

**AMENDMENTS TO AGENCY RULEMAKING
REGARDING CRIMINAL PENALTIES**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ben C. Ferry

Senate Sponsor: Howard A. Stephenson

LONG TITLE

Committee Note:

The Administrative Rules Review Committee recommended this bill.

General Description:

This bill modifies various statutory provisions regarding rulemaking authority by repealing statutory provisions that authorize certain state agencies to determine by administrative rule what conduct constitutes a criminal penalty **↔** and amends a provision regarding wildlife resources **←↔** .

Highlighted Provisions:

This bill:

▶ repeals certain statutory grants of administrative rulemaking authority to the Department of Health, the Department of Insurance, the Labor Commission, and the Department of Natural Resources that determine what conduct constitutes a criminal penalty;

↔ ▶ addresses rulemaking as needed to maintain state primacy of federal programs and as relates to federal penalties that are equal to or greater than state penalties;

▶ amends the limitations on specified uses of Division of Wildlife Resources lands that are being placed in statute; ←↔ and

▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

↔ [None] This bill coordinates with H.B. 11, Recodification of Natural Resources Provisions, by providing amendments. ←↔

Utah Code Sections Affected:

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 **26-21-16**, as last amended by Laws of Utah 1997, Chapter 209
- 31 **26-23-6**, as last amended by Laws of Utah 1995, Chapter 202
- 32 **31A-2-308**, as last amended by Laws of Utah 2007, Chapter 309
- 33 **34-23-402**, as last amended by Laws of Utah 1997, Chapter 375
- 34 **34A-2-407**, as last amended by Laws of Utah 2008, Chapter 382
- 35 **34A-2-801**, as last amended by Laws of Utah 2008, Chapters 90 and 382
- 36 **54-7-15**, as last amended by Laws of Utah 2008, Chapter 382
- 37 **61-1-21**, as last amended by Laws of Utah 2001, Chapter 149
- 38 **61-1-24**, as last amended by Laws of Utah 1991, Chapter 161
- 38a ~~H~~→ **63G-3-201**, as renumbered and amended by Laws of Utah 2008, Chapter 382 ←~~H~~

39 ENACTS:

40 **23-21-7**, Utah Code Annotated 1953

41 REPEALS AND REENACTS:

42 **63-11-17.3**, as last amended by Laws of Utah 1997, Chapter 315

43 REPEALS:

44 **73-18b-3**, as last amended by Laws of Utah 1997, Chapter 276



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

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

48 **23-13-11. Violations.**

49 Except as otherwise provided in this title:

50 (1) [~~Unless otherwise provided,~~] a violation of any provision of this title is a class B
51 misdemeanor[-]; and

52 (2) [~~A~~] a violation of any rule or proclamation of the Wildlife Board [is a class C
53 misdemeanor] is an infraction.

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

55 **23-20-3. Taking, transporting, selling, or purchasing protected wildlife illegal**
56 **except as authorized -- Penalty.**

57 (1) Except as provided in this title or a rule, proclamation, or order of the Wildlife
58 Board, a person may not:

- 59 ~~[(a) take or permit his dog to take:]~~
60 ~~[(i) protected wildlife or their parts;]~~
61 ~~[(ii) an occupied nest of protected wildlife; or]~~
62 ~~[(iii) an egg of protected wildlife;]~~
63 ~~[(b) transport, ship, or cause to be shipped protected wildlife or their parts;]~~
64 ~~[(c) sell or purchase protected wildlife or their parts; or]~~
65 ~~[(d) possess protected wildlife or their parts unaccompanied by a valid license, permit,~~
66 ~~tag, certificate of registration, bill of sale, or invoice.]~~
67 (a) take protected wildlife or its parts;
68 (b) collect, import, possess, transport, propagate, store, donate, transfer, or export
69 protected wildlife or its parts;
70 (c) take, possess, sell, purchase, barter, donate, or trade protected wildlife or its parts
71 without having previously procured the necessary licenses, permits, tags, stamps, certificates of
72 registration, authorizations, and receipts required in this title or a rule, proclamation, or order of
73 the Wildlife Board;
74 (d) take protected wildlife with any weapon, ammunition, implement, tool, device, or
75 any part of any of these not specifically authorized in this title or a rule, proclamation, or order
76 of the Wildlife Board;
77 (e) possess while in pursuit of protected wildlife any weapon, ammunition, implement,
78 tool, device, or any part of any of these not specifically authorized in this title or a rule,
79 proclamation, or order of the Wildlife Board;
80 (f) take protected wildlife using any method, means, process, or practice not
81 specifically authorized in this title or a rule, proclamation, or order of the Wildlife Board;
82 (g) take protected wildlife outside the season dates, location boundaries, and daily time
83 frames established in rule, proclamation, or order of the Wildlife Board;
84 (h) take protected wildlife in excess of the bag and possession limits established in
85 rule, proclamation, or order of the Wildlife Board;
86 (i) take protected wildlife in an area closed to hunting, trapping, or fishing by rule,
87 proclamation, or order of the Wildlife Board, or by executive order of the division director
88 pursuant to Subsection 23-14-8(4);
89 (j) practice falconry or capture, possess, or use birds in falconry;

