

1 **ADMINISTRATIVE RULE PENALTY**

2 **AMENDMENTS**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Ben C. Ferry**

6 Senate Sponsor: Howard A. Stephenson

7

8 **LONG TITLE**

9 **Committee Note:**

10 The Administrative Rules Review Committee recommended this bill.

11 **General Description:**

12 This bill modifies various provisions regarding rulemaking authority by repealing
13 statutory provisions that authorize certain state agencies to determine by administrative
14 rule what conduct constitutes a criminal penalty.

15 **Highlighted Provisions:**

16 This bill:

- 17 ▶ repeals statutory grants that authorize certain state agencies to determine by
18 administrative rule what conduct constitutes a criminal penalty;
- 19 ▶ provides certain agencies with authority to assess criminal penalties by statute;
- 20 ▶ provides a delayed repeal date for Section 73-18b-3; and
- 21 ▶ makes technical changes.

22 **Monies Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 This bill provides a delayed effect date for certain sections.

26 **Utah Code Sections Affected:**

27 AMENDS:



- 28 **23-13-11**, as last amended by Laws of Utah 1995, Chapter 211
- 29 **23-20-3**, as last amended by Laws of Utah 1995, Chapter 211
- 30 **32A-13-106**, as last amended by Laws of Utah 1991, Chapter 5
- 31 **34-23-402**, as last amended by Laws of Utah 1997, Chapter 375
- 32 **34A-2-407**, as last amended by Laws of Utah 2006, Chapter 295
- 33 **34A-2-801**, as last amended by Laws of Utah 2006, Chapter 295
- 34 **35A-4-103**, as last amended by Laws of Utah 1998, Chapters 13 and 116
- 35 **41-1a-712**, as enacted by Laws of Utah 2003, Chapter 250
- 36 **54-7-15**, as last amended by Laws of Utah 2003, Chapter 200
- 37 **54-7-26**, as last amended by Laws of Utah 1986, Chapter 178
- 38 **54-7-28**, as last amended by Laws of Utah 1986, Chapter 178
- 39 **58-37d-4**, as last amended by Laws of Utah 2007, Chapter 358
- 40 **59-14-208**, as last amended by Laws of Utah 2007, Chapter 306
- 41 **61-1-13**, as last amended by Laws of Utah 2007, Chapters 292 and 307
- 42 **61-1-21**, as last amended by Laws of Utah 2001, Chapter 149
- 43 **72-7-208**, as renumbered and amended by Laws of Utah 1998, Chapter 270
- 44 **72-7-302**, as renumbered and amended by Laws of Utah 1998, Chapter 270
- 45 **72-7-402**, as last amended by Laws of Utah 2002, Chapter 151
- 46 **72-7-406**, as last amended by Laws of Utah 2006, Chapter 212
- 47 **72-7-407**, as last amended by Laws of Utah 2005, Chapter 2
- 48 **72-7-409**, as last amended by Laws of Utah 1998, Chapter 224 and renumbered and
- 49 amended by Laws of Utah 1998, Chapter 270
- 50 **72-9-701**, as renumbered and amended by Laws of Utah 1998, Chapter 270
- 51 **72-10-120**, as last amended by Laws of Utah 1998, Chapter 365 and renumbered and
- 52 amended by Laws of Utah 1998, Chapter 270
- 53 **73-18-21**, as last amended by Laws of Utah 1987, Chapter 99
- 54 **73-18a-14**, as last amended by Laws of Utah 1987, Chapter 99
- 55 **76-8-1301**, as last amended by Laws of Utah 2007, Chapter 264
- 56 ENACTS:
- 57 **23-21-7**, Utah Code Annotated 1953
- 58 **61-1-1.3**, Utah Code Annotated 1953

- 59 **61-1-1.5**, Utah Code Annotated 1953
- 60 **61-1-2.1**, Utah Code Annotated 1953
- 61 **61-1-2.2**, Utah Code Annotated 1953
- 62 **61-1-2.3**, Utah Code Annotated 1953
- 63 **61-1-2.4**, Utah Code Annotated 1953
- 64 **61-1-2.5**, Utah Code Annotated 1953
- 65 **61-1-2.6**, Utah Code Annotated 1953
- 66 **61-1-2.7**, Utah Code Annotated 1953
- 67 **63-55b-173**, Utah Code Annotated 1953

68 REPEALS AND REENACTS:

69 **63-11-17.3**, as last amended by Laws of Utah 1997, Chapter 315

70 REPEALS:

71 **72-7-211**, as renumbered and amended by Laws of Utah 1998, Chapter 270



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

74 Section 1. Section **23-13-11** is amended to read:

75 **23-13-11. Violations.**

76 (1) Unless otherwise provided, a violation of any provision of this title is a class B
77 misdemeanor.

78 (2) ~~[A] Except as otherwise provided in this title, a violation of any rule or~~
79 ~~proclamation of the Wildlife Board [is a class C misdemeanor] is an infraction.~~

80 Section 2. Section **23-20-3** is amended to read:

81 **23-20-3. Taking, transporting, selling, or purchasing protected wildlife illegal**
82 **except as authorized -- Penalty.**

83 (1) Except as provided in this title or [a] an administrative rule, proclamation, or order
84 of the Wildlife Board, [a person may not] it is unlawful for any person to:

85 ~~[(a) take or permit his dog to take:]~~

86 ~~[(i) protected wildlife or their parts;]~~

87 ~~[(ii) an occupied nest of protected wildlife; or]~~

88 ~~[(iii) an egg of protected wildlife;]~~

89 ~~[(b) transport, ship, or cause to be shipped protected wildlife or their parts;]~~

- 90 ~~[(c) sell or purchase protected wildlife or their parts; or]~~
- 91 ~~[(d) possess protected wildlife or their parts unaccompanied by a valid license, permit,~~
- 92 ~~tag, certificate of registration, bill of sale, or invoice.]~~
- 93 (a) take protected wildlife or its parts;
- 94 (b) collect, import, possess, transport, propagate, store, donate, transfer, or export
- 95 protected wildlife or its parts;
- 96 (c) take, possess, sell, purchase, barter, donate, or trade protected wildlife or its parts
- 97 without first having procured the necessary licenses, permits, tags, stamps, certificates of
- 98 registration, authorizations, and receipts required in this title or an administrative rule,
- 99 proclamation, or order of the Wildlife Board;
- 100 (d) take protected wildlife with any weapon, ammunition, implement, tool, device or
- 101 any part of any of these not specifically authorized in this title or a rule, proclamation, or order
- 102 of the Wildlife Board;
- 103 (e) possess while in pursuit of protected wildlife any weapon, ammunition, implement,
- 104 tool, device, or any part of any of these not specifically authorized in this title or an
- 105 administrative rule, proclamation, or order of the Wildlife Board;
- 106 (f) take protected wildlife using any method, means, process, or practice not
- 107 specifically authorized in this title or an administrative rule, proclamation, or order of the
- 108 Wildlife Board;
- 109 (g) take protected wildlife outside the season dates, location boundaries, and daily time
- 110 frames established in rule, proclamation, or order of the Wildlife Board;
- 111 (h) take protected wildlife in excess of the bag and possession limits established in
- 112 rule, proclamation, or order of the Wildlife Board;
- 113 (i) take protected wildlife in an area closed to hunting, trapping, or fishing by rule,
- 114 proclamation, or order of the Wildlife Board, or by executive order of the division director
- 115 pursuant to Subsection 23-14-8(4);
- 116 (j) practice falconry or capture, possess, or use birds in falconry;
- 117 (k) take any wildlife from an airplane or any other airborne vehicle or device or any
- 118 motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles;
- 119 (l) hold in captivity at any time any live protected wildlife;
- 120 (m) use or permit a dog or other domestic or trained animal to take protected wildlife;

- 121 (n) remove, damage, or destroy an occupied nest of protected wildlife;
122 (o) release captured or captive wildlife into the wild;
123 (p) use spotlighting to take protected wildlife;
124 (q) employ or use a means of concealment or camouflage while taking protected
125 wildlife which is prohibited in this title or an administrative rule, proclamation, or order of the
126 Wildlife Board;
127 (r) possess or use bait or other attractant to take protected wildlife which is prohibited
128 in this title or an administrative rule, proclamation, or order of the Wildlife Board;
129 (s) use any decoy or recorded or electronically amplified call which is prohibited in this
130 title or an administrative rule, proclamation, or order of the Wildlife Board to take protected
131 wildlife;
132 (t) commercially harvest protected wildlife, including brine shrimp and brine shrimp
133 eggs;
134 (u) utilize protected wildlife for commercial purposes or financial gain;
135 (v) enter, establish, or hold a contest or tournament involving the taking of protected
136 wildlife;
137 (w) operate or participate in a commercial hunting area as described in Section
138 23-17-6; or
139 (x) operate or participate in a cooperative wildlife management unit as defined in
140 Section 23-23-2.
141 (2) Possession of protected wildlife without a valid license, permit, tag, certificate of
142 registration, bill of sale, or invoice is prima facie evidence that the protected wildlife was
143 illegally taken and is illegally held in possession.
144 (3) A person is guilty of a class B misdemeanor if he:
145 (a) violates any provision of Subsection (1); and
146 (b) does so with criminal negligence as defined in Subsection 76-2-103(4).
147 Section 3. Section **23-21-7** is enacted to read:
148 **23-21-7. Unlawful uses and activities on division lands.**
149 (1) Except as authorized by statute, administrative rule, contractual agreement, special
150 use permit, certificate of registration, or public notice, a person may not on division land:
151 (a) remove, extract, use, consume, or destroy any improvement or cultural or historic

152 resource;

153 (b) remove, extract, use, consume, or destroy any sand, gravel, cinder, ornamental rock,
154 or other common mineral resource, or vegetation resource;

155 (c) allow livestock to graze;

156 (d) remove any plant or portion of a plant for commercial gain purposes;

157 (e) enter, use, or occupy division land that is posted against entry, use, or occupancy;

158 (f) enter, use, or occupy division land as part of a group of more than 25 people;

159 (g) enter, use, or occupy division land while engaged in or part of an organized event;

160 (h) use, occupy, destroy, move, or construct any structure, including fences, water
161 control devices, roads, survey and section markers, or signs;

162 (i) prohibit, prevent, or obstruct public entry on division lands when public entry is
163 authorized by the division;

164 (j) attempt to manage or control division lands in a manner inconsistent with division
165 management plans, administrative rules, or policies;

166 (k) solicit, promote, negotiate, barter, sell, or trade any product or service on, or
167 obtained from, division lands for commercial gain;

168 (l) park a motor vehicle or trailer or camp for more than 14 consecutive days unless the
169 area is posted for a different duration;

170 (m) light a fire without taking adequate precaution to prevent spreading of the fire or
171 leave a fire unattended;

172 (n) use fireworks, explosives, poisons, herbicides, insecticides, or pesticides;

173 (o) use motorized vehicles of any kind except as authorized by declaration,
174 management plan, or posting; or

175 (p) use division lands for any purpose that violates applicable land use restrictions
176 imposed by statute, administrative rule, or by the division.

177 (2) A person or entity which unlawfully uses division lands is liable for damages in the
178 amount of:

179 (a) the value of the resource removed, destroyed, or extracted;

180 (b) the amount of damage caused; and

181 (c) whichever is greater of:

182 (i) the value of any losses or expenses caused as a result of interference with authorized

183 activities; or

184 (ii) the consideration which would have been charged by the division for use of the
185 land during the period of trespass.

186 (3) This section does not apply to division employees or division volunteers while
187 acting in the lawful performance of their duties.

188 (4) Except as otherwise provided by statute, the criminal penalty for a violation of any
189 provision of this section is prescribed in Section 23-13-11.

190 Section 4. Section **32A-13-106** is amended to read:

191 **32A-13-106. Nuisances.**

192 (1) (a) Any room, house, building, structure, place, aircraft, vehicle, vessel, or other
193 conveyance, where alcoholic products are possessed, kept, used, offered for sale, sold, given,
194 furnished, supplied, received, purchased, stored, warehoused, manufactured, adulterated,
195 shipped, carried, transported, or distributed in violation of this title [~~or commission rules,~~] and
196 all alcoholic products, packages, equipment, or other property kept or used in maintaining the
197 same, are common nuisances.

198 (b) Any person who maintains or assists in maintaining any common nuisance is guilty
199 of a class B misdemeanor.

200 (2) If any person has knowledge, or has reason to believe that the person's room, house,
201 building, structure, place, aircraft, vehicle, vessel, or other conveyance is occupied or used in
202 violation of this title or commission rules as described in this section, or allows it to be so
203 occupied or used, it is subject to a lien for and may be sold to pay all fines and costs assessed
204 against the person guilty of the nuisance. This lien may be enforced by action in any court
205 having jurisdiction.

206 (3) Any action to abate any nuisance defined in this title shall be brought in the name
207 of the department in any court having jurisdiction. It shall be tried as an action in equity. No
208 bond is required to initiate proceedings.

209 (4) The court may issue a temporary writ of injunction, if it appears that the nuisance
210 exists, restraining the defendant from conducting or permitting the continuance of the nuisance
211 until the conclusion of the trial. The court may also issue an order restraining the defendant
212 and all other persons from removing or interfering with the alcoholic products, packages,
213 equipment, or other property kept or used in violation of this title or commission rules.

214 (5) (a) In any action to abate or enjoin any nuisance, the court need not find that the
215 property involved was being unlawfully used at the time of the hearing.

