

1 **AMENDMENTS TO AGENCY RULEMAKING**
2 **REGARDING CRIMINAL PENALTIES**

3 2009 GENERAL SESSION

4 STATE OF UTAH

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

6 Senate Sponsor: Howard A. Stephenson

8 **LONG TITLE**

9 **General Description:**

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

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ repeals certain statutory grants of administrative rulemaking authority to the
17 Department of Health, the Department of Insurance, the Labor Commission, and
18 the Department of Natural Resources that determine what conduct constitutes a
19 criminal penalty;
- 20 ▶ addresses rulemaking as needed to maintain state primacy of federal programs and
21 as relates to federal penalties that are equal to or greater than state penalties;
- 22 ▶ amends the limitations on specified uses of Division of Wildlife Resources lands
23 that are being placed in statutes; and
- 24 ▶ makes technical changes.

25 **Monies Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**

28 This bill coordinates with H.B. 11, Recodification of Natural Resources Provisions, by
29 providing technical renumbering amendments.

30 **Utah Code Sections Affected:**

31 AMENDS:

- 32 **23-13-11**, as last amended by Laws of Utah 1995, Chapter 211
- 33 **23-20-3**, as last amended by Laws of Utah 1995, Chapter 211
- 34 **26-21-16**, as last amended by Laws of Utah 1997, Chapter 209
- 35 **26-23-6**, as last amended by Laws of Utah 1995, Chapter 202
- 36 **31A-2-308**, as last amended by Laws of Utah 2007, Chapter 309
- 37 **34-23-402**, as last amended by Laws of Utah 1997, Chapter 375
- 38 **34A-2-407**, as last amended by Laws of Utah 2008, Chapter 382
- 39 **34A-2-801**, as last amended by Laws of Utah 2008, Chapters 90 and 382
- 40 **54-7-15**, as last amended by Laws of Utah 2008, Chapter 382
- 41 **61-1-21**, as last amended by Laws of Utah 2001, Chapter 149
- 42 **61-1-24**, as last amended by Laws of Utah 1991, Chapter 161
- 43 **63G-3-201**, as renumbered and amended by Laws of Utah 2008, Chapter 382

44 ENACTS:

- 45 **23-21-7**, Utah Code Annotated 1953

46 REPEALS AND REENACTS:

- 47 **63-11-17.3**, as last amended by Laws of Utah 1997, Chapter 315

48 REPEALS:

- 49 **73-18b-3**, as last amended by Laws of Utah 1997, Chapter 276



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

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

53 **23-13-11. Violations.**

54 Except as otherwise provided in this title:

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

57 (2) [~~A~~] a violation of any rule or proclamation of the Wildlife Board [~~is a class C~~]

58 misdemeanor] is an infraction.

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

60 **23-20-3. Taking, transporting, selling, or purchasing protected wildlife illegal**
61 **except as authorized -- Penalty.**

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

64 [~~(a) take or permit his dog to take;~~]

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

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

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

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

69 [~~(c) sell or purchase protected wildlife or their parts; or]~~

70 [~~(d) possess protected wildlife or their parts unaccompanied by a valid license, permit,~~
71 ~~tag, certificate of registration, bill of sale, or invoice.]~~

72 (a) take protected wildlife or its parts;

73 (b) collect, import, possess, transport, propagate, store, donate, transfer, or export
74 protected wildlife or its parts;

75 (c) take, possess, sell, purchase, barter, donate, or trade protected wildlife or its parts
76 without having previously procured the necessary licenses, permits, tags, stamps, certificates
77 of registration, authorizations, and receipts required in this title or a rule, proclamation, or
78 order of the Wildlife Board;

79 (d) take protected wildlife with any weapon, ammunition, implement, tool, device, or
80 any part of any of these not specifically authorized in this title or a rule, proclamation, or order
81 of the Wildlife Board;

82 (e) possess while in pursuit of protected wildlife any weapon, ammunition, implement,
83 tool, device, or any part of any of these not specifically authorized in this title or a rule,
84 proclamation, or order of the Wildlife Board;

85 (f) take protected wildlife using any method, means, process, or practice not

86 specifically authorized in this title or a rule, proclamation, or order of the Wildlife Board;

87 (g) take protected wildlife outside the season dates, location boundaries, and daily
88 time frames established in rule, proclamation, or order of the Wildlife Board;

89 (h) take protected wildlife in excess of the bag and possession limits established in
90 rule, proclamation, or order of the Wildlife Board;