- 90 (k) take any wildlife from an airplane or any other airborne vehicle or device or any
91 motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles;
92 (l) hold in captivity at any time any live protected wildlife;
93 (m) use or permit a dog or other domestic or trained animal to take protected wildlife;
94 (n) remove, damage, or destroy an occupied nest of protected wildlife;
95 (o) release captured or captive wildlife into the wild;
96 (p) use spotlighting to take protected wildlife;
97 (q) employ or use a means of concealment or camouflage while taking protected
98 wildlife which is prohibited in this title or a rule, proclamation, or order of the Wildlife Board;
99 (r) possess or use bait or other attractant to take protected wildlife which is prohibited
100 in this title or a rule, proclamation, or order of the Wildlife Board;
101 (s) use any decoy or recorded or electronically amplified call which is prohibited in this
102 title or a rule, proclamation, or order of the Wildlife Board to take protected wildlife;
103 (t) commercially harvest protected wildlife, including brine shrimp and brine shrimp
104 eggs;
105 (u) utilize protected wildlife for commercial purposes or financial gain;
106 (v) enter, establish, or hold a contest or tournament involving the taking of protected
107 wildlife;
108 (w) operate or participate in a commercial hunting area as described in Section
109 23-17-6; or
110 (x) operate or participate in a cooperative wildlife management unit as defined in
111 Section 23-23-2.
112 (2) Possession of protected wildlife without a valid license, permit, tag, certificate of
113 registration, bill of sale, or invoice is prima facie evidence that the protected wildlife was
114 illegally taken and is illegally held in possession.
115 (3) A person is guilty of a class B misdemeanor if ~~he~~ the person:
116 (a) violates any provision of Subsection (1); and
117 (b) does so with criminal negligence as defined in Subsection 76-2-103(4).
118 Section 3. Section **23-21-7** is enacted to read:
119 **23-21-7. Unlawful uses and activities on division lands.**
120 (1) Except as authorized by statute, rule, contractual agreement, special use permit,

121 certificate of registration, or public notice, a person may not on division land:

122 (a) remove, extract, use, consume, or destroy any improvement or cultural or historic
 123 resource;

124 (b) remove, extract, use, consume, or destroy any sand, gravel, cinder, ornamental rock,
 125 or other common mineral resource, or vegetation resource ~~H→~~ **,except a person may collect for**
 125a **noncommercial uses up to 250 pounds per calendar year of common rock or gravel lying on**
 125b **the surface of the ground** ~~←H~~ ;

126 (c) allow livestock to graze;

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

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

129 (f) enter, use, or occupy division land as part of a group of more than 25 people ~~H→~~ ,
 129a **except a group may include up to 50 persons if the group consists of extended family**
 129b **members** ~~←H~~ ;

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

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

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

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

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

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

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

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

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

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

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

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

151 (b) the amount of damage caused; and

152 (c) whichever is greater of:
153 (i) the value of any losses or expenses caused as a result of interference with authorized
154 activities; or

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

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

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

161 Section 4. Section **26-21-16** is amended to read:

162 **26-21-16. Operating facility in violation of chapter a misdemeanor.**

163 ~~[(1) Any]~~ In addition to the penalties in Section 26-23-6, any person owning,
164 establishing, conducting, maintaining, managing, or operating a health care facility in violation
165 of this chapter [or rules of the committee] is guilty of a class A misdemeanor.