216 (b) On finding that the material allegations of the petition or complaint are true, the
217 court shall order that no alcoholic product may be possessed, kept, used, offered for sale, sold,
218 given, furnished, supplied, received, purchased, stored, warehoused, manufactured, adulterated,
219 shipped, carried, transported, or distributed in the room, house, building, structure, place,
220 aircraft, vehicle, vessel, or other conveyance or in any part of these.

221 (c) Upon judgment of the court ordering abatement of the nuisance, the court may
222 order that the premises or conveyance in question may not be occupied or used for any purpose
223 for one year.

224 (d) The court may permit the premises or conveyance to be occupied or used if its
225 owner, lessee, tenant, or occupant gives bond in an appropriate amount with sufficient surety,
226 approved by the court, payable to the state of Utah, and on the conditions that alcoholic
227 products will not be present [~~therein or thereon~~] in or on the premises or the conveyance, and
228 that payment of all fines, costs, and damages that may be assessed for any violation of this title
229 or commission rules upon the property will be made.

230 (6) If a tenant of any premises uses the premises or any part of them in maintaining a
231 common nuisance as defined in this section, or knowingly permits use by another, the lease is
232 rendered void and the right to possession reverts to the owner or lessor who is entitled to the
233 remedy provided by law for forcible detention of the premises.

234 (7) Any person who knowingly permits any building or premises owned or leased by
235 the person, or under the person's control, or any part of any building or premises, to be used in
236 maintaining a common nuisance as defined in this section, or who, after being notified in
237 writing by a prosecuting officer or any citizen of the unlawful use, and who fails to take all
238 proper measures, either to abate the nuisance or to remove the person or persons from the
239 premises, is guilty of assisting in the maintaining of the nuisance as provided in Section
240 76-10-804.

241 Section 5. Section **34-23-402** is amended to read:

242 **34-23-402. Violation -- Criminal penalty.**

243 (1) The commission may prosecute a misdemeanor criminal action in the name of the
244 state. The county attorney, district attorney, or attorney general shall provide assistance in

245 prosecutions under this section at the request of the commission.

246 (2) It is a class B misdemeanor for a person, whether individually or as an officer,
247 agent, or employee of any person, firm, or corporation to:

248 (a) knowingly employ a minor or permit a minor to work in a repeated violation of this
249 chapter;

250 (b) refuse or knowingly neglect to furnish to the commission, any information
251 requested by the commission under this chapter;

252 (c) refuse access to that person's place of business or employment to the commission or
253 its authorized representative when access has been requested in conjunction with an
254 investigation related to this section;

255 (d) hinder the commission or its authorized representative in the securing of any
256 information authorized by this section;

257 (e) refuse or knowingly omit or neglect to keep any of the records required by this
258 chapter;

259 (f) knowingly make any false statement, representation, or certification in any
260 application, record, report, plan, or other document filed or required to be maintained under
261 this chapter;

262 (g) discharge an employee or threaten to or retaliate against an employee because:

263 (i) the employee has testified;

264 (ii) is about to testify; or

265 (iii) the employer believes that the employee may testify in any investigation or
266 proceedings relative to the enforcement of this chapter; and

267 (h) willfully violate any ~~rule or~~ order issued under this chapter.

268 (3) This section does not apply to violations of Section 34-23-301.

269 Section 6. Section **34A-2-407** is amended to read:

270 **34A-2-407. Reporting of industrial injuries -- Regulation of health care providers**

271 **-- Funeral expenses.**

272 (1) As used in this section, "physician" is as defined in Section 34A-2-111.

273 (2) (a) Any employee sustaining an injury arising out of and in the course of
274 employment shall provide notification to the employee's employer promptly of the injury.

275 (b) If the employee is unable to provide the notification required by Subsection (2)(a),

276 the following may provide notification of the injury to the employee's employer:

277 (i) the employee's next-of-kin; or

278 (ii) the employee's attorney.

279 (c) An employee claiming benefits under this chapter, or Chapter 3, Utah Occupational
280 Disease Act, shall comply with rules adopted by the commission regarding disclosure of
281 medical records of the employee medically relevant to the industrial accident or occupational
282 disease claim.

283 (3) (a) An employee is barred for any claim of benefits arising from an injury if the
284 employee fails to notify within the time period described in Subsection (3)(b):

285 (i) the employee's employer in accordance with Subsection (2); or

286 (ii) the division.

287 (b) The notice required by Subsection (3)(a) shall be made within:

288 (i) 180 days of the day on which the injury occurs; or

289 (ii) in the case of an occupational hearing loss, the time period specified in Section
290 34A-2-506.

291 (4) The following constitute notification of injury required by Subsection (2):

292 (a) an employer's or physician's injury report filed with:

293 (i) the division;

294 (ii) the employer; or

295 (iii) the employer's insurance carrier; or

296 (b) the payment of any medical or disability benefits by:

297 (i) the employer; or

298 (ii) the employer's insurance carrier.

299 (5) (a) In the form prescribed by the division, each employer shall file a report with the
300 division of any:

301 (i) work-related fatality; or

302 (ii) work-related injury resulting in:

303 (A) medical treatment;

304 (B) loss of consciousness;

305 (C) loss of work;

306 (D) restriction of work; or

- 307 (E) transfer to another job.
- 308 (b) The employer shall file the report required by Subsection (5)(a) within seven days
309 after:
- 310 (i) the occurrence of a fatality or injury;
- 311 (ii) the employer's first knowledge of the fatality or injury; or
- 312 (iii) the employee's notification of the fatality or injury.
- 313 (c) (i) An employer shall file a subsequent report with the division of any previously
314 reported injury that later results in death.
- 315 (ii) The subsequent report required by this Subsection (5)(c) shall be filed with the
316 division within seven days following:
- 317 (A) the death; or
- 318 (B) the employer's first knowledge or notification of the death.
- 319 (d) A report is not required to be filed under this Subsection (5) for minor injuries,
320 such as cuts or scratches that require first-aid treatment only, unless:
- 321 (i) a treating physician files a report with the division in accordance with Subsection
322 (9); or
- 323 (ii) a treating physician is required to file a report with the division in accordance with
324 Subsection (9).
- 325 (6) An employer required to file a report under Subsection (5) shall provide the
326 employee with:
- 327 (a) a copy of the report submitted to the division; and
- 328 (b) a statement, as prepared by the division, of the employee's rights and
329 responsibilities related to the industrial injury.
- 330 (7) Each employer shall maintain a record in a manner prescribed by the division by
331 administrative rule of all:
- 332 (a) work-related fatalities; or
- 333 (b) work-related injuries resulting in:
- 334 (i) medical treatment;
- 335 (ii) loss of consciousness;
- 336 (iii) loss of work;
- 337 (iv) restriction of work; or

338 (v) transfer to another job.

339 (8) (a) Except as provided in Subsection (8)(b), an employer who refuses or neglects to
340 make reports, to maintain records, or to file reports with the division as required by this section
341 is:

342 (i) guilty of a class C misdemeanor; and

343 (ii) subject to a civil assessment:

344 (A) imposed by the division, subject to the requirements of Title 63, Chapter 46b,
345 Administrative Procedures Act; and

346 (B) that may not exceed \$500.

347 (b) An employer is not subject to the civil assessment or guilty of a class C
348 misdemeanor under this Subsection (8) if:

349 (i) the employer submits a report later than required by this section; and

350 (ii) the division finds that the employer has shown good cause for submitting a report
351 later than required by this section.

352 (c) A civil assessment collected under this Subsection (8) shall be deposited into the
353 Uninsured Employers' Fund created in Section 34A-2-704.

354 (9) (a) A physician attending an injured employee shall comply with administrative
355 rules established by the commission regarding:

356 (i) fees for physician's services;

357 (ii) disclosure of medical records of the employee medically relevant to the employee's
358 industrial accident or occupational disease claim; and

359 (iii) reports to the division regarding:

360 (A) the condition and treatment of an injured employee; or

361 (B) any other matter concerning industrial cases that the physician is treating.

362 (b) A physician who is associated with, employed by, or bills through a hospital is
363 subject to Subsection (9)(a).

364 (c) A hospital providing services for an injured employee is not subject to the
365 requirements of Subsection (9)(a) except for rules made by the commission that are described
366 in Subsection (9)(a)(ii) or (iii).

367 (d) The commission's schedule of fees may reasonably differentiate remuneration to be
368 paid to providers of health services based on:

369 (i) the severity of the employee's condition;
 370 (ii) the nature of the treatment necessary; and
 371 (iii) the facilities or equipment specially required to deliver that treatment.

372 (e) This Subsection (9) does not prohibit a contract with a provider of health services
 373 relating to the pricing of goods and services.

374 (10) A copy of the initial report filed under Subsection (9)(a)(iii) shall be furnished to:
 375 (a) the division;
 376 (b) the employee; and
 377 (c) (i) the employer; or
 378 (ii) the employer's insurance carrier.

379 ~~[(11) (a) Except as provided in Subsection (11)(b), a person subject to Subsection~~
 380 ~~(9)(a)(iii) who fails to comply with Subsection (9)(a)(iii) is guilty of a class C misdemeanor for~~
 381 ~~each offense.]~~

382 ~~[(b) A person subject to Subsection (9)(a)(iii) is not guilty of a class C misdemeanor~~
 383 ~~under this Subsection (11), if:]~~

384 ~~[(i) the person files a late report; and]~~
 385 ~~[(ii) the division finds that there is good cause for submitting a late report.]~~

386 ~~[(12)]~~ (11) (a) Subject to appellate review under Section 34A-1-303, the commission
 387 has exclusive jurisdiction to hear and determine:
 388 (i) whether goods provided to or services rendered to an employee are compensable
 389 pursuant to this chapter or Chapter 3, Utah Occupational Disease Act, including:
 390 (A) medical, nurse, or hospital services;
 391 (B) medicines; and
 392 (C) artificial means, appliances, or prosthesis;
 393 (ii) the reasonableness of the amounts charged or paid for a good or service described
 394 in Subsection ~~[(12)]~~ (11)(a)(i); and
 395 (iii) collection issues related to a good or service described in Subsection ~~[(12)]~~
 396 (11)(a)(i).

397 (b) Except as provided in Subsection ~~[(12)]~~ (11)(a), Subsection 34A-2-211(7), or
 398 Section 34A-2-212, a person may not maintain a cause of action in any forum within this state
 399 other than the commission for collection or payment for goods or services described in

400 Subsection [~~(12)~~] (11)(a) that are compensable under this chapter or Chapter 3, Utah
401 Occupational Disease Act.

402 Section 7. Section **34A-2-801** is amended to read:

403 **34A-2-801. Initiating adjudicative proceedings -- Procedure for review of**
404 **administrative action.**

405 (1) (a) To contest an action of the employee's employer or its insurance carrier
406 concerning a compensable industrial accident or occupational disease alleged by the employee,
407 any of the following shall file an application for hearing with the Division of Adjudication:

408 (i) the employee; or

409 (ii) a representative of the employee, the qualifications of whom are defined in rule by
410 the commission.

411 (b) To appeal the imposition of a penalty or other administrative act imposed by the
412 division on the employer or its insurance carrier for failure to comply with this chapter or
413 Chapter 3, Utah Occupational Disease Act, any of the following shall file an application for
414 hearing with the Division of Adjudication:

415 (i) the employer;

416 (ii) the insurance carrier; or

417 (iii) a representative of either the employer or the insurance carrier, the qualifications
418 of whom are defined in rule by the commission.

419 (c) A person providing goods or services described in Subsections 34A-2-407[~~(12)~~]
420 (11) and 34A-3-108(12) may file an application for hearing in accordance with Section
421 34A-2-407 or 34A-3-108.

422 (d) An attorney may file an application for hearing in accordance with Section
423 34A-1-309.

424 (2) Unless a party in interest appeals the decision of an administrative law judge in
425 accordance with Subsection (3), the decision of an administrative law judge on an application
426 for hearing filed under Subsection (1) is a final order of the commission 30 days after the date
427 the decision is issued.

428 (3) (a) A party in interest may appeal the decision of an administrative law judge by
429 filing a motion for review with the Division of Adjudication within 30 days of the date the
430 decision is issued.

431 (b) Unless a party in interest to the appeal requests under Subsection (3)(c) that the
432 appeal be heard by the Appeals Board, the commissioner shall hear the review.

433 (c) A party in interest may request that an appeal be heard by the Appeals Board by
434 filing the request with the Division of Adjudication:

435 (i) as part of the motion for review; or

436 (ii) if requested by a party in interest who did not file a motion for review, within 20
437 days of the date the motion for review is filed with the Division of Adjudication.

438 (d) A case appealed to the Appeals Board shall be decided by the majority vote of the
439 Appeals Board.

440 (4) All records on appeals shall be maintained by the Division of Adjudication. Those
441 records shall include an appeal docket showing the receipt and disposition of the appeals on
442 review.

443 (5) Upon appeal, the commissioner or Appeals Board shall make its decision in
444 accordance with Section 34A-1-303.

445 (6) The commissioner or Appeals Board shall promptly notify the parties to any
446 proceedings before it of its decision, including its findings and conclusions.

447 (7) The decision of the commissioner or Appeals Board is final unless within 30 days
448 after the date the decision is issued further appeal is initiated under the provisions of this
449 section or Title 63, Chapter 46b, Administrative Procedures Act.

450 (8) (a) Within 30 days after the date the decision of the commissioner or Appeals
451 Board is issued, any aggrieved party may secure judicial review by commencing an action in
452 the court of appeals against the commissioner or Appeals Board for the review of the decision
453 of the commissioner or Appeals Board.