91 (i) take protected wildlife in an area closed to hunting, trapping, or fishing by rule,
92 proclamation, or order of the Wildlife Board, or by executive order of the division director
93 pursuant to Subsection 23-14-8(4);

94 (j) practice falconry or capture, possess, or use birds in falconry;

95 (k) take any wildlife from an airplane or any other airborne vehicle or device or any
96 motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles;

97 (l) hold in captivity at any time any live protected wildlife;

98 (m) use or permit a dog or other domestic or trained animal to take protected wildlife;

99 (n) remove, damage, or destroy an occupied nest of protected wildlife;

100 (o) release captured or captive wildlife into the wild;

101 (p) use spotlighting to take protected wildlife;

102 (q) employ or use a means of concealment or camouflage while taking protected
103 wildlife which is prohibited in this title or a rule, proclamation, or order of the Wildlife Board;

104 (r) possess or use bait or other attractant to take protected wildlife which is prohibited
105 in this title or a rule, proclamation, or order of the Wildlife Board;

106 (s) use any decoy or recorded or electronically amplified call which is prohibited in
107 this title or a rule, proclamation, or order of the Wildlife Board to take protected wildlife;

108 (t) commercially harvest protected wildlife, including brine shrimp and brine shrimp
109 eggs;

110 (u) utilize protected wildlife for commercial purposes or financial gain;

111 (v) enter, establish, or hold a contest or tournament involving the taking of protected
112 wildlife;

113 (w) operate or participate in a commercial hunting area as described in Section

114 23-17-6; or

115 (x) operate or participate in a cooperative wildlife management unit as defined in
116 Section 23-23-2.

117 (2) Possession of protected wildlife without a valid license, permit, tag, certificate of
118 registration, bill of sale, or invoice is prima facie evidence that the protected wildlife was
119 illegally taken and is illegally held in possession.

120 (3) A person is guilty of a class B misdemeanor if [he] the person:

121 (a) violates any provision of Subsection (1); and

122 (b) does so with criminal negligence as defined in Subsection 76-2-103(4).

123 Section 3. Section **23-21-7** is enacted to read:

124 **23-21-7. Unlawful uses and activities on division lands.**

125 (1) Except as authorized by statute, rule, contractual agreement, special use permit,
126 certificate of registration, or public notice, a person may not on division land:

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

129 (b) remove, extract, use, consume, or destroy any sand, gravel, cinder, ornamental
130 rock, or other common mineral resource, or vegetation resource, except a person may collect
131 for noncommercial uses up to 250 pounds per calendar year of common rock or gravel lying
132 on the surface of the ground;

133 (c) allow livestock to graze;

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

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

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

137 except a group may include up to 50 persons if the group consists of extended family
138 members;

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

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

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

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

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

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

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

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

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

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

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

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

160 (b) the amount of damage caused; and

161 (c) whichever is greater of:

162 (i) the value of any losses or expenses caused as a result of interference with
163 authorized activities; or

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

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

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

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

171 **26-21-16. Operating facility in violation of chapter a misdemeanor.**

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

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

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

177 **26-23-6. Criminal and civil penalties and liability for violations.**

178 (1) (a) Any person, association, or corporation, or the officers of any of them, who
179 violates any provision of this chapter or lawful orders [~~, or rules adopted under this chapter by~~
180 ~~the department: (a) shall be assessed, in a civil proceeding, a penalty not to exceed the sum of~~
181 ~~\$5,000; or (b)] of the department or a local health department in a criminal proceeding is
182 guilty of a class B misdemeanor for the first violation, and for any subsequent similar
183 violation within two years, is guilty of a class A misdemeanor, except this section does not
184 establish the criminal penalty for violation of Section 26-23-5.5.~~

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

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

192 (a) shall be assessed, in a judicial civil proceeding, a penalty not to exceed the sum of
193 \$10,000 per violation; or

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

197 (3) Assessment of any civil penalty or administrative penalty does not preclude the

198 department or a local health department from seeking criminal penalties or to deny, revoke,
199 impose conditions on, or refuse to renew a permit, license, or certificate or to seek other
200 injunctive or equitable remedies.

201 ~~[(2)]~~ (4) In addition to any penalties imposed under Subsection (1), the person,
202 association, or corporation, or the officers of any of them is liable for any expense incurred by
203 the department in removing or abating any health or sanitation violations, including any
204 nuisance, source of filth, cause of sickness, or dead animal.

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

208 ~~[(4)]~~ (5) Each day of violation of ~~[this chapter]~~ a provision of this title, lawful orders
209 of the department or a local health department, or rules adopted by the department under it
210 ~~[may be]~~ is a separate violation.