166 ~~[(2) This section takes precedence over Section 26-23-6.]~~

167 Section 5. Section **26-23-6** is amended to read:

168 **26-23-6. Criminal and civil penalties and liability for violations.**

169 (1) (a) Any person, association, or corporation, or the officers of any of them, who
170 violates any provision of this chapter or lawful orders~~[, or rules adopted under this chapter by~~
171 ~~the department: (a) shall be assessed, in a civil proceeding, a penalty not to exceed the sum of~~
172 ~~\$5,000; or (b)]~~ of the department or a local health department in a criminal proceeding is guilty
173 of a class B misdemeanor for the first violation, and for any subsequent similar violation
174 within two years, is guilty of a class A misdemeanor, except this section does not establish the
175 criminal penalty for violation of Section 26-23-5.5.

176 (b) Conviction in a criminal proceeding does not preclude the department or a local
177 health department from assessment of any civil penalty, administrative civil money penalty or
178 to deny, revoke, condition, or refuse to renew a permit, license, or certificate or to seek other
179 injunctive or equitable remedies.

180 (2) Any person, association, or corporation, or the officers of any of them, who violates
181 any provision of this title or lawful orders of the department or a local health department, or
182 rules adopted under this title by the department:

183 (a) shall be assessed, in a judicial civil proceeding, a penalty not to exceed the sum of
184 \$10,000 per violation; or

185 (b) in an administrative action in accordance with Title 63G, Chapter 4, Administrative
186 Procedures Act, or similar procedures adopted by local or county government, a penalty not to
187 exceed the sum of \$10,000 per violation.

188 (3) Assessment of any civil penalty or administrative penalty does not preclude the
189 department or a local health department from seeking criminal penalties or to deny, revoke,
190 impose conditions on, or refuse to renew a permit, license, or certificate or to seek other
191 injunctive or equitable remedies.

192 ~~[(2)]~~ (4) In addition to any penalties imposed under Subsection (1), the person,
193 association, or corporation, or the officers of any of them is liable for any expense incurred by
194 the department in removing or abating any health or sanitation violations, including any
195 nuisance, source of filth, cause of sickness, or dead animal.

196 ~~[(3) Assessment or conviction under this chapter or any other public health law does~~
197 ~~not relieve the person assessed or convicted from civil liability for any act which was also a~~
198 ~~violation of the public health laws.]~~

199 ~~[(4)]~~ (5) Each day of violation of ~~[this chapter]~~ a provision of this title, lawful orders of
200 the department or a local health department, or rules adopted by the department under it ~~[may~~
201 ~~be]~~ is a separate violation.

202 Section 6. Section **31A-2-308** is amended to read:

203 **31A-2-308. Enforcement penalties and procedures.**

204 (1) (a) A person who violates any insurance statute or rule or any order issued under
205 Subsection 31A-2-201(4) shall forfeit to the state twice the amount of any profit gained from
206 the violation, in addition to any other forfeiture or penalty imposed.

207 (b) (i) The commissioner may order an individual producer, limited line producer,
208 customer service representative, managing general agent, reinsurance intermediary, adjuster, or
209 insurance consultant who violates an insurance statute or rule to forfeit to the state not more
210 than \$2,500 for each violation.

211 (ii) The commissioner may order any other person who violates an insurance statute or
212 rule to forfeit to the state not more than \$5,000 for each violation.

213 (c) (i) The commissioner may order an individual producer, limited line producer,

214 customer service representative, managing general agent, reinsurance intermediary, adjuster, or
215 insurance consultant who violates an order issued under Subsection 31A-2-201(4) to forfeit to
216 the state not more than \$2,500 for each violation. Each day the violation continues is a
217 separate violation.

218 (ii) The commissioner may order any other person who violates an order issued under
219 Subsection 31A-2-201(4) to forfeit to the state not more than \$5,000 for each violation. Each
220 day the violation continues is a separate violation.

221 (d) The commissioner may accept or compromise any forfeiture under this Subsection
222 (1) until after a complaint is filed under Subsection (2). After the filing of the complaint, only
223 the attorney general may compromise the forfeiture.

224 (2) When a person fails to comply with an order issued under Subsection
225 31A-2-201(4), including a forfeiture order, the commissioner may file an action in any court of
226 competent jurisdiction or obtain a court order or judgment:

227 (a) enforcing the commissioner's order;

228 (b) (i) directing compliance with the commissioner's order and restraining further
229 violation of the order; and

230 (ii) subjecting the person ordered to the procedures and sanctions available to the court
231 for punishing contempt if the failure to comply continues; or

232 (c) imposing a forfeiture in an amount the court considers just, up to \$10,000 for each
233 day the failure to comply continues after the filing of the complaint until judgment is rendered.