454 (b) In an action filed under Subsection (8)(a):

455 (i) any other party to the proceeding before the commissioner or Appeals Board shall
456 be made a party; and

457 (ii) the commission shall be made a party.

458 (c) A party claiming to be aggrieved may seek judicial review only if the party has
459 exhausted the party's remedies before the commission as provided by this section.

460 (d) At the request of the court of appeals, the commission shall certify and file with the
461 court all documents and papers and a transcript of all testimony taken in the matter together

462 with the decision of the commissioner or Appeals Board.

463 Section 8. Section **35A-4-103** is amended to read:

464 **35A-4-103. Void agreements -- Child support obligations -- Penalties.**

465 (1) (a) Any agreement by an individual to waive, release, or commute his rights to
466 benefits or any other rights under this chapter is void.

467 (b) Any agreement by any individual in the employ of any person or concern to pay all
468 or any portion of an employer's contributions, required under this chapter from the employer, is
469 void.

470 (c) An employer may not directly or indirectly:

471 (i) make, require, or accept any deduction from wages to finance the employer's
472 contributions required from the employer;

473 (ii) require or accept any waiver of any right under this chapter by any individual in the
474 employer's employ;

475 (iii) discriminate in regard to the hiring or tenure of work on any term or condition of
476 work of any individual on account of the individual claiming benefits under this chapter; or

477 (iv) in any manner obstruct or impede the filing of claims for benefits.

478 (d) (i) Any employer or officer or agent of an employer who violates Subsection (1)(c)
479 is, for each offense, guilty of a class B misdemeanor.

480 (ii) Notwithstanding Sections 76-3-204 and 76-3-301, a fine imposed under Subsection
481 (1) shall be not less than \$100, and a penalty of imprisonment shall be not more than six
482 months.

483 (2) An individual claiming benefits may not be charged fees or costs of any kind in any
484 proceeding under this chapter by the department or its representatives, or by any court or any
485 officer of the court.

486 (3) (a) Any individual claiming benefits in any proceeding before the department or its
487 representatives or a court may be represented by counsel or any other ~~duty~~ authorized agent.

488 (b) A counsel or agent may not either charge or receive for the counsel's or agent's
489 services more than an amount approved by the division or administrative law judge in
490 accordance with administrative rules made by the department.

491 ~~[(c) Any person who violates any provision of Subsection (3) is guilty of a class B
492 misdemeanor for each offense.]~~

493 ~~[(d) Notwithstanding Sections 76-3-204 and 76-3-301, a fine imposed under~~
494 ~~Subsection (3) shall be not less than \$50 nor more than \$500, and a penalty for imprisonment~~
495 ~~shall be not more than six months.]~~

496 (4) Except as provided for in Subsection (5):

497 (a) any assignment, pledge, or encumbrance of any right to benefits that are or may
498 become due or payable under this chapter is void;

499 (b) rights to benefits are exempt from levy, execution, attachment, or any other remedy
500 provided for the collection of debt;

501 (c) benefits received by any individual, so long as they are not mingled with other
502 funds of the recipient, are exempt from any remedy for the collection of all debts except debts
503 incurred for necessities furnished to the individual or the individual's spouse or dependents
504 during the time when the individual was unemployed; and

505 (d) any waiver of any exemption provided for in Subsection (4) is void.

506 (5) (a) An individual filing a new claim for unemployment compensation shall, at the
507 time of filing the claim, disclose whether or not the individual owes:

508 (i) child support obligations; or

509 (ii) an uncollected overissuance of food stamp benefits.

510 (b) If the individual owes child support obligations, and is determined to be eligible for
511 unemployment compensation, the division shall notify the state or local child support agency
512 charged with enforcing that obligation that the individual is eligible for unemployment
513 compensation.

514 (c) The division shall deduct and withhold from any unemployment compensation
515 payable to an individual that owes child support obligations:

516 (i) any amount required to be deducted and withheld from unemployment
517 compensation under legal process, as defined in the Social Security Act, 42 U.S.C. Sec. 659(i),
518 properly served upon the department;

519 (ii) the amount determined under an agreement submitted to the division under
520 Subsection 454 (19)(B)(i) of the Social Security Act, 42 U.S.C. Sec. 654, by the state or local
521 child support enforcement agency, except if Subsection (5)(c)(i) is applicable; or

522 (iii) the amount specified by the claimant to the division if neither Subsection (5)(c)(i)
523 nor (ii) is applicable.

524 (d) The division shall notify the state food stamp agency that an individual is eligible
525 for unemployment compensation if the individual:

- 526 (i) owes an uncollected overissuance of food stamp benefits; and
- 527 (ii) is determined to be eligible for unemployment compensation.

528 (e) The division shall deduct and withhold from any unemployment compensation
529 payable to an individual who owes an uncollected overissuance of food stamp benefits:

530 (i) the amount specified by the individual to the division to be deducted and withheld
531 under this Subsection (5)(e);

532 (ii) the amount, if any, determined pursuant to an agreement submitted to the state food
533 stamp agency under Section 13(c)(3)(B) of the Food Stamp Act of 1977; or

534 (iii) any amount otherwise required to be deducted and withheld from unemployment
535 compensation pursuant to Section 13(c)(3)(B) of the Food Stamp Act of 1977.

536 (f) Any amount deducted and withheld under Subsection (5)(c) or (e) shall:

537 (i) be paid by the department to the appropriate:

- 538 (A) state or local child support enforcement agency; or
- 539 (B) state food stamp agency; and

540 (ii) for all purposes, be treated as if it was paid to the individual as unemployment
541 compensation and then paid by the individual to the appropriate:

542 (A) state or local child support enforcement agency in satisfaction of the individual's
543 child support obligation; or

544 (B) state food stamp agency in satisfaction of the individual's uncollected overissuance.

545 (g) For purposes of Subsection (5):

546 (i) "Child support obligation" means obligations that are enforced under a plan
547 described in Section 454 of the Social Security Act, 42 U.S.C. Sec. 654, that has been approved
548 by the Secretary of Health and Human Services under Part D of Title IV of the Social Security
549 Act, 42 U.S.C. Sec. 651 et seq.

550 (ii) "State food stamp agency" means the Department of Workforce Services or its
551 designee responsible for the collection of uncollected overissuances.

552 (iii) "State or local child support enforcement agency" means any agency or political
553 subdivision of the state operating under a plan described in Subsection (5).

554 (iv) "Uncollected overissuance" is as defined in Section 13(c)(1) of the Food Stamp

555 Act of 1977.

556 (v) "Unemployment compensation" means any compensation payable under this
557 chapter, including amounts payable under an agreement directed by federal law that provides
558 compensation assistance or allowances for unemployment.

559 (h) Subsection (5) is applicable only if appropriate arrangements have been made for
560 reimbursement by the state or local child support enforcement agency or state food stamp
561 agency for the administrative costs of the department under Subsection (5) that are directly
562 related to the enforcement of child support obligations or the repayment of uncollected
563 overissuance of food stamp benefits.

564 Section 9. Section **41-1a-712** is amended to read:

565 **41-1a-712. Foreign vehicle disclosure requirements -- Penalties -- Civil damages.**

566 (1) A person may not knowingly sell or offer for sale in this state any vehicle that was
567 initially delivered for disposition or sale in a country other than the United States of America
568 unless, prior to the sale, the person provides written notice to the purchaser on a separate form
569 furnished by the Motor Vehicle Enforcement Division;

570 (a) that indicates:

571 ~~[(a)]~~ (i) that the vehicle was initially delivered for disposition or sale in a country
572 outside of the United States as indicated on the Manufacturer's Statement of Origin or similar
573 ownership document; and

574 ~~[(b)]~~ (ii) the country where the vehicle was initially delivered for the disposition or
575 sale; and

576 ~~[(c) any other information required by the commission under rules made by the
577 commission in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.]~~

578 (b) that contains language substantially similar to each of the following statements:

579 (i) the odometer for this vehicle may have been converted to miles;

580 (ii) this vehicle meets U.S. Department of Transportation safety standards; and

581 (iii) this vehicle may have manufacturer warranty exclusions if sold or offered for sale
582 in this country.

583 (2) A person who violates this section is guilty of a class B misdemeanor.

584 (3) (a) In addition to any other penalties, a purchaser may bring a civil action to recover
585 damages resulting from a seller's failure to provide notice as required under this section.

586 (b) The amount of damages that may be recovered in a civil action are the actual
587 damages or \$1,500, whichever is greater.

588 Section 10. Section **54-7-15** is amended to read:

589 **54-7-15. Review or rehearing by commission -- Application -- Procedure --**
590 **Prerequisite to court action -- Effect of commission decisions.**

591 (1) Before seeking judicial review of the commission's action, any party, stockholder,
592 bondholder, or other person pecuniarily interested in the public utility who is dissatisfied with
593 an order of the commission shall meet the requirements of this section.

594 (2) (a) After any order or decision has been made by the commission, any party to the
595 action or proceeding, any stockholder, bondholder, or other party pecuniarily interested in the
596 public utility affected may apply for rehearing of any matters determined in the action or
597 proceeding.

598 (b) An applicant may not urge or rely on any ground not set forth in the application in
599 an appeal to any court.

600 (c) Any application for rehearing not granted by the commission within 20 days is
601 denied.

602 (d) (i) If the commission grants any application for rehearing without suspending the
603 order involved, the commission shall issue its decision on rehearing within 20 days after final
604 submission.

605 (ii) If the commission fails to render its decision on rehearing within 20 days, the order
606 involved is affirmed.

607 (e) Unless an order of the commission directs that an order is stayed or postponed, an
608 application for review or rehearing does not excuse any corporation or person from complying
609 with and obeying any order or decision of the commission.

610 (3) Any order or decision on rehearing that abrogates, changes, or modifies an original
611 order or decision has the same force and effect as an original order or decision, but does not
612 affect any right, or the enforcement of any right, arising from the original order or decision
613 unless so ordered by the commission.

614 (4) An order of the commission, including a decision on rehearing:

615 (a) shall have binding force and effect only with respect to a public utility that is an
616 actual party to the proceeding in which the order is rendered; and

617 (b) does not determine any right, privilege, obligation, duty, constraint, burden, or
618 responsibility with respect to a public utility that is not a party to the proceeding in which the
619 order is rendered unless, in accordance with Subsection 63-46a-3[~~(6)~~] (7), the commission
620 makes a rule that incorporates the one or more principles of law that:

- 621 (i) are established by the order;
622 (ii) are not in commission rules at the time of the order; and
623 (iii) affect the right, privilege, obligation, duty, constraint, burden, or responsibility
624 with respect to the public utility.

625 Section 11. Section **54-7-26** is amended to read:

626 **54-7-26. Violations by officers or agents of utility -- Penalty.**

627 Every officer, agent, or employee of any public utility who violates or fails to comply
628 with, or who procures, aids, or abets any violation by any public utility of any provision of the
629 Constitution of this state or of this title, or who fails to obey, observe, or comply with any
630 order, decision, [~~rule;~~] direction, demand, or requirement, or any part or provision thereof, of
631 the commission, or who procures, aids, or abets any public utility in its failure to obey, observe,
632 and comply with any order, decision, [~~rule;~~] direction, demand, or requirement, or any part or
633 provision thereof, in a case in which a penalty has not been provided for, the officer, agent, or
634 employee is guilty of a class A misdemeanor.

635 Section 12. Section **54-7-28** is amended to read:

636 **54-7-28. Violations by individuals -- Penalty.**

637 Every person who, either individually, or acting as an officer, agent, or employee of a
638 corporation other than a public utility, violates any provision of this title or fails to observe,
639 obey, or comply with any order, decision, [~~rule;~~] direction, demand, or requirement, or any part
640 or provision thereof, of the commission, or who procures, aids, or abets any public utility in its
641 violation of this title or in its failure to obey, observe, or comply with any order, decision,
642 [~~rule;~~] direction, demand, or requirement, or any part or portion thereof, in a case in which a
643 penalty has not been provided for the person, is guilty of a class A misdemeanor.

644 Section 13. Section **58-37d-4** is amended to read:

645 **58-37d-4. Prohibited acts -- Second degree felony.**

- 646 (1) It is unlawful for any person to knowingly or intentionally:
647 (a) possess a controlled substance precursor with the intent to engage in a clandestine

648 laboratory operation;

649 (b) possess laboratory equipment or supplies with the intent to engage in a clandestine
650 laboratory operation;

651 (c) sell, distribute, or otherwise supply a precursor chemical, laboratory equipment, or
652 laboratory supplies, knowing or having reasonable cause to believe any of these items will be
653 used for a clandestine laboratory operation;

654 (d) evade the recordkeeping provisions of Title 58, Chapter 37c, Utah Controlled
655 Substance Precursor Act, [~~or the administrative rules issued under that chapter,~~] knowing or
656 having reasonable cause to believe that the material distributed or received will be used for a
657 clandestine laboratory operation;

658 (e) conspire with or aid another to engage in a clandestine laboratory operation;

659 (f) produce or manufacture, or possess with intent to produce or manufacture a
660 controlled or counterfeit substance except as authorized under Title 58, Chapter 37, Utah
661 Controlled Substances Act;

662 (g) transport or convey a controlled or counterfeit substance with the intent to
663 distribute or to be distributed by the person transporting or conveying the controlled or
664 counterfeit substance or by any other person regardless of whether the final destination for the
665 distribution is within this state or any other location; or

666 (h) engage in compounding, synthesis, concentration, purification, separation,
667 extraction, or other physical or chemical processing of any substance, including a controlled
668 substance precursor, or the packaging, repackaging, labeling, or relabeling of a container
669 holding a substance that is a product of any of these activities, knowing or having reasonable
670 cause to believe that the substance is a product of any of these activities and will be used in the
671 illegal manufacture of specified controlled substances.