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

212 **31A-2-308. Enforcement penalties and procedures.**

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

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

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

222 (c) (i) The commissioner may order an individual producer, limited line producer,
223 customer service representative, managing general agent, reinsurance intermediary, adjuster,
224 or insurance consultant who violates an order issued under Subsection 31A-2-201(4) to forfeit
225 to the state not more than \$2,500 for each violation. Each day the violation continues is a

226 separate violation.

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

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

233 (2) When a person fails to comply with an order issued under Subsection
234 31A-2-201(4), including a forfeiture order, the commissioner may file an action in any court
235 of competent jurisdiction or obtain a court order or judgment:

236 (a) enforcing the commissioner's order;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

273 (i) intentionally violates:

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

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

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

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

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

279 (iii) intentionally aids any person in violating:

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

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

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

- 284 (i) \$10,000 if a corporation; or
- 285 (ii) \$5,000 if a person other than a corporation.

286 (c) If the person is an individual, the person may, in addition, be imprisoned for up to
287 one year.

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

290 (10) (a) A person who knowingly and intentionally violates Section 31A-4-102,
291 31A-8a-208, 31A-15-105, 31A-23a-116, or 31A-31-111 is guilty of a felony as provided in
292 this Subsection (10).

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

- 295 (i) is less than \$5,000, a person is guilty of a third degree felony; or
- 296 (ii) is or exceeds \$5,000, a person is guilty of a second degree felony.

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

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

- 300 (A) persistently or substantially violates the insurance law; or
- 301 (B) violates an order of the commissioner under Subsection 31A-2-201(4);

302 (ii) if there are grounds for delinquency proceedings against the licensee under Section
303 31A-27a-207; or

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

307 (b) Additional license termination or probation provisions for licensees other than
308 insurers are set forth in Sections 31A-19a-303, 31A-19a-304, 31A-23a-111, 31A-23a-112,
309 31A-25-208, 31A-25-209, 31A-26-213, 31A-26-214, 31A-35-501, and 31A-35-503.

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

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

314 **34-23-402. Violation -- Criminal penalty.**

315 (1) The commission may prosecute a misdemeanor criminal action in the name of the
316 state. The county attorney, district attorney, or attorney general shall provide assistance in
317 prosecutions under this section at the request of the commission.

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

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

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

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

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

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

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

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

335 (i) the employee has testified;

336 (ii) is about to testify; or

337 (iii) the employer believes that the employee may testify in any investigation or

338 proceedings relative to the enforcement of this chapter; and

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

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

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

342 **34A-2-407. Reporting of industrial injuries -- Regulation of health care**
343 **providers -- Funeral expenses.**

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

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

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

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

350 (ii) the employee's attorney.

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

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

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

358 (ii) the division.

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

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

361 (ii) in the case of an occupational hearing loss, the time period specified in Section
362 34A-2-506.

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

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

365 (i) the division;

366 (ii) the employer; or
367 (iii) the employer's insurance carrier; or
368 (b) the payment of any medical or disability benefits by:
369 (i) the employer; or
370 (ii) the employer's insurance carrier.
371 (5) (a) In the form prescribed by the division, each employer shall file a report with the
372 division of any:
373 (i) work-related fatality; or
374 (ii) work-related injury resulting in:
375 (A) medical treatment;
376 (B) loss of consciousness;
377 (C) loss of work;
378 (D) restriction of work; or
379 (E) transfer to another job.
380 (b) The employer shall file the report required by Subsection (5)(a) within seven days
381 after:
382 (i) the occurrence of a fatality or injury;
383 (ii) the employer's first knowledge of the fatality or injury; or
384 (iii) the employee's notification of the fatality or injury.
385 (c) (i) An employer shall file a subsequent report with the division of any previously
386 reported injury that later results in death.
387 (ii) The subsequent report required by this Subsection (5)(c) shall be filed with the
388 division within seven days following:
389 (A) the death; or
390 (B) the employer's first knowledge or notification of the death.
391 (d) A report is not required to be filed under this Subsection (5) for minor injuries,
392 such as cuts or scratches that require first-aid treatment only, unless:
393 (i) a treating physician files a report with the division in accordance with Subsection

394 (9); or

395 (ii) a treating physician is required to file a report with the division in accordance with
396 Subsection (9).

397 (6) An employer required to file a report under Subsection (5) shall provide the
398 employee with:

399 (a) a copy of the report submitted to the division; and

400 (b) a statement, as prepared by the division, of the employee's rights and
401 responsibilities related to the industrial injury.