234 (3) (a) The Utah Rules of Civil Procedure govern actions brought under Subsection (2),
235 except that the commissioner may file a complaint seeking a court-ordered forfeiture under
236 Subsection (2)(c) no sooner than two weeks after giving written notice of the commissioner's
237 intention to proceed under Subsection (2)(c).

238 (b) The commissioner's order issued under Subsection 31A-2-201(4) may contain a
239 notice of intention to seek a court-ordered forfeiture if the commissioner's order is disobeyed.

240 (4) If, after a court order is issued under Subsection (2), the person fails to comply with
241 the commissioner's order or judgment:

242 (a) the commissioner may certify the fact of the failure to the court by affidavit; and

243 (b) the court may, after a hearing following at least five days written notice to the
244 parties subject to the order or judgment, amend the order or judgment to add the forfeiture or

245 forfeitures, as prescribed in Subsection (2)(c), until the person complies.

246 (5) (a) The proceeds of all forfeitures under this section, including collection expenses,
247 shall be paid into the General Fund.

248 (b) The expenses of collection shall be credited to the department's budget.

249 (c) The attorney general's budget shall be credited to the extent the department
250 reimburses the attorney general's office for its collection expenses under this section.

251 (6) (a) Forfeitures and judgments under this section bear interest at the rate charged by
252 the United States Internal Revenue Service for past due taxes on the:

253 (i) date of entry of the commissioner's order under Subsection (1); or

254 (ii) date of judgment under Subsection (2).

255 (b) Interest accrues from the later of the dates described in Subsection (6)(a) until the
256 forfeiture and accrued interest are fully paid.

257 (7) A forfeiture may not be imposed under Subsection (2)(c) if:

258 (a) at the time the forfeiture action is commenced, the person was in compliance with
259 the commissioner's order; or

260 (b) the violation of the order occurred during the order's suspension.

261 (8) The commissioner may seek an injunction as an alternative to issuing an order
262 under Subsection 31A-2-201(4).

263 (9) (a) A person is guilty of a class B misdemeanor if that person:

264 (i) intentionally violates:

265 (A) an insurance statute [~~or rule~~] of this state; or

266 (B) an order issued under Subsection 31A-2-201(4);

267 (ii) intentionally permits a person over whom that person has authority to violate:

268 (A) an insurance statute [~~or rule~~] of this state; or

269 (B) an order issued under Subsection 31A-2-201(4); or

270 (iii) intentionally aids any person in violating:

271 (A) an insurance statute [~~or rule~~] of this state; or

272 (B) an order issued under Subsection 31A-2-201(4).

273 (b) Unless a specific criminal penalty is provided elsewhere in this title, the person may
274 be fined not more than:

275 (i) \$10,000 if a corporation; or

276 (ii) \$5,000 if a person other than a corporation.
277 (c) If the person is an individual, the person may, in addition, be imprisoned for up to
278 one year.

279 (d) As used in this Subsection (9), "intentionally" has the same meaning as under
280 Subsection 76-2-103(1).

281 (10) (a) A person who knowingly and intentionally violates Section 31A-4-102,
282 31A-8a-208, 31A-15-105, 31A-23a-116, or 31A-31-111 is guilty of a felony as provided in this
283 Subsection (10).

284 (b) When the value of the property, money, or other things obtained or sought to be
285 obtained in violation of Subsection (10)(a):

286 (i) is less than \$5,000, a person is guilty of a third degree felony; or

287 (ii) is or exceeds \$5,000, a person is guilty of a second degree felony.

288 (11) (a) After a hearing, the commissioner may, in whole or in part, revoke, suspend,
289 place on probation, limit, or refuse to renew the licensee's license or certificate of authority:

290 (i) when a licensee of the department, other than a domestic insurer:

291 (A) persistently or substantially violates the insurance law; or

292 (B) violates an order of the commissioner under Subsection 31A-2-201(4);

293 (ii) if there are grounds for delinquency proceedings against the licensee under Section
294 31A-27a-207; or

295 (iii) if the licensee's methods and practices in the conduct of the licensee's business
296 endanger, or the licensee's financial resources are inadequate to safeguard, the legitimate
297 interests of the licensee's customers and the public.

