection (1) or if
2286 the minor has violated the conditions of probation, if the minor is under the continuing
2287 jurisdiction of the juvenile court or in emergency situations in which a peace officer is not
2288 immediately available.

2289 (3) (a) If an officer or other person takes a minor into temporary custody, he shall
2290 without unnecessary delay notify the parents, guardian, or custodian. The minor shall then be

2291 released to the care of his parent or other responsible adult, unless his immediate welfare or the
2292 protection of the community requires his detention.

2293 (b) Before the minor is released, the parent or other person to whom the minor is
2294 released shall be required to sign a written promise on forms supplied by the court to bring the
2295 minor to the court at a time set or to be set by the court.

2296 (4) (a) A minor may not be held in temporary custody by law enforcement any longer
2297 than is reasonably necessary to obtain his name, age, residence, and other necessary
2298 information and to contact his parents, guardian, or custodian.

2299 (b) If the minor is not released under Subsection (3), he shall be taken to a place of
2300 detention or shelter without unnecessary delay.

2301 (5) (a) The person who takes a minor to a detention or shelter facility shall promptly
2302 file with the detention or shelter facility a written report on a form provided by the division
2303 stating the details of the presently alleged offense, the facts which bring the minor within the
2304 jurisdiction of the juvenile court, and the reason the minor was not released by law
2305 enforcement.

2306 (b) (i) The designated youth corrections facility staff person shall immediately review
2307 the form and determine, based on the guidelines for detention admissions established by the
2308 Division of Youth Corrections under Sections 62A-7-104 and 62A-7-205, whether to admit the
2309 minor to secure detention, admit the minor to home detention, place the minor in a placement
2310 other than detention, or return the minor home upon written promise to bring the minor to the
2311 court at a time set, or without restriction.

2312 (ii) If the designated youth corrections facility staff person determines to admit the
2313 minor to home detention, that staff person shall notify the juvenile court of that determination.
2314 The court shall order that notice be provided to the designated persons in the local law
2315 enforcement agency and the school or transferee school, if applicable, which the minor attends
2316 of the home detention. The designated persons may receive the information for purposes of the
2317 minor's supervision and student safety.

2318 (iii) Any employee of the local law enforcement agency and the school which the
2319 minor attends who discloses the notification of home detention is not:

2320 (A) civilly liable except when disclosure constitutes fraud or [~~malice~~] willful
2321 misconduct as provided in Section [~~63-30-4~~] 63-30d-202; and

2322 (B) civilly or criminally liable except when disclosure constitutes a knowing violation
2323 of Section 63-2-801.

2324 (c) A minor may not be admitted to detention unless the minor is detainable based on
2325 the guidelines or the minor has been brought to detention pursuant to a judicial order or
2326 division warrant pursuant to Subsection 62A-7-112(8).

2327 (d) If a minor taken to detention does not qualify for admission under the guidelines
2328 established by the division under Sections 62A-7-104 and 62A-7-205, detention staff shall
2329 arrange appropriate placement.

2330 (e) If a minor is taken into custody and admitted to a secure detention or shelter
2331 facility, facility staff shall immediately notify the minor's parents, guardian, or custodian and
2332 shall promptly notify the court of the placement.

2333 (f) If the minor is admitted to a secure detention or shelter facility outside the county of
2334 his residence and it is determined in the hearing held under Subsection 78-3a-114(3) that
2335 detention shall continue, the judge or commissioner shall direct the sheriff of the county of the
2336 minor's residence to transport the minor to a detention or shelter facility as provided in this
2337 section.

2338 (6) A person may be taken into custody by a peace officer without a court order if the
2339 person is in apparent violation of a protective order or if there is reason to believe that a minor
2340 is being abused by the person and any of the situations outlined in Section 77-7-2 exist.

2341 Section 40. Section **78-3a-113 (Effective 07/01/04)** is amended to read:

2342 **78-3a-113 (Effective 07/01/04). Minor taken into custody by peace officer, private**
2343 **citizen, or probation officer -- Grounds -- Notice requirements -- Release or detention --**
2344 **Grounds for peace officer to take adult into custody.**

2345 (1) A minor may be taken into custody by a peace officer without order of the court if:

2346 (a) in the presence of the officer the minor has violated a state law, federal law, local
2347 law, or municipal ordinance;

2348 (b) there are reasonable grounds to believe the minor has committed an act which if
2349 committed by an adult would be a felony;

2350 (c) the minor is seriously endangered in his surroundings or if the minor seriously
2351 endangers others, and immediate removal appears to be necessary for his protection or the
2352 protection of others;

2353 (d) there are reasonable grounds to believe the minor has run away or escaped from his
2354 parents, guardian, or custodian; or

2355 (e) there is reason to believe the minor is subject to the state's compulsory education
2356 law and that the minor is absent from school without legitimate or valid excuse, subject to
2357 Section 53A-11-105.

2358 (2) (a) A private citizen or a probation officer may take a minor into custody if under
2359 the circumstances he could make a citizen's arrest if the minor was an adult.

2360 (b) A probation officer may also take a minor into custody under Subsection (1) or if
2361 the minor has violated the conditions of probation, if the minor is under the continuing
2362 jurisdiction of the juvenile court or in emergency situations in which a peace officer is not
2363 immediately available.

2364 (3) (a) If an officer or other person takes a minor into temporary custody, he shall
2365 without unnecessary delay notify the parents, guardian, or custodian. The minor shall then be
2366 released to the care of his parent or other responsible adult, unless his immediate welfare or the
2367 protection of the community requires his detention.

2368 (b) Before the minor is released, the parent or other person to whom the minor is
2369 released shall be required to sign a written promise on forms supplied by the court to bring the
2370 minor to the court at a time set or to be set by the court.

2371 (4) (a) A minor may not be held in temporary custody by law enforcement any longer
2372 than is reasonably necessary to obtain his name, age, residence, and other necessary
2373 information and to contact his parents, guardian, or custodian.

2374 (b) If the minor is not released under Subsection (3), he shall be taken to a place of
2375 detention or shelter without unnecessary delay.

2376 (5) (a) The person who takes a minor to a detention or shelter facility shall promptly
2377 file with the detention or shelter facility a written report on a form provided by the division
2378 stating the details of the presently alleged offense, the facts which bring the minor within the
2379 jurisdiction of the juvenile court, and the reason the minor was not released by law
2380 enforcement.

2381 (b) (i) The designated youth corrections facility staff person shall immediately review
2382 the form and determine, based on the guidelines for detention admissions established by the
2383 Division of Juvenile Justice Services under Sections 62A-7-104 and 62A-7-205, whether to

2384 admit the minor to secure detention, admit the minor to home detention, place the minor in a
2385 placement other than detention, or return the minor home upon written promise to bring the
2386 minor to the court at a time set, or without restriction.

2387 (ii) If the designated youth corrections facility staff person determines to admit the
2388 minor to home detention, that staff person shall notify the juvenile court of that determination.
2389 The court shall order that notice be provided to the designated persons in the local law
2390 enforcement agency and the school or transferee school, if applicable, which the minor attends
2391 of the home detention. The designated persons may receive the information for purposes of the
2392 minor's supervision and student safety.