672 (2) A person who violates any provision of Subsection (1) is guilty of a second degree
673 felony punishable by imprisonment for an indeterminate term of not less than 3 years nor more
674 than 15 years.

675 Section 14. Section **59-14-208** is amended to read:

676 **59-14-208. Rules for stamping and packaging procedures -- Penalty.**

677 (1) The commission may by rule provide for the method of breaking packages, the
678 forms and kinds of containers, and the method of affixing or cancelling stamps. These rules

679 shall allow for the enforcement of payment by inspection.

680 (2) A person is guilty of a class B misdemeanor who:

681 (a) engages in or permits any practice which is prohibited by law [~~or by rules of the~~
682 ~~commission~~] and makes it difficult to enforce the provisions of this chapter by inspection;

683 (b) refuses to allow full inspection of his premises by any peace officer or of any agent
684 of the commission upon demand; or

685 (c) hinders or in any way delays or prevents inspection when the demand is made.

686 Section 15. Section **61-1-1.3** is enacted to read:

687 **61-1-1.3. Definitions.**

688 (1) "Customer" means potential, current, or prior clients.

689 (2) "Broker-dealer" is as defined in Section 61-1-13.

690 (3) "Broker-dealer or agent" means broker-dealers, broker-dealer agents, or
691 issuer-agents.

692 (4) "Designated security" means any equity security other than a security:

693 (a) listed, or approved for listing upon notice of issuance, on a national securities
694 exchange and which makes transaction reports available as required under SEC Rule 11Aa3-1,
695 Dissemination of Transaction Reports and Last Sale Data With Respect To Transactions in
696 Reported Securities, 17 C.F.R. 240.11Aa3-1 (1992), which is adopted and incorporated by
697 reference and is available from the SEC;

698 (b) listed, or approved for listing upon notice of issuance, on the NASDAQ system;

699 (c) issued by an investment company registered under the federal Investment Company
700 Act of 1940;

701 (d) that is a put option or call option issued by The Options Clearing Corporation; or

702 (e) whose issuer has net tangible assets in excess of \$4,000,000 as demonstrated by
703 financial statements dated fewer than 15 months prior to the date of the transaction with the
704 broker-dealer or agent, that:

705 (i) the broker-dealer or agent has reviewed and has a reasonable basis to believe are
706 true and complete; and

707 (ii) if the issuer is other than a foreign private issuer, are the most recent financial
708 statements for the issuer that have been audited and reported on by an independent public
709 accountant in accordance with SEC Rule 2-02, Accountant's Reports, 17 C.F.R. 210.2-02

710 (1992), which is adopted and incorporated by reference and available from the SEC; or
711 (iii) if the issuer is a foreign private issuer, are:
712 (A) the most recent financial statements for the issuer that have been filed with the
713 SEC and furnished to the SEC pursuant to SEC Rule 12g3-2(b), Exemptions for American
714 Depository Receipts and Certain Foreign Securities, 17 C.F.R. 240.12g3-2 (1992), which is
715 adopted and incorporated by reference and available from the SEC; or
716 (B) (I) prepared in accordance with generally accepted accounting principles in the
717 country of incorporation;
718 (II) audited in compliance with the requirements of that jurisdiction; and
719 (III) reported on by an accountant registered and in good standing in accordance with
720 the laws of that jurisdiction.
721 (5) "Division" is as defined in Section 61-1-13.
722 (6) "Exempt transactions" under Subsection 61-1-1.5(8) means:
723 (a) transactions in which the price of the designated security is \$5 or more, exclusive of
724 costs or charges, except:
725 (i) if the designated security is a unit composed of one or more securities, the unit price
726 divided by the number of components of the unit other than warrants, options, rights, or similar
727 securities must be \$5 or more; and
728 (ii) any component of the unit must have an exercise price or conversion price of \$5 or
729 more if it is:
730 (A) a warrant, option, right, or similar securities; or
731 (B) a convertible security;
732 (b) a transaction that is not recommended by a broker-dealer or agent;
733 (c) a transaction conducted by a dealer or agent, as defined in this section, under the
734 following conditions:
735 (i) commissions, commission equivalents, and mark-ups from transactions in
736 designated securities did not exceed 5% of a dealer's or agent's total commissions from
737 transactions in securities during:
738 (A) each of the immediately preceding three months; and
739 (B) during 11 or more of the preceding 12 months; and
740 (ii) in the immediately preceding 12 months, a dealer or agent has not executed

741 principal transactions in connection with the solicitation to purchase the designated security
742 that is the subject of the transaction; or

743 (d) transactions that, upon prior written request or upon its own motion, the division
744 conditionally or unconditionally exempts as not encompassed within this definition.

745 (7) "Market-maker" means a broker-dealer who, regarding a particular security:

746 (a) regularly publishes bona fide, competitive bid and ask quotations in a recognized
747 inter-dealer quotation system; or

748 (b) (i) regularly furnishes bona fide competitive bid and offer quotations to other
749 broker-dealers upon request; and

750 (ii) is prepared to effect transactions in reasonable quantities at the quoted price with
751 other broker-dealers or agents on a regular basis.

752 (8) "NASDAQ" means National Association of Securities Dealers Automatic
753 Quotation System.

754 (9) "Person" is as defined in Section 61-1-13.

755 (10) "SEC" means the United States Securities Exchange Commission.

756 Section 16. Section **61-1-1.5** is enacted to read:

757 **61-1-1.5. Fraudulent acts.**

758 A dealer or agent who engages in one or more of the practices listed below is in
759 violation of the anti-fraud provisions of Subsection 61-1-1(3):

760 (1) effecting a transaction with a customer in any security at an unreasonable price or at
761 a price not reasonably related to the current market price of the security;

762 (2) receiving an unreasonable commission or profit;

763 (3) contradicting or negating the importance of information contained in a prospectus
764 or other offering materials with intent to deceive or mislead;

765 (4) using advertising or sales presentations in a deceptive or misleading manner;

766 (5) leading a customer to believe that the broker-dealer or agent is in possession of
767 material, non-public information which would impact on the value of a security whether or not
768 the broker-dealer or agent is in possession of the material non-public information;

769 (6) making contradictory recommendations to different customers having similar
770 investment objectives for some to sell and others to purchase the same security, at or about the
771 same time, when not justified by the particular circumstance of each customer;

772 (7) failing to make a bona fide public offering of all the securities allotted to the dealer
773 or agent for distribution by:

774 (a) transferring securities to a customer, another broker-dealer, or a fictitious account
775 with the understanding that those securities will be returned to the transferring broker-dealer or
776 agent or nominee; or

777 (b) parking or withholding securities;

778 (8) in connection with the solicitation of a purchase of a designated security that is not
779 an exempt transaction as defined in Section 61-1-1.3:

780 (a) failing to disclose to the broker-dealer's or agent's customer, at the time of
781 solicitation and on the trade confirmation documents:

782 (i) the bid and ask price at which the broker-dealer or agent effects transactions with
783 individual retail customers of the designated security; and

784 (ii) the spread in both percentage and dollar amounts;

785 (b) failing to advise the broker-dealer's or agent's customer, at the time of solicitation
786 and on the confirmation, of all compensation related to a specific securities transaction to be
787 paid to the broker-dealer or agent, including:

788 (i) commissions;

789 (ii) sales charges; or

790 (iii) concessions;

791 (c) failing to disclose, at the time of solicitation and on the confirmation:

792 (i) the broker-dealer's short inventory position of more than 5%; or

793 (ii) the broker-dealer's long inventory position of more than 10%, of the issued and
794 outstanding shares of that class of securities of the issuer, if:

795 (A) the broker-dealer is a market-maker at the time of the solicitation; and

796 (B) the transaction is a principal transaction;

797 (d) conducting or participating in sales contests in a particular designated security;

798 (e) failing to include with the confirmation, in a form satisfactory to the division, a
799 written explanation of the bid and ask price;

800 (f) failing or refusing to execute sell orders from a customer from whom the
801 broker-dealer or agent solicited the purchase of the designated security in a principal
802 transaction;

803 (g) soliciting a secondary market transaction when there has not been a bona fide
804 distribution in the primary market; or

805 (h) engaging in a pattern of compensating an agent in different amounts for effecting
806 sales and purchases in the same designated security; or

807 (9) effecting transactions in, or inducing the purchase or sale of, any security by means
808 of any manipulative, deceptive, or other fraudulent device or contrivance, including the use of
809 boiler room tactics or use of fictitious or nominee accounts.

810 Section 17. Section **61-1-2.1** is enacted to read:

811 **61-1-2.1. Definitions.**

812 As used in this part:

813 (1) "Affiliate" has the same definition as in Section 2(a)(3) of the federal Investment
814 Company Act of 1940, which is adopted and incorporated by reference and is available from
815 the division.

816 (2) (a) "Company" means:

817 (i) a corporation, partnership, association, joint stock company, trust, or any organized
818 group of persons, whether incorporated or not; or

819 (ii) any receiver, trustee in a bankruptcy case under Title 11 of the United States Code,
820 or similar official or any liquidating agent for any entity listed in Subsection (2)(a)(i).

821 (b) "Company" does not include:

822 (i) a company required to be registered under the federal Investment Company Act of
823 1940 and that is not registered;

824 (ii) an investment company registered under Section 8 of the Investment Company Act
825 of 1940, 15 U.S.C. Sec. 80a-8;

826 (iii) a business development company as defined in Section 202(a)(22) of the
827 Investment Advisers Act of 1940, which is adopted and incorporated by reference and is
828 available from the division, unless each of the equity owners of the company, other than the
829 investment adviser entering into the contract, is an interested person as defined in this section;
830 or

831 (iv) a private investment company which would be defined as an investment company
832 under Section 3(a) of the federal Investment Company Act of 1940 but for the exception from
833 that definition under Section 3(c)(1) of that act.

834 (3) "Division" means the Division of Securities within the Utah Department of
835 Commerce.

836 (4) "Interested person" means any:

837 (a) member of the immediate family of any individual who is an affiliated person of the
838 investment adviser;

839 (b) person who knowingly has any direct or indirect beneficial interest in, or who is
840 designated as trustee, executor, or guardian of any legal interest in, any security issued by the
841 investment adviser or by a controlling person of the investment adviser if that beneficial or
842 legal interest exceeds:

843 (i) 1/10 of 1% of any class of outstanding securities of the investment adviser or a
844 controlling person of the investment adviser; or

845 (ii) 5% of the total assets of the person seeking to act as the client's independent agent;

846 or

847 (c) person or partner or employee of any person who, at any time since the beginning of
848 the last two years, has acted as legal counsel for the investment adviser.

849 (5) "SEC" means the United States Securities and Exchange Commission.

850 Section 18. Section **61-1-2.2** is enacted to read:

851 **61-1-2.2. Performance-based contract exemption.**

852 Notwithstanding Subsection 61-1-2(2), an investment adviser may enter into, extend, or
853 renew an investment advisory contract which provides for compensation to the investment
854 adviser on the basis of a share of capital gains upon or capital appreciation of the funds, or any
855 portion of the funds, of the client if the conditions in Sections 61-1-2.3 through 61-1-2.6 are
856 met.

857 Section 19. Section **61-1-2.3** is enacted to read:

858 **61-1-2.3. Client requirements.**

859 (1) The client entering into the contract must be:

860 (a) a person who, immediately after entering into the contract, has at least \$750,000
861 under the management of the investment adviser;

862 (b) a person whom the investment adviser and its investment adviser representatives
863 reasonably believe is a person whose net worth, which may include assets held jointly by an
864 individual with the individual's spouse, exceeds \$1,500,000 immediately before entering into

865 the contract;

866 (c) a qualified purchaser as defined in Section 2(a)(51)(A) of the Investment Company
867 Act of 1940 at the time the contract is entered into; or

868 (d) an individual who, immediately prior to entering into the contract, is:

869 (i) an executive officer, director, trustee, general partner, or person serving in a similar
870 capacity of the investment adviser; or

871 (ii) an employee of the investment adviser, but not an employee performing solely
872 clerical or administrative functions with regard to the investment adviser, who participated in
873 the investment activities of the investment adviser, provided that:

874 (A) participation in the investment activities of the investment adviser was part of the
875 employee's regular functions or duties; and

876 (B) for at least 12 months, the employee has been:

877 (I) performing the functions and duties for or on behalf of the investment adviser; or

878 (II) performing similar functions and duties for or on behalf of another company.