298 (b) Additional license termination or probation provisions for licensees other than
299 insurers are set forth in Sections 31A-19a-303, 31A-19a-304, 31A-23a-111, 31A-23a-112,
300 31A-25-208, 31A-25-209, 31A-26-213, 31A-26-214, 31A-35-501, and 31A-35-503.

301 (12) The enforcement penalties and procedures set forth in this section are not
302 exclusive, but are cumulative of other rights and remedies the commissioner has pursuant to
303 applicable law.

304 Section 7. Section **34-23-402** is amended to read:

305 **34-23-402. Violation -- Criminal penalty.**

306 (1) The commission may prosecute a misdemeanor criminal action in the name of the

307 state. The county attorney, district attorney, or attorney general shall provide assistance in
308 prosecutions under this section at the request of the commission.

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

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

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

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

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

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

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

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

326 (i) the employee has testified;

327 (ii) is about to testify; or

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

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

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

332 Section 8. Section **34A-2-407** is amended to read:

333 **34A-2-407. Reporting of industrial injuries -- Regulation of health care providers**
334 **-- Funeral expenses.**

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

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

338 (b) If the employee is unable to provide the notification required by Subsection (2)(a),
339 the following may provide notification of the injury to the employee's employer:

- 340 (i) the employee's next-of-kin; or
- 341 (ii) the employee's attorney.

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

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

- 348 (i) the employee's employer in accordance with Subsection (2); or
- 349 (ii) the division.

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

- 351 (i) 180 days of the day on which the injury occurs; or
- 352 (ii) in the case of an occupational hearing loss, the time period specified in Section
353 34A-2-506.

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

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

- 356 (i) the division;
- 357 (ii) the employer; or
- 358 (iii) the employer's insurance carrier; or

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

- 360 (i) the employer; or
- 361 (ii) the employer's insurance carrier.

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

- 364 (i) work-related fatality; or
- 365 (ii) work-related injury resulting in:
 - 366 (A) medical treatment;
 - 367 (B) loss of consciousness;
 - 368 (C) loss of work;

- 369 (D) restriction of work; or
- 370 (E) transfer to another job.
- 371 (b) The employer shall file the report required by Subsection (5)(a) within seven days
- 372 after:
- 373 (i) the occurrence of a fatality or injury;
- 374 (ii) the employer's first knowledge of the fatality or injury; or
- 375 (iii) the employee's notification of the fatality or injury.
- 376 (c) (i) An employer shall file a subsequent report with the division of any previously
- 377 reported injury that later results in death.
- 378 (ii) The subsequent report required by this Subsection (5)(c) shall be filed with the
- 379 division within seven days following:
- 380 (A) the death; or
- 381 (B) the employer's first knowledge or notification of the death.
- 382 (d) A report is not required to be filed under this Subsection (5) for minor injuries,
- 383 such as cuts or scratches that require first-aid treatment only, unless:
- 384 (i) a treating physician files a report with the division in accordance with Subsection
- 385 (9); or
- 386 (ii) a treating physician is required to file a report with the division in accordance with
- 387 Subsection (9).
- 388 (6) An employer required to file a report under Subsection (5) shall provide the
- 389 employee with:
- 390 (a) a copy of the report submitted to the division; and
- 391 (b) a statement, as prepared by the division, of the employee's rights and
- 392 responsibilities related to the industrial injury.
- 393 (7) Each employer shall maintain a record in a manner prescribed by the [~~division~~]
- 394 commission by rule of all:
- 395 (a) work-related fatalities; or
- 396 (b) work-related injuries resulting in:
- 397 (i) medical treatment;
- 398 (ii) loss of consciousness;
- 399 (iii) loss of work;

400 (iv) restriction of work; or
401 (v) transfer to another job.

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

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

406 (ii) subject to a civil assessment:

407 (A) imposed by the division, subject to the requirements of Title 63G, Chapter 4,
408 Administrative Procedures Act; and

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

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

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

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

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

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

419 (i) fees for physician's services;

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

422 (iii) reports to the division regarding:

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

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

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

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

430 (d) The commission's schedule of fees may reasonably differentiate remuneration to be

431 paid to providers of health services based on:

432 (i) the severity of the employee's condition;

433 (ii) the nature of the treatment necessary; and

434 (iii) the facilities or equipment specially required to deliver that treatment.