2393 (iii) Any employee of the local law enforcement agency and the school which the
2394 minor attends who discloses the notification of home detention is not:

2395 (A) civilly liable except when disclosure constitutes fraud or [~~malice~~] willful
2396 misconduct as provided in Section [~~63-30-4~~] 63-30d-202; and

2397 (B) civilly or criminally liable except when disclosure constitutes a knowing violation
2398 of Section 63-2-801.

2399 (c) A minor may not be admitted to detention unless the minor is detainable based on
2400 the guidelines or the minor has been brought to detention pursuant to a judicial order or
2401 division warrant pursuant to Subsection 62A-7-112(8).

2402 (d) If a minor taken to detention does not qualify for admission under the guidelines
2403 established by the division under Sections 62A-7-104 and 62A-7-205, detention staff shall
2404 arrange appropriate placement.

2405 (e) If a minor is taken into custody and admitted to a secure detention or shelter
2406 facility, facility staff shall immediately notify the minor's parents, guardian, or custodian and
2407 shall promptly notify the court of the placement.

2408 (f) If the minor is admitted to a secure detention or shelter facility outside the county of
2409 his residence and it is determined in the hearing held under Subsection 78-3a-114(3) that
2410 detention shall continue, the judge or commissioner shall direct the sheriff of the county of the
2411 minor's residence to transport the minor to a detention or shelter facility as provided in this
2412 section.

2413 (6) A person may be taken into custody by a peace officer without a court order if the
2414 person is in apparent violation of a protective order or if there is reason to believe that a minor

2415 is being abused by the person and any of the situations outlined in Section 77-7-2 exist.

2416 Section 41. Section **78-3a-114 (Superseded 07/01/04)** is amended to read:

2417 **78-3a-114 (Superseded 07/01/04). Placement of minor in detention or shelter**
2418 **facility -- Grounds -- Detention hearings -- Period of detention -- Notice -- Confinement of**
2419 **minors for criminal proceedings -- Bail laws inapplicable, exception.**

2420 (1) (a) A minor may not be placed or kept in a secure detention facility pending court
2421 proceedings unless it is unsafe for the public to leave the minor with his parents, guardian, or
2422 custodian and the minor is detainable based on guidelines promulgated by the Division of
2423 Youth Corrections.

2424 (b) A minor who must be taken from his home but who does not require physical
2425 restriction shall be given temporary care in a shelter facility and may not be placed in a
2426 detention facility.

2427 (c) A minor may not be placed or kept in a shelter facility pending court proceedings
2428 unless it is unsafe for the minor to leave him with his parents, guardian, or custodian.

2429 (2) After admission to a detention facility pursuant to the guidelines established by the
2430 Division of Youth Corrections and immediate investigation by an authorized officer of the
2431 court, the judge or the officer shall order the release of the minor to his parents, guardian, or
2432 custodian if it is found he can be safely returned to their care, either upon written promise to
2433 bring the minor to the court at a time set or without restriction.

2434 (a) If the minor's parent, guardian, or custodian fails to retrieve the minor from a
2435 facility within 24 hours after notification of release, the parent, guardian, or custodian is
2436 responsible for the cost of care for the time the minor remains in the facility.

2437 (b) The facility shall determine the cost of care.

2438 (c) Any money collected under Subsection (2) shall be retained by the Division of
2439 Youth Corrections to recover the cost of care for the time the minor remains in the facility.

2440 (3) (a) When a minor is detained in a detention or shelter facility, the parents or
2441 guardian shall be informed by the person in charge of the facility that they have the right to a
2442 prompt hearing in court to determine whether the minor is to be further detained or released.

2443 (b) Detention hearings shall be held by the judge or by a commissioner.

2444 (c) The court may, at any time, order the release of the minor, whether a detention
2445 hearing is held or not.

2446 (d) If the minor is released, and the minor remains in the facility, because the parents,
2447 guardian, or custodian fails to retrieve the minor, the parents, guardian, or custodian shall be
2448 responsible for the cost of care as provided in Subsections (2)(a), (b), and (c).

2449 (4) (a) A minor may not be held in a detention facility longer than 48 hours prior to a
2450 detention hearing, excluding weekends and holidays, unless the court has entered an order for
2451 continued detention.

2452 (b) A minor may not be held in a shelter facility longer than 48 hours prior to a shelter
2453 hearing, excluding weekends and holidays, unless a court order for extended shelter has been
2454 entered by the court after notice to all parties described in Section 78-3a-306.

2455 (c) A hearing for detention or shelter may not be waived. Detention staff shall provide
2456 the court with all information received from the person who brought the minor to the detention
2457 facility.

2458 (d) If the court finds at a detention hearing that it is not safe to release the minor, the
2459 judge or commissioner may order the minor to be held in the facility or be placed in another
2460 appropriate facility, subject to further order of the court.

2461 (e) (i) After a detention hearing has been held, only the court may release a minor from
2462 detention. If a minor remains in a detention facility, periodic reviews shall be held pursuant to
2463 the Utah State Juvenile Court Rules of Practice and Procedure to ensure that continued
2464 detention is necessary.

2465 (ii) If the court orders home detention, it shall direct that notice of its order be provided
2466 to designated persons in the appropriate local law enforcement agency and the school or
2467 transferee school, if applicable, which the minor attends. The designated persons may receive
2468 the information for purposes of the minor's supervision and student safety.

2469 (iii) Any employee of the local law enforcement agency and the school which the
2470 minor attends who discloses the court's order of probation is not:

2471 (A) civilly liable except when the disclosure constitutes fraud or ~~[malice]~~ willful
2472 misconduct as provided in Section ~~[63-30-4]~~ 63-30d-202; and

2473 (B) civilly or criminally liable except when disclosure constitutes a knowing violation
2474 of Section 63-2-801.

2475 (5) A minor may not be held in a detention facility, following a dispositional order of
2476 the court for nonsecure substitute care as defined in Section 62A-4a-101, or for

2477 community-based placement under Section 62A-7-101 for longer than 72 hours, excluding
2478 weekends and holidays. The period of detention may be extended by the court for one period
2479 of seven calendar days if:

2480 (a) the Division of Youth Corrections or another agency responsible for placement files
2481 a written petition with the court requesting the extension and setting forth good cause; and

2482 (b) the court enters a written finding that it is in the best interests of both the minor and
2483 the community to extend the period of detention.

2484 (6) The agency requesting an extension shall promptly notify the detention facility that
2485 a written petition has been filed.

2486 (7) The court shall promptly notify the detention facility regarding its initial disposition
2487 and any ruling on a petition for an extension, whether granted or denied.

2488 (8) (a) A minor under 16 years of age may not be held in a jail, lockup, or other place
2489 for adult detention except as provided by Section 62A-7-201 or unless certified as an adult
2490 pursuant to Section 78-3a-603. The provisions of Section 62A-7-201 regarding confinement
2491 facilities apply to this Subsection (8).

2492 (b) A minor 16 years of age or older whose conduct or condition endangers the safety
2493 or welfare of others in the detention facility for minors may, by court order that specifies the
2494 reasons, be detained in another place of confinement considered appropriate by the court,
2495 including a jail or other place of confinement for adults. However, a secure youth corrections
2496 facility is not an appropriate place of confinement for detention purposes under this section.