879 Section 20. Section **61-1-2.4** is enacted to read:

880 **61-1-2.4. Compensation formula.**

881 The compensation paid to the investment adviser regarding the performance of any
882 securities over a given period shall be based on a formula with the following characteristics:

883 (1) the formula shall include the realized capital losses and unrealized capital
884 depreciation of the securities over the period, in the case of securities for which market
885 quotations are readily available within the meaning of Rule 2a-4(a)(1) under the Investment
886 Company Act of 1940, 17 C.F.R. 270.2a-4(a)(1) (1999), which is adopted and incorporated by
887 reference and available from the division;

888 (2) in the case of securities for which market quotations are not readily available within
889 the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940 the formula must
890 include:

891 (a) the realized capital losses of securities over the period; and

892 (b) the unrealized capital depreciation of the securities over the period, if the
893 unrealized capital appreciation of the securities over the period is included; and

894 (3) the formula shall provide that any compensation paid to the investment adviser
895 under this section is based on the gains minus the losses, computed in accordance with

896 Subsections (1) and (2), in the client's account for a period of not less than one year.

897 Section 21. Section **61-1-2.5** is enacted to read:

898 **61-1-2.5. Additional disclosure requirements.**

899 Before entering into the advisory contract, and in addition to the requirements of SEC
900 Form ADV - Uniform Application for Investment Adviser Registration, the investment adviser
901 shall disclose in writing to the client all material information concerning the proposed advisory
902 arrangement, including:

903 (1) that the fee arrangement may create an incentive for the investment adviser to make
904 investments that are riskier or more speculative than would be the case in the absence of a
905 performance fee;

906 (2) where relevant, that the investment adviser may receive increased compensation
907 with regard to unrealized appreciation as well as realized gains in the client's account;

908 (3) the periods which will be used to measure investment performance throughout the
909 contract and their significance in the computation of the fee;

910 (4) the nature of any index which will be used as a comparative measure of investment
911 performance, the significance of the index, and the reason the investment adviser believes that
912 the index is appropriate; and

913 (5) (a) where the investment adviser's compensation is based in part on the unrealized
914 appreciation of securities for which market quotations are not readily available within the
915 meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940;

916 (b) how the securities will be valued; and

917 (c) the extent to which the valuation will be independently determined.

918 Section 22. Section **61-1-2.6** is enacted to read:

919 **61-1-2.6. Arm's length agreement.**

920 (1) The investment adviser and its investment adviser representatives who enter into
921 the contract must reasonably believe, immediately before entering into the contract, that:

922 (a) the contract represents an arm's length arrangement between the parties; and

923 (b) the client, or in the case of a client which is a company as defined in Section
924 61-1-2.1, the person representing the company, understands the proposed method of
925 compensation and its risks.

926 (2) The representative of a company may be:

927 (a) a partner, director, officer, or an employee of the company or the trustee, if the
928 company is a trust; or

929 (b) any other person designated by the company or trustee.

930 Section 23. Section **61-1-2.7** is enacted to read:

931 **61-1-2.7. Unlawful acts.**

932 Any person entering into or performing an investment advisory contract under Sections
933 61-1-2.1 through 61-1-2.7:

934 (1) is not relieved of any obligations under Subsection 61-1-2(1); or

935 (2) any other applicable provision of Title 61, Chapter 1, Utah Uniform Securities Act.

936 Section 24. Section **61-1-13** is amended to read:

937 **61-1-13. Definitions.**

938 (1) As used in this chapter:

939 (a) "Affiliate" means a person that, directly or indirectly, through one or more
940 intermediaries, controls or is controlled by, or is under common control with a person
941 specified.

942 (b) (i) "Agent" means any individual other than a broker-dealer who represents a
943 broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.

944 (ii) "Agent" does not include an individual who represents:

945 (A) an issuer, who receives no commission or other remuneration, directly or
946 indirectly, for effecting or attempting to effect purchases or sales of securities in this state, and
947 who effects transactions:

948 (I) in securities exempted by Subsection 61-1-14(1)(a), (b), (c), (i), or (j);

949 (II) exempted by Subsection 61-1-14(2);

950 (III) in a covered security as described in Sections 18(b)(3) and 18(b)(4)(D) of the
951 Securities Act of 1933; or

952 (IV) with existing employees, partners, officers, or directors of the issuer; or

953 (B) a broker-dealer in effecting transactions in this state limited to those transactions
954 described in Section 15(h)(2) of the Securities Exchange Act of 1934.

955 (iii) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a
956 similar status or performing similar functions, is an agent only if the partner, officer, director,
957 or person otherwise comes within the definition of "agent."

- 958 (iv) "Agent" does not include a person described in Subsection (3).
- 959 (c) (i) "Broker-dealer" means any person engaged in the business of effecting
- 960 transactions in securities for the account of others or for the person's own account.
- 961 (ii) "Broker-dealer" does not include:
- 962 (A) an agent;
- 963 (B) an issuer;
- 964 (C) a bank, savings institution, or trust company;
- 965 (D) a person who has no place of business in this state if:
- 966 (I) the person effects transactions in this state exclusively with or through:
- 967 (Aa) the issuers of the securities involved in the transactions;
- 968 (Bb) other broker-dealers; or
- 969 (Cc) banks, savings institutions, trust companies, insurance companies, investment
- 970 companies as defined in the Investment Company Act of 1940, 15 U.S.C. Sec. 80a-3, pension
- 971 or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for
- 972 themselves or as trustees; or
- 973 (II) during any period of 12 consecutive months the person does not direct more than
- 974 15 offers to sell or buy into this state in any manner to persons other than those specified in
- 975 Subsection (1)(c)(ii)(D)(I), whether or not the offeror or any of the offerees is then present in
- 976 this state;
- 977 (E) a general partner who organizes and effects transactions in securities of three or
- 978 fewer limited partnerships, of which the person is the general partner, in any period of 12
- 979 consecutive months;
- 980 (F) a person whose participation in transactions in securities is confined to those
- 981 transactions made by or through a broker-dealer licensed in this state;
- 982 (G) a person who is a real estate broker licensed in this state and who effects
- 983 transactions in a bond or other evidence of indebtedness secured by a real or chattel mortgage
- 984 or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage,
- 985 deed or trust, or agreement, together with all the bonds or other evidences of indebtedness
- 986 secured thereby, is offered and sold as a unit;
- 987 (H) a person effecting transactions in commodity contracts or commodity options;
- 988 (I) a person described in Subsection (3); or

989 (J) other persons as the division, by rule or order, may designate, consistent with the
990 public interest and protection of investors, as not within the intent of this Subsection (1)(c).

991 (d) "Buy" or "purchase" means every contract for purchase of, contract to buy, or
992 acquisition of a security or interest in a security for value.

993 (e) "Commodity" means, except as otherwise specified by the division by rule:

994 (i) any agricultural, grain, or livestock product or byproduct, except real property or
995 any timber, agricultural, or livestock product grown or raised on real property and offered or
996 sold by the owner or lessee of the real property;

997 (ii) any metal or mineral, including a precious metal, except a numismatic coin whose
998 fair market value is at least 15% greater than the value of the metal it contains;

999 (iii) any gem or gemstone, whether characterized as precious, semi-precious, or
1000 otherwise;

1001 (iv) any fuel, whether liquid, gaseous, or otherwise;

1002 (v) any foreign currency; and

1003 (vi) all other goods, articles, products, or items of any kind, except any work of art
1004 offered or sold by art dealers, at public auction or offered or sold through a private sale by the
1005 owner of the work.

1006 (f) (i) "Commodity contract" means any account, agreement, or contract for the
1007 purchase or sale, primarily for speculation or investment purposes and not for use or
1008 consumption by the offeree or purchaser, of one or more commodities, whether for immediate
1009 or subsequent delivery or whether delivery is intended by the parties, and whether characterized
1010 as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures
1011 contract, installment or margin contract, leverage contract, or otherwise.

1012 (ii) Any commodity contract offered or sold shall, in the absence of evidence to the
1013 contrary, be presumed to be offered or sold for speculation or investment purposes.

1014 (iii) (A) A commodity contract shall not include any contract or agreement which
1015 requires, and under which the purchaser receives, within 28 calendar days from the payment in
1016 good funds any portion of the purchase price, physical delivery of the total amount of each
1017 commodity to be purchased under the contract or agreement.

1018 (B) The purchaser is not considered to have received physical delivery of the total
1019 amount of each commodity to be purchased under the contract or agreement when the

1020 commodity or commodities are held as collateral for a loan or are subject to a lien of any
1021 person when the loan or lien arises in connection with the purchase of each commodity or
1022 commodities.

1023 (g) (i) "Commodity option" means any account, agreement, or contract giving a party
1024 to the option the right but not the obligation to purchase or sell one or more commodities or
1025 one or more commodity contracts, or both whether characterized as an option, privilege,
1026 indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

1027 (ii) "Commodity option" does not include an option traded on a national securities
1028 exchange registered:

1029 (A) with the United States Securities and Exchange Commission; or

1030 (B) on a board of trade designated as a contract market by the Commodity Futures
1031 Trading Commission.

1032 (h) "Director" means the director of the Division of Securities charged with the
1033 administration and enforcement of this chapter.

1034 (i) "Division" means the Division of Securities established by Section 61-1-18.

1035 (j) "Executive director" means the executive director of the Department of Commerce.

1036 (k) "Federal covered adviser" means a person who:

1037 (i) is registered under Section 203 of the Investment Advisers Act of 1940; or

1038 (ii) is excluded from the definition of "investment adviser" under Section 202(a)(11) of
1039 the Investment Advisers Act of 1940.

1040 (l) "Federal covered security" means any security that is a covered security under
1041 Section 18(b) of the Securities Act of 1933 or rules or regulations promulgated under Section
1042 18(b) of the Securities Act of 1933.

1043 (m) "Fraud," "deceit," and "defraud" are not limited to their common-law meanings.

1044 (n) "Guaranteed" means guaranteed as to payment of principal or interest as to debt
1045 securities, or dividends as to equity securities.

1046 (o) (i) "Investment adviser" means any person who:

1047 (A) for compensation, engages in the business of advising others, either directly or
1048 through publications or writings, as to the value of securities or as to the advisability of
1049 investing in, purchasing, or selling securities; or

1050 (B) for compensation and as a part of a regular business, issues or promulgates

1051 analyses or reports concerning securities.

1052 (ii) "Investment adviser" includes financial planners and other persons who:

1053 (A) as an integral component of other financially related services, provide the
1054 investment advisory services described in Subsection (1)(o)(i) to others for compensation and
1055 as part of a business; or

1056 (B) hold themselves out as providing the investment advisory services described in
1057 Subsection (1)(o)(i) to others for compensation.

1058 (iii) "Investment adviser" does not include:

1059 (A) an investment adviser representative;

1060 (B) a bank, savings institution, or trust company;

1061 (C) a lawyer, accountant, engineer, or teacher whose performance of these services is
1062 solely incidental to the practice of his profession;

1063 (D) a broker-dealer or its agent whose performance of these services is solely
1064 incidental to the conduct of its business as a broker-dealer and who receives no special
1065 compensation for the services;

1066 (E) a publisher of any bona fide newspaper, news column, news letter, news magazine,
1067 or business or financial publication or service, of general, regular, and paid circulation, whether
1068 communicated in hard copy form, or by electronic means, or otherwise, that does not consist of
1069 the rendering of advice on the basis of the specific investment situation of each client;

1070 (F) any person who is a federal covered adviser;

1071 (G) a person described in Subsection (3); or

1072 (H) such other persons not within the intent of this Subsection (1)(o) as the division
1073 may by rule or order designate.

1074 (p) (i) "Investment adviser representative" means any partner, officer, director of, or a
1075 person occupying a similar status or performing similar functions, or other individual, except
1076 clerical or ministerial personnel, who:

1077 (A) (I) is employed by or associated with an investment adviser who is licensed or
1078 required to be licensed under this chapter; or

1079 (II) has a place of business located in this state and is employed by or associated with a
1080 federal covered adviser; and

1081 (B) does any of the following:

- 1082 (I) makes any recommendations or otherwise renders advice regarding securities;
- 1083 (II) manages accounts or portfolios of clients;
- 1084 (III) determines which recommendation or advice regarding securities should be given;
- 1085 (IV) solicits, offers, or negotiates for the sale of or sells investment advisory services;

1086 or

- 1087 (V) supervises employees who perform any of the acts described in this Subsection

1088 (1)(p)(i)(B).

- 1089 (ii) "Investment [~~advisor~~] adviser representative" does not include a person described
- 1090 in Subsection (3).

1091 (q) "Investment contract" includes:

- 1092 (i) any investment in a common enterprise with the expectation of profit to be derived
- 1093 through the essential managerial efforts of someone other than the investor; or

1094 (ii) any investment by which:

1095 (A) an offeree furnishes initial value to an offeror;

1096 (B) a portion of this initial value is subjected to the risks of the enterprise;

1097 (C) the furnishing of the initial value is induced by the offeror's promises or

1098 representations which give rise to a reasonable understanding that a valuable benefit of some

1099 kind over and above the initial value will accrue to the offeree as a result of the operation of the

1100 enterprise; and

1101 (D) the offeree does not receive the right to exercise practical and actual control over

1102 the managerial decisions of the enterprise.

1103 (r) "Isolated transaction" means not more than a total of two transactions which occur

1104 anywhere during six consecutive months.

1105 [~~(q)~~] (s) (i) "Issuer" means any person who issues or proposes to issue any security or

1106 has outstanding a security that it has issued.

1107 (ii) With respect to a preorganization certificate or subscription, "issuer" means the

1108 promoter or the promoters of the person to be organized.