435 (e) This Subsection (9) does not prohibit a contract with a provider of health services

436 relating to the pricing of goods and services.

437 (10) A copy of the initial report filed under Subsection (9)(a)(iii) shall be furnished to:

438 (a) the division;

439 (b) the employee; and

440 (c) (i) the employer; or

441 (ii) the employer's insurance carrier.

442 [~~(11)(a) Except as provided in Subsection (11)(b), a person subject to Subsection~~

443 ~~(9)(a)(iii) who fails to comply with Subsection (9)(a)(iii) is guilty of a class C misdemeanor for~~
444 ~~each offense.]~~

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

447 [~~(i) the person files a late report; and]~~

448 [~~(ii) the division finds that there is good cause for submitting a late report.]~~

449 [~~(12)~~] (11) (a) Subject to appellate review under Section 34A-1-303, the commission
450 has exclusive jurisdiction to hear and determine:

451 (i) whether goods provided to or services rendered to an employee are compensable
452 pursuant to this chapter or Chapter 3, Utah Occupational Disease Act, including:

453 (A) medical, nurse, or hospital services;

454 (B) medicines; and

455 (C) artificial means, appliances, or prosthesis;

456 (ii) the reasonableness of the amounts charged or paid for a good or service described
457 in Subsection [~~(12)~~] (11)(a)(i); and

458 (iii) collection issues related to a good or service described in Subsection [~~(12)~~]

459 (11)(a)(i).

460 (b) Except as provided in Subsection [~~(12)~~] (11)(a), Subsection 34A-2-211(7), or

461 Section 34A-2-212, a person may not maintain a cause of action in any forum within this state

462 other than the commission for collection or payment for goods or services described in
463 Subsection [~~(12)~~] (11)(a) that are compensable under this chapter or Chapter 3, Utah
464 Occupational Disease Act.

465 Section 9. Section **34A-2-801** is amended to read:

466 **34A-2-801. Initiating adjudicative proceedings -- Procedure for review of**
467 **administrative action.**

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

472 (i) the employee;

473 (ii) a representative of the employee, the qualifications of whom are defined in rule by
474 the commission; or

475 (iii) a dependent as described in Section 34A-2-403.

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

480 (i) the employer;

481 (ii) the insurance carrier; or

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

484 (c) A person providing goods or services described in Subsections
485 34A-2-407[~~(12)~~](11) and 34A-3-108(12) may file an application for hearing in accordance with
486 Section 34A-2-407 or 34A-3-108.

487 (d) An attorney may file an application for hearing in accordance with Section
488 34A-1-309.

489 (2) Unless a party in interest appeals the decision of an administrative law judge in
490 accordance with Subsection (3), the decision of an administrative law judge on an application
491 for hearing filed under Subsection (1) is a final order of the commission 30 days after the day
492 on which the decision is issued.

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

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

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

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

501 (ii) if requested by a party in interest who did not file a motion for review, within 20
502 days of the day on which the motion for review is filed with the Division of Adjudication.

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

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

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

510 (6) The commissioner or Appeals Board shall promptly notify the parties to a
511 proceeding before it of its decision, including its findings and conclusions.

512 (7) The decision of the commissioner or Appeals Board is final unless within 30 days
513 after the date the decision is issued further appeal is initiated under the provisions of this
514 section or Title 63G, Chapter 4, Administrative Procedures Act.

515 (8) (a) Within 30 days after the day on which the decision of the commissioner or
516 Appeals Board is issued, an aggrieved party may secure judicial review by commencing an
517 action in the court of appeals against the commissioner or Appeals Board for the review of the
518 decision of the commissioner or Appeals Board.

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

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

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

523 (c) A party claiming to be aggrieved may seek judicial review only if the party exhausts

524 the party's remedies before the commission as provided by this section.

525 (d) At the request of the court of appeals, the commission shall certify and file with the
526 court all documents and papers and a transcript of all testimony taken in the matter together
527 with the decision of the commissioner or Appeals Board.

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

529 **54-7-15. Review or rehearing by commission -- Application -- Procedure --**
530 **Prerequisite to court action -- Effect of commission decisions.**

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

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

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

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

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

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

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

550 (3) Any order or decision on rehearing that abrogates, changes, or modifies an original
551 order or decision has the same [~~force and~~] effect as an original order or decision, but does not
552 affect any right, or the enforcement of any right, arising from the original order or decision
553 unless [~~so~~] ordered by the commission.