2497 (9) A sheriff, warden, or other official in charge of a jail or other facility for the
2498 detention of adult offenders or persons charged with crime shall immediately notify the
2499 juvenile court when a minor who is or appears to be under 18 years of age is received at the
2500 facility and shall make arrangements for the transfer of the minor to a detention facility, unless
2501 otherwise ordered by the juvenile court.

2502 (10) This section does not apply to a minor who is brought to the adult facility under
2503 charges pursuant to Section 78-3a-602 or by order of the juvenile court to be held for criminal
2504 proceedings in the district court under Section 78-3a-603.

2505 (11) A minor held for criminal proceedings under Section 78-3a-602 or 78-3a-603 may
2506 be detained in a jail or other place of detention used for adults charged with crime.

2507 (12) Provisions of law regarding bail are not applicable to minors detained or taken

2508 into custody under this chapter, except that bail may be allowed:

2509 (a) if a minor who need not be detained lives outside this state; or

2510 (b) when a minor who need not be detained comes within one of the classes in
2511 Subsection 78-3a-503(11).

2512 (13) Section 76-8-418 is applicable to a minor who willfully and intentionally commits
2513 an act against a jail or other place of confinement, including a Division of Youth Corrections
2514 detention, shelter, or secure confinement facility which would be a third degree felony if
2515 committed by an adult.

2516 Section 42. Section **78-3a-114 (Effective 07/01/04)** is amended to read:

2517 **78-3a-114 (Effective 07/01/04). Placement of minor in detention or shelter facility**
2518 **-- Grounds -- Detention hearings -- Period of detention -- Notice -- Confinement of minors**
2519 **for criminal proceedings -- Bail laws inapplicable, exception.**

2520 (1) (a) A minor may not be placed or kept in a secure detention facility pending court
2521 proceedings unless it is unsafe for the public to leave the minor with his parents, guardian, or
2522 custodian and the minor is detainable based on guidelines promulgated by the Division of
2523 Juvenile Justice Services.

2524 (b) A minor who must be taken from his home but who does not require physical
2525 restriction shall be given temporary care in a shelter facility and may not be placed in a
2526 detention facility.

2527 (c) A minor may not be placed or kept in a shelter facility pending court proceedings
2528 unless it is unsafe for the minor to leave him with his parents, guardian, or custodian.

2529 (2) After admission to a detention facility pursuant to the guidelines established by the
2530 Division of Juvenile Justice Services and immediate investigation by an authorized officer of
2531 the court, the judge or the officer shall order the release of the minor to his parents, guardian, or
2532 custodian if it is found he can be safely returned to their care, either upon written promise to
2533 bring the minor to the court at a time set or without restriction.

2534 (a) If the minor's parent, guardian, or custodian fails to retrieve the minor from a
2535 facility within 24 hours after notification of release, the parent, guardian, or custodian is
2536 responsible for the cost of care for the time the minor remains in the facility.

2537 (b) The facility shall determine the cost of care.

2538 (c) Any money collected under this Subsection (2) shall be retained by the Division of

2539 Juvenile Justice Services to recover the cost of care for the time the minor remains in the
2540 facility.

2541 (3) (a) When a minor is detained in a detention or shelter facility, the parents or
2542 guardian shall be informed by the person in charge of the facility that they have the right to a
2543 prompt hearing in court to determine whether the minor is to be further detained or released.

2544 (b) Detention hearings shall be held by the judge or by a commissioner.

2545 (c) The court may, at any time, order the release of the minor, whether a detention
2546 hearing is held or not.

2547 (d) If the minor is released, and the minor remains in the facility, because the parents,
2548 guardian, or custodian fails to retrieve the minor, the parents, guardian, or custodian shall be
2549 responsible for the cost of care as provided in Subsections (2)(a), (b), and (c).

2550 (4) (a) A minor may not be held in a detention facility longer than 48 hours prior to a
2551 detention hearing, excluding weekends and holidays, unless the court has entered an order for
2552 continued detention.

2553 (b) A minor may not be held in a shelter facility longer than 48 hours prior to a shelter
2554 hearing, excluding weekends and holidays, unless a court order for extended shelter has been
2555 entered by the court after notice to all parties described in Section 78-3a-306.

2556 (c) A hearing for detention or shelter may not be waived. Detention staff shall provide
2557 the court with all information received from the person who brought the minor to the detention
2558 facility.

2559 (d) If the court finds at a detention hearing that it is not safe to release the minor, the
2560 judge or commissioner may order the minor to be held in the facility or be placed in another
2561 appropriate facility, subject to further order of the court.

2562 (e) (i) After a detention hearing has been held, only the court may release a minor from
2563 detention. If a minor remains in a detention facility, periodic reviews shall be held pursuant to
2564 the Utah State Juvenile Court Rules of Practice and Procedure to ensure that continued
2565 detention is necessary.

2566 (ii) If the court orders home detention, it shall direct that notice of its order be provided
2567 to designated persons in the appropriate local law enforcement agency and the school or
2568 transferee school, if applicable, which the minor attends. The designated persons may receive
2569 the information for purposes of the minor's supervision and student safety.

2570 (iii) Any employee of the local law enforcement agency and the school which the
2571 minor attends who discloses the court's order of probation is not:

2572 (A) civilly liable except when the disclosure constitutes fraud or [~~malice~~] willful
2573 misconduct as provided in Section [~~63-30-4~~] 63-30d-202; and

2574 (B) civilly or criminally liable except when disclosure constitutes a knowing violation
2575 of Section 63-2-801.

2576 (5) A minor may not be held in a detention facility, following a dispositional order of
2577 the court for nonsecure substitute care as defined in Section 62A-4a-101, or for
2578 community-based placement under Section 62A-7-101 for longer than 72 hours, excluding
2579 weekends and holidays. The period of detention may be extended by the court for one period
2580 of seven calendar days if:

2581 (a) the Division of Juvenile Justice Services or another agency responsible for
2582 placement files a written petition with the court requesting the extension and setting forth good
2583 cause; and

2584 (b) the court enters a written finding that it is in the best interests of both the minor and
2585 the community to extend the period of detention.

2586 (6) The agency requesting an extension shall promptly notify the detention facility that
2587 a written petition has been filed.

2588 (7) The court shall promptly notify the detention facility regarding its initial disposition
2589 and any ruling on a petition for an extension, whether granted or denied.

2590 (8) (a) A minor under 16 years of age may not be held in a jail, lockup, or other place
2591 for adult detention except as provided by Section 62A-7-201 or unless certified as an adult
2592 pursuant to Section 78-3a-603. The provisions of Section 62A-7-201 regarding confinement
2593 facilities apply to this Subsection (8).

2594 (b) A minor 16 years of age or older whose conduct or condition endangers the safety
2595 or welfare of others in the detention facility for minors may, by court order that specifies the
2596 reasons, be detained in another place of confinement considered appropriate by the court,
2597 including a jail or other place of confinement for adults. However, a secure youth corrections
2598 facility is not an appropriate place of confinement for detention purposes under this section.