1109 (iii) "Issuer" means the person or persons performing the acts and assuming duties of a

1110 depositor or manager under the provisions of the trust or other agreement or instrument under

1111 which the security is issued with respect to:

1112 (A) interests in trusts, including collateral trust certificates, voting trust certificates, and

- 1113 certificates of deposit for securities; or
- 1114 (B) shares in an investment company without a board of directors.
- 1115 (iv) With respect to an equipment trust certificate, a conditional sales contract, or
- 1116 similar securities serving the same purpose, "issuer" means the person by whom the equipment
- 1117 or property is to be used.
- 1118 (v) With respect to interests in partnerships, general or limited, "issuer" means the
- 1119 partnership itself and not the general partner or partners.
- 1120 (vi) With respect to certificates of interest or participation in oil, gas, or mining titles or
- 1121 leases or in payment out of production under the titles or leases, "issuer" means the owner of
- 1122 the title or lease or right of production, whether whole or fractional, who creates fractional
- 1123 interests therein for the purpose of sale.
- 1124 [~~(t)~~] (t) "Nonissuer" means not directly or indirectly for the benefit of the issuer.
- 1125 [~~(s)~~] (u) "Person" means:
- 1126 (i) an individual;
- 1127 (ii) a corporation;
- 1128 (iii) a partnership;
- 1129 (iv) a limited liability company;
- 1130 (v) an association;
- 1131 (vi) a joint-stock company;
- 1132 (vii) a joint venture;
- 1133 (viii) a trust where the interests of the beneficiaries are evidenced by a security;
- 1134 (ix) an unincorporated organization;
- 1135 (x) a government; or
- 1136 (xi) a political subdivision of a government.
- 1137 [~~(t)~~] (v) "Precious metal" means the following, whether in coin, bullion, or other form:
- 1138 (i) silver;
- 1139 (ii) gold;
- 1140 (iii) platinum;
- 1141 (iv) palladium;
- 1142 (v) copper; and
- 1143 (vi) such other substances as the division may specify by rule.

1144 ~~(t)~~ (w) "Promoter" means any person who, acting alone or in concert with one or
1145 more persons, takes initiative in founding or organizing the business or enterprise of a person.

1146 ~~(v)~~ (x) (i) "Sale" or "sell" includes every contract for sale of, contract to sell, or
1147 disposition of, a security or interest in a security for value.

1148 (ii) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or
1149 solicitation of an offer to buy, a security or interest in a security for value.

1150 (iii) The following are examples of the definitions in Subsection (1)~~(v)~~(x)(i) or (ii):

1151 (A) any security given or delivered with or as a bonus on account of any purchase of a
1152 security or any other thing, is part of the subject of the purchase, and has been offered and sold
1153 for value;

1154 (B) a purported gift of assessable stock is an offer or sale as is each assessment levied
1155 on the stock;

1156 (C) an offer or sale of a security that is convertible into, or entitles its holder to acquire
1157 or subscribe to another security of the same or another issuer is an offer or sale of that security,
1158 and also an offer of the other security, whether the right to convert or acquire is exercisable
1159 immediately or in the future;

1160 (D) any conversion or exchange of one security for another shall constitute an offer or
1161 sale of the security received in a conversion or exchange, and the offer to buy or the purchase
1162 of the security converted or exchanged;

1163 (E) securities distributed as a dividend wherein the person receiving the dividend
1164 surrenders the right, or the alternative right, to receive a cash or property dividend is an offer or
1165 sale;

1166 (F) a dividend of a security of another issuer is an offer or sale; or

1167 (G) the issuance of a security under a merger, consolidation, reorganization,
1168 recapitalization, reclassification, or acquisition of assets shall constitute the offer or sale of the
1169 security issued as well as the offer to buy or the purchase of any security surrendered in
1170 connection therewith, unless the sole purpose of the transaction is to change the issuer's
1171 domicile.

1172 (iv) The terms defined in Subsections (1)~~(v)~~(x)(i) and (ii) do not include:

1173 (A) a good faith gift;

1174 (B) a transfer by death;

- 1175 (C) a transfer by termination of a trust or of a beneficial interest in a trust;
- 1176 (D) a security dividend not within Subsection (1)[~~(v)~~](x)(iii)(E) or (F);
- 1177 (E) a securities split or reverse split; or
- 1178 (F) any act incident to a judicially approved reorganization in which a security is issued
- 1179 in exchange for one or more outstanding securities, claims, or property interests, or partly in
- 1180 such exchange and partly for cash.
- 1181 [~~(w)~~] (y) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility
- 1182 Holding Company Act of 1935," and "Investment Company Act of 1940" mean the federal
- 1183 statutes of those names as amended before or after the effective date of this chapter.
- 1184 [~~(x)~~] (z) (i) "Security" means any:
- 1185 (A) note;
- 1186 (B) stock;
- 1187 (C) treasury stock;
- 1188 (D) bond;
- 1189 (E) debenture;
- 1190 (F) evidence of indebtedness;
- 1191 (G) certificate of interest or participation in any profit-sharing agreement;
- 1192 (H) collateral-trust certificate;
- 1193 (I) preorganization certificate or subscription;
- 1194 (J) transferable share;
- 1195 (K) investment contract;
- 1196 (L) burial certificate or burial contract;
- 1197 (M) voting-trust certificate;
- 1198 (N) certificate of deposit for a security;
- 1199 (O) certificate of interest or participation in an oil, gas, or mining title or lease or in
- 1200 payments out of production under such a title or lease;
- 1201 (P) commodity contract or commodity option;
- 1202 (Q) interest in a limited liability company;
- 1203 (R) viatical settlement interest; or
- 1204 (S) in general, any interest or instrument commonly known as a "security," or any
- 1205 certificate of interest or participation in, temporary or interim certificate for, receipt for,

1206 guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

1207 (ii) "Security" does not include any:

1208 (A) insurance or endowment policy or annuity contract under which an insurance
1209 company promises to pay money in a lump sum or periodically for life or some other specified
1210 period;

1211 (B) interest in a limited liability company in which the limited liability company is
1212 formed as part of an estate plan where all of the members are related by blood or marriage,
1213 there are five or fewer members, or the person claiming this exception can prove that all of the
1214 members are actively engaged in the management of the limited liability company; or

1215 (C) (I) a whole long-term estate in real property;

1216 (II) an undivided fractionalized long-term estate in real property that consists of ten or
1217 fewer owners; or

1218 (III) an undivided fractionalized long-term estate in real property that consists of more
1219 than ten owners if, when the real property estate is subject to a management agreement:

1220 (Aa) the management agreement permits a simple majority of owners of the real
1221 property estate to not renew or to terminate the management agreement at the earlier of the end
1222 of the management agreement's current term, or 180 days after the day on which the owners
1223 give notice of termination to the manager;

1224 (Bb) the management agreement prohibits, directly or indirectly, the lending of the
1225 proceeds earned from the real property estate or the use or pledge of its assets to any person or
1226 entity affiliated with or under common control of the manager; and

1227 (Cc) the management agreement complies with any other requirement imposed by rule
1228 by the Real Estate Commission under Section 61-2-26.

1229 (iii) For purposes of Subsection (1)~~(x)~~(z)(ii)(B), evidence that members vote or have
1230 the right to vote, or the right to information concerning the business and affairs of the limited
1231 liability company, or the right to participate in management, shall not establish, without more,
1232 that all members are actively engaged in the management of the limited liability company.

1233 ~~(y)~~ (aa) "State" means any state, territory, or possession of the United States, the
1234 District of Columbia, and Puerto Rico.

1235 ~~(z)~~ (bb) (i) "Undivided fractionalized long-term estate" means an ownership interest
1236 in real property by two or more persons that is a:

- 1237 (A) tenancy in common; or
- 1238 (B) any other legal form of undivided estate in real property including:
- 1239 (I) a fee estate;
- 1240 (II) a life estate; or
- 1241 (III) other long-term estate.
- 1242 (ii) "Undivided fractionalized long-term estate" does not include a joint tenancy.
- 1243 [~~(aa)~~] (cc) (i) "Viatical settlement interest" means the entire interest or any fractional
- 1244 interest in any of the following that is the subject of a viatical settlement:
- 1245 (A) a life insurance policy; or
- 1246 (B) the death benefit under a life insurance policy.
- 1247 (ii) "Viatical settlement interest" does not include the initial purchase from the viator
- 1248 by a viatical settlement provider.
- 1249 [~~(bb)~~] (dd) "Whole long-term estate" means a person or persons through joint tenancy
- 1250 owns real property through:
- 1251 (i) a fee estate;
- 1252 (ii) a life estate; or
- 1253 (iii) other long-term estate.
- 1254 [~~(cc)~~] (ee) "Working days" means 8 a.m. to 5 p.m., Monday through Friday, exclusive
- 1255 of legal holidays listed in Section 63-13-2.
- 1256 (2) A term not defined in this section shall have the meaning as established by division
- 1257 rule. The meaning of a term neither defined in this section nor by rule of the division shall be
- 1258 the meaning commonly accepted in the business community.
- 1259 (3) (a) This Subsection (3) applies to:
- 1260 (i) the offer or sale of a real property estate exempted from the definition of security
- 1261 under Subsection (1)[~~(x)~~](z)(ii)(C); or
- 1262 (ii) the offer or sale of an undivided fractionalized long-term estate that is the offer of a
- 1263 security.
- 1264 (b) A person who, directly or indirectly receives compensation in connection with the
- 1265 offer or sale as provided in this Subsection (3) of a real property estate is not an agent,
- 1266 broker-dealer, investment adviser, or [~~investor~~] investment adviser representative under this
- 1267 chapter if that person is licensed under Chapter 2, Division of Real Estate, as:

- 1268 (i) a principal real estate broker;
- 1269 (ii) an associate real estate broker; or
- 1270 (iii) a real estate sales agent.

1271 (4) The list of real property estates excluded from the definition of securities under
1272 Subsection (1)~~(x)~~(z)(ii)(C) is not an exclusive list of real property estates or interests that are
1273 not a security.

1274 Section 25. Section **61-1-21** is amended to read:

1275 **61-1-21. Penalties for violations.**

1276 (1) A person is guilty of a third degree felony who willfully violates any provision of
1277 this chapter except Sections 61-1-1 and 61-1-16, or who willfully violates any ~~rule or~~ order
1278 under this chapter, or who willfully violates Section 61-1-16 knowing the statement made to be
1279 false or misleading in any material respect.

1280 (2) A person who willfully violates Section 61-1-1:

1281 (a) is guilty of a third degree felony if, at the time the crime was committed, the
1282 property, money, or thing unlawfully obtained or sought to be obtained was worth less than
1283 \$10,000;

1284 (b) is guilty of a second degree felony if:

1285 (i) at the time the crime was committed, the property, money, or thing unlawfully
1286 obtained or sought to be obtained was worth \$10,000 or more; or

1287 (ii) (A) at the time the crime was committed, the property, money, or thing unlawfully
1288 obtained or sought to be obtained was worth less than \$10,000; and

1289 (B) in connection with that violation, the violator knowingly accepted any money
1290 representing:

1291 (I) equity in a person's home;

1292 (II) a withdrawal from any individual retirement account; or

1293 (III) a withdrawal from any qualified retirement plan as defined in the Internal Revenue
1294 Code; or

1295 (c) is guilty of a second degree felony punishable by imprisonment for an indeterminate
1296 term of not less than three years or more than 15 years if:

1297 (i) at the time the crime was committed, the property, money, or thing unlawfully
1298 obtained or sought to be obtained was worth \$10,000 or more; and

1299 (ii) in connection with that violation, the violator knowingly accepted any money
 1300 representing:

1301 (A) equity in a person's home;

1302 (B) a withdrawal from any individual retirement account; or

1303 (C) a withdrawal from any qualified retirement plan as defined in the Internal Revenue
 1304 Code.

1305 (3) ~~Not~~ A person may not be imprisoned for the violation of any [rule or] order if [he]
 1306 the person proves that ~~he~~ the person had no knowledge of the ~~rule or~~ order.

1307 (4) In addition to any other penalty for a criminal violation of this chapter, the
 1308 sentencing judge may impose any penalty or remedy provided for in Subsection 61-1-20(2)(b).

1309 Section 26. Section **63-11-17.3** is repealed and reenacted to read:

1310 **63-11-17.3. Violation of law or board rules enacted to comply with federal**
 1311 **funding requirements -- Misdemeanor.**

1312 (1) (a) A violation of Section 63-11-17 or administrative rules that implement this
 1313 section is a class B misdemeanor if:

1314 (i) (A) the rule is necessary to entitle the division to participate in or distribute federal
 1315 funding; or

1316 (B) the rule is necessary in order for the division to comply with all federal laws or
 1317 regulations regarding administration procedures and standards; and

1318 (ii) the rule is not prohibited by state law.

1319 (b) Any provision of state law susceptible to more than one construction shall be
 1320 interpreted in favor of the construction most likely to comply with federal law or requirements
 1321 entitling the division to participate in or distribute federal funding, or conform with federal law
 1322 or requirements pertaining to methods and standards of administration.

1323 (2) (a) Except as permitted by this chapter, board rules, or an order or permit issued by
 1324 the division, it is a class B misdemeanor under Subsection (3) for any person in a state park to:

1325 (i) enter an area posted as "closed" or participate in a restricted activity determined by
 1326 the board, or when reasonably necessary, posted by the park manager or the park manager's
 1327 designated division employee, to protect public safety or park resources;

1328 (ii) fail to produce and exhibit any permit the person claims to have, upon request of
 1329 any authorized person for the purpose of inspecting the permit in order to enforce compliance

1330 with any ordinance or rule;
 1331 (iii) disturb or interfere unreasonably with any person or party occupying any area or
 1332 participating in any activity under the authority of a permit;
 1333 (iv) operate an off-highway vehicle, boat, sailboard, or any kind of water vessel; or
 1334 (v) participate in a restricted recreational activity except in state park areas designated
 1335 for the activity.

1336 (b) Restricted recreational activity under Subsection (2)(a)(v) includes:

1337 (i) technical rock climbing;
 1338 (ii) repelling;
 1339 (iii) hanggliding;
 1340 (iv) para gliding;
 1341 (v) Building Antenna Span Earth (B.A.S.E.) jumping;
 1342 (vi) cliff diving; or
 1343 (vii) hunting wildlife.