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

555 (a) [~~shall have binding force and~~] has effect only with respect to a public utility that is
556 an actual party to the proceeding in which the order is rendered; and

557 (b) does not determine any right, privilege, obligation, duty, constraint, burden, or
558 responsibility with respect to a public utility that is not a party to the proceeding in which the
559 order is rendered unless, in accordance with Subsection 63G-3-201(6), the commission makes
560 a rule that incorporates the one or more principles of law that:

561 (i) are established by the order;

562 (ii) are not in commission rules at the time of the order; and

563 (iii) affect the right, privilege, obligation, duty, constraint, burden, or responsibility
564 with respect to the public utility.

565 Section 11. Section **61-1-21** is amended to read:

566 **61-1-21. Penalties for violations.**

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

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

572 (a) is guilty of a third degree felony if, at the time the crime was committed, the
573 property, money, or thing unlawfully obtained or sought to be obtained was worth less than
574 \$10,000;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

600 Section 12. Section **61-1-24** is amended to read:

601 **61-1-24. Rules, forms, and orders of division.**

602 (1) (a) The division may make, amend, and rescind rules, forms, and orders when
603 necessary to carry out the provisions of this chapter.

604 (b) For the purpose of rules and forms, the division may classify securities, persons,
605 and matters within its jurisdiction, and prescribe different requirements for different classes.

606 (2) (a) The division may not make, amend, or rescind any rule, form, or order unless it
607 finds that the action is in the public interest, for the protection of investors, and consistent with
608 the purposes of this chapter.

609 (b) In prescribing rules and forms, the division may cooperate with the securities
610 administrators of the other states and the Securities and Exchange Commission to achieve
611 maximum uniformity in the form and content of registration statements, applications, and
612 reports wherever practicable.

613 (3) (a) The division may prescribe:

614 (i) the form and content of financial statements required under this chapter;

615 (ii) the circumstances under which consolidated financial statements shall be filed; and

616 (iii) whether or not any required financial statements shall be certified by independent

617 public accountants.

618 (b) All financial statements shall be prepared in accordance with generally accepted
619 accounting principles.

620 (4) All rules and forms of the division shall be published.

621 (5) ~~[(No)]~~ A provision of this chapter imposing any liability [applies] does not apply to
622 any act done or omitted in good faith in conformity with any rule, form, or order of the
623 division, notwithstanding that the rule, form, or order may later be amended or rescinded or be
624 determined by judicial or other authority to be invalid for any reason.

625 ~~[(6) The division may by rule classify specific acts as unlawful within the meaning of
626 Sections 61-1-1 and 61-1-2 if it finds that the acts could operate as a fraud or part of a device,
627 scheme, or artifice to defraud any person, and that the rule is not inconsistent with this chapter.]~~

628 Section 13. Section **63-11-17.3** is repealed and reenacted to read:

629 **63-11-17.3. Violations of title and rules.**

630 Unless otherwise provided in this title:

631 (1) a violation of any provision of this title is a class B misdemeanor; and

632 (2) a violation of any rule of the Board of Parks and Recreation is an infraction.

632a **H→ Section 14. Section 63G-3-201 is amended to read:**

632b **63G-3-201. When rulemaking is required.**

632c **(1) Each agency shall:**

632d **(a) maintain a current version of its rules; and**

632e **(b) make it available to the public for inspection during its regular business hours.**

632f **(2) In addition to other rulemaking required by law, each agency shall make rules when**
632g **agency action:**

632h **(a) authorizes, requires, or prohibits an action;**

632i **(b) provides or prohibits a material benefit;**

632j **(c) applies to a class of persons or another agency; and**

632k **(d) is explicitly or implicitly authorized by statute.**

632l **(3) Rulemaking is also required when an agency issues a written interpretation of a state or**
632m **federal legal mandate.**

632n **(4) Rulemaking is not required when:**

632o **(a) agency action applies only to internal agency management, inmates or residents of a state**
632p **correctional, diagnostic, or detention facility, persons under state legal custody, patients admitted to a**
632q **state hospital, members of the state retirement system, or students enrolled in a state education**
632r **institution;**

632s **(b) a standardized agency manual applies only to internal fiscal or administrative details of**
632t **governmental entities supervised under statute;**

632u (c) an agency issues policy or other statements that are advisory, informative, or descriptive,
632v and do not conform to the requirements of Subsections (2) and (3); or

632w (d) an agency makes nonsubstantive changes in a rule, except that the agency shall file all
632x nonsubstantive changes in a rule with the division.