2599 (9) A sheriff, warden, or other official in charge of a jail or other facility for the
2600 detention of adult offenders or persons charged with crime shall immediately notify the

2601 juvenile court when a minor who is or appears to be under 18 years of age is received at the
2602 facility and shall make arrangements for the transfer of the minor to a detention facility, unless
2603 otherwise ordered by the juvenile court.

2604 (10) This section does not apply to a minor who is brought to the adult facility under
2605 charges pursuant to Section 78-3a-602 or by order of the juvenile court to be held for criminal
2606 proceedings in the district court under Section 78-3a-603.

2607 (11) A minor held for criminal proceedings under Section 78-3a-602 or 78-3a-603 may
2608 be detained in a jail or other place of detention used for adults charged with crime.

2609 (12) Provisions of law regarding bail are not applicable to minors detained or taken
2610 into custody under this chapter, except that bail may be allowed:

2611 (a) if a minor who need not be detained lives outside this state; or

2612 (b) when a minor who need not be detained comes within one of the classes in
2613 Subsection 78-3a-503(11).

2614 (13) Section 76-8-418 is applicable to a minor who willfully and intentionally commits
2615 an act against a jail or other place of confinement, including a Division of Juvenile Justice
2616 Services detention, shelter, or secure confinement facility which would be a third degree felony
2617 if committed by an adult.

2618 Section 43. Section **78-3a-118 (Superseded 07/01/04)** is amended to read:

2619 **78-3a-118 (Superseded 07/01/04). Adjudication of jurisdiction of juvenile court --**
2620 **Disposition of cases -- Enumeration of possible court orders -- Considerations of court --**
2621 **Obtaining DNA sample.**

2622 (1) (a) When a minor is found to come within the provisions of Section 78-3a-104, the
2623 court shall so adjudicate. The court shall make a finding of the facts upon which it bases its
2624 jurisdiction over the minor. However, in cases within the provisions of Subsection
2625 78-3a-104(1), findings of fact are not necessary.

2626 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of
2627 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided
2628 to the school superintendent of the district in which the minor resides or attends school. Notice
2629 shall be made to the district superintendent within three days of the adjudication and shall
2630 include the specific offenses for which the minor was adjudicated.

2631 (2) Upon adjudication the court may make the following dispositions by court order:

2632 (a) (i) The court may place the minor on probation or under protective supervision in
2633 the minor's own home and upon conditions determined by the court, including compensatory
2634 service as provided in Section 78-11-20.7.

2635 (ii) The court may place the minor in state supervision with the probation department
2636 of the court, under the legal custody of:

2637 (A) his parent or guardian;

2638 (B) the Division of Youth Corrections; or

2639 (C) the Division of Child and Family Services.

2640 (iii) If the court orders probation or state supervision, the court shall direct that notice
2641 of its order be provided to designated persons in the local law enforcement agency and the
2642 school or transferee school, if applicable, which the minor attends. The designated persons
2643 may receive the information for purposes of the minor's supervision and student safety.

2644 (iv) Any employee of the local law enforcement agency and the school which the
2645 minor attends who discloses the court's order of probation is not:

2646 (A) civilly liable except when the disclosure constitutes fraud or [~~malice~~] willful
2647 misconduct as provided in Section [~~63-30-4~~] 63-30d-202; and

2648 (B) civilly or criminally liable except when the disclosure constitutes a knowing
2649 violation of Section 63-2-801.

2650 (b) The court may place the minor in the legal custody of a relative or other suitable
2651 person, with or without probation or protective supervision, but the juvenile court may not
2652 assume the function of developing foster home services.

2653 (c) (i) The court may:

2654 (A) vest legal custody of the minor in the Division of Child and Family Services,
2655 Division of Youth Corrections, or the Division of Substance Abuse and Mental Health; and

2656 (B) order the Department of Human Services to provide dispositional
2657 recommendations and services.

2658 (ii) For minors who may qualify for services from two or more divisions within the
2659 Department of Human Services, the court may vest legal custody with the department.

2660 (iii) (A) Minors who are committed to the custody of the Division of Child and Family
2661 Services on grounds other than abuse or neglect are subject to the provisions of Title 78,
2662 Chapter 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title

2663 62A, Chapter 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

2664 (B) Prior to the court entering an order to place a minor in the custody of the Division
2665 of Child and Family Services on grounds other than abuse or neglect, the court shall provide
2666 the division with notice of the hearing no later than five days before the time specified for the
2667 hearing so the division may attend the hearing.

2668 (C) Prior to committing a minor to the custody of the Division of Child and Family
2669 Services, the court shall make a finding as to what reasonable efforts have been attempted to
2670 prevent the minor's removal from his home.

2671 (d) (i) The court may commit the minor to the Division of Youth Corrections for secure
2672 confinement.

2673 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect,
2674 or dependency under Subsection 78-3a-104(1)(c) may not be committed to the Division of
2675 Youth Corrections.

2676 (e) The court may commit the minor, subject to the court retaining continuing
2677 jurisdiction over him, to the temporary custody of the Division of Youth Corrections for
2678 observation and evaluation for a period not to exceed 45 days, which period may be extended
2679 up to 15 days at the request of the director of the Division of Youth Corrections.

2680 (f) (i) The court may commit the minor to a place of detention or an alternative to
2681 detention for a period not to exceed 30 days subject to the court retaining continuing
2682 jurisdiction over the minor. This commitment may be stayed or suspended upon conditions
2683 ordered by the court.

2684 (ii) This Subsection (2)(f) applies only to those minors adjudicated for:

2685 (A) an act which if committed by an adult would be a criminal offense; or

2686 (B) contempt of court under Section 78-3a-901.

2687 (g) The court may vest legal custody of an abused, neglected, or dependent minor in
2688 the Division of Child and Family Services or any other appropriate person in accordance with
2689 the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and
2690 Dependency Proceedings.

2691 (h) The court may place the minor on a ranch or forestry camp, or similar facility for
2692 care and also for work, if possible, if the person, agency, or association operating the facility
2693 has been approved or has otherwise complied with all applicable state and local laws. A minor

2694 placed in a forestry camp or similar facility may be required to work on fire prevention,
2695 forestation and reforestation, recreational works, forest roads, and on other works on or off the
2696 grounds of the facility and may be paid wages, subject to the approval of and under conditions
2697 set by the court.

2698 (i) (A) The court may order the minor to repair, replace, or otherwise make restitution
2699 for damage or loss caused by the minor's wrongful act, including costs of treatment as stated in
2700 Section 78-3a-318 and impose fines in limited amounts.

2701 (B) The court may also require the minor to reimburse an individual, entity, or
2702 governmental agency who offered and paid a reward to a person or persons for providing
2703 information resulting in a court adjudication that the minor is within the jurisdiction of the
2704 juvenile court due to the commission of a criminal offense.

2705 (C) If a minor has been returned to this state under the Interstate Compact on Juveniles,
2706 the court may order the minor to make restitution for costs expended by any governmental
2707 entity for the return.

2708 (j) The court may issue orders necessary for the collection of restitution and fines
2709 ordered by the court, including garnishments, wage withholdings, and executions.