1344 (3) A person is guilty of a class B misdemeanor who:

1345 (a) violates any provision of this section:
 1346 (i) knowingly; or
 1347 (ii) with criminal negligence as defined in Subsection 76-2-103(4).

1348 Section 27. Section **63-55b-173** is enacted to read:

1349 **63-55b-173. Repeal dates -- Title 73.**

1350 Section 73-18b-3 is repealed May 4, 2009.

1351 Section 28. Section **72-7-208** is amended to read:

1352 **72-7-208. Junkyard operated in violation of provisions is public nuisance --**
 1353 **Abatement -- Adjudicative proceedings -- Judicial Review -- Costs of Abatement.**

1354 (1) The establishment, operation, or maintenance of any junkyard contrary to the
 1355 provisions of this part is a public nuisance~~[, and the department, with the advice of the attorney~~
 1356 ~~general, may apply to the district court of the county in which the junkyard is located for an~~
 1357 ~~injunction to abate the nuisance].~~

1358 ~~[(2) A correction notice of 30 days shall be given the owner prior to filing for an~~
 1359 ~~injunction to abate the nuisance.]~~

1360 ~~[(3) A notice is not required prior to filing a misdemeanor complaint under Section~~

1361 ~~72-7-211.]~~

1362 (2) The department shall:

1363 (a) enforce the provisions of this part and administrative rules the department makes
1364 under this part; and

1365 (b) except as provided in Subsection (3) and in its enforcement of the provisions of this
1366 part, comply with the procedures and requirements of Title 63, Chapter 46b, Administrative
1367 Procedures Act.

1368 (3) (a) The district court has jurisdiction to review by trial de novo all final orders of
1369 the department under this part resulting from formal and informal adjudicative proceedings.

1370 (b) Venue for judicial review of final orders of the department is in the county in which
1371 the junkyard is located.

1372 (4) If the department is granted a judgment, the department is entitled to take action
1373 necessary to cause the nuisance to be abated and is entitled to recover from the responsible
1374 person, firm, or corporation, jointly and severally:

1375 (a) the costs and expenses incurred in abating the nuisance; and

1376 (b) \$10 for each day the junkyard was maintained following the expiration of ten days
1377 after notice of agency action was filed and served under Section 63-46b-3.

1378 Section 29. Section **72-7-302** is amended to read:

1379 **72-7-302. Damage to signs, warnings, or barriers -- Penalty.**

1380 (1) A person is guilty of a class B misdemeanor who ~~:(a) willfully violates any of the~~
1381 ~~rules of the department or the commission on the use of state highways or traffic on them; or~~
1382 ~~(b)] willfully and unlawfully removes, defaces, or interferes with any highway sign, signal,~~
1383 ~~notice, warning, or barrier.~~

1384 (2) A person who commits an offense under Subsection (1)~~(b)]~~ that results in ~~[any] an~~
1385 ~~injury to [persons] a person~~ or damage to property is guilty of a class A misdemeanor.

1386 Section 30. Section **72-7-402** is amended to read:

1387 **72-7-402. Limitations as to vehicle width, height, length, and load extensions.**

1388 (1) (a) Except as provided by statute, all state or federally approved safety devices and
1389 any other lawful appurtenant devices, including refrigeration units, hitches, air line
1390 connections, and load securing devices related to the safe operation of a vehicle are excluded
1391 for purposes of measuring the width and length of a vehicle under the provisions of this part, if

1392 the devices are not designed or used for carrying cargo.

1393 (b) Load-induced tire bulge is excluded for purposes of measuring the width of
1394 vehicles under the provisions of this part.

1395 (c) Appurtenances attached to the sides or rear of a recreational vehicle that is not a
1396 commercial motor vehicle are excluded for purposes of measuring the width and length of the
1397 recreational vehicle if the additional width or length of the appurtenances does not exceed six
1398 inches.

1399 (2) A vehicle unladen or with a load may not exceed a width of 8-1/2 feet.

1400 (3) A vehicle unladen or with a load may not exceed a height of 14 feet.

1401 (4) (a) (i) A single-unit vehicle, unladen or with a load, may not exceed a length of 45
1402 feet including front and rear bumpers.

1403 (ii) In this section, a truck tractor coupled to one or more semitrailers or trailers is not
1404 considered a single-unit vehicle.

1405 (b) (i) Except as provided under Subsection (4)(b)(iii), a semitrailer, unladen or with a
1406 load, may not exceed a length of 48 feet excluding refrigeration units, hitches, air line
1407 connections, and safety appurtenances.

1408 (ii) There is no overall length limitation on a truck tractor and semitrailer combination
1409 when the semitrailer length is 48 feet or less.

1410 (iii) A semitrailer that exceeds a length of 48 feet but does not exceed a length of 53
1411 feet may operate on a route designated by the department or within one mile of that route.

1412 (c) (i) Two trailers coupled together, unladen or with a load, may not exceed an overall
1413 length of 61 feet, measured from the front of the first trailer to the rear of the second trailer.

1414 (ii) There is no overall length limitation on a truck tractor and double trailer
1415 combination when the trailers coupled together measure 61 feet or less.

1416 (d) All other combinations of vehicles, unladen or with a load, when coupled together,
1417 may not exceed a total length of 65 feet, except the length limitations do not apply to
1418 combinations of vehicles operated at night by a public utility when required for emergency
1419 repair of public service facilities or properties, or when operated under a permit under Section
1420 72-7-406.

1421 (5) (a) Subject to Subsection (4), a vehicle or combination of vehicles may not carry
1422 any load extending more than three feet beyond the front of the body of the vehicle or more

1423 than six feet beyond the rear of the bed or body of the vehicle.

1424 (b) A passenger vehicle may not carry any load extending beyond the line of the
1425 fenders on the left side of the vehicle nor extending more than six inches beyond the line of the
1426 fenders on the right side of the vehicle.

1427 (6) Any exception to this section must be authorized by a permit as provided under
1428 Section 72-7-406.

1429 [~~(7) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,~~
1430 ~~the department shall make rules designating routes where a semitrailer that exceeds a length of~~
1431 ~~48 feet but that does not exceed a length of 53 feet may operate as provided under Subsection~~
1432 ~~(4)(b)(iii).~~]

1433 [(8)] (7) Any person who violates this section is guilty of a class B misdemeanor.

1434 Section 31. Section **72-7-406** is amended to read:

1435 **72-7-406. Oversize permits and oversize and overweight permits for vehicles of**
1436 **excessive size or weight -- Applications -- Restrictions -- Fees -- Rulemaking provisions --**
1437 **Penalty.**

1438 (1) (a) The department may, upon receipt of an application and good cause shown,
1439 issue in writing an oversize permit or an oversize and overweight permit. The oversize permit
1440 or oversize and overweight permit may authorize the applicant to operate or move upon a
1441 highway:

1442 (i) a vehicle or combination of vehicles, unladen or with a load weighing more than the
1443 maximum weight specified in Section 72-7-404 for any wheel, axle, group of axles, or total
1444 gross weight; or

1445 (ii) a vehicle or combination of vehicles that exceeds the vehicle width, height, or
1446 length provisions under Section 72-7-402.

1447 (b) Except as provided under Subsection (8), an oversize and overweight permit may
1448 not be issued under this section to allow the transportation of a load that is reasonably divisible.

1449 (c) The maximum size or weight authorized by a permit under this section shall be
1450 within limits that do not impair the state's ability to qualify for federal-aid highway funds.

1451 (d) The department may deny or issue a permit under this section to protect the safety
1452 of the traveling public and to protect highway foundation, surfaces, or structures from undue
1453 damage by one or more of the following:

- 1454 (i) limiting the number of trips the vehicle may make;
- 1455 (ii) establishing seasonal or other time limits within which the vehicle may operate or
- 1456 move on the highway indicated;
- 1457 (iii) requiring security in addition to the permit to compensate for any potential damage
- 1458 by the vehicle to any highway; and
- 1459 (iv) otherwise limiting the conditions of operation or movement of the vehicle.
- 1460 (e) Prior to granting a permit under this section, the department shall approve the route
- 1461 of any vehicle or combination of vehicles.
- 1462 (2) An application for a permit under this section shall state:
- 1463 (a) the proposed maximum wheel loads, maximum axle loads, all axle spacings of each
- 1464 vehicle or combination of vehicles;
- 1465 (b) the proposed maximum load size and maximum size of each vehicle or
- 1466 combination of vehicles;
- 1467 (c) the specific roads requested to be used under authority of the permit; and
- 1468 (d) if the permit is requested for a single trip or if other seasonal limits or time limits
- 1469 apply.
- 1470 (3) Each oversize permit or oversize and overweight permit shall be carried in the
- 1471 vehicle or combination of vehicles to which it refers and shall be available for inspection by
- 1472 any peace officer, special function officer, port of entry agent, or other personnel authorized by
- 1473 the department.
- 1474 (4) A permit under this section may not be issued or is not valid unless the vehicle or
- 1475 combination of vehicles is:
- 1476 (a) properly registered for the weight authorized by the permit; or
- 1477 (b) registered for a gross laden weight of 78,001 pounds or over, if the gross laden
- 1478 weight authorized by the permit exceeds 80,000 pounds.
- 1479 (5) (a) (i) An oversize permit may be issued under this section for a vehicle or
- 1480 combination of vehicles that exceeds one or more of the maximum width, height, or length
- 1481 provisions under Section 72-7-402.
- 1482 (ii) Except for an annual oversize permit for an implement of husbandry under Section
- 1483 72-7-407 or for an annual oversize permit issued under Subsection (5)(a)(iii), only a single trip
- 1484 oversize permit may be issued for a vehicle or combination of vehicles that is more than 14 feet

1485 6 inches wide, 14 feet high, or 105 feet long.

1486 (iii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
1487 the department shall make rules for the issuance of an annual oversize permit for a vehicle or
1488 combination of vehicles that is more than 14 feet 6 inches wide, 14 feet high, or 105 feet long
1489 if the department determines that the permit is needed to accommodate highway transportation
1490 needs for multiple trips on a specified route.

1491 (b) The fee is \$25 for a single trip oversize permit under this Subsection (5). This
1492 permit is valid for not more than 96 continuous hours.

1493 (c) The fee is \$60 for a semiannual oversize permit under this Subsection (5). This
1494 permit is valid for not more than 180 continuous days.

1495 (d) The fee is \$75 for an annual oversize permit under this Subsection (5). This permit
1496 is valid for not more than 365 continuous days.

1497 (6) (a) An oversize and overweight permit may be issued under this section for a
1498 vehicle or combination of vehicles carrying a nondivisible load that exceeds one or more of the
1499 maximum weight provisions of Section 72-7-404 by not more than 25%, except that the gross
1500 weight may not exceed 125,000 pounds.

1501 (b) The fee is \$50 for a single trip oversize and overweight permit under this
1502 Subsection (6). This permit is valid for not more than 96 continuous hours.

1503 (c) A semiannual oversize and overweight permit under this Subsection (6) is valid for
1504 not more than 180 continuous days. The fee for this permit is:

1505 (i) \$150 for a vehicle or combination of vehicles with gross vehicle weight of more
1506 than 80,000 pounds, but not exceeding 84,000 pounds;

1507 (ii) \$260 for a vehicle or combination of vehicles with gross vehicle weight of more
1508 than 84,000 pounds, but not exceeding 112,000 pounds; and

1509 (iii) \$350 for a vehicle or combination of vehicles with gross vehicle weight of more
1510 than 112,000 pounds, but not exceeding 125,000 pounds.

1511 (d) An annual oversize and overweight permit under this Subsection (6) is valid for not
1512 more than 365 continuous days. The fee for this permit is:

1513 (i) \$200 for a vehicle or combination of vehicles with gross vehicle weight of more
1514 than 80,000 pounds, but not exceeding 84,000 pounds;

1515 (ii) \$400 for a vehicle or combination of vehicles with gross vehicle weight of more

1516 than 84,000 pounds, but not exceeding 112,000 pounds; and

1517 (iii) \$450 for a vehicle or combination of vehicles with gross vehicle weight of more
1518 than 112,000 pounds, but not exceeding 125,000 pounds.

1519 (7) (a) A single trip oversize and overweight permit may be issued under this section
1520 for a vehicle or combination of vehicles carrying a nondivisible load that exceeds one or more
1521 of the maximum weight provisions of Section 72-7-404 by more than 25% or that exceeds a
1522 gross weight of 125,000 pounds.

1523 (b) (i) The fee for a single trip oversize and overweight permit under this Subsection
1524 (7), which is valid for not more than 96 continuous hours, is \$.01 per mile for each 1,000
1525 pounds above 80,000 pounds subject to the rounding described in Subsection (7)(c).

1526 (ii) The minimum fee that may be charged under this Subsection (7) is \$65.

1527 (iii) The maximum fee that may be charged under this Subsection (7) is \$450.

1528 (c) (i) The miles used to calculate the fee under this Subsection (7) shall be rounded up
1529 to the nearest 50 mile increment.

1530 (ii) The pounds used to calculate the fee under this Subsection (7) shall be rounded up
1531 to the nearest 25,000 pound increment.