402 (7) Each employer shall maintain a record in a manner prescribed by the [division]
403 commission by rule of all:

404 (a) work-related fatalities; or

405 (b) work-related injuries resulting in:

406 (i) medical treatment;

407 (ii) loss of consciousness;

408 (iii) loss of work;

409 (iv) restriction of work; or

410 (v) transfer to another job.

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

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

415 (ii) subject to a civil assessment:

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

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

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

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

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

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

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

428 (i) fees for physician's services;

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

431 (iii) reports to the division regarding:

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

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

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

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

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

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

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

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

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

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

447 (a) the division;

448 (b) the employee; and

449 (c) (i) the employer; or

450 (ii) the employer's insurance carrier.

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

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

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

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

458 [~~(12)~~] (11) (a) Subject to appellate review under Section 34A-1-303, the commission
459 has exclusive jurisdiction to hear and determine:

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

- 462 (A) medical, nurse, or hospital services;
- 463 (B) medicines; and
- 464 (C) artificial means, appliances, or prosthesis;

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

467 (iii) collection issues related to a good or service described in Subsection [~~(12)~~]
468 (11)(a)(i).

469 (b) Except as provided in Subsection [~~(12)~~] (11)(a), Subsection 34A-2-211(7), or
470 Section 34A-2-212, a person may not maintain a cause of action in any forum within this state
471 other than the commission for collection or payment for goods or services described in
472 Subsection [~~(12)~~] (11)(a) that are compensable under this chapter or Chapter 3, Utah
473 Occupational Disease Act.

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

475 **34A-2-801. Initiating adjudicative proceedings -- Procedure for review of**
476 **administrative action.**

477 (1) (a) To contest an action of the employee's employer or its insurance carrier

478 concerning a compensable industrial accident or occupational disease alleged by the employee
479 or a dependent any of the following shall file an application for hearing with the Division of
480 Adjudication:

481 (i) the employee;

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

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

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

489 (i) the employer;

490 (ii) the insurance carrier; or

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

493 (c) A person providing goods or services described in Subsections
494 34A-2-407~~[(12)]~~(11) and 34A-3-108(12) may file an application for hearing in accordance
495 with Section 34A-2-407 or 34A-3-108.

496 (d) An attorney may file an application for hearing in accordance with Section
497 34A-1-309.

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

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

505 (b) Unless a party in interest to the appeal requests under Subsection (3)(c) that the

506 appeal be heard by the Appeals Board, the commissioner shall hear the review.

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

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

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

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

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

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

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

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

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

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

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

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

532 (c) A party claiming to be aggrieved may seek judicial review only if the party
533 exhausts the party's remedies before the commission as provided by this section.

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

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

538 **54-7-15. Review or rehearing by commission -- Application -- Procedure --**
539 **Prerequisite to court action -- Effect of commission decisions.**

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

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

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

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

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

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

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

559 (3) Any order or decision on rehearing that abrogates, changes, or modifies an original
560 order or decision has the same [~~force and~~] effect as an original order or decision, but does not
561 affect any right, or the enforcement of any right, arising from the original order or decision

562 unless ~~[so]~~ ordered by the commission.

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

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

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

570 (i) are established by the order;

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

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

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

575 **61-1-21. Penalties for violations.**

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

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

581 (a) is guilty of a third degree felony if, at the time the crime was committed, the
582 property, money, or thing unlawfully obtained or sought to be obtained was worth less than
583 \$10,000;

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

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

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

589 (B) in connection with that violation, the violator knowingly accepted any money

590 representing:

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

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

593 (III) a withdrawal from any qualified retirement plan as defined in the Internal

594 Revenue Code; or

595 (c) is guilty of a second degree felony punishable by imprisonment for an

596 indeterminate term of not less than three years or more than 15 years if:

597 (i) at the time the crime was committed, the property, money, or thing unlawfully

598 obtained or sought to be obtained was worth \$10,000 or more; and

599 (ii) in connection with that violation, the violator knowingly accepted any money

600 representing:

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

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

603 (C) a withdrawal from any qualified retirement plan as defined in the Internal Revenue

604 Code.

605 (3) ~~[No]~~ A person may not be imprisoned for the violation of any ~~[rule or]~~ order if ~~[he]~~

606 the person proves that ~~[he]~~ the person had no knowledge of the ~~[rule or]~~ order.

607 (4) In addition to any other penalty for a criminal violation of this chapter, the

608 sentencing judge may impose any penalty or remedy provided for in Subsection 61-1-20(2)(b).

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

610 **61-1-24. Rules, forms, and orders of division.**

611 (1) (a) The division may make, amend, and rescind rules, forms, and orders when

612 necessary to carry out the provisions of this chapter.