2710 (k) (i) The court may through its probation department encourage the development of
2711 employment or work programs to enable minors to fulfill their obligations under Subsection
2712 (2)(i) and for other purposes considered desirable by the court.

2713 (ii) Consistent with the order of the court, the probation officer may permit the minor
2714 found to be within the jurisdiction of the court to participate in a program of work restitution or
2715 compensatory service in lieu of paying part or all of the fine imposed by the court.

2716 (l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in
2717 addition to any other disposition authorized by this section:

2718 (A) restrain the minor from driving for periods of time the court considers necessary;
2719 and

2720 (B) take possession of the minor's driver license.

2721 (ii) The court may enter any other disposition under Subsection (2)(l)(i); however, the
2722 suspension of driving privileges for an offense under Section 78-3a-506 are governed only by
2723 Section 78-3a-506.

2724 (m) (i) When a minor is found within the jurisdiction of the juvenile court under

2725 Section 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug
2726 Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court
2727 shall, in addition to any fines or fees otherwise imposed, order that the minor perform a
2728 minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory
2729 completion of an approved substance abuse prevention or treatment program may be credited
2730 by the court as compensatory service hours.

2731 (ii) When a minor is found within the jurisdiction of the juvenile court under Section
2732 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court
2733 may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order
2734 that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory
2735 service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an
2736 approved substance abuse prevention or treatment program may be credited by the court as
2737 compensatory service hours.

2738 (n) The court may order that the minor be examined or treated by a physician, surgeon,
2739 psychiatrist, or psychologist or that he receive other special care. For these purposes the court
2740 may place the minor in a hospital or other suitable facility.

2741 (o) (i) The court may appoint a guardian for the minor if it appears necessary in the
2742 interest of the minor, and may appoint as guardian a public or private institution or agency in
2743 which legal custody of the minor is vested.

2744 (ii) In placing a minor under the guardianship or legal custody of an individual or of a
2745 private agency or institution, the court shall give primary consideration to the welfare of the
2746 minor. When practicable, the court may take into consideration the religious preferences of the
2747 minor and of the minor's parents.

2748 (p) (i) In support of a decree under Section 78-3a-104, the court may order reasonable
2749 conditions to be complied with by the parents or guardian, the minor, the minor's custodian, or
2750 any other person who has been made a party to the proceedings. Conditions may include:

2751 (A) parent-time by the parents or one parent;

2752 (B) restrictions on the minor's associates;

2753 (C) restrictions on the minor's occupation and other activities; and

2754 (D) requirements to be observed by the parents or custodian.

2755 (ii) A minor whose parents or guardians successfully complete a family or other

2756 counseling program may be credited by the court for detention, confinement, or probation time.

2757 (q) The court may order the minor to be committed to the physical custody of a local
2758 mental health authority, in accordance with the procedures and requirements of Title 62A,
2759 Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and
2760 Mental Health.

2761 (r) (i) The court may make an order committing a minor within its jurisdiction to the
2762 Utah State Developmental Center if the minor has mental retardation in accordance with the
2763 provisions of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility.

2764 (ii) The court shall follow the procedure applicable in the district courts with respect to
2765 judicial commitments to the Utah State Developmental Center when ordering a commitment
2766 under Subsection (2)(r)(i).

2767 (s) The court may terminate all parental rights upon a finding of compliance with the
2768 provisions of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

2769 (t) The court may make any other reasonable orders for the best interest of the minor or
2770 as required for the protection of the public, except that a person younger than 18 years of age
2771 may not be committed to jail or prison.

2772 (u) The court may combine the dispositions listed in this section if they are compatible.

2773 (v) Before depriving any parent of custody, the court shall give due consideration to the
2774 rights of parents concerning their minor. The court may transfer custody of a minor to another
2775 person, agency, or institution in accordance with the requirements and procedures of Title 78,
2776 Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

2777 (w) Except as provided in Subsection (2)(y)(i), an order under this section for
2778 probation or placement of a minor with an individual or an agency shall include a date certain
2779 for a review of the case by the court. A new date shall be set upon each review.

2780 (x) In reviewing foster home placements, special attention shall be given to making
2781 adoptable minors available for adoption without delay.

2782 (y) (i) The juvenile court may enter an order of permanent custody and guardianship
2783 with a relative or individual of a minor where the court has previously acquired jurisdiction as
2784 a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an
2785 order for child support on behalf of the minor child against the natural or adoptive parents of
2786 the child.

2787 (ii) Orders under Subsection (2)(y)(i):
2788 (A) shall remain in effect until the minor reaches majority;
2789 (B) are not subject to review under Section 78-3a-119; and
2790 (C) may be modified by petition or motion as provided in Section 78-3a-903.

2791 (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and
2792 permanent orders of custody and guardianship do not expire with a termination of jurisdiction
2793 of the juvenile court.

2794 (3) In addition to the dispositions described in Subsection (2), when a minor comes
2795 within the court's jurisdiction he may be given a choice by the court to serve in the National
2796 Guard in lieu of other sanctions, provided:

2797 (a) the minor meets the current entrance qualifications for service in the National
2798 Guard as determined by a recruiter, whose determination is final;

2799 (b) the minor is not under the jurisdiction of the court for any act that:

2800 (i) would be a felony if committed by an adult;

2801 (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

2802 (iii) was committed with a weapon; and

2803 (c) the court retains jurisdiction over the minor under conditions set by the court and
2804 agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

2805 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction
2806 of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by
2807 designated employees of the court or, if the minor is in the legal custody of the Division of
2808 Youth Corrections, then by designated employees of the division under Subsection
2809 53-10-404(5)(b).

2810 (b) The responsible agency shall ensure that employees designated to collect the saliva
2811 DNA specimens receive appropriate training and that the specimens are obtained in accordance
2812 with accepted protocol.

2813 (c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA
2814 Specimen Restricted Account created in Section 53-10-407.

2815 (d) Payment of the reimbursement is second in priority to payments the minor is
2816 ordered to make for restitution under this section and treatment under Section 78-3a-318.

2817 Section 44. Section **78-3a-118 (Effective 07/01/04)** is amended to read:

2818 **78-3a-118 (Effective 07/01/04). Adjudication of jurisdiction of juvenile court --**
2819 **Disposition of cases -- Enumeration of possible court orders -- Considerations of court --**
2820 **Obtaining DNA sample.**

2821 (1) (a) When a minor is found to come within the provisions of Section 78-3a-104, the
2822 court shall so adjudicate. The court shall make a finding of the facts upon which it bases its
2823 jurisdiction over the minor. However, in cases within the provisions of Subsection
2824 78-3a-104(1), findings of fact are not necessary.

2825 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of
2826 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided
2827 to the school superintendent of the district in which the minor resides or attends school. Notice
2828 shall be made to the district superintendent within three days of the adjudication and shall
2829 include the specific offenses for which the minor was adjudicated.

2830 (2) Upon adjudication the court may make the following dispositions by court order:

2831 (a) (i) The court may place the minor on probation or under protective supervision in
2832 the minor's own home and upon conditions determined by the court, including compensatory
2833 service as provided in Section 78-11-20.7.