1532 (8) (a) An oversize and overweight permit may be issued under this section for a
1533 vehicle or combination of vehicles carrying a divisible load if:

1534 (i) the bridge formula under Subsection 72-7-404(3) is not exceeded; and

1535 (ii) the length of the vehicle or combination of vehicles is:

1536 (A) more than the limitations specified under Subsections 72-7-402(4)(c) and (d) but
1537 not exceeding 81 feet in cargo carrying length and the application is for a single trip,
1538 semiannual trip, or annual trip permit; or

1539 (B) more than 81 feet in cargo carrying length but not exceeding 95 feet in cargo
1540 carrying length and the application is for an annual trip permit.

1541 (b) The fee is \$50 for a single trip oversize and overweight permit under this
1542 Subsection (8). The permit is valid for not more than 96 continuous hours.

1543 (c) The fee for a semiannual oversize and overweight permit under this Subsection (8),
1544 which permit is valid for not more than 180 continuous days is:

1545 (i) \$150 for a vehicle or combination of vehicles with gross vehicle weight of more
1546 than 80,000 pounds, but not exceeding 84,000 pounds;

1547 (ii) \$260 for a vehicle or combination of vehicles with gross vehicle weight of more
1548 than 84,000 pounds, but not exceeding 112,000 pounds; and

1549 (iii) \$350 for a vehicle or combination of vehicles with gross vehicle weight of more
1550 than 112,000 pounds, but not exceeding 129,000 pounds.

1551 (d) The fee for an annual oversize and overweight permit under this Subsection (8),
1552 which permit is valid for not more than 365 continuous days is:

1553 (i) \$200 for a vehicle or combination of vehicles with gross vehicle weight of more
1554 than 80,000 pounds, but not exceeding 84,000 pounds;

1555 (ii) \$400 for a vehicle or combination of vehicles with gross vehicle weight of more
1556 than 84,000 pounds, but not exceeding 112,000 pounds; and

1557 (iii) \$450 for a vehicle or combination of vehicles with gross vehicle weight of more
1558 than 112,000 pounds, but not exceeding 129,000 pounds.

1559 (9) Permits under Subsections (7) and (8) may be issued only upon authorization of the
1560 commission.

1561 (10) Permit fees collected under this section shall be credited monthly to the
1562 Transportation Fund.

1563 (11) The department shall prepare maps, drawings, and instructions as guidance when
1564 issuing permits under this section.

1565 (12) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
1566 the department shall make rules governing the issuance and revocation of all permits under this
1567 section and Section 72-7-407.

1568 (13) Any person who violates any of the terms or conditions of a permit issued under
1569 this section:

1570 (a) may have his permit revoked; and

1571 (b) is guilty of a class B misdemeanor, except that a violation of any administrative
1572 rule made under Subsection (12) is not subject to a criminal penalty.

1573 Section 32. Section ~~72-7-407~~ is amended to read:

1574 **72-7-407. Implements of husbandry -- Escort vehicle requirements -- Oversize**
1575 **permit -- Penalty.**

1576 (1) As used in this section, "escort vehicle" means a motor vehicle, as defined under
1577 Section 41-1a-102, that has its emergency warning lights operating, and that is being used to

1578 warn approaching motorists by either preceding or following a slow or oversized vehicle,
1579 object, or implement of husbandry being moved on the highway.

1580 (2) An implement of husbandry being moved on a highway shall be accompanied by:

1581 (a) front and rear escort vehicles when the implement of husbandry is 16 feet in width
1582 or greater unless the implement of husbandry is moved by a farmer or rancher or his employees
1583 in connection with an agricultural operation; or

1584 (b) one or more escort vehicles when the implement of husbandry is traveling on a
1585 highway where special hazards exist related to weather, pedestrians, other traffic, or highway
1586 conditions.

1587 (3) In addition to the requirements of Subsection (2), a person may not move an
1588 implement of husbandry on a highway during hours of darkness without lights and reflectors as
1589 required under Section 41-6a-1608 or 41-6a-1609.

1590 (4) (a) Except for an implement of husbandry moved by a farmer or rancher or the
1591 farmer's or rancher's employees in connection with an agricultural operation, a person may not
1592 move an implement of husbandry on the highway without:

1593 (i) an oversize permit obtained under Section 72-7-406 if required;

1594 (ii) trained escort vehicle drivers and approved escort vehicles when required under
1595 Subsection (2); and

1596 (iii) compliance with the vehicle weight requirements of Section 72-7-404.

1597 (b) (i) The department shall issue an annual oversize permit for the purpose of allowing
1598 the movement of implements of husbandry on the highways in accordance with this chapter.

1599 (ii) The permit shall require the applicant to obtain verbal permission from the
1600 department for each trip involving the movement of an implement of husbandry 16 feet or
1601 greater in width.

1602 [~~(c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,~~
1603 ~~the department shall make rules specifying training for escort vehicle drivers and equipment~~
1604 ~~requirements for escort vehicles as provided in Subsection (4)(a).]~~

1605 (5) Any person who violates this section is guilty of a class B misdemeanor.

1606 Section 33. Section **72-7-409** is amended to read:

1607 **72-7-409. Loads on vehicles -- Limitations -- Confining, securing, and fastening**
1608 **load required -- Penalty.**

1609 (1) As used in this section:

1610 (a) "Agricultural product" means any raw product which is derived from agriculture,
1611 including silage, hay, straw, grain, manure, and other similar product.

1612 (b) "Vehicle" has the same meaning set forth in Section 41-1a-102.

1613 (2) A vehicle may not be operated or moved on any highway unless the vehicle is
1614 constructed or loaded to prevent its contents from dropping, sifting, leaking, or otherwise
1615 escaping.

1616 (3) (a) In addition to the requirements under Subsection (2), a vehicle carrying dirt,
1617 sand, gravel, rock fragments, pebbles, crushed base, aggregate, any other similar material, or
1618 scrap metal shall have a covering over the entire load unless:

1619 (i) the highest point of the load does not extend above the top of any exterior wall or
1620 sideboard of the cargo compartment of the vehicle; and

1621 (ii) the outer edges of the load are at least six inches below the top inside edges of the
1622 exterior walls or sideboards of the cargo compartment of the vehicle.

1623 (b) The following material is exempt from the provisions of Subsection (3)(a):

1624 (i) hot mix asphalt;

1625 (ii) construction debris or scrap metal if the debris or scrap metal is a size and in a form
1626 not susceptible to being blown out of the vehicle;

1627 (iii) material being transported across a highway between two parcels of property that
1628 would be contiguous but for the highway that is being crossed; and

1629 (iv) material listed under Subsection (3)(a) that is enclosed on all sides by containers,
1630 bags, or packaging.

1631 (c) A chemical substance capable of coating or bonding a load so that the load is
1632 confined on a vehicle, may be considered a covering for purposes of Subsection (3)(a) so long
1633 as the chemical substance remains effective at confining the load.

1634 (4) Subsections (2) and (3) do not apply to a vehicle or implement of husbandry
1635 carrying an agricultural product, if the agricultural product is:

1636 (a) being transported in a manner which is not a hazard or a potential hazard to the safe
1637 operation of the vehicle or to other highway users; and

1638 (b) loaded in a manner that only allows minimal spillage.

1639 (5) (a) An authorized vehicle performing snow removal services on a highway is

1640 exempt from the requirements of this section [~~if the vehicle's load is screened to a particle size~~
1641 ~~established by a rule of the department~~].

1642 (b) This section does not prohibit the necessary spreading of any substance connected
1643 with highway maintenance, construction, securing traction, or snow removal.

1644 (6) A person may not operate a vehicle with a load on any highway unless the load and
1645 any load covering is fastened, secured, and confined to prevent the covering or load from
1646 becoming loose, detached, or in any manner a hazard to the safe operation of the vehicle, or to
1647 other highway users.

1648 (7) Before entering a highway, the operator of a vehicle carrying any material listed
1649 under Subsection (3), shall remove all loose material on any portion of the vehicle not designed
1650 to carry the material.

1651 (8) Any person who violates this section is guilty of a class B misdemeanor.

1652 Section 34. Section **72-9-701** is amended to read:

1653 **72-9-701. Penalty for unlawful conduct.**

1654 (1) Unless otherwise specified, any person who violates [~~the provisions~~] a provision of
1655 this chapter or who aids or abets another person in a violation of this chapter is guilty of a class
1656 B misdemeanor.

1657 (2) A second or subsequent conviction for a violation of this chapter or of aiding or
1658 abetting another person in a violation of this chapter is a class A misdemeanor.

1659 [~~(2) Unless otherwise specified, any person who fails to obey any lawful order or rule~~
1660 ~~made under this chapter is guilty of a class B misdemeanor. A second or subsequent~~
1661 ~~conviction for failing to obey any lawful order or rule made under this chapter is a class A~~
1662 ~~misdemeanor.~~]

1663 Section 35. Section **72-10-120** is amended to read:

1664 **72-10-120. Violations -- Penalty.**

1665 A person who fails to comply with the requirements of or [~~violating~~] violates any [~~of~~
1666 ~~the provisions~~] provision of this part[, or the rules or orders adopted by the department] is
1667 guilty of a class B misdemeanor.

1668 Section 36. Section **73-18-21** is amended to read:

1669 **73-18-21. Violation of chapter as class B misdemeanor.**

1670 Unless otherwise specified, any person who violates any provision of this chapter [~~or~~

1671 ~~rule promulgated under this chapter~~] is guilty of a class B misdemeanor.

1672 Section 37. Section **73-18a-14** is amended to read:

1673 **73-18a-14. Violation of chapter as class B misdemeanor.**

1674 Unless otherwise specified, any person who violates any provision of this chapter [~~or~~
1675 ~~rule promulgated under this chapter~~] is guilty of a class B misdemeanor.

1676 Section 38. Section **76-8-1301** is amended to read:

1677 **76-8-1301. False statements regarding unemployment compensation -- Penalties.**

1678 (1) (a) A person who makes a false statement or representation knowing it to be false
1679 or knowingly fails to disclose a material fact, to obtain or increase a benefit or other payment
1680 under Title 35A, Chapter 4, Employment Security Act, or under the Unemployment
1681 Compensation Law of any state or of the federal government for any person is guilty of
1682 unemployment insurance fraud.

1683 (b) A violation of Subsection (1)(a) is:

1684 (i) a class B misdemeanor when the value of the money obtained or sought to be
1685 obtained is less than \$300;

1686 (ii) a class A misdemeanor when the value of the money obtained or sought to be
1687 obtained is or exceeds \$300 but is less than \$1,000;

1688 (iii) a third degree felony when the value of the money obtained or sought to be
1689 obtained is or exceeds \$1,000 but is less than \$5,000; or

1690 (iv) a second degree felony when the value of the money obtained or sought to be
1691 obtained is or exceeds \$5,000.

1692 (c) The determination of the degree of an offense under Subsection (1)(b) shall be
1693 measured by the total value of all money obtained or sought to be obtained by the unlawful
1694 conduct.

1695 (2) (a) An officer or agent of an employing unit as defined in Section 35A-4-202 or any
1696 other person who makes a false statement or representation knowing it to be false, or who
1697 knowingly fails to disclose a material fact, to prevent or reduce the payment of unemployment
1698 compensation benefits to an individual entitled to those benefits, or to avoid becoming or
1699 remaining a subject employer or to avoid or reduce any contribution or other payment required
1700 from an employing unit under Title 35A, Chapter 4, Employment Security Act, or under the
1701 Unemployment Compensation Law of any state or of the federal government, or who willfully

1702 fails or refuses to make a contribution or other payment or to furnish any report required in
1703 Title 35A, Chapter 4, Employment Security Act, or to produce or permit the inspection or
1704 copying of records as required under that chapter is guilty of unemployment insurance fraud.

1705 (b) A violation of Subsection (2)(a) is:

1706 (i) a class B misdemeanor when the value of the money obtained or sought to be
1707 obtained is less than \$300;

1708 (ii) a class A misdemeanor when the value of the money obtained or sought to be
1709 obtained is or exceeds \$300 but is less than \$1,000;

1710 (iii) a third degree felony when the value of the money obtained or sought to be
1711 obtained is or exceeds \$1,000 but is less than \$5,000; or

1712 (iv) a second degree felony when the value of the money obtained or sought to be
1713 obtained is or exceeds \$5,000.

1714 (3) (a) A person who willfully violates any provision of Title 35A, Chapter 4,
1715 Employment Security Act, or any order [~~or rule~~] made under that chapter, the violation of
1716 which is made unlawful or the observance of which is required under the terms of that chapter,
1717 and for which a penalty is neither prescribed in that chapter nor provided by any other
1718 applicable statute is guilty of a class A misdemeanor.

1719 (b) Each day a violation of Subsection (3)(a) continues shall be a separate offense.

1720 (4) A person is guilty of a class C misdemeanor if:

1721 (a) as an employee of the Department of Workforce Services, in willful violation of
1722 Section 35A-4-312, the employee makes a disclosure of information obtained from an
1723 employing unit or individual in the administration of Title 35A, Chapter 4, Employment
1724 Security Act; or

1725 (b) the person has obtained a list of applicants for work or of claimants or recipients of
1726 benefits under Title 35A, Chapter 4, Employment Security Act, and uses or permits the use of
1727 the list for any political purpose.

1728 **Section 39. Repealer.**

1729 This bill repeals:

1730 **Section 72-7-211, Violations -- Misdemeanor.**

1731 **Section 40. Effective date.**

1732 This bill takes effect on May 5, 2008, except that the amendments to Sections

1733 63-11-17.3, 73-18-21, and 73-18a-14 in this bill take effect on May 4, 2009.

Legislative Review Note
as of **1-25-08 12:54 PM**

Office of Legislative Research and General Counsel

H.B. 80 - Administrative Rule Penalty Amendments

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