632y (5) (a) A rule shall enumerate any penalty authorized by statute that may result from its
632z violation , subject to Subsections (5)(b) and (c) ←Ĥ .

632aa Ĥ→ (b) A violation of a rule may not be subject to the criminal penalty of a class C
632ab misdemeanor or greater offense, except as provided under Subsection (5)(c).

632ac (c) A violation of a rule may be subject to a class C or greater criminal penalty under
632ad Subsection (5)(a) when:

632ae (i) [a federal law or regulation requires that the criminal penalty be established by rule]
632af1 authorized by a specific state statute ;

632af [or]

632ag (ii) [state law or a federal law or regulation imposes a deadline for enacting a provision
632ah in order for the state to retain primacy over a federal program and the deadline cannot be met
632ai prior to the next general legislative session] a state law and programs under that law are
632aj1 established in order for the state to obtain or maintain primacy over a federal program; or
632aj2 (iii) state civil or criminal penalties established by state statute regarding the program are
632aj3 equivalent to or less than corresponding federal civil or criminal penalties .

632aj (6) Each agency shall enact rules incorporating the principles of law not already in its rules
632ak that are established by final adjudicative decisions within 120 days after the decision is announced in
632al its cases.

632am (7) (a) Each agency may enact a rule that incorporates by reference:

632an (i) all or any part of another code, rule, or regulation that has been adopted by a federal
632ao agency, an agency or political subdivision of this state, an agency of another state, or by a nationally
632ap recognized organization or association;

632aq (ii) state agency implementation plans mandated by the federal government for participation
632ar in the federal program;

632as (iii) lists, tables, illustrations, or similar materials that are subject to frequent change, fully
632at described in the rule, and are available for public inspection; or

632au (iv) lists, tables, illustrations, or similar materials that the director determines are too
632av expensive to reproduce in the administrative code.

632aw (b) Rules incorporating materials by reference shall:

632ax (i) be enacted according to the procedures outlined in this chapter;

632ay (ii) state that the referenced material is incorporated by reference;

632az (iii) state the date, issue, or version of the material being incorporated; and

632ba (iv) define specifically what material is incorporated by reference and identify any agency
632bb deviations from it.

632bc (c) The agency shall identify any substantive changes in the material incorporated by
632bd reference by following the rulemaking procedures of this chapter.

- 632be (d) The agency shall maintain a complete and current copy of the referenced material
 632bf available for public review at the agency and at the division.
- 632bg (8) (a) This chapter is not intended to inhibit the exercise of agency discretion within the limits
 632bh prescribed by statute or agency rule.
- 632bi (b) An agency may enact a rule creating a justified exception to a rule.
- 632bj (9) An agency may obtain assistance from the attorney general to ensure that its rules meet
 632bk legal and constitutional requirements. ←Ĥ
- 632bl **Ŝ→ Section 14. Coordinating H.B. 32 and H.B. 11.**
- 632bm **If this H.B. 32 and H.B. 11, Recodification of Natural Resources Provisions, both pass,**
 632bn **it is the intent of the Legislature that the Office of Legislative Research and General Counsel ,**
 632bo **in preparing the Utah Code database for publication, shall change Section 63-11-17.3, which is**
 632bp **repealed and reenacted in this bill, so that the reenacted section reads:**
- 632bq **"79-4-502. Violations of rules.**
- 632br **Unless otherwise provided in this title, a violation of any rule of the Board of Parks and**
 632bs **Recreation is an infraction." ←Ŝ**
- 633 Section **Ĥ→ [14] Ŝ→ [15] 16 ←Ŝ ←Ĥ . Repealer.**
- 634 This bill repeals:
- 635 Section **73-18b-3, Violation of regulations -- Misdemeanor.**

Legislative Review Note
 as of 11-14-08 12:00 PM

Office of Legislative Research and General Counsel

H.B. 32 - Amendments to Agency Rulemaking Regarding Criminal Penalties

Fiscal Note

2009 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.