2834 (ii) The court may place the minor in state supervision with the probation department
2835 of the court, under the legal custody of:

2836 (A) his parent or guardian;

2837 (B) the Division of Juvenile Justice Services; or

2838 (C) the Division of Child and Family Services.

2839 (iii) If the court orders probation or state supervision, the court shall direct that notice
2840 of its order be provided to designated persons in the local law enforcement agency and the
2841 school or transferee school, if applicable, which the minor attends. The designated persons
2842 may receive the information for purposes of the minor's supervision and student safety.

2843 (iv) Any employee of the local law enforcement agency and the school which the
2844 minor attends who discloses the court's order of probation is not:

2845 (A) civilly liable except when the disclosure constitutes fraud or ~~[malice]~~ willful
2846 misconduct as provided in Section ~~[63-30-4]~~ 63-30d-202; and

2847 (B) civilly or criminally liable except when the disclosure constitutes a knowing
2848 violation of Section 63-2-801.

2849 (b) The court may place the minor in the legal custody of a relative or other suitable
2850 person, with or without probation or protective supervision, but the juvenile court may not
2851 assume the function of developing foster home services.

2852 (c) (i) The court may:

2853 (A) vest legal custody of the minor in the Division of Child and Family Services,
2854 Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health;
2855 and

2856 (B) order the Department of Human Services to provide dispositional
2857 recommendations and services.

2858 (ii) For minors who may qualify for services from two or more divisions within the
2859 Department of Human Services, the court may vest legal custody with the department.

2860 (iii) (A) Minors who are committed to the custody of the Division of Child and Family
2861 Services on grounds other than abuse or neglect are subject to the provisions of Title 78,
2862 Chapter 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title
2863 62A, Chapter 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

2864 (B) Prior to the court entering an order to place a minor in the custody of the Division
2865 of Child and Family Services on grounds other than abuse or neglect, the court shall provide
2866 the division with notice of the hearing no later than five days before the time specified for the
2867 hearing so the division may attend the hearing.

2868 (C) Prior to committing a minor to the custody of the Division of Child and Family
2869 Services, the court shall make a finding as to what reasonable efforts have been attempted to
2870 prevent the minor's removal from his home.

2871 (d) (i) The court may commit the minor to the Division of Juvenile Justice Services for
2872 secure confinement.

2873 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect,
2874 or dependency under Subsection 78-3a-104(1)(c) may not be committed to the Division of
2875 Juvenile Justice Services.

2876 (e) The court may commit the minor, subject to the court retaining continuing
2877 jurisdiction over him, to the temporary custody of the Division of Juvenile Justice Services for
2878 observation and evaluation for a period not to exceed 45 days, which period may be extended
2879 up to 15 days at the request of the director of the Division of Juvenile Justice Services.

2880 (f) (i) The court may commit the minor to a place of detention or an alternative to
2881 detention for a period not to exceed 30 days subject to the court retaining continuing
2882 jurisdiction over the minor. This commitment may be stayed or suspended upon conditions
2883 ordered by the court.

2884 (ii) This Subsection (2)(f) applies only to those minors adjudicated for:

2885 (A) an act which if committed by an adult would be a criminal offense; or

2886 (B) contempt of court under Section 78-3a-901.

2887 (g) The court may vest legal custody of an abused, neglected, or dependent minor in
2888 the Division of Child and Family Services or any other appropriate person in accordance with
2889 the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and
2890 Dependency Proceedings.

2891 (h) The court may place the minor on a ranch or forestry camp, or similar facility for
2892 care and also for work, if possible, if the person, agency, or association operating the facility
2893 has been approved or has otherwise complied with all applicable state and local laws. A minor
2894 placed in a forestry camp or similar facility may be required to work on fire prevention,
2895 forestation and reforestation, recreational works, forest roads, and on other works on or off the
2896 grounds of the facility and may be paid wages, subject to the approval of and under conditions
2897 set by the court.

2898 (i) (A) The court may order the minor to repair, replace, or otherwise make restitution
2899 for damage or loss caused by the minor's wrongful act, including costs of treatment as stated in
2900 Section 78-3a-318 and impose fines in limited amounts.

2901 (B) The court may also require the minor to reimburse an individual, entity, or
2902 governmental agency who offered and paid a reward to a person or persons for providing
2903 information resulting in a court adjudication that the minor is within the jurisdiction of the
2904 juvenile court due to the commission of a criminal offense.

2905 (C) If a minor has been returned to this state under the Interstate Compact on Juveniles,
2906 the court may order the minor to make restitution for costs expended by any governmental
2907 entity for the return.

2908 (j) The court may issue orders necessary for the collection of restitution and fines
2909 ordered by the court, including garnishments, wage withholdings, and executions.

2910 (k) (i) The court may through its probation department encourage the development of

2911 employment or work programs to enable minors to fulfill their obligations under Subsection
2912 (2)(i) and for other purposes considered desirable by the court.

2913 (ii) Consistent with the order of the court, the probation officer may permit the minor
2914 found to be within the jurisdiction of the court to participate in a program of work restitution or
2915 compensatory service in lieu of paying part or all of the fine imposed by the court.

2916 (l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in
2917 addition to any other disposition authorized by this section:

2918 (A) restrain the minor from driving for periods of time the court considers necessary;
2919 and

2920 (B) take possession of the minor's driver license.

2921 (ii) The court may enter any other disposition under Subsection (2)(l)(i); however, the
2922 suspension of driving privileges for an offense under Section 78-3a-506 are governed only by
2923 Section 78-3a-506.

2924 (m) (i) When a minor is found within the jurisdiction of the juvenile court under
2925 Section 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug
2926 Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court
2927 shall, in addition to any fines or fees otherwise imposed, order that the minor perform a
2928 minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory
2929 completion of an approved substance abuse prevention or treatment program may be credited
2930 by the court as compensatory service hours.

2931 (ii) When a minor is found within the jurisdiction of the juvenile court under Section
2932 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court
2933 may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order
2934 that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory
2935 service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an
2936 approved substance abuse prevention or treatment program may be credited by the court as
2937 compensatory service hours.

2938 (n) The court may order that the minor be examined or treated by a physician, surgeon,
2939 psychiatrist, or psychologist or that he receive other special care. For these purposes the court
2940 may place the minor in a hospital or other suitable facility.

2941 (o) (i) The court may appoint a guardian for the minor if it appears necessary in the

2942 interest of the minor, and may appoint as guardian a public or private institution or agency in
2943 which legal custody of the minor is vested.

2944 (ii) In placing a minor under the guardianship or legal custody of an individual or of a
2945 private agency or institution, the court shall give primary consideration to the welfare of the
2946 minor. When practicable, the court may take into consideration the religious preferences of the
2947 minor and of the minor's parents.

2948 (p) (i) In support of a decree under Section 78-3a-104, the court may order reasonable
2949 conditions to be complied with by the parents or guardian, the minor, the minor's custodian, or
2950 any other person who has been made a party to the proceedings. Conditions may include:

2951 (A) parent-time by the parents or one parent;

2952 (B) restrictions on the minor's associates;

2953 (C) restrictions on the minor's occupation and other activities; and

2954 (D) requirements to be observed by the parents or custodian.