613 (b) For the purpose of rules and forms, the division may classify securities, persons,

614 and matters within its jurisdiction, and prescribe different requirements for different classes.

615 (2) (a) The division may not make, amend, or rescind any rule, form, or order unless it

616 finds that the action is in the public interest, for the protection of investors, and consistent

617 with the purposes of this chapter.

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

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

- 623 (i) the form and content of financial statements required under this chapter;
- 624 (ii) the circumstances under which consolidated financial statements shall be filed;
- 625 and

626 (iii) whether or not any required financial statements shall be certified by independent
627 public accountants.

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

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

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

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

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

640 **63-11-17.3. Violations of title and rules.**

641 Unless otherwise provided in this title:

- 642 (1) a violation of any provision of this title is a class B misdemeanor; and
- 643 (2) a violation of any rule of the Board of Parks and Recreation is an infraction.

644 Section 14. Section **63G-3-201** is amended to read:

645 **63G-3-201. When rulemaking is required.**

- 646 (1) Each agency shall:
- 647 (a) maintain a current version of its rules; and
- 648 (b) make it available to the public for inspection during its regular business hours.
- 649 (2) In addition to other rulemaking required by law, each agency shall make rules
- 650 when agency action:
- 651 (a) authorizes, requires, or prohibits an action;
- 652 (b) provides or prohibits a material benefit;
- 653 (c) applies to a class of persons or another agency; and
- 654 (d) is explicitly or implicitly authorized by statute.
- 655 (3) Rulemaking is also required when an agency issues a written interpretation of a
- 656 state or federal legal mandate.
- 657 (4) Rulemaking is not required when:
- 658 (a) agency action applies only to internal agency management, inmates or residents of
- 659 a state correctional, diagnostic, or detention facility, persons under state legal custody, patients
- 660 admitted to a state hospital, members of the state retirement system, or students enrolled in a
- 661 state education institution;
- 662 (b) a standardized agency manual applies only to internal fiscal or administrative
- 663 details of governmental entities supervised under statute;
- 664 (c) an agency issues policy or other statements that are advisory, informative, or
- 665 descriptive, and do not conform to the requirements of Subsections (2) and (3); or
- 666 (d) an agency makes nonsubstantive changes in a rule, except that the agency shall file
- 667 all nonsubstantive changes in a rule with the division.
- 668 (5) (a) A rule shall enumerate any penalty authorized by statute that may result from
- 669 its violation, subject to Subsections (5)(b) and (c).
- 670 (b) A violation of a rule may not be subject to the criminal penalty of a class C
- 671 misdemeanor or greater offense, except as provided under Subsection (5)(c).
- 672 (c) A violation of a rule may be subject to a class C or greater criminal penalty under
- 673 Subsection (5)(a) when:

- 674 (i) authorized by a specific state statute;
- 675 (ii) a state law and programs under that law are established in order for the state to
- 676 obtain or maintain primacy over a federal program; or
- 677 (iii) state civil or criminal penalties established by state statute regarding the program
- 678 are equivalent to or less than corresponding federal civil or criminal penalties.

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

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

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

686 (ii) state agency implementation plans mandated by the federal government for
687 participation in the federal program;

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

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

692 (b) Rules incorporating materials by reference shall:

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

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

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

696 (iv) define specifically what material is incorporated by reference and identify any
697 agency deviations from it.

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

700 (d) The agency shall maintain a complete and current copy of the referenced material
701 available for public review at the agency and at the division.

702 (8) (a) This chapter is not intended to inhibit the exercise of agency discretion within
703 the limits prescribed by statute or agency rule.

704 (b) An agency may enact a rule creating a justified exception to a rule.

705 (9) An agency may obtain assistance from the attorney general to ensure that its rules
706 meet legal and constitutional requirements.

707 Section 15. **Repealer.**

708 This bill repeals:

709 Section **73-18b-3, Violation of regulations -- Misdemeanor.**

710 Section 16. **Coordinating H.B. 32 with H.B. 11 -- Technical renumbering.**

711 If this H.B. 32 and H.B. 11, Recodification of Natural Resources Provisions, both
712 pass, it is the intent of the Legislature that the Office of Legislative Research and General
713 Counsel, in preparing the Utah Code database for publication, shall change Section
714 63-11-17.3, which is repealed and reenacted in this bill, so that the reenacted section reads:

715 "79-4-502. Violations of rules.

716 Unless otherwise provided in this title, a violation of any rule of the Board of Parks and
717 Recreation is an infraction."