2955 (ii) A minor whose parents or guardians successfully complete a family or other
2956 counseling program may be credited by the court for detention, confinement, or probation time.

2957 (q) The court may order the minor to be committed to the physical custody of a local
2958 mental health authority, in accordance with the procedures and requirements of Title 62A,
2959 Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and
2960 Mental Health.

2961 (r) (i) The court may make an order committing a minor within its jurisdiction to the
2962 Utah State Developmental Center if the minor has mental retardation in accordance with the
2963 provisions of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility.

2964 (ii) The court shall follow the procedure applicable in the district courts with respect to
2965 judicial commitments to the Utah State Developmental Center when ordering a commitment
2966 under Subsection (2)(r)(i).

2967 (s) The court may terminate all parental rights upon a finding of compliance with the
2968 provisions of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

2969 (t) The court may make any other reasonable orders for the best interest of the minor or
2970 as required for the protection of the public, except that a person younger than 18 years of age
2971 may not be committed to jail or prison.

2972 (u) The court may combine the dispositions listed in this section if they are compatible.

2973 (v) Before depriving any parent of custody, the court shall give due consideration to the
2974 rights of parents concerning their minor. The court may transfer custody of a minor to another
2975 person, agency, or institution in accordance with the requirements and procedures of Title 78,
2976 Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

2977 (w) Except as provided in Subsection (2)(y)(i), an order under this section for
2978 probation or placement of a minor with an individual or an agency shall include a date certain
2979 for a review of the case by the court. A new date shall be set upon each review.

2980 (x) In reviewing foster home placements, special attention shall be given to making
2981 adoptable minors available for adoption without delay.

2982 (y) (i) The juvenile court may enter an order of permanent custody and guardianship
2983 with a relative or individual of a minor where the court has previously acquired jurisdiction as
2984 a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an
2985 order for child support on behalf of the minor child against the natural or adoptive parents of
2986 the child.

2987 (ii) Orders under Subsection (2)(y)(i):

2988 (A) shall remain in effect until the minor reaches majority;

2989 (B) are not subject to review under Section 78-3a-119; and

2990 (C) may be modified by petition or motion as provided in Section 78-3a-903.

2991 (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and
2992 permanent orders of custody and guardianship do not expire with a termination of jurisdiction
2993 of the juvenile court.

2994 (3) In addition to the dispositions described in Subsection (2), when a minor comes
2995 within the court's jurisdiction he may be given a choice by the court to serve in the National
2996 Guard in lieu of other sanctions, provided:

2997 (a) the minor meets the current entrance qualifications for service in the National
2998 Guard as determined by a recruiter, whose determination is final;

2999 (b) the minor is not under the jurisdiction of the court for any act that:

3000 (i) would be a felony if committed by an adult;

3001 (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

3002 (iii) was committed with a weapon; and

3003 (c) the court retains jurisdiction over the minor under conditions set by the court and

3004 agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

3005 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction
3006 of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by
3007 designated employees of the court or, if the minor is in the legal custody of the Division of
3008 Juvenile Justice Services, then by designated employees of the division under Subsection
3009 53-10-404(5)(b).

3010 (b) The responsible agency shall ensure that employees designated to collect the saliva
3011 DNA specimens receive appropriate training and that the specimens are obtained in accordance
3012 with accepted protocol.

3013 (c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA
3014 Specimen Restricted Account created in Section 53-10-407.

3015 (d) Payment of the reimbursement is second in priority to payments the minor is
3016 ordered to make for restitution under this section and treatment under Section 78-3a-318.

3017 Section 45. Section **78-17-3** is amended to read:

3018 **78-17-3. Liability imposed and limitations -- Defenses -- Limitations on damages.**

3019 (1) Except as provided in this section, any person who owns, holds under license,
3020 transports, ships, stores, or disposes of nuclear material is liable, without regard to the conduct
3021 of any other person, for harm from nuclear incidents arising in connection with or resulting
3022 from such ownership, transportation, shipping, storage, or disposal.

3023 (2) Except as provided in this section, any person who owns, designs, constructs,
3024 operates, or maintains facilities, structures, vehicles, or equipment used for handling,
3025 transportation, shipment, storage, or disposal of nuclear material is liable, without regard to the
3026 conduct of any other person, for harm from nuclear incidents arising in connection with or
3027 resulting from such ownership, design, construction, operation, and maintenance.

3028 (3) Liability established by this chapter shall only be imposed if a court of competent
3029 jurisdiction finds that:

3030 (a) the nuclear incident which is the basis for the suit is covered by existing financial
3031 protection undertaken pursuant to 42 U.S.C. Sec. 2210; and

3032 (b) a person who is liable under this chapter is a person indemnified as defined in 42
3033 U.S.C. Sec. 2014.

3034 (4) Immunity of the state, its political subdivisions, or the agencies of either from suit

3035 are only waived with respect to a suit arising from a nuclear incident:

3036 (a) in accordance with [~~Sections 63-30-1 through 63-30-38~~] Title 63, Chapter 30d,
3037 Governmental Immunity Act of Utah; or

3038 (b) when brought by a person suffering harm.

3039 (5) The conduct of the person suffering harm is not a defense to liability, except that
3040 this section does not preclude any defense based on:

3041 (a) the claimant's knowing failure to mitigate damages related to any injury or damage
3042 to the claimant or the claimant's property; or

3043 (b) an incident involving nuclear material that is knowingly and wrongfully caused by
3044 the claimant.

3045 (6) No person may collect punitive or exemplary damages under this chapter.

3046 Section 46. Section **78-19-1** is amended to read:

3047 **78-19-1. Definitions.**

3048 As used in this chapter:

3049 (1) "Damage or injury" includes physical, nonphysical, economic, and noneconomic
3050 damage.

3051 (2) "Financially secure source of recovery" means that, at the time of the incident, a
3052 nonprofit organization:

3053 (a) has an insurance policy in effect that covers the activities of the volunteer and has
3054 an insurance limit of not less than the limits established under the [~~Utah~~] Governmental
3055 Immunity Act of Utah in Section [~~63-30-34~~] 63-30d-604; or

3056 (b) has established a qualified trust with a value not less than the combined limits for
3057 property damage and single occurrence liability established under the [~~Utah~~] Governmental
3058 Immunity Act of Utah in Section [~~63-30-34~~] 63-30d-604.

3059 (3) "Nonprofit organization" means any organization, other than a public entity,
3060 described in Section 501 (c) of the Internal Revenue Code of 1986 and exempt from tax under
3061 Section 501 (a) of that code.

3062 (4) "Public entity" has the same meaning as defined in Section 63-30b-1.

3063 (5) "Qualified trust" means a trust held for the purpose of compensating claims for
3064 damages or injury in a trust company licensed to do business in this state under the provisions
3065 of Title 7, Chapter 5, Trust Business.

3066 (6) "Reimbursements" means, with respect to each nonprofit organization:
3067 (a) compensation or honoraria totaling less than \$300 per calendar year; and
3068 (b) payment of expenses actually incurred.
3069 (7) (a) "Volunteer" means an individual performing services for a nonprofit
3070 organization who does not receive anything of value from that nonprofit organization for those
3071 services except reimbursements.

3072 (b) "Volunteer" includes a volunteer serving as a director, officer, trustee, or direct
3073 service volunteer.

3074 (c) "Volunteer" does not include an individual performing services for a public entity
3075 to the extent the services are within the scope of Title 63, Chapter 30b, Immunity for Persons
3076 Performing Voluntary Services or Title 67, Chapter 20, Volunteer Government Workers Act.

3077 Section 47. **Repealer.**

3078 This bill repeals:

3079 Section **63-30-1, Short title.**

3080 Section **63-30-2, Definitions.**

3081 Section **63-30-3, Immunity of governmental entities from suit.**

3082 Section **63-30-4, Act provisions not construed as admission or denial of liability --**
3083 **Effect of waiver of immunity -- Exclusive remedy -- Joinder of employee -- Limitations on**
3084 **personal liability.**

3085 Section **63-30-5, Waiver of immunity as to contractual obligations.**

3086 Section **63-30-6, Waiver of immunity as to actions involving property.**

3087 Section **63-30-7, Waiver of immunity for negligent damage, destruction or loss of**
3088 **seized property.**

3089 Section **63-30-8, Waiver of immunity for injury caused by defective, unsafe, or**
3090 **dangerous condition of highways, bridges, or other structures.**

3091 Section **63-30-9, Waiver of immunity for injury from dangerous or defective public**
3092 **building, structure, or other public improvement -- Exception.**

3093 Section **63-30-10, Waiver of immunity for injury caused by negligent act or**
3094 **omission of employee -- Exceptions.**

3095 Section **63-30-10.5, Waiver of immunity for taking private property without**
3096 **compensation.**

- 3097 Section **63-30-10.6, Attorneys' fees for records requests.**
- 3098 Section **63-30-11, Claim for injury -- Notice -- Contents -- Service -- Legal**
- 3099 **disability -- Appointment of guardian ad litem.**
- 3100 Section **63-30-12, Claim against state or its employee -- Time for filing notice.**
- 3101 Section **63-30-13, Claim against political subdivision or its employee -- Time for**
- 3102 **filing notice.**
- 3103 Section **63-30-14, Claim for injury -- Approval or denial by governmental entity or**
- 3104 **insurance carrier within ninety days.**
- 3105 Section **63-30-15, Denial of claim for injury -- Authority and time for filing action**
- 3106 **against governmental entity.**
- 3107 Section **63-30-16, Jurisdiction of district courts over actions -- Application of Rules**
- 3108 **of Civil Procedure.**
- 3109 Section **63-30-17, Venue of actions.**
- 3110 Section **63-30-18, Compromise and settlement of actions.**
- 3111 Section **63-30-19, Undertaking required of plaintiff in action.**
- 3112 Section **63-30-20, Judgment against governmental entity bars action against**
- 3113 **employee.**
- 3114 Section **63-30-22, Exemplary or punitive damages prohibited -- Governmental**
- 3115 **entity exempt from execution, attachment, or garnishment.**
- 3116 Section **63-30-23, Payment of claim or judgment against state -- Presentment for**
- 3117 **payment.**
- 3118 Section **63-30-24, Payment of claim or judgment against political subdivision --**
- 3119 **Procedure by governing body.**
- 3120 Section **63-30-25, Payment of claim or judgment against political subdivision --**
- 3121 **Installment payments.**
- 3122 Section **63-30-26, Reserve funds for payment of claims or purchase of insurance**
- 3123 **created by political subdivisions.**
- 3124 Section **63-30-27, Tax levy by political subdivisions for payment of claims,**
- 3125 **judgments, or insurance premiums.**
- 3126 Section **63-30-28, Liability insurance -- Purchase of insurance or self-insurance by**
- 3127 **governmental entity authorized -- Establishment of trust accounts for self-insurance.**

3128 Section **63-30-29.5, Liability insurance -- Government vehicles operated by**
3129 **employees outside scope of employment.**

3130 Section **63-30-31, Liability insurance -- Construction of policy not in compliance**
3131 **with act.**

3132 Section **63-30-32, Liability insurance -- Methods for purchase or renewal.**

3133 Section **63-30-33, Liability insurance -- Insurance for employees authorized -- No**
3134 **right to indemnification or contribution from governmental agency.**

3135 Section **63-30-34, Limitation of judgments against governmental entity or**
3136 **employee -- Insurance coverage exception -- Process for adjustment of limits.**

3137 Section **63-30-35, Expenses of attorney general, general counsel for state judiciary,**
3138 **and general counsel for the Legislature in representing the state, its branches, members,**
3139 **or employees.**

3140 Section **63-30-36, Defending government employee -- Request -- Cooperation --**
3141 **Payment of judgment.**

3142 Section **63-30-37, Recovery of judgment paid and defense costs by government**
3143 **employee.**

3144 Section **63-30-38, Indemnification of governmental entity by employee not**
3145 **required.**

3146 Section **78-60-101, Title.**

3147 Section **78-60-102, Definitions.**

3148 Section **78-60-103, Limitation of judgments against governmental entity or**
3149 **employee -- Process for adjustment of limits.**

3150 Section 48. **Transition clause.**

3151 It is the intent of the legislature that:

3152 (1) injuries alleged to be caused by a governmental entity that occurred before July 1,
3153 2004, be governed by the provisions of Title 63, Chapter 30, Utah Governmental Immunity
3154 Act; and

3155 (2) injuries alleged to be caused by a governmental entity that occurred on or after July
3156 1, 2004, be governed by the provisions of Title 63, Chapter 30d, Governmental Immunity Act
3157 of Utah.

3158 Section 49. **Effective date.**

3159 This bill takes effect on July 1, 2004.

3160 Section 50. **Coordinating S.B. 55 with S.B. 9.**

3161 (1) If this S.B. 55, Governmental Immunity Act of Utah, and S.B. 9, Property Rights
3162 Amendments, both pass, and the amendments to Section 63-30-10.5 pass as part of S.B. 9, it is
3163 the intent of the Legislature to enact the following provisions and direct that the Office of
3164 Legislative Research and General Counsel include that enactment in preparing the Utah Code
3165 database for publication:

3166 **"63-30d-203. Exemptions for certain takings actions.**

3167 An action that involves takings law, as defined in Section 63-34-13, is not subject to the
3168 requirements of Sections 63-30d-401, 63-30d-402, 63-30d-403, and 63-30d-601."

3169 Section 51. **Coordinating S.B. 55 with H.B. 111**

3170 (2) If this S.B. 55, Governmental Immunity Act of Utah, and H.B. 111, Municipal
3171 Government Amendments, both pass, it is the intent of the Legislature that the Office of
3172 Legislative Research and General Counsel, in preparing the Utah Code database for
3173 publication, amend Subsection 63-30d-401(3)(b)(ii)(A) to read as follows:

3174 "(A) the city or town clerk when the claim is against an incorporated city or town;"

Legislative Review Note
as of 1-29-04 6:54 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0055

Governmental Immunity Act of Utah

05-Feb-04

10:10 AM

State Impact

No fiscal impact

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst