



30           **4-16-7**, as last amended by Laws of Utah 1997, Chapter 81  
31           **4-17-3.5**, as last amended by Laws of Utah 1997, Chapter 82  
32           **4-19-2**, as last amended by Laws of Utah 2009, Chapter 260  
33           **4-23-4**, as last amended by Laws of Utah 1996, Chapter 243  
34           **4-24-4**, as last amended by Laws of Utah 1996, Chapter 243  
35           **4-24-10**, as last amended by Laws of Utah 1997, Chapter 302  
36           **4-32-4**, as last amended by Laws of Utah 1997, Chapter 302  
37           **4-32-7**, as last amended by Laws of Utah 2008, Chapter 382  
38           **4-38-8**, as last amended by Laws of Utah 1993, Chapter 64  
39           **7-2-7**, as last amended by Laws of Utah 2000, Chapter 260  
40           **7-7-15**, as last amended by Laws of Utah 1989, Chapter 267  
41           **7-9-30**, as last amended by Laws of Utah 1990, Chapter 93  
42           **7-9-43**, as last amended by Laws of Utah 1996, Chapter 243  
43           **7-9-53**, as last amended by Laws of Utah 2003, Chapter 327  
44           **7-15-2**, as last amended by Laws of Utah 2007, Chapter 87  
45           **8-4-2**, as last amended by Laws of Utah 2000, Chapter 167  
46           **9-3-410**, as last amended by Laws of Utah 2008, Chapter 382  
47           **9-4-202**, as last amended by Laws of Utah 2008, Chapter 382  
48           **9-6-305**, as last amended by Laws of Utah 1996, Chapter 243  
49           **9-6-505**, as renumbered and amended by Laws of Utah 1992, Chapter 241  
50           **9-7-204**, as last amended by Laws of Utah 1996, Chapters 194 and 243  
51           **9-8-705**, as enacted by Laws of Utah 1991, Chapter 121  
52           **11-32-3.5**, as enacted by Laws of Utah 1995, Chapter 235  
53           **11-32-15**, as enacted by Laws of Utah 1987, Chapter 143  
54           **13-11-21**, as enacted by Laws of Utah 1973, Chapter 188  
55           **13-28-2**, as enacted by Laws of Utah 1995, Chapter 196  
56           **16-10a-705**, as enacted by Laws of Utah 1992, Chapter 277  
57           **16-10a-906**, as enacted by Laws of Utah 1992, Chapter 277

- 58           **16-10a-1325**, as enacted by Laws of Utah 1992, Chapter 277
- 59           **17-36-5**, as last amended by Laws of Utah 1996, Chapters 212 and 243
- 60           **19-2-109.2**, as last amended by Laws of Utah 1996, Chapter 243
- 61           **19-2-113**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 62           **19-5-115**, as last amended by Laws of Utah 1998, Chapter 271
- 63           **19-6-108.5**, as enacted by Laws of Utah 1992, Chapter 282
- 64           **19-6-316**, as last amended by Laws of Utah 1995, Chapter 324
- 65           **19-6-318**, as last amended by Laws of Utah 1995, Chapter 324
- 66           **19-6-325**, as enacted by Laws of Utah 1991, Chapter 194
- 67           **19-6-402**, as last amended by Laws of Utah 2005, Chapter 200
- 68           **19-6-703**, as last amended by Laws of Utah 2000, Chapter 1
- 69           **19-6-706**, as enacted by Laws of Utah 1993, Chapter 283
- 70           **20A-1-703**, as last amended by Laws of Utah 1997, Chapter 296
- 71           **20A-3-307**, as enacted by Laws of Utah 1993, Chapter 1
- 72           **20A-7-501**, as renumbered and amended by Laws of Utah 1994, Chapter 272
- 73           **23-14-2.6**, as last amended by Laws of Utah 1997, Chapter 276
- 74           **23-22-2**, as last amended by Laws of Utah 1992, Chapter 86
- 75           **26-18-102**, as last amended by Laws of Utah 1996, Chapter 243
- 76           **26A-1-111**, as last amended by Laws of Utah 2002, Chapter 249
- 77           **31A-5-217.5**, as enacted by Laws of Utah 1992, Chapter 230
- 78           **31A-8-103**, as last amended by Laws of Utah 2004, Chapters 2 and 90
- 79           **31A-15-202**, as enacted by Laws of Utah 1992, Chapter 258
- 80           **31A-16-106**, as repealed and reenacted by Laws of Utah 1992, Chapter 258
- 81           **31A-17-506**, as last amended by Laws of Utah 2002, Chapter 308
- 82           **36-20-2**, as enacted by Laws of Utah 1993, Chapter 282
- 83           **39-1-1**, as last amended by Laws of Utah 1989, Chapter 15
- 84           **40-6-6.5**, as enacted by Laws of Utah 1992, Chapter 34
- 85           **40-6-9**, as last amended by Laws of Utah 1993, Chapter 151

86           **40-10-3**, as last amended by Laws of Utah 1997, Chapter 99  
87           **40-10-18**, as last amended by Laws of Utah 1997, Chapter 49  
88           **41-1a-510**, as enacted by Laws of Utah 1992, Chapter 1 and last amended by Laws of  
89 Utah 1992, Chapter 218  
90           **41-1a-1001**, as last amended by Laws of Utah 1994, Chapter 184  
91           **41-1a-1002**, as last amended by Laws of Utah 1994, Chapter 184  
92           **41-3-106**, as last amended by Laws of Utah 1996, Chapter 243  
93           **48-2a-402**, as last amended by Laws of Utah 1991, Chapter 189  
94           **52-3-1**, as last amended by Laws of Utah 1988, Chapter 25  
95           **53-3-213**, as renumbered and amended by Laws of Utah 1993, Chapter 234  
96           **53-3-225**, as last amended by Laws of Utah 1993, Second Special Session, Chapter 5  
97           **53-3-416**, as renumbered and amended by Laws of Utah 1993, Chapter 234  
98           **53-3-908**, as last amended by Laws of Utah 1996, Chapter 243  
99           **53-5-703**, as last amended by Laws of Utah 1997, Chapters 10 and 280  
100          **53-6-108**, as renumbered and amended by Laws of Utah 1993, Chapter 234  
101          **53-6-302**, as enacted by Laws of Utah 1995, Chapter 134  
102          **53-7-102**, as renumbered and amended by Laws of Utah 1993, Chapter 234  
103          **53-7-222**, as last amended by Laws of Utah 1997, Chapter 82  
104          **53-7-309**, as renumbered and amended by Laws of Utah 1993, Chapter 234  
105          **53-7-315**, as renumbered and amended by Laws of Utah 1993, Chapter 234  
106          **53-10-211**, as renumbered and amended by Laws of Utah 1998, Chapter 263  
107          **53A-26a-305**, as enacted by Laws of Utah 1994, Chapter 306  
108          **53B-12-104**, as enacted by Laws of Utah 1987, Chapter 167  
109          **53B-21-102**, as last amended by Laws of Utah 1997, Chapter 58  
110          **54-7-13.6**, as enacted by Laws of Utah 2009, Chapter 319  
111          **54-8b-13**, as enacted by Laws of Utah 1990, Chapter 141  
112          **56-1-18.5**, as last amended by Laws of Utah 1996, Chapter 122  
113          **57-11-7**, as last amended by Laws of Utah 1995, Chapter 180

- 114           **58-1-201**, as last amended by Laws of Utah 1997, Chapter 10  
115           **58-41-4**, as last amended by Laws of Utah 1993, Chapter 297  
116           **58-54-3**, as last amended by Laws of Utah 1996, Chapters 232 and 243  
117           **58-57-7**, as last amended by Laws of Utah 2006, Chapter 106  
118           **58-73-401**, as last amended by Laws of Utah 1996, Chapter 175 and renumbered and  
119 amended by Laws of Utah 1996, Chapter 253  
120           **59-2-1114**, as last amended by Laws of Utah 2000, Chapter 47  
121           **59-10-503**, as renumbered and amended by Laws of Utah 1987, Chapter 2  
122           **59-10-517**, as renumbered and amended by Laws of Utah 1987, Chapter 2  
123           **59-11-114**, as renumbered and amended by Laws of Utah 1987, Chapter 2  
124           **61-1-10**, as last amended by Laws of Utah 1991, Chapter 161  
125           **62A-3-206**, as last amended by Laws of Utah 1993, Chapter 176  
126           **63A-3-203**, as renumbered and amended by Laws of Utah 1993, Chapter 212  
127           **63A-4-103**, as renumbered and amended by Laws of Utah 1993, Chapter 212  
128           **63A-5-302**, as last amended by Laws of Utah 2008, Chapter 382  
129           **63J-1-602**, as enacted by Laws of Utah 2009, Chapter 368  
130           **63M-9-301**, as renumbered and amended by Laws of Utah 2008, Chapter 382  
131           **67-1-8.1**, as last amended by Laws of Utah 1996, Chapter 243  
132           **67-19a-201**, as last amended by Laws of Utah 1996, Chapters 194 and 243  
133           **67-21-3**, as last amended by Laws of Utah 1992, Chapter 187  
134           **70A-2a-219**, as enacted by Laws of Utah 1990, Chapter 197  
135           **70A-2a-529**, as last amended by Laws of Utah 1993, Chapter 237  
136           **70A-3-206**, as repealed and reenacted by Laws of Utah 1993, Chapter 237  
137           **70A-3-307**, as repealed and reenacted by Laws of Utah 1993, Chapter 237  
138           **70A-3-310**, as enacted by Laws of Utah 1993, Chapter 237  
139           **70A-3-502**, as repealed and reenacted by Laws of Utah 1993, Chapter 237  
140           **70A-4a-507**, as last amended by Laws of Utah 1993, Chapter 237  
141           **70A-8-106**, as repealed and reenacted by Laws of Utah 1996, Chapter 204

- 142            **70A-8-202**, as repealed and reenacted by Laws of Utah 1996, Chapter 204
- 143            **75-2-103**, as repealed and reenacted by Laws of Utah 1998, Chapter 39
- 144            **75-2-302**, as repealed and reenacted by Laws of Utah 1998, Chapter 39
- 145            **75-2-603**, as repealed and reenacted by Laws of Utah 1998, Chapter 39
- 146            **75-2-606**, as repealed and reenacted by Laws of Utah 1998, Chapter 39
- 147            **75-5-410**, as last amended by Laws of Utah 1997, Chapter 161
- 148            **76-2-402**, as last amended by Laws of Utah 1994, Chapter 26
- 149            **76-9-301.1**, as enacted by Laws of Utah 1987, Chapter 22
- 150            **76-10-920**, as last amended by Laws of Utah 1995, Chapter 291
- 151            **76-10-1219**, as last amended by Laws of Utah 1984, Chapter 66
- 152            **76-10-2101**, as enacted by Laws of Utah 1992, Chapter 245
- 153            **77-7-5**, as last amended by Laws of Utah 2002, Chapter 35
- 154            **77-23a-4**, as last amended by Laws of Utah 1994, Chapter 12
- 155            **77-23a-10**, as last amended by Laws of Utah 1994, Chapter 201
- 156            **78B-7-113**, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

159            Section 1. Section **3-1-2** is amended to read:

160            **3-1-2. Definitions.**

161            As used in this act, unless the context or subject matter requires otherwise:

162            [~~(a)~~] (1) "Agricultural products" includes floricultural, horticultural, viticultural,  
 163 forestry, nut, seed, ground stock, dairy, livestock, poultry, bee and any and all farm products.

164            [~~(k)~~] (2) "Articles" means the articles of incorporation.

165            [~~(b)~~] (3) "Association" means a corporation organized under this act, or a similar  
 166 domestic corporation, or a foreign association or corporation if authorized to do business in  
 167 this state, organized under any general or special act as a cooperative association for the  
 168 mutual benefit of its members, as agricultural producers, and which confines its operation to  
 169 purposes authorized by this act and restricts the return on the stock or membership capital and

170 the amount of its business with nonmembers to the limits placed thereon by this act for  
171 associations organized hereunder.

172 [~~(j)~~] (4) "Board" means the board of directors.

173 [~~(e)~~] (5) "Domestic associations" means an association or corporation formed under  
174 the laws of this state.

175 [~~(d)~~] (6) "Foreign association" means an association or corporation not formed under  
176 the laws of this state.

177 [~~(g)~~] (7) "Member" includes the holder of a membership of which there shall be but  
178 one class, in an association without stock and the holder of common stock in an association  
179 organized with stock.

180 [~~(i)~~] (8) "Person" includes an individual, a partnership, a corporation and an  
181 association.

182 [~~(h)~~] (9) "Producer" means a person who produces agricultural products, or an  
183 association of such persons.

184 [~~(e)~~] (10) (a) "This act" means the "Uniform Agricultural Cooperative Association  
185 Act."

186 [~~(f)~~] (b) Associations shall be classified as and deemed to be nonprofit corporations,  
187 inasmuch as their primary object is not to pay dividends on invested capital, but to render  
188 service and provide means and facilities by or through which the producers of agricultural  
189 products may receive a reasonable and fair return for their products.

190 Section 2. Section **3-1-4** is amended to read:

191 **3-1-4. Purposes.**

192 Such association may be organized for the purpose of engaging in any cooperative  
193 activity for producers of agricultural products in connection with:

194 [~~(a)~~] (1) producing, assembling, marketing, buying or selling agricultural products, or  
195 harvesting, preserving, drying, processing, manufacturing, blending, canning, packing,  
196 ginning, grading, storing, warehousing, handling, shipping, or utilizing such products, or  
197 manufacturing or marketing the by-products thereof;

- 198           ~~[(b)]~~ (2) seed and crop improvement, and soil conservation and rehabilitation;
- 199           ~~[(c)]~~ (3) manufacturing, buying or supplying to its members and others, machinery,
- 200 equipment, feed, fertilizer, coal, gasoline and other fuels, oils and other lubricants, seeds, and
- 201 all other agricultural and household supplies;
- 202           ~~[(d)]~~ (4) generating and distributing electrical energy and furnishing telephone service
- 203 to its members and others;
- 204           ~~[(e)]~~ (5) performing or furnishing business or educational services, on a co-operative
- 205 basis, for or to its members; or
- 206           ~~[(f)]~~ (6) financing any of the above enumerated activities.

207           Section 3. Section **3-1-8** is amended to read:

208           **3-1-8. Bylaws.**

209           The members of the association shall adopt bylaws not inconsistent with law or the  
210 articles, and they may alter and amend the same from time to time. Bylaws may be adopted,  
211 amended or repealed, at any regular meeting, or at any special meeting called for that purpose,  
212 by a majority vote of the members voting thereon. The bylaws may provide for:

- 213           ~~[(a)]~~ (1) the time, place and manner of calling and conducting meetings of the
- 214 members, and the number of members that shall constitute a quorum;
- 215           ~~[(b)]~~ (2) the manner of voting and the condition upon which members may vote at
- 216 general and special meetings and by mail or by delegates elected by district groups or other
- 217 associations;
- 218           ~~[(c)]~~ (3) subject to any provision thereon in the articles and in this act, the number,
- 219 qualifications, compensation, duties and terms of office of directors and officers; the time of
- 220 their election and the mode and manner of giving notice thereof;
- 221           ~~[(d)]~~ (4) the time, place and manner for calling and holding meetings of the directors
- 222 and executive committee, and the number that shall constitute a quorum;
- 223           ~~[(e)]~~ (5) rules consistent with law and the articles for the management of the
- 224 association, the establishment of voting districts, the making of contracts, the issuance,
- 225 retirement, and transfer of stock, and the relative rights, interests and preferences of members

226 and shareholders;

227 ~~[(f)]~~ (6) penalties for violations of the bylaws; and

228 ~~[(g)]~~ (7) such additional provisions as shall be deemed necessary for the carrying out  
229 of the purposes of this act.

230 Section 4. Section **3-1-19** is amended to read:

231 **3-1-19. Association not in restraint of trade -- Right to disseminate information.**

232 ~~[(a)]~~ (1) No association complying with the terms hereof shall be deemed to be a  
233 conspiracy, or a combination in restraint of trade, or an illegal monopoly; or be deemed to  
234 have been formed for the purpose of lessening competition or fixing prices arbitrarily, nor  
235 shall the contracts between the association and its members, or any agreement authorized in  
236 this act, be construed as an unlawful restraint of trade, or as part of a conspiracy or  
237 combination to accomplish an improper or illegal purpose or act.

238 ~~[(b)]~~ (2) An association may acquire, exchange, interpret and disseminate to its  
239 members, to other cooperative associations, and otherwise, past, present, and prospective crop,  
240 market, statistical, economic, and other similar information relating to the business of the  
241 association, either directly or through an agent created or selected by it or by other associations  
242 acting in conjunction with it.

243 ~~[(c)]~~ (3) An association may advise its members in respect to the adjustment of their  
244 current and prospective production of agricultural commodities and its relation to the  
245 prospective volume of consumption, selling prices and existing or potential surplus, to the end  
246 that every market may be served from the most convenient productive areas under a program  
247 of orderly marketing that will assure adequate supplies without undue enhancement of prices  
248 or the accumulation of any undue surplus.

249 Section 5. Section **3-1-21** is amended to read:

250 **3-1-21. Existing associations continued under chapter.**

251 ~~[(a)]~~ (1) This act shall be applicable to any existing association formed under any law  
252 of this state providing for the incorporation of agricultural cooperative associations, for a  
253 purpose for which an association may be formed under this act, and particularly to

254 associations formed under the Agricultural Cooperative Association Act, and all such  
255 associations shall have and may exercise and enjoy all the rights, privileges, authority, powers,  
256 and capacity heretofore granted, and all such associations shall have and may also exercise  
257 and enjoy all the rights, privileges, authority, powers, and capacity granted or afforded under  
258 and in pursuance of this act to the same extent and effect as though organized hereunder.

259 ~~[(b)]~~ (2) Any cooperative association heretofore organized by producers of agricultural  
260 products under ~~[Title 3,]~~ Chapter 1, General Provisions Relating to Agricultural Cooperative  
261 Associations, for purposes in this act provided, may bring itself under and within the terms of  
262 this act as if organized hereunder and may thereafter operate in pursuance of the terms hereof,  
263 and may exercise and enjoy all the rights, privileges, authority, powers, and capacity afforded  
264 and provided for under the terms of this act, by filing with the Division of Corporations and  
265 Commercial Code, a sworn statement signed by the president and secretary of such  
266 association, to the effect that by resolution of the board of directors of such association duly  
267 adopted, such association has elected to bring itself within the terms of this act.

268 Section 6. Section **3-1-45** is amended to read:

269 **3-1-45. Sale, mortgage, and lease of assets.**

270 (1) (a) The association may sell, lease, exchange, mortgage, pledge, dispose of, or  
271 repay a debt with any of the property and assets of an association, if this action is made in the  
272 usual and regular course of business of the association.

273 (b) The action taken under Subsection (1)(a) may be made upon the terms and  
274 conditions and for consideration as are authorized by the board of directors.

275 (2) Consideration may include money or property, real or personal, including shares of  
276 any other association or corporation, domestic or foreign, as is authorized by the association's  
277 board of directors.

278 (3) If the articles of incorporation provide for the mortgage or pledge of the property of  
279 the association by its directors, then the mortgage or pledge of all, or substantially all, of the  
280 property or assets, with or without the good will of an association, is considered to be made in  
281 the usual and regular course of its business.

282 (4) If the action taken under Subsection (1) is not made in the usual regular course of  
283 the association's business, the action may still be taken if the following requirements are  
284 complied with:

285 (a) The board of directors shall adopt a resolution recommending the action, and the  
286 members shall vote at an annual or special meeting of members.

287 (b) Written or printed notice of the meeting shall be given to each member entitled to  
288 vote as provided in this chapter.

289 (c) (i) At the meeting in which the action is considered, the members may authorize  
290 the action described in Subsection (1) and set the terms, or may authorize the board of  
291 directors to set the terms, conditions, and consideration to be received by the association.

292 (ii) A two-thirds majority vote of the members is required to approve the action  
293 specified in Subsection (1).

294 (d) The board of directors may abandon the action, even if approved by the members,  
295 subject to the rights of third parties under any related contracts, without further action or  
296 approval by members.

297 Section 7. Section **4-1-8** is amended to read:

298 **4-1-8. General definitions.**

299 Subject to additional definitions contained in the chapters of this title which are  
300 applicable to specific chapters, as used in this title:

301 (1) "Agriculture" means the science and art of the production of plants and animals  
302 useful to man including the preparation of plants and animals for human use and disposal by  
303 marketing or otherwise.

304 (2) "Agricultural product" or "product of agriculture" means any product which is  
305 derived from agriculture, including any product derived from aquaculture as defined in  
306 Section 4-37-103.

307 (3) "Commissioner" means the commissioner of agriculture and food.

308 (4) "Department" means the Department of Agriculture and Food created [~~under Title~~  
309 4;] in Chapter 2, Department - State Chemist - Enforcement.

310 (5) "Dietary supplement" has the meaning defined in the Federal Food, Drug, and  
311 Cosmetic Act, 21 U.S.C. Sec. 301 et seq.

312 (6) "Livestock" means cattle, sheep, goats, swine, horses, mules, poultry, domesticated  
313 elk as defined in Section 4-39-102, or any other domestic animal or domestic furbearer raised  
314 or kept for profit.

315 (7) "Organization" means a corporation, government or governmental subdivision or  
316 agency, business trust, estate, trust, partnership, association, two or more persons having a  
317 joint or common interest, or any other legal entity.

318 (8) "Person" means a natural person or individual, corporation, organization, or other  
319 legal entity.

320 Section 8. Section **4-8-4** is amended to read:

321 **4-8-4. Department functions, powers, and duties.**

322 The department has and shall exercise the following functions, powers, and duties, in  
323 addition to those specified in Chapter 1 [~~of this code~~], Short Title and General Provisions:

324 (1) general supervision over the marketing, sale, trade, advertising, storage, and  
325 transportation practices, used in buying and selling products of agriculture in Utah;

326 (2) conduct and publish surveys and statistical analyses with its own resources or with  
327 the resources of others through contract, regarding the cost of production for products of  
328 agriculture, including transportation, processing, storage, advertising, and marketing costs;  
329 regarding market locations, demands, and prices for such products; and regarding market  
330 forecasts;

331 (3) assist and encourage producers of products of agriculture in controlling current and  
332 prospective production and market deliveries in order to stabilize product prices at prices  
333 which assure reasonable profits for producers and at the same time ensure adequate market  
334 supplies; and

335 (4) actively solicit input from the public and from interested groups or associations,  
336 through public hearings or otherwise, to assist in making fair determinations with respect to  
337 the production, marketing, and consumption of products of agriculture.

338 Section 9. Section **4-16-2** is amended to read:

339 **4-16-2. Definitions.**

340 As used in this chapter:

341 (1) "Advertisement" means any representation made relative to seeds, plants, bulbs, or  
342 ground stock other than those on the label of a seed container, disseminated in any manner.

343 (2) "Agricultural seeds" mean seeds of grass, forage plants, cereal crops, fiber crops,  
344 sugar beets, seed potatoes, or any other kinds of seed or mixtures of seed commonly known  
345 within this state as agricultural or field seeds.

346 (3) "Flower seeds" mean seeds of herbaceous plants grown for their blooms,  
347 ornamental foliage, or other ornamental plants commonly known and sold under the name of  
348 flower seeds in this state.

349 (4) "Foundation seed," "registered seed," or "certified seed" means seed that is  
350 produced and labeled in accordance with procedures officially recognized by a seed certifying  
351 agency approved and accredited in this state.

352 (5) (a) "Hybrid" means the first generation seed of a cross produced by controlling  
353 pollination and by combining:

354 (i) two or more inbred lines;

355 (ii) one inbred or a single cross with an open-pollinated variety; or

356 (iii) two varieties or species, except open-pollinated varieties of corn, *Zea mays*.

357 (b) The second generation and subsequent generations from the crosses referred to in  
358 Subsection (5)(a) are not to be regarded as hybrids.

359 (c) Hybrid designations shall be treated as variety names.

360 (6) "Kind" means one or more related species or subspecies of seed which singly or  
361 collectively is known by one name, for example, corn, oats, alfalfa, and timothy.

362 (7) (a) "Label" means any written, printed, or graphic representation accompanying  
363 and pertaining to any seeds, plants, bulbs, or ground stock whether in bulk or in containers.

364 (b) "Label" includes representations on invoices, bills, and letterheads.

365 (8) "Lot" means a definite quantity of seed identified by a number or other mark, every

366 part or bag of which is uniform within recognized tolerances.

367 (9) "Noxious-weed seeds" mean weed seeds declared noxious by the commissioner.

368 (10) "Pure seed," "germination," or other terms in common use for testing seeds for  
369 purposes of labeling shall have ascribed to them the meaning set forth for such terms in the  
370 most recent edition of "Rules for Seed Testing" published by the Association of Official Seed  
371 Analysts.

372 (11) "Seeds for sprouting" means seeds sold for sprouting for salad or culinary  
373 purposes.

374 (12) "Sowing" means the placement of agricultural seeds, vegetable seeds, flower  
375 seeds, tree and shrub seeds, or seeds for sprouting in a selected environment for the purpose of  
376 obtaining plant growth.

377 (13) "Treated" means seed that has received an application of a substance to reduce,  
378 control, or repel certain disease organisms, fungi, insects or other pests which may attack the  
379 seed or its seedlings, or has received some other treatment to improve its planting value.

380 (14) "Tree and shrub seeds" mean seeds of woody plants commonly known and sold  
381 under the name of tree and shrub seeds in this state.

382 (15) "Variety" means a subdivision of a kind characterized by growth, yield, plant,  
383 fruit, seed, or other characteristic, which differentiate it from other plants of the same kind.

384 (16) "Vegetable seeds" mean seeds of crops grown in gardens or on truck farms that  
385 are generally known and sold under the name of vegetable seeds, plants, bulbs, and ground  
386 stocks in this state.

387 (17) "Weed seeds" mean seeds of any plant generally recognized as a weed within this  
388 state.

389 Section 10. Section **4-16-7** is amended to read:

390 **4-16-7. Inspection -- Samples -- Analysis -- Seed testing facilities to be**  
391 **maintained -- Rules to control offensive seeds -- Notice of offending seeds -- Warrants.**

392 (1) (a) The department shall periodically enter public or private premises from which  
393 seeds are distributed, offered, or exposed for sale to sample, inspect, analyze, and test

394 agricultural, vegetable, flower, or tree and shrub seeds or seeds for sprouting distributed within  
395 this state to determine compliance with this chapter.

396 (b) To perform the duties specified in Subsection (1)(a), the department shall:

397 (i) establish and maintain facilities for testing the purity and germination of seeds;

398 (ii) prescribe by rule uniform methods for sampling and testing seeds; and

399 (iii) establish fees for rendering service.

400 (2) The department shall prescribe by rule weed seeds and noxious weed seeds and fix  
401 the tolerances permitted for those offensive seeds.

402 (3) If a seed sample, upon analysis, fails to comply with this chapter, the department  
403 shall give written notice to that effect to any person who is distributing, offering, or exposing  
404 the seeds for sale. Nothing in this chapter, however, shall be construed as requiring the  
405 department to refer minor violations for criminal prosecution or for the institution of  
406 condemnation proceedings if it believes the public interest will best be served through  
407 informal action.

408 (4) The department may proceed immediately, if admittance is refused, to obtain an ex  
409 parte warrant from the nearest court of competent jurisdiction to allow entry upon the premises  
410 for the purpose of making inspections and obtaining samples.

411 Section 11. Section **4-17-3.5** is amended to read:

412 **4-17-3.5. Creation of State Weed Committee -- Membership -- Powers and duties**  
413 **-- Expenses.**

414 (1) There is created a State Weed Committee composed of five members, one member  
415 representing each of the following:

416 (a) the Department of Agriculture and Food;

417 (b) the Utah State University Agricultural Experiment Station;

418 (c) the Utah State University Extension Service;

419 (d) the Utah Association of Counties; and

420 (e) private agricultural industry.

421 (2) The commissioner shall select the members of the committee from those

422 nominated by each of the respective groups or agencies following approval by the Agricultural  
423 Advisory Board.

424 (3) (a) Except as required by Subsection (3)(b), as terms of current committee  
425 members expire, the commissioner shall appoint each new member or reappointed member to  
426 a four-year term.

427 (b) Notwithstanding the requirements of Subsection (3)(a), the commissioner shall, at  
428 the time of appointment or reappointment, adjust the length of terms to ensure that the terms  
429 of committee members are staggered so that approximately half of the committee is appointed  
430 every two years.

431 (4) (a) Members may be removed by the commissioner for cause.

432 (b) When a vacancy occurs in the membership for any reason, the replacement shall be  
433 appointed for the unexpired term.

434 (5) The State Weed Committee shall:

435 (a) confer and advise on matters pertaining to the planning, implementation, and  
436 administration of the state noxious weed program;

437 (b) recommend names for membership on the committee; and

438 (c) serve as members of the executive committee of the Utah Weed Control  
439 Association.

440 (6) (a) (i) Members who are not government employees shall receive no compensation  
441 or benefits for their services, but may receive per diem and expenses incurred in the  
442 performance of the member's official duties at the rates established by the Division of Finance  
443 under Sections 63A-3-106 and 63A-3-107.

444 (ii) Members may decline to receive per diem and expenses for their service.

445 (b) (i) State government officer and employee members who do not receive salary, per  
446 diem, or expenses from their agency for their service may receive per diem and expenses  
447 incurred in the performance of their official duties from the committee at the rates established  
448 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

449 (ii) State government officer and employee members may decline to receive per diem

450 and expenses for their service.

451 (c) (i) Higher education members who do not receive salary, per diem, or expenses  
452 from the entity that they represent for their service may receive per diem and expenses  
453 incurred in the performance of their official duties from the committee at the rates established  
454 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

455 (ii) Higher education members may decline to receive per diem and expenses for their  
456 service.

457 (d) (i) Local government members who do not receive salary, per diem, or expenses  
458 from the entity that they represent for their service may receive per diem and expenses  
459 incurred in the performance of their official duties at the rates established by the Division of  
460 Finance under Sections 63A-3-106 and 63A-3-107.

461 (ii) Local government members may decline to receive per diem and expenses for their  
462 service.

463 Section 12. Section **4-19-2** is amended to read:

464 **4-19-2. Department authorized to approve and make grants and loans, acquire**  
465 **property, or lease or operate property.**

466 The department, in conjunction with the administration of the rural rehabilitation  
467 program, may:

468 (1) approve and make a loan to a farm or agricultural cooperative association  
469 regulated under Title 3, [~~General Provisions Relating to Agricultural Associations~~] Uniform  
470 Agricultural Cooperative Association Act, subject to Section 4-19-3, including:

471 (a) taking security for the loan through a mortgage, trust deed, pledge, or other  
472 security device;

473 (b) purchasing a promissory note, real estate contract, mortgage, trust deed, or other  
474 instrument or evidence of indebtedness; and

475 (c) collecting, compromising, canceling, or adjusting a claim or obligation arising out  
476 of the administration of the rural rehabilitation program;

477 (2) purchase or otherwise obtain property in which the department has acquired an

478 interest on account of a mortgage, trust deed, lien, pledge, assignment, judgment, or other  
479 means at any execution or foreclosure sale;

480 (3) operate or lease, if necessary to protect its investment, property in which it has an  
481 interest or sell or otherwise dispose of the property; and

482 (4) approve and make an education loan or an education grant to an individual for the  
483 purpose of attending a vocational school, college, or university to obtain additional education,  
484 qualifications, or skills.

485 Section 13. Section ~~4-23-4~~ is amended to read:

486 **4-23-4. Agricultural and Wildlife Damage Prevention Board created --**  
487 **Composition -- Appointment -- Terms -- Vacancies -- Compensation.**

488 (1) There is created an Agricultural and Wildlife Damage Prevention Board composed  
489 of the commissioner and the director of the Division of Wildlife Resources, who shall serve,  
490 respectively, as the board's chair and vice chair, together with seven other members appointed  
491 by the governor to four-year terms of office as follows:

- 492 (a) one sheep producer representing wool growers of the state;
- 493 (b) one cattle producer representing range cattle producers of the state;
- 494 (c) one person from the United States Department of Agriculture;
- 495 (d) one agricultural landowner representing agricultural landowners of the state;
- 496 (e) one person representing wildlife interests in the state;
- 497 (f) one person from the United States Forest Service; and
- 498 (g) one person from the United States Bureau of Land Management.

499 (2) Appointees' term of office shall commence June 1.

500 (3) (a) Except as required by Subsection (3)(b), as terms of current board members  
501 expire, the governor shall appoint each new member or reappointed member to a four-year  
502 term.

503 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the  
504 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
505 board members are staggered so that approximately half of the board is appointed every two

506 years.

507 (4) When a vacancy occurs in the membership for any reason, the replacement shall be  
508 appointed for the unexpired term.

509 (5) Attendance of five members at a duly called meeting shall constitute a quorum for  
510 the transaction of official business. The board shall convene at the times and places  
511 prescribed by the chair or vice chair.

512 (6) (a) (i) Members who are not government employees shall receive no compensation  
513 or benefits for their services, but may receive per diem and expenses incurred in the  
514 performance of the member's official duties at the rates established by the Division of Finance  
515 under Sections 63A-3-106 and 63A-3-107.

516 (ii) Members may decline to receive per diem and expenses for their service.

517 (b) (i) State government officer and employee members who do not receive salary, per  
518 diem, or expenses from their agency for their service may receive per diem and expenses  
519 incurred in the performance of their official duties from the board at the rates established by  
520 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

521 (ii) State government officer and employee members may decline to receive per diem  
522 and expenses for their service.

523 Section 14. Section ~~4-24-4~~ is amended to read:

524 **4-24-4. Livestock Brand Board created -- Composition -- Terms -- Removal --**  
525 **Quorum for transaction of business -- Compensation -- Duties.**

526 (1) There is created the Livestock Brand Board consisting of seven members  
527 appointed by the governor as follows:

528 (a) four cattle ranchers recommended by the Utah Cattlemen's Association, one of  
529 whom shall be a feeder operator;

530 (b) one dairyman recommended by the Utah Dairymen's Association;

531 (c) one livestock market operator recommended jointly by the Utah Cattlemen's  
532 Association and the Utah Dairymen's Association and the Livestock Market Association; and

533 (d) one horse breeder recommended by the Utah Horse Council.

534 (2) If a nominee is rejected by the governor, the recommending association shall  
535 submit another nominee.

536 (3) (a) Except as required by Subsection (3)(b), as terms of current board members  
537 expire, the governor shall appoint each new member or reappointed member to a four-year  
538 term.

539 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the  
540 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
541 board members are staggered so that approximately half of the board is appointed every two  
542 years.

543 (4) (a) A member may, at the discretion of the governor, be removed at the request of  
544 the association that recommended the appointment.

545 (b) When a vacancy occurs in the membership for any reason, the replacement shall be  
546 appointed for the unexpired term.

547 (5) One member elected by the board shall serve as chair for a term of one year and be  
548 responsible for the call and conduct of meetings of the Livestock Brand Board. Attendance of  
549 a simple majority of the members at a duly called meeting shall constitute a quorum for the  
550 transaction of official business.

551 (6) (a) Members shall receive no compensation or benefits for their services, but may  
552 receive per diem and expenses incurred in the performance of the member's official duties at  
553 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

554 (b) Members may decline to receive per diem and expenses for their service.

555 (7) The Livestock Brand Board with the cooperation of the department shall direct the  
556 procedures and policies to be followed in administering and enforcing this chapter.

557 Section 15. Section **4-24-10** is amended to read:

558 **4-24-10. Livestock on open range or outside enclosure to be marked or branded**

559 **-- Cattle upon transfer of ownership to be marked or branded -- Exceptions.**

560 (1) (a) Except as provided in Subsections (1)(b) and [(+) (c)], no livestock shall forage  
561 upon an open range in this state or outside an enclosure unless they bear a brand or mark

562 recorded in accordance with this chapter.

563 (b) Swine, goats, and unweaned calves or colts are not required to bear a brand or  
564 mark to forage upon open range or outside an enclosure.

565 (c) Domesticated elk may not forage upon open range or outside an enclosure under  
566 any circumstances as provided in Chapter 39 [~~of this title~~], Domesticated Elk Act.

567 (2) (a) Except as provided in Subsection (2)(b), all cattle, upon sale or other transfer of  
568 ownership, shall be branded or marked with the recorded brand or mark of the new owner  
569 within 30 days after transfer of ownership.

570 (b) No branding or marking, upon change of ownership, is required within the 30-day  
571 period for:

572 (i) unweaned calves;

573 (ii) registered or certified cattle;

574 (iii) youth project calves, if the number transferred is less than five; or

575 (iv) dairy cattle held on farms.

576 Section 16. Section **4-32-4** is amended to read:

577 **4-32-4. License required to operate slaughterhouse -- Slaughtering livestock**  
578 **except in slaughterhouse prohibited -- Exceptions -- Violation a misdemeanor.**

579 (1) No person shall operate a slaughterhouse in this state without a license issued by  
580 the department, nor shall any person, except in a licensed slaughterhouse, slaughter livestock  
581 as a business or assist other persons in the slaughter of livestock except as otherwise provided  
582 in Subsection (2) or (3).

583 (2) Except as provided in Subsection (3), a person who raises his own livestock or an  
584 employee of that person may slaughter livestock without a farm custom slaughter permit if:

585 (a) the livestock is slaughtered on property owned by that person;

586 (b) the livestock product derived from the slaughtered animal is consumed exclusively  
587 by that person or his immediate family, regular employees of that person, or nonpaying guests;  
588 and

589 (c) the livestock product is marked "Not For Sale."

590 (3) Domesticated elk may only be slaughtered as provided in this chapter and in  
591 Chapter 39 ~~[of this title]~~, Domesticated Elk Act.

592 (4) Farm custom slaughter may be performed by a person who holds a valid farm  
593 custom slaughter permit.

594 (5) Any person who violates this section, except as otherwise provided in Subsection  
595 ~~[(5)]~~ (6), is guilty of a class C misdemeanor.

596 (6) Any person who offers for sale or sells any uninspected livestock product is guilty  
597 of a class B misdemeanor.

598 Section 17. Section ~~4-32-7~~ is amended to read:

599 **4-32-7. Mandatory functions, powers, and duties of department prescribed.**

600 The department shall make rules pursuant to Title 63G, Chapter 3, Utah Administrative  
601 Rulemaking Act, regarding the following functions, powers, and duties, in addition to those  
602 specified in ~~[Title 4,]~~ Chapter 1, ~~[Utah Agricultural Code]~~ Short Title and General Provisions,  
603 for the administration and enforcement of this chapter:

604 (1) The department shall require antemortem and postmortem inspections, quarantine,  
605 segregation, and reinspections by inspectors appointed for those purposes with respect to the  
606 slaughter of livestock and poultry and the preparation of livestock and poultry products at  
607 official establishments, except as provided in Subsection ~~4-32-8(13)~~.

608 (2) The department shall require that:

609 (a) livestock and poultry be identified for inspection purposes;

610 (b) livestock or poultry products, or their containers be marked or labeled as:

611 (i) "Utah Inspected and Passed" if, upon inspection, the products are found to be  
612 unadulterated; and

613 (ii) "Utah Inspected and Condemned" if, upon inspection, the products are found to be  
614 adulterated; and

615 (c) condemned products, which otherwise would be used for human consumption, be  
616 destroyed under the supervision of an inspector.

617 (3) The department shall prohibit or limit livestock products, poultry products, or

618 other materials not prepared under inspection procedures provided in this chapter, from being  
619 brought into official establishments.

620 (4) The department shall require that labels and containers for livestock and poultry  
621 products:

622 (a) bear all information required under Section 4-32-3 if the product leaves the official  
623 establishment; and

624 (b) be approved prior to sale or transportation.

625 (5) For official establishments required to be inspected under Subsection (1), the  
626 department shall:

627 (a) prescribe sanitary standards;

628 (b) require experts in sanitation or other competent investigators to investigate sanitary  
629 conditions; and

630 (c) refuse to provide inspection service if the sanitary conditions allow adulteration of  
631 any livestock or poultry product.

632 (6) (a) The department shall require that any person engaged in a business referred to  
633 in Subsection (6)(b) shall:

634 (i) keep accurate records disclosing all pertinent business transactions;

635 (ii) allow inspection of the business premises at reasonable times and examination of  
636 inventory, records, and facilities; and

637 (iii) allow inventory samples to be taken after payment of their fair market value.

638 (b) Subsection (6)(a) shall refer to any person who:

639 (i) slaughters livestock or poultry;

640 (ii) prepares, freezes, packages, labels, buys, sells, transports, or stores any livestock or  
641 poultry products for human or animal consumption;

642 (iii) renders livestock or poultry; or

643 (iv) buys, sells, or transports any dead, dying, disabled, or diseased livestock or  
644 poultry, or parts of their carcasses that died by a method other than slaughter.

645 (7) (a) The department shall:

646 (i) adopt by reference rules and regulations under federal acts with changes that the  
647 commissioner considers appropriate to make the rules and regulations applicable to operations  
648 and transactions subject to this chapter; and

649 (ii) promulgate any other rules considered necessary for the efficient execution of the  
650 provisions of this chapter, including rules of practice providing an opportunity for hearing in  
651 connection with the issuance of orders under Subsection (5) or under Subsection 4-32-8(1),  
652 (2), or (3) and prescribing procedures for proceedings in these cases.

653 (b) These procedures shall not preclude requiring that a label or container be withheld  
654 from use, or inspection be refused under Subsections (1) and (5), or Subsection 4-32-8(3),  
655 pending issuance of a final order in the proceeding.

656 (8) (a) To prevent the inhumane slaughtering of livestock and poultry, inspectors shall  
657 be appointed to examine and inspect methods of handling and slaughtering livestock and  
658 poultry.

659 (b) Inspection of new slaughtering establishments may be refused or temporarily  
660 suspended if livestock or poultry have been slaughtered or handled by any method not in  
661 accordance with the Humane Methods of Slaughter Act of 1978, Public Law 95-445.

662 (9) (a) The department shall require all livestock and poultry showing symptoms of  
663 disease during antemortem inspection, performed by an inspector appointed for that purpose,  
664 to be set apart and slaughtered separately from other livestock and poultry.

665 (b) When slaughtered, the carcasses of livestock and poultry shall be subject to careful  
666 examination and inspection in accordance with rules prescribed by the commissioner.

667 Section 18. Section **4-38-8** is amended to read:

668 **4-38-8. Stewards.**

669 (1) (a) The commission may delegate authority to enforce its rules and this chapter to  
670 three stewards employed by the commission at each recognized race meet. At least one of them  
671 shall be selected by the commission.

672 (b) Stewards shall exercise reasonable and necessary authority as designated by rules  
673 of the commission including the following:

- 674 (i) enforce rules of the commission;
- 675 (ii) rule on the outcome of events;
- 676 (iii) evict from an event any person who has been convicted of bookmaking, bribery,  
677 or attempts to alter the outcome of any race through tampering with any animal that is not in  
678 accordance with this chapter or the rules of the commission;
- 679 (iv) levy fines not to exceed \$2,500 for violations of rules of the commission, which  
680 fines shall be reported daily and paid to the commission within 48 hours of imposition and  
681 notice;
- 682 (v) suspend licenses not to exceed one year for violations of rules of the commission,  
683 which suspension shall be reported to the commission daily; and
- 684 (vi) recommend that the commission impose fines or suspensions greater than  
685 permitted by Subsections (1)(b)(iv) and (v).
- 686 (2) If a majority of the stewards agree, they may impose fines or suspend licenses.
- 687 (3) (a) Any fine or license suspension imposed by a steward may be appealed in  
688 writing to the commission within five days after its imposition. The commission may affirm or  
689 reverse the decision of a steward or may increase or decrease any fine or suspension.
- 690 (b) A fine imposed by the commission under this section or Section 4-38-9 may not  
691 exceed \$10,000.
- 692 (c) Suspensions of a license may be for any period of time but shall be commensurate  
693 with the seriousness of the offense.

694 Section 19. Section **7-2-7** is amended to read:

695 **7-2-7. Stay of proceedings against institution -- Relief.**

- 696 (1) Except as otherwise specified, a taking of an institution or other person by the  
697 commissioner or a receiver or liquidator appointed by the commissioner under this chapter  
698 operates as a stay of the commencement or continuation of the following with respect to the  
699 institution:
  - 700 (a) any judicial, administrative, or other proceeding, including service of process;
  - 701 (b) the enforcement of any judgment;

- 702 (c) any act to obtain possession of property;
- 703 (d) any act to create, perfect, or enforce any lien against property of the institution;
- 704 (e) any act to collect, assess, or recover a claim against the institution; and
- 705 (f) the setoff of any debt owing to the institution against any claim against the
- 706 institution.
- 707 (2) Except as provided in Subsections (3), (4), (5), and (8):
- 708 (a) the stay of any action against property of the institution continues until the
- 709 institution has no interest in the property; and
- 710 (b) the stay of any other action continues until the earlier of when the case is:
- 711 (i) closed; or
- 712 (ii) dismissed.
- 713 (3) On the motion of any party in interest and after notice and a hearing, the court may
- 714 terminate, annul, modify, condition, or otherwise grant relief from the stay:
- 715 (a) for cause, including the lack of adequate protection of an interest in property of the
- 716 party in interest; or
- 717 (b) with respect to a stay of any action against property if:
- 718 (i) the institution does not have an equity interest in the property; and
- 719 (ii) the property would have no value in a reorganization or liquidation of the
- 720 institution.
- 721 (4) (a) Thirty days after a request under Subsection (3) for relief from the stay of any
- 722 act against property of the institution, the stay is terminated with respect to the party in interest
- 723 making the request unless the court, after notice and a hearing, orders the stay continued in
- 724 effect pending the conclusion of, or as a result of, a final hearing and determination under
- 725 Subsection (3).
- 726 (b) A hearing under this Subsection (4) may be:
- 727 (i) a preliminary hearing; or
- 728 (ii) consolidated with the final hearing under Subsection (3).
- 729 (c) The court shall order the stay continued in effect pending the conclusion of the

730 final hearing under Subsection (3) if there is a reasonable likelihood that the party opposing  
731 relief from the stay will prevail at the conclusion of the final hearing.

732 (d) If the hearing under this Subsection (4) is a preliminary hearing, the final hearing  
733 shall be commenced not later than 30 days after the conclusion of the preliminary hearing.

734 (5) Upon request of a party in interest, the court, with or without a hearing, may grant  
735 relief from the stay provided under Subsection (1) to the extent necessary to prevent  
736 irreparable damage to the interest of an entity in property, if the interest will or could be  
737 damaged before there is an opportunity for notice and a hearing under Subsection (3) or (4).

738 (6) In any hearing under Subsection (3) or (4) concerning relief from the stay of any  
739 act under Subsection (1):

740 (a) the party requesting relief has the burden of proof on the issue of the institution's  
741 equity in property; and

742 (b) the party opposing relief has the burden of proof on all other issues.

743 (7) A person injured by any willful violation of a stay provided by this section shall  
744 recover actual damages, including costs and attorneys' fees and, when appropriate, may  
745 recover punitive damages.

746 (8) Nothing in this section prevents the holder or the trustee for any holder of any  
747 bond, note, debenture, or other evidence of indebtedness issued by a city, county, municipal  
748 corporation, commission, district, authority, agency, subdivision, or other public body  
749 pursuant to Title 11, Chapter 17, Utah Industrial Facilities and Development Act, from  
750 exercising any rights it may have to sell, take possession of, foreclose upon, or enforce a lien  
751 against or security interest in property of an institution that has been pledged, assigned, or  
752 mortgaged as collateral for that bond, note, debenture, or evidence of indebtedness, or as  
753 collateral for a letter of credit or other instrument issued in support of that bond, note,  
754 debenture, or evidence of indebtedness.

755 (9) Notice of any hearing under this section shall be served as provided in Subsection  
756 7-2-9(6).

757 Section 20. Section **7-7-15** is amended to read:

758           **7-7-15. Fiduciary relationship of directors and officers to association --**  
759 **Disclosure requirements -- Prohibitions -- Violations as misdemeanors.**

760           (1) (a) Directors and officers occupy fiduciary relationships to the association of  
761 which they are directors or officers. No director or officer may engage or participate, directly  
762 or indirectly, in any business or transaction conducted on behalf of or involving the  
763 association, which would result in a conflict of his own personal interests with those of the  
764 association which he serves, unless:

765                   (i) the business or transactions are conducted in good faith and are honest, fair, and  
766 reasonable to the association;

767                   (ii) a full disclosure of the business or transactions and the nature of the director's or  
768 officer's interest is made to the board of directors;

769                   (iii) the business or transactions are approved in good faith by the board of directors,  
770 any interested director abstaining; and

771                   (iv) the business or transactions do not represent a breach of the officer's or director's  
772 fiduciary duty and are not fraudulent, illegal, or ultra vires.

773           (b) Without limitation by any of the specific provisions of this section, the supervisor  
774 may require the disclosure by directors, officers and employees of their personal interest, direct  
775 or indirect, in any business or transaction on behalf of or involving the association and of their  
776 control of or active participation in enterprises having activities related to the business of the  
777 association.

778           (2) The following express restrictions governing the conduct of directors and officers  
779 of associations shall apply, but shall not be construed in any manner as excusing those persons  
780 from the observance of any other aspect of the general fiduciary duty owed by them to the  
781 association which they serve:

782                   (a) No officer or director of an association may, without the prior written approval of  
783 the commissioner, serve as a director or officer of another savings institution, the principal  
784 office of which is located in the same community as an office of the association, unless he  
785 served as director or officer of both institutions before the effective date of this act.

786 (b) A director may not receive remuneration as a director, except reasonable fees for  
787 service as a director or for service as a member of a committee of directors. This Subsection  
788 (2)(b) does not prohibit or in any way limit any right of a director who is also an officer,  
789 employee, or attorney for the association to receive compensation for service as an officer,  
790 employee, or attorney.

791 (c) No director or officer may have any interest, directly or indirectly, in the proceeds  
792 of a loan or investment or of a purchase or sale made by the association, unless the loan,  
793 investment, purchase, or sale is authorized expressly by resolution of the board of directors,  
794 and unless the resolution is approved by vote of at least two-thirds of the directors authorized  
795 of the association, any interested director taking no part in the vote.

796 (d) No director or officer may have any interest, direct or indirect, in the purchase at  
797 less than its face value of any evidence of a savings account, deposit or other indebtedness  
798 issued by the association.

799 (e) An association or a director, officer, or employee of an association may not require,  
800 as a condition to the granting of any loan or the extension of any other service by the  
801 association, that the borrower or any other person undertake a contract of insurance or any  
802 other agreement or understanding with respect to the furnishing of any other goods or services,  
803 with any specific company, agency, or individual.

804 (f) No officer or director acting as proxy for a member or stockholder of an association  
805 may exercise, transfer, or delegate the proxy vote or votes in consideration of a private benefit  
806 or advantage, direct or indirect, accruing to himself, nor may he surrender control or pass his  
807 office to any other for any consideration of a private benefit or advantage, direct or indirect.  
808 The voting rights of members and directors may not be the subject of sale, barter, exchange, or  
809 similar transaction, either directly or indirectly. Any officer or director who violates this  
810 Subsection (2)(f) shall be held accountable to the association for any increment.

811 (g) No director or officer may solicit, accept, or agree to accept, directly or indirectly,  
812 from any person other than the association any gratuity, compensation or other personal  
813 benefit for any action taken by the association or for endeavoring to procure any such action.

814 (h) Any person violating any of the specific prohibitions set forth in Subsections (2)(a)  
815 through (g) is guilty of a class C misdemeanor.

816 Section 21. Section **7-9-30** is amended to read:

817 **7-9-30. Reserve requirements -- "Risk assets" defined.**

818 (1) As used in this section, the words "risk assets" means all assets except the  
819 following:

820 (a) cash on hand;

821 (b) deposits and shares in federal or state banks, savings and loan associations, and  
822 credit unions;

823 (c) assets which are insured by any agency of the federal government, the Federal  
824 National Mortgage Association, or the Government Mortgage Association;

825 (d) loans to students insured under Title IV, Part B of the Higher Education Act of  
826 1965, 20 U.S.C. Sections 1071 et seq. or similar state insurance programs;

827 (e) loans insured under Title 1 of the National Housing Act, 12 U.S.C. Sections 1702  
828 et seq. by the Federal Housing Administration;

829 (f) shares or deposits in corporate credit unions as provided in Section 7-9-44, or of  
830 any other state act, or of the Federal Credit Union Act;

831 (g) accrued interest on nonrisk investments; and

832 (h) loans fully guaranteed by shares or deposits.

833 (2) At the end of each accounting period, after payment of any interest refunds, the  
834 credit union shall determine the gross income from member loans and from this amount shall  
835 set aside a regular reserve in accordance with Subsections (2)(a), (b), and (c).

836 (a) A credit union in operation for more than four years and having assets of \$500,000  
837 or more shall set aside a minimum of 10% of gross income from member loans until the  
838 regular reserve equals at least 4% of the total of outstanding loans and risk assets, then a  
839 minimum of 5% of gross income from member loans until the regular reserve equals at least  
840 6% of the total of outstanding loans and risk assets.

841 (b) A credit union in operation for less than four years or having assets of less than

842 \$500,000 shall set aside a minimum of 10% of gross income from member loans until the  
843 regular reserve equals at least 7-1/2% of the total of outstanding loans and risk assets, then a  
844 minimum of 5% of gross income from member loans until the regular reserve equals at least  
845 10% of the total of outstanding loans and risk assets.

846 (c) The regular reserve belongs to the credit union and shall be used to build equity  
847 and to meet contingencies or losses when authorized by the commissioner or the supervisor of  
848 credit unions.

849 (d) The commissioner may temporarily reduce or waive the requirements for the  
850 regular reserve placement if he finds it to be in the best interest of the credit union.

851 Section 22. Section **7-9-43** is amended to read:

852 **7-9-43. Board of Credit Union Advisors.**

853 There is created a Board of Credit Union Advisors of five members to be appointed by  
854 the governor.

855 (1) Members of the board shall be individuals who are familiar with and associated in  
856 the field of credit unions.

857 (2) At least three of the members shall be persons who have had three or more years of  
858 experience as a credit union officer and shall be selected from a list submitted to the governor  
859 by the Utah League of Credit Unions.

860 (3) The board shall meet quarterly.

861 (4) A chair of the advisory board shall be chosen each year from the membership of  
862 the advisory board by a majority of the members present at the board's first meeting each year.

863 (5) (a) Except as required by Subsection (5)(b), as terms of current board members  
864 expire, the governor shall appoint each new member or reappointed member to a four-year  
865 term.

866 (b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the  
867 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
868 board members are staggered so that approximately half of the board is appointed every two  
869 years.

870 (6) When a vacancy occurs in the membership for any reason, the replacement shall be  
871 appointed for the unexpired term.

872 (7) All members shall serve until their successors are appointed and qualified.

873 (8) (a) Members shall receive no compensation or benefits for their services, but may  
874 receive per diem and expenses incurred in the performance of the member's official duties at  
875 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

876 (b) Members may decline to receive per diem and expenses for their service.

877 (9) Meetings of the advisory board shall be held on the call of the chair. A majority of  
878 the members of the board shall constitute a quorum.

879 (10) The Board of Credit Union Advisors has the duty to advise the governor and  
880 commissioner on problems relating to credit unions and to foster the interest and cooperation  
881 of credit unions in the improvement of their services to the people of the state of Utah.

882 Section 23. Section **7-9-53** is amended to read:

883 **7-9-53. Grandfathering.**

884 (1) As used in this section:

885 (a) "Association that resides in a domicile-county" means an association that:

- 886 (i) operates a place of business or other physical location in the domicile-county; or
- 887 (ii) has at least 100 members that are residents of the domicile-county.

888 (b) "Domicile-county" means the county:

889 (i) in the field of membership of the credit union as of January 1, 1999; and

890 (ii) in which the credit union has located the greatest number of branches as of  
891 January 1, 1999.

892 (c) "Grandfathered field of membership" means the field of membership as of May 3,  
893 1999, of a credit union described in Subsection (2)(d).

894 (2) For each credit union formed before January 1, 1999, its field of membership as of  
895 May 3, 1999, is determined as follows:

896 (a) if the field of membership stated in the bylaws of the credit union as of January 1,  
897 1999, complies with Section 7-9-51, the credit union's field of membership is the field of

898 membership indicated in its bylaws;

899 (b) (i) the field of membership of a credit union as of May 3, 1999, is as provided in  
900 Subsection (2)(b)(ii) if:

901 (A) the field of membership stated in the bylaws of the credit union as of January 1,  
902 1999, includes the residents of more than one county; and

903 (B) as of January 1, 1999, the credit union's main office and any of its branches are  
904 located in only one county in its field of membership;

905 (ii) as of May 3, 1999, the field of membership of a credit union described in  
906 Subsection (2)(b)(i) is:

907 (A) the immediate family of a member of the credit union;

908 (B) the employees of the credit union;

909 (C) residents of the one county in which the credit union has its main office or  
910 branches as of January 1, 1999[;]; and

911 (D) any association that as of January 1, 1999, is in the field of membership of the  
912 credit union;

913 (c) (i) the field of membership of a credit union as of May 3, 1999, is as provided in  
914 Subsection (2)(c)(ii) if:

915 (A) the field of membership of a credit union stated in the bylaws of the credit union  
916 as of January 1, 1999, includes residents of more than one county;

917 (B) as of January 1, 1999, the credit union has a main office or branch in more than  
918 one county; and

919 (C) as a result of a merger pursuant to a supervisory action under Chapter 2,  
920 Possession of Depository Institution by Commissioner, or Chapter 19, Acquisition of Failing  
921 Depository Institutions or Holding Companies, that is effective on or after January 1, 1983,  
922 but before January 1, 1994, the credit union acquired a branch in a county in the field of  
923 membership of the credit union and the credit union did not have a branch in the county  
924 before the merger;

925 (ii) as of May 3, 1999, the field of membership of a credit union described in

926 Subsection (2)(c)(i) is the same field of membership that the credit union would have had  
927 under Subsection (2)(d) except that the credit union:

- 928 (A) is not subject to Subsection (3); and
- 929 (B) is subject to Subsection (4)(b); and

930 (d) (i) the field of membership of a credit union as of May 3, 1999, is as provided in  
931 Subsection (2)(d)(ii) if:

- 932 (A) the field of membership stated in the bylaws of the credit union as of January 1,  
933 1999, includes the residents of more than one county; and
- 934 (B) as of January 1, 1999, the credit union has a main office or branch in more than  
935 one county;
- 936 (ii) as of May 3, 1999, the field of membership of a credit union described in  
937 Subsection (2)(d)(i) is:
  - 938 (A) the immediate family of a member of the credit union;
  - 939 (B) the employees of the credit union;
  - 940 (C) residents of the credit union's domicile-county;
  - 941 (D) the residents of any county other than the domicile-county:
    - 942 (I) if, as of January 1, 1999, the county is in the field of membership of the credit  
943 union; and
    - 944 (II) in which, as of January 1, 1994, the credit union had located its main office or a  
945 branch; and
    - 946 (E) any association that as of January 1, 1999, is in the field of membership of the  
947 credit union.
- 948 (3) If a credit union's field of membership is as described in Subsection (2)(d),  
949 beginning May 3, 1999, the credit union:
  - 950 (a) within the credit union's domicile-county, may establish, relocate, or otherwise  
951 change the physical location of the credit union's:
    - 952 (i) main office; or
    - 953 (ii) branch;

954 (b) within a county other than a domicile-county that is in the credit union's  
955 grandfathered field of membership, may not:

956 (i) establish a main office or branch that:

957 (A) was not located in the county as of January 1, 1999; or

958 (B) for which the credit union has not received by January 1, 1999, approval or  
959 conditional approval of a site plan for the main office or branch from the planning commission  
960 of the municipality where the main office or branch will be located;

961 (ii) participate in a service center in which it does not participate as of January 1,  
962 1999;

963 (iii) relocate the credit union's main office or a branch located in the county as of  
964 January 1, 1999, unless the commissioner finds that the main office or branch is relocated  
965 within a three-mile radius of where it was originally located; or

966 (iv) after a voluntary merger under Section 7-9-39, operate a branch in the county if:

967 (A) the effective date of the merger is on or after May 5, 2003;

968 (B) the credit union with the field of membership described in Subsection (2)(d) is the  
969 surviving credit union after the merger; and

970 (C) the credit union did not own and operate the branch before the effective date of the  
971 merger; and

972 (c) may only admit as a member:

973 (i) a person in the credit union's grandfathered field of membership; or

974 (ii) a person belonging to an association that:

975 (A) is added to the field of membership of the credit union; and

976 (B) resides in the domicile-county of the credit union.

977 (4) (a) If a credit union's field of membership is as described in Subsection (2)(b), as  
978 of May 3, 1999, the credit union may operate as a credit union having a field of membership  
979 under Section 7-9-51.

980 (b) If a credit union's field of membership is as described in Subsection (2)(c), as of  
981 May 3, 1999, the credit union:

982 (i) within the credit union's domicile-county, may establish, relocate, or otherwise  
983 change the physical location of the credit union's:

984 (A) main office; or

985 (B) branch;

986 (ii) within a county other than its domicile-county that is in the credit union's field of  
987 membership under Subsection (2)(c), may not:

988 (A) establish a main office or branch that was not located in the county as of January  
989 1, 1999;

990 (B) participate in a service center in which it does not participate as of January 1,  
991 1999; or

992 (C) relocate the credit union's main office or a branch located in the county as of  
993 January 1, 1999, unless the commissioner finds that the main office or branch is relocated  
994 within a three-mile radius of where it was originally located; and

995 (iii) may only admit as a member:

996 (A) a person in the credit union's field of membership under Subsection (2)(c); or

997 (B) a person belonging to an association that is added to the field of membership of  
998 the credit union, regardless of whether the association resides in the domicile-county of the  
999 credit union.

1000 (5) (a) Notwithstanding Subsections (1) through (4), after May 3, 1999, a credit union  
1001 described in Subsection (2)(c) or [~~2~~] (d) may:

1002 (i) operate an office or branch that is operated by the credit union on May 3, 1999, but  
1003 that is not located in a county that is in the credit union's field of membership as of May 3,  
1004 1999; and

1005 (ii) serve a member who is not in a credit union's field of membership as of May 3,  
1006 1999, if the member is a member of the credit union as of March 15, 1999.

1007 (b) Subsection (5)(a) does not authorize a credit union to:

1008 (i) establish a branch in a county that is not in the credit union's field of membership  
1009 as of May 3, 1999, unless the branch meets the requirements under this title for establishing a

1010 branch; or  
1011 (ii) for a credit union described in Subsection (2)(d), include in its field of  
1012 membership an association that:  
1013 (A) as of January 1, 1999, is not included in the credit union's field of membership;  
1014 and  
1015 (B) does not reside within the credit union's domicile-county.  
1016 (6) A credit union shall amend its bylaws in accordance with Section 7-9-11 by no  
1017 later than August 3, 1999, to comply with this section.  
1018 (7) In addition to any requirement under this section, a credit union shall comply with  
1019 any requirement under this title for the establishment, relocation, or change in the physical  
1020 location of a main office or branch of a credit union.  
1021 Section 24. Section **7-15-2** is amended to read:  
1022 **7-15-2. Notice -- Form.**  
1023 (1) (a) "Notice" means notice given to the issuer of a check either orally or in writing.  
1024 (b) Written notice may be given by United States mail that is:  
1025 (i) first class; and  
1026 (ii) postage prepaid.  
1027 (c) Notwithstanding Subsection (1)(b), written notice is conclusively presumed to  
1028 have been given when the notice is:  
1029 (i) properly deposited in the United States mail;  
1030 (ii) postage prepaid;  
1031 (iii) certified or registered mail;  
1032 (iv) return receipt requested; and  
1033 (v) addressed to the signer at the signer's:  
1034 (A) address as it appears on the check; or  
1035 (B) last-known address.  
1036 (2) Written notice under Subsection 7-15-1(5) shall take substantially the following  
1037 form:

1038            >Date: \_\_\_\_\_

1039            To: \_\_\_\_\_

1040            You are hereby notified that the check(s) described below issued by you has (have)  
1041 been returned to us unpaid:

1042            Check date: \_\_\_\_\_

1043            Check number: \_\_\_\_\_

1044            Originating institution: \_\_\_\_\_

1045            Amount: \_\_\_\_\_

1046            Reason for dishonor (marked on check): \_\_\_\_\_

1047            In accordance with Section 7-15-1, Utah Code Annotated, you are liable for this check  
1048 together with a service charge of \$20, which must be paid to the undersigned.

1049            If you do not pay the check amount and the \$20 service charge within 15 calendar days  
1050 from the day on which this notice was mailed, you are required to pay within 30 calendar days  
1051 from the day on which this notice is mailed:

1052            (1) the check amount;

1053            (2) the \$20 service charge; and

1054            (3) collection costs not to exceed \$20.

1055            If you do not pay the check amount, the \$20 service charge, and the collection costs  
1056 within 30 calendar days from the day on which this notice is mailed, in accordance with  
1057 Section 7-15-1, Utah Code Annotated, an appropriate civil legal action may be filed against  
1058 you for:

1059            (1) the check amount;

1060            (2) interest;

1061            (3) court costs;

1062            (4) attorneys' fees;

1063            (5) actual costs of collection as provided by law; and

1064            (6) damages in an amount equal to the greater of \$100 or triple the check amount,

1065 except:

1066 (a) that damages recovered under this Subsection (6) may not exceed the check  
1067 amount by more than \$500; and

1068 (b) you are not liable for these damages for a check used to obtain a deferred deposit  
1069 loan.

1070 In addition, the criminal code provides in Section 76-6-505, Utah Code Annotated, that  
1071 any person who issues or passes a check for the payment of money, for the purpose of  
1072 obtaining from any person, firm, partnership, or corporation, any money, property, or other  
1073 thing of value or paying for any services, wages, salary, labor, or rent, knowing it will not be  
1074 paid by the drawee and payment is refused by the drawee, is guilty of issuing a bad check.

1075 The civil action referred to in this notice does not preclude the right to prosecute under  
1076 the criminal code of the state.

1077 (Signed)

1078 \_\_\_\_\_

1079 Name of Holder:

1080 \_\_\_\_\_

1081 Address of Holder:

1082 \_\_\_\_\_

1083 Telephone Number:

1084 \_\_\_\_\_"

1085 (3) Notwithstanding the other provisions of this section, a holder exempt under  
1086 Subsection 7-15-1(9) is exempt from this section.

1087 Section 25. Section **8-4-2** is amended to read:

1088 **8-4-2. Endowment care cemetery trust funds -- Deposits in endowment fund --**  
1089 **Reports -- Penalties for failure to file -- Investment of trust fund monies -- Attestation.**

1090 (1) An endowment care cemetery shall establish an endowment care trust fund  
1091 pursuant to Title 75, Chapter 7, [~~Trust Administration~~] Utah Uniform Trust Code.

1092 (a) Any newly established endowment care cemetery or existing cemetery converting  
1093 to an endowment care cemetery shall deposit a minimum of \$25,000 in the endowment care

1094 trust fund.

1095           (b) Each endowment care cemetery shall deposit in the endowment care trust fund for  
1096 each plot space sold or disposed of a minimum of:

1097           (i) \$1.50 a square foot for each grave;  
1098           (ii) \$15 for each niche; and  
1099           (iii) \$60 for each crypt.

1100           (2) (a) An endowment care cemetery shall collect endowment care funds only pursuant  
1101 to a written contract of sale signed by the endowment care cemetery and the purchaser.

1102           (b) The contract of sale shall specify the terms of the endowment care trust consistent  
1103 with this section and the terms of payment.

1104           (c) If requested by the purchaser, a copy of the endowment care trust shall be provided  
1105 to the purchaser.

1106           (3) (a) Each endowment care cemetery shall prepare an annual written report for the  
1107 benefit of its trustor lot holders.

1108           (b) The report shall contain:

1109           (i) information determined to be reasonable and necessary to show compliance with  
1110 the provisions of this chapter;

1111           (ii) the number and square feet of grave space;  
1112           (iii) the number of crypts and niches sold or disposed of under endowment care during  
1113 a specific period; and

1114           (iv) the dollar amount of sales, amounts paid, amounts receivable, and amounts  
1115 deposited in endowment care funds for crypts, niches, and grave space during a specific  
1116 period, set forth on the accrual basis as determined by the cemetery authority.

1117           (c) An officer of the endowment care cemetery authority shall verify the report.

1118           (d) The report shall be on file in the principal office of the endowment care cemetery  
1119 and shall be made available upon request.

1120           (e) The report shall be completed by the 15th day of the third month following the end  
1121 of the endowment care cemetery's fiscal year.

1122 (4) An officer, director, partner, proprietor, or other person having control of the  
1123 records of an endowment care cemetery shall provide the reports and records necessary to  
1124 comply with the provisions of this chapter.

1125 (5) A person is guilty of a class A misdemeanor who willfully and intentionally fails to:

1126 (a) deposit funds collected as endowment care funds into the endowment care trust  
1127 within 30 days of receipt of the funds; or

1128 (b) prepare the report required by Subsection (3).

1129 (6) Endowment care funds may be invested separately or together. The investment  
1130 income shall be divided between the funds in the proportion that each contributed to the  
1131 invested amount.

1132 (7) Endowment care funds shall be invested in accordance with Section 31A-18-105  
1133 and Title 75, Chapter 7, [~~Trust Administration~~] Utah Uniform Trust Code.

1134 (8) (a) An endowment care cemetery shall place endowment care funds with an  
1135 independent trustee appointed by the endowment care cemetery.

1136 (b) A trustee may be independent even if it has common ownership with the cemetery.

1137 (c) The independent trustee shall be a depository institution, as defined by Section  
1138 7-1-103, or an insurer, as defined in Section 31A-1-301.

1139 (9) (a) The trustee shall submit to the endowment care cemetery an annual  
1140 independent attestation of the endowment care trust funds.

1141 (b) The attestation shall state:

1142 (i) the total amount of the general and special endowment care funds invested by law;

1143 (ii) the amount of cash on hand not invested;

1144 (iii) the location, description, and character of the investments in which the special  
1145 endowment care funds are invested;

1146 (iv) the value of any securities held in the endowment care fund; and

1147 (v) the actual financial condition of the funds.

1148 (10) (a) A trustee may not receive compensation for services and expenses, including  
1149 audits, in excess of 5% of the income derived from an endowment care fund in any year.

1150 (b) If there are insufficient funds from the income derived from the endowment care  
1151 trust fund to pay for the attestation of the endowment care funds, the endowment care  
1152 cemetery shall pay amounts due from funds other than the endowment care trust fund or  
1153 income derived from that fund.

1154 (11) The income from an endowment care fund shall be used for the care,  
1155 maintenance, and embellishment of the cemetery as determined by the endowment care  
1156 cemetery, and to pay for administering the fund.

1157 Section 26. Section **9-3-410** is amended to read:

1158 **9-3-410. Relation to certain acts.**

1159 (1) The authority is exempt from:

1160 (a) Title 51, Chapter 5, Funds Consolidation Act;

1161 (b) Title 63A, Chapter 1, [~~Utah~~] Department of Administrative Services [~~Code~~];

1162 (c) Title 63G, Chapter 6, Utah Procurement Code;

1163 (d) Title 63J, Chapter 1, Budgetary Procedures Act; and

1164 (e) Title 67, Chapter 19, Utah State Personnel Management Act.

1165 (2) The authority shall be subject to audit by:

1166 (a) the state auditor pursuant to Title 67, Chapter 3, Auditor; and

1167 (b) the legislative auditor general pursuant to Section 36-12-15.

1168 (3) The authority shall annually report to the Retirement and Independent Entities  
1169 Committee created under Section 63E-1-201 concerning the authority's implementation of this  
1170 part.

1171 Section 27. Section **9-4-202** is amended to read:

1172 **9-4-202. Powers and duties of division.**

1173 (1) The division shall:

1174 (a) assist local governments and citizens in the planning, development, and  
1175 maintenance of necessary public infrastructure and services;

1176 (b) cooperate with, and provide technical assistance to, counties, cities, towns,  
1177 regional planning commissions, area-wide clearinghouses, zoning commissions, parks or

1178 recreation boards, community development groups, community action agencies, and other  
1179 agencies created for the purpose of aiding and encouraging an orderly, productive, and  
1180 coordinated development of the state and its political subdivisions;

1181 (c) assist the governor in coordinating the activities of state agencies which have an  
1182 impact on the solution of community development problems and the implementation of  
1183 community plans;

1184 (d) serve as a clearinghouse for information, data, and other materials which may be  
1185 helpful to local governments in discharging their responsibilities and provide information on  
1186 available federal and state financial and technical assistance;

1187 (e) carry out continuing studies and analyses of the problems faced by communities  
1188 within the state and develop such recommendations for administrative or legislative action as  
1189 appear necessary;

1190 (f) assist in funding affordable housing and addressing problems of homelessness;

1191 (g) support economic development activities through grants, loans, and direct  
1192 programs financial assistance;

1193 (h) certify project funding at the local level in conformance with federal, state, and  
1194 other requirements;

1195 (i) utilize the capabilities and facilities of public and private universities and colleges  
1196 within the state in carrying out its functions;

1197 (j) assist and support local governments, community action agencies, and citizens in  
1198 the planning, development, and maintenance of home weatherization, energy efficiency, and  
1199 antipoverty activities; and

1200 (k) assist and support volunteer efforts in the state.

1201 (2) The division may:

1202 (a) by following the procedures and requirements of Title 63J, Chapter 5, Federal  
1203 Funds Procedures Act, seek federal grants, loans, or participation in federal programs;

1204 (b) if any federal program requires the expenditure of state funds as a condition to  
1205 participation by the state in any fund, property, or service, with the governor's approval,

1206 expend whatever funds are necessary out of the money provided by the Legislature for the use  
1207 of the department;

1208 (c) in accordance with Part 13, Domestic Violence Shelters, assist in developing,  
1209 constructing, and improving shelters for victims of domestic violence, as described in Section  
1210 77-36-1, through loans and grants to nonprofit and governmental entities; and

1211 (d) assist, when requested by a county or municipality, in the development of  
1212 accessible housing.

1213 (3) (a) The division is recognized as an issuing authority as defined in Subsection  
1214 9-4-502(7), entitled to issue bonds from the Small Issue Bond Account created in Subsection  
1215 9-4-506(1)(c) as a part of the state's private activity bond volume cap authorized by the  
1216 Internal Revenue Code of 1986 and computed under Section 146 of the code.

1217 (b) To promote and encourage the issuance of bonds from the Small Issue Bond  
1218 Account for manufacturing projects, the division may:

1219 (i) develop campaigns and materials that inform qualified small manufacturing  
1220 businesses about the existence of the program and the application process;

1221 (ii) assist small businesses in applying for and qualifying for these bonds; or

1222 (iii) develop strategies to lower the cost to small businesses of applying for and  
1223 qualifying for these bonds, including making arrangements with financial advisors,  
1224 underwriters, bond counsel, and other professionals involved in the issuance process to  
1225 provide their services at a reduced rate when the division can provide them with a high volume  
1226 of applicants or issues.

1227 Section 28. Section **9-6-305** is amended to read:

1228 **9-6-305. Art collection committee.**

1229 (1) The division shall appoint a committee of artists or judges of art to take charge of  
1230 all works of art acquired under this chapter. This collection shall be known as the Utah State  
1231 Alice Art Collection.

1232 (2) (a) Except as required by Subsection (2)(b), as terms of current board members  
1233 expire, the division shall appoint each new member or reappointed member to a four-year

1234 term.

1235 (b) Notwithstanding the requirements of Subsection (2)(a), the division shall, at the  
1236 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
1237 board members are staggered so that approximately half of the board is appointed every two  
1238 years.

1239 (3) When a vacancy occurs in the membership for any reason, the replacement shall be  
1240 appointed for the unexpired term.

1241 (4) (a) Members shall receive no compensation or benefits for their services, but may  
1242 receive per diem and expenses incurred in the performance of the member's official duties at  
1243 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

1244 (b) Members may decline to receive per diem and expenses for their service.

1245 Section 29. Section **9-6-505** is amended to read:

1246 **9-6-505. Eligibility requirements of qualifying arts organizations -- Allocation**  
1247 **limitations -- Matching requirements.**

1248 (1) Any qualifying organization may apply to receive moneys from the state fund to be  
1249 deposited in an endowment fund it has created under Subsection 9-6-503(1):

1250 (a) if it has received a grant from the board during one of the three years immediately  
1251 before making application for state fund moneys under this Subsection (1); or

1252 (b) upon approval by the board if it has not received a grant from the board within the  
1253 past three years.

1254 (2) (a) The maximum amount that may be allocated to each qualifying organization  
1255 from the state fund shall be determined by the board by calculating the average cash income of  
1256 the qualifying organization during the past three fiscal years as contained in the qualifying  
1257 organization's final reports on file with the board. The board shall notify each qualifying  
1258 organization of the maximum amount of moneys from the state fund for which it qualifies.

1259 (b) The minimum amount that may be allocated to each qualifying organization from  
1260 the state fund is \$2,500.

1261 (c) If the maximum amount for which the organization qualifies is less than \$2,500,

1262 the organization may still apply for \$2,500.

1263 (3) After the board determines that a qualifying organization is eligible to receive  
1264 moneys from the state fund and before any money is allocated to the qualifying organization  
1265 from the state fund, the qualifying organization shall match the amount qualified for by  
1266 moneys raised and designated exclusively for that purpose. State moneys, in-kind  
1267 contributions, and preexisting endowment gifts may not be used to match moneys from the  
1268 state fund.

1269 (4) Endowment match moneys shall be based on a sliding scale as follows:

1270 (a) any amount requested not exceeding \$100,000 shall be matched one-to-one;

1271 (b) any additional amount requested that makes the aggregate amount requested  
1272 exceed \$100,000 but not exceed \$500,000 shall be matched two-to-one; and

1273 (c) any additional amount requested that makes the aggregate amount requested  
1274 exceed \$500,000 shall be matched three-to-one.

1275 (5) (a) Qualifying organizations shall raise the matching amount within three years  
1276 after applying for moneys from the state fund by a date determined by the board.

1277 (b) Moneys from the state fund shall be released to the qualifying organization only  
1278 upon verification by the board that the matching money has been received on or before the  
1279 date determined under Subsection (5)(a). Verification of matching funds shall be made by a  
1280 certified public accountant.

1281 (c) Moneys from the state fund shall be released to qualifying organizations with  
1282 professional endowment management in increments not less than \$20,000 as audited  
1283 confirmation of matching funds is received by the board.

1284 (d) Moneys from the state fund shall be granted to each qualifying organization on the  
1285 basis of the matching funds it has raised by the date determined under Subsection (5)(a).

1286 Section 30. Section **9-7-204** is amended to read:

1287 **9-7-204. State Library Board -- Members -- Meetings -- Expenses.**

1288 (1) There is created within the department the State Library Board.

1289 (2) (a) The board shall consist of nine members appointed by the governor.

1290 (b) One member shall be appointed on recommendation from each of the following  
1291 agencies:

- 1292 (i) the State Office of Education;
- 1293 (ii) the Board of Control of the State Law Library;
- 1294 (iii) the Office of Legislative Research and General Counsel; and
- 1295 (iv) the Utah System of Higher Education.

1296 (c) Of the five remaining members at least two shall be appointed from rural areas.

1297 (3) (a) Except as required by Subsection (3)(b), as terms of current board members  
1298 expire, the governor shall appoint each new member or reappointed member to a four-year  
1299 term.

1300 (b) [~~Notwithstanding the requirements of Subsection (a), the~~] The governor shall, at  
1301 the time of appointment or reappointment, adjust the length of terms to ensure that the terms  
1302 of board members are staggered so that approximately half of the board is appointed every two  
1303 years.

1304 (4) The members may not serve more than two full consecutive terms.

1305 (5) When a vacancy occurs in the membership for any reason, the replacement shall be  
1306 appointed for the unexpired term in the same manner as originally appointed.

1307 (6) Five members of the board constitute a quorum for conducting board business.

1308 (7) The governor shall select one of the board members as chair who shall serve for a  
1309 period of two years.

1310 (8) The director of the State Library Division shall be executive officer of the board.

1311 (9) (a) (i) Members who are not government employees shall receive no compensation  
1312 or benefits for their services, but may receive per diem and expenses incurred in the  
1313 performance of the member's official duties at the rates established by the Division of Finance  
1314 under Sections 63A-3-106 and 63A-3-107.

1315 (ii) Members may decline to receive per diem and expenses for their service.

1316 (b) (i) State government officer and employee members who do not receive salary, per  
1317 diem, or expenses from their agency for their service may receive per diem and expenses

1318 incurred in the performance of their official duties from the board at the rates established by  
1319 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

1320 (ii) State government officer and employee members may decline to receive per diem  
1321 and expenses for their service.

1322 (c) (i) Higher education members who do not receive salary, per diem, or expenses  
1323 from the entity that they represent for their service may receive per diem and expenses  
1324 incurred in the performance of their official duties from the committee at the rates established  
1325 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

1326 (ii) Higher education members may decline to receive per diem and expenses for their  
1327 service.

1328 Section 31. Section **9-8-705** is amended to read:

1329 **9-8-705. Eligibility requirements of qualifying history organizations --**  
1330 **Allocation limitations -- Matching requirements.**

1331 (1) Any qualifying organization may apply to receive monies from the state fund to be  
1332 deposited in an endowment fund it has created under Section 9-8-703:

1333 (a) if it has received a grant from the division during one of the three years  
1334 immediately before making application for state fund monies under this Subsection (1); or

1335 (b) if it has not received a grant from the division within the past three years, it may  
1336 receive a grant upon approval by the division according to policy of the board.

1337 (2) (a) The maximum amount that may be allocated to each qualifying organization  
1338 from the state fund shall be determined by the division in a format to be developed in  
1339 consultation with the board.

1340 (b) The minimum amount that may be allocated to each qualifying organization from  
1341 the state fund is \$2,500.

1342 (3) After the division determines that a qualifying organization is eligible to receive  
1343 monies from the state fund and before any money is allocated to the qualifying organization  
1344 from the state fund, the qualifying organization shall match the amount qualified for by  
1345 monies raised and designated exclusively for that purpose. State monies and in-kind

1346 contributions may not be used to match monies from the state fund.

1347 (4) Endowment match monies shall be based on a sliding scale as follows:

1348 (a) amounts requested up to \$20,000 shall be matched one-to-one;

1349 (b) any additional amount requested that makes the aggregate amount requested  
1350 exceed \$20,000 but not exceed \$50,000 shall be matched two-to-one; and

1351 (c) any additional amount requested that makes the aggregate amount requested  
1352 exceed \$50,000 shall be matched three-to-one.

1353 (5) (a) Qualifying organizations shall raise the matching amount by a date determined  
1354 by the board.

1355 (b) Monies from the state fund shall be released to the qualifying organization only  
1356 upon verification by the division that the matching money has been received on or before the  
1357 date determined under Subsection (5)(a). Verification of matching funds shall be made by a  
1358 certified public accountant.

1359 (c) Monies from the state fund shall be released to qualifying organizations with  
1360 professional endowment management in increments not less than \$2,500 as audited  
1361 confirmation of matching funds is received by the board.

1362 (d) Monies from the state fund shall be granted to each qualifying organization on the  
1363 basis of the matching funds it has raised by the date determined under Subsection (5)(a).

1364 Section 32. Section **11-32-3.5** is amended to read:

1365 **11-32-3.5. Entry into an established interlocal finance authority -- Withdrawal**  
1366 **from an interlocal finance authority -- Effect of outstanding debt -- Effect on**  
1367 **organization.**

1368 (1) The governing body of any public body, which is not at that time a member of a  
1369 financing authority established in the county in which the public body is located, may, by  
1370 resolution, elect to join the authority.

1371 (2) The resolution shall state the name of the public body and that the public body  
1372 thereby petitions for membership in the authority. A certified copy of the resolution shall be  
1373 delivered to the authority.

1374 (3) The public body shall become a participant member of the authority, upon receipt  
1375 by the authority of the resolution, but only with respect to any financing initiated after the  
1376 public body has become a member of the authority.

1377 (4) A participant member may elect to withdraw from an authority by resolution  
1378 adopted by the governing body of the participant member following:

1379 (a) the payment of all outstanding bonds for which a participant member's delinquent  
1380 tax receivables have been assigned;

1381 (b) the distribution of remaining amounts as provided in Section 11-32-15; and

1382 (c) satisfactory completion of any independent accounting audits requested by the  
1383 authority or the county.

1384 (5) The resolution of the governing body of the public body which is withdrawing its  
1385 membership shall state the name of the public body it represents and that the public body  
1386 thereby petitions for withdrawal from the authority. A certified copy of the resolution shall be  
1387 delivered to the authority. The membership of the public body in the authority shall terminate  
1388 upon receipt of the resolution by the authority.

1389 (6) A public body which has withdrawn from membership in an authority may elect to  
1390 join such authority to participate in future financings by the authority.

1391 (7) (a) By resolution of its governing body, a participant member may elect not to  
1392 participate in future financings of the authority. Such election shall be effective upon delivery  
1393 of a certified copy of the resolution to the authority.

1394 (b) In addition to the method outlined in Subsection (7)(a), a participant member may  
1395 be considered to have elected not to participate in future financings in any reasonable manner  
1396 selected by the authority.

1397 (8) For purposes of determining the presence of a quorum of the board of trustees or  
1398 for other purposes, the board of trustees of an authority may treat participant members which  
1399 have elected or are considered to have elected not to participate in a financing as not being  
1400 participant members.

1401 (9) The composition organization of the authority shall change upon the entrance,

1402 election to participate, election not to participate, or withdrawal of a participant member.

1403 Section 33. Section **11-32-15** is amended to read:

1404 **11-32-15. Special fund -- Apportionment of excess amounts.**

1405 (1) The provisions of Title 59, Revenue and Taxation, otherwise notwithstanding,  
1406 delinquent taxes paid to the county on behalf of the participant members shall be paid into the  
1407 special fund created with respect to the bonds issued by any authority.

1408 (2) Following the payment of all bonds issued with respect to any delinquent tax  
1409 receivables and all other amounts due and owing under any assignment agreement, amounts  
1410 remaining on deposit with the authority or in the special fund created with respect to the  
1411 issuance of the bonds shall be apportioned and distributed as follows:

1412 (a) Any amounts which represent the amount by which the delinquent taxes recovered  
1413 exceed the amount originally paid by the authority at the time of transfer of the delinquent tax  
1414 receivables to the authority shall be distributed to the respective participant members,  
1415 including the county, in the proportion of their respective taxes.

1416 (b) Any amounts remaining following the distribution directed in Subsection (2)(a)  
1417 shall be paid to the county.

1418 Section 34. Section **13-11-21** is amended to read:

1419 **13-11-21. Settlement of class action -- Complaint in class action delivered to**  
1420 **enforcing authority.**

1421 (1) (a) A defendant in a class action may file a written offer of settlement. If it is not  
1422 accepted within a reasonable time by a plaintiff class representative, the defendant may file an  
1423 affidavit reciting the rejection. The court may determine that the offer has enough merit to  
1424 present to the members of the class. If it so determines, it shall order a hearing to determine  
1425 whether the offer should be approved. It shall give the best notice of the hearing that is  
1426 practicable under the circumstances, including notice to each member who can be identified  
1427 through reasonable effort. The notice shall specify the terms of the offer and a reasonable  
1428 period within which members of the class who request it are entitled to be included in the  
1429 class. The statute of limitations for those who are excluded pursuant to this Subsection (1) is

1430 tolled for the period the class action has been pending, plus an additional year.

1431 (b) If a member who has previously lost an opportunity to be excluded from the class  
1432 is excluded at his request in response to notice of the offer of settlement during the period  
1433 specified under Subsection (1)(a), he may not thereafter participate in a class action for  
1434 damages respecting the same consumer transaction, unless the court later disapproves the offer  
1435 of settlement or approves a settlement materially different from that proposed in the original  
1436 offer of settlement. After the expiration of the period of limitations, a member of the class is  
1437 not entitled to be excluded from it.

1438 (c) If the court later approves the offer of settlement, including changes, if any,  
1439 required by the court in the interest of a just settlement of the action, it shall enter judgment,  
1440 which is binding on all persons who are then members of the class. If the court disapproves the  
1441 offer or approves a settlement materially different from that proposed in the original offer,  
1442 notice shall be given to a person who was excluded from the action at his request in response  
1443 to notice of the offer under Subsection (1)(a), and he is entitled to rejoin the class and, in the  
1444 case of the approval, participate in the settlement.

1445 (2) On the commencement of a class action under Section 13-11-19, the class  
1446 representative shall mail by certified mail with return receipt requested or personally serve a  
1447 copy of the complaint on the enforcing authority. Within 30 days after the receipt of a copy of  
1448 the complaint, but not thereafter, the enforcing authority may intervene in the class action.

1449 Section 35. Section **13-28-2** is amended to read:

1450 **13-28-2. Definitions.**

1451 For the purpose of this part:

1452 (1) "Division" means the Division of Consumer Protection in the Department of  
1453 Commerce.

1454 (2) "Prize" means a gift, award, or other item or service of value.

1455 (3) (a) "Prize notice" means a notice given to an individual in this state that satisfies  
1456 all of the following:

1457 (i) is or contains a representation that the individual has been selected or may be

1458 eligible to receive a prize; and  
1459           (ii) conditions receipt of a prize on a payment or donation from the individual or  
1460 requires or invites the individual to make a contact to learn how to receive the prize or to  
1461 obtain other information related to the notice.

1462           (b) "Prize notice" does not include:  
1463           (i) a notice given at the request of the individual; or  
1464           (ii) a notice informing the individual that he or she has been awarded a prize as a  
1465 result of his actual prior entry in a game, drawing, sweepstakes, or other contest if the  
1466 individual is awarded the prize stated in the notice.

1467           (4) "Solicitor" means a person who represents to an individual that the individual has  
1468 been selected or may be eligible to receive a prize.

1469           (5) "Sponsor" means a person on whose behalf a solicitor gives a prize notice.

1470           (6) "Verifiable retail value" of a prize means:  
1471           (a) a price at which the solicitor or sponsor can demonstrate that a substantial number  
1472 of the prizes have been sold by a person other than the solicitor or sponsor in the trade area in  
1473 which the prize notice is given; or  
1474           (b) if the solicitor or sponsor is unable to satisfy Subsection (6)(a), no more than 1.5  
1475 times the amount the solicitor or sponsor paid for the prize.

1476           Section 36. Section **16-10a-705** is amended to read:  
1477           **16-10a-705. Notice of meeting.**  
1478           (1) A corporation shall give notice to shareholders of the date, time, and place of each  
1479 annual and special shareholders' meeting no fewer than 10 nor more than 60 days before the  
1480 meeting date. Unless this chapter or the articles of incorporation require otherwise, the  
1481 corporation is required to give notice only to shareholders entitled to vote at the meeting.  
1482           (2) Unless this chapter or the articles of incorporation require otherwise, notice of an  
1483 annual meeting need not include a description of the purpose or purposes for which the  
1484 meeting is called.  
1485           (3) Notice of a special meeting must include a description of the purpose or purposes

1486 for which the meeting is called.

1487 (4) (a) Subject to Subsection (4)(b), unless the bylaws require otherwise, if an annual  
1488 or special shareholders' meeting is adjourned to a different date, time, or place, notice need not  
1489 be given of the new date, time, or place if the new date, time, or place is announced at the  
1490 meeting before adjournment.

1491 (b) If the adjournment is for more than 30 days, or if after the adjournment a new  
1492 record date for the adjourned meeting is or must be fixed under Section 16-10a-707, notice of  
1493 the adjourned meeting must be given pursuant to the requirements of this section to  
1494 shareholders of record who are entitled to vote at the meeting.

1495 (5) (a) Notwithstanding a requirement that notice be given under any provision of this  
1496 chapter, the articles of incorporation, or bylaws of any corporation, notice shall not be required  
1497 to be given to any shareholder to whom:

1498 (i) a notice of two consecutive annual meetings, and all notices of meetings or of the  
1499 taking of action by written consent without a meeting during the period between the two  
1500 consecutive annual meetings, have been mailed, addressed to the shareholder at the  
1501 shareholder's address as shown on the records of the corporation, and have been returned  
1502 undeliverable; or

1503 (ii) at least two payments, if sent by first class mail, of dividends or interest on  
1504 securities during a 12 month period, have been mailed, addressed to the shareholder at the  
1505 shareholder's address as shown on the records of the corporation, and have been returned  
1506 undeliverable.

1507 (b) Any action taken or meeting held without notice to a shareholder to whom notice is  
1508 excused under Subsection (5) has the same force and effect as if notice had been duly given.  
1509 If a shareholder to whom notice is excused under Subsection (5) delivers to the corporation a  
1510 written notice setting forth the shareholder's current address, or if another address for the  
1511 shareholder is otherwise made known to the corporation, the requirement that notice be given  
1512 to the shareholder is reinstated. In the event that the action taken by the corporation requires  
1513 the filing of a certificate under any provision of this chapter, the certificate need not state that

1514 notice was not given to shareholders to whom notice was not required pursuant to this  
1515 Subsection (5).

1516 Section 37. Section **16-10a-906** is amended to read:

1517 **16-10a-906. Determination and authorization of indemnification of directors.**

1518 (1) A corporation may not indemnify a director under Section 16-10a-902 unless  
1519 authorized and a determination has been made in the specific case that indemnification of the  
1520 director is permissible in the circumstances because the director has met the applicable  
1521 standard of conduct set forth in Section 16-10a-902. A corporation may not advance expenses  
1522 to a director under Section 16-10a-904 unless authorized in the specific case after the written  
1523 affirmation and undertaking required by Subsections 16-10a-904(1)(a) and (b) are received  
1524 and the determination required by Subsection 16-10a-904(1)(c) has been made.

1525 (2) The determinations required by Subsection (1) shall be made:

1526 (a) by the board of directors by a majority vote of those present at a meeting at which  
1527 a quorum is present, and only those directors not parties to the proceeding shall be counted in  
1528 satisfying the quorum; or

1529 (b) if a quorum cannot be obtained as contemplated in Subsection (2)(a), by a majority  
1530 vote of a committee of the board of directors designated by the board of directors, which  
1531 committee shall consist of two or more directors not parties to the proceeding, except that  
1532 directors who are parties to the proceeding may participate in the designation of directors for  
1533 the committee;

1534 (c) by special legal counsel:

1535 (i) selected by the board of directors or its committee in the manner prescribed in  
1536 Subsection (2)(a) or (b); or

1537 (ii) if a quorum of the board of directors cannot be obtained under Subsection (2)(a)  
1538 and a committee cannot be designated under Subsection (2)(b), selected by a majority vote of  
1539 the full board of directors, in which selection directors who are parties to the proceeding may  
1540 participate; or

1541 (d) by the shareholders, by a majority of the votes entitled to be cast by holders of

1542 qualified shares present in person or by proxy at a meeting.

1543           (3) A majority of the votes entitled to be cast by the holders of all qualified shares  
1544 constitutes a quorum for purposes of action that complies with this section. Shareholders'  
1545 action that otherwise complies with this section is not affected by the presence of holders, or  
1546 the voting, of shares that are not qualified shares.

1547           (4) Unless authorization is required by the bylaws, authorization of indemnification  
1548 and advance of expenses shall be made in the same manner as the determination that  
1549 indemnification or advance of expenses is permissible. However, if the determination that  
1550 indemnification or advance of expenses is permissible is made by special legal counsel,  
1551 authorization of indemnification and advance of expenses shall be made by a body entitled  
1552 under Subsection (2)(c) to select legal counsel.

1553           Section 38. Section **16-10a-1325** is amended to read:

1554           **16-10a-1325. Payment.**

1555           (1) Except as provided in Section 16-10a-1327, upon the later of the effective date of  
1556 the corporate action creating dissenters' rights under Section 16-10a-1302, and receipt by the  
1557 corporation of each payment demand pursuant to Section 16-10a-1323, the corporation shall  
1558 pay the amount the corporation estimates to be the fair value of the dissenter's shares, plus  
1559 interest to each dissenter who has complied with Section 16-10a-1323, and who meets the  
1560 requirements of Section 16-10a-1321, and who has not yet received payment.

1561           (2) Each payment made pursuant to Subsection (1) must be accompanied by:

1562           (a) (i) (A) the corporation's balance sheet as of the end of its most recent fiscal year, or  
1563 if not available, a fiscal year ending not more than 16 months before the date of payment;

1564           (B) an income statement for that year;

1565           (C) a statement of changes in shareholders' equity for that year and a statement of cash  
1566 flow for that year, if the corporation customarily provides such statements to shareholders; and

1567           (D) the latest available interim financial statements, if any;

1568           (ii) the balance sheet and statements referred to in Subsection (2)(a)(i) must be audited  
1569 if the corporation customarily provides audited financial statements to shareholders;

1570 (b) a statement of the corporation's estimate of the fair value of the shares and the  
1571 amount of interest payable with respect to the shares;

1572 (c) a statement of the dissenter's right to demand payment under Section 16-10a-1328;  
1573 and

1574 (d) a copy of this part.

1575 Section 39. Section **17-36-5** is amended to read:

1576 **17-36-5. Creation of Citizens and County Officials Advisory Committee.**

1577 (1) For the purpose of this act there is created a Citizens and County Officials  
1578 Advisory Committee appointed by the state auditor composed of the following persons:

1579 (a) five county auditors elected to that specific and exclusive position;

1580 (b) five county treasurers elected to that specific and exclusive position;

1581 (c) two citizens with expertise in the area of local government and the needs and  
1582 problems of such government;

1583 (d) four additional elected county officers, one of whom shall be from the five largest  
1584 counties in the state and one of whom shall be from the five smallest counties in the state; and

1585 (e) such other members as the auditor considers appropriate.

1586 (2) (a) Except as required by Subsection (2)(b), the terms of committee members shall  
1587 be four years each.

1588 (b) Notwithstanding the requirements of Subsection (2)(a), the state auditor shall, at  
1589 the time of appointment or reappointment, adjust the length of terms to ensure that the terms  
1590 of committee members are staggered so that approximately half of the committee is appointed  
1591 every two years.

1592 (3) When a vacancy occurs in the membership for any reason, the replacement shall be  
1593 appointed for the unexpired term.

1594 (4) (a) (i) Members who are not government employees shall receive no compensation  
1595 or benefits for their services, but may receive per diem and expenses incurred in the  
1596 performance of the member's official duties at the rates established by the Division of Finance  
1597 under Sections 63A-3-106 and 63A-3-107.

- 1598 (ii) Members may decline to receive per diem and expenses for their service.
- 1599 (b) (i) State government officer and employee members who do not receive salary, per  
1600 diem, or expenses from their agency for their service may receive per diem and expenses  
1601 incurred in the performance of their official duties from the committee at the rates established  
1602 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- 1603 (ii) State government officer and employee members may decline to receive per diem  
1604 and expenses for their service.
- 1605 (c) (i) Local government members who do not receive salary, per diem, or expenses  
1606 from the entity that they represent for their service may receive per diem and expenses  
1607 incurred in the performance of their official duties at the rates established by the Division of  
1608 Finance under Sections 63A-3-106 and 63A-3-107.
- 1609 (ii) Local government members may decline to receive per diem and expenses for their  
1610 service.
- 1611 (5) The advisory committee shall assist, advise, and make recommendations to the  
1612 state auditor in the preparation of a uniform system of county budgeting, accounting, and  
1613 reporting.
- 1614 Section 40. Section **19-2-109.2** is amended to read:
- 1615 **19-2-109.2. Small business assistance program.**
- 1616 (1) The board shall establish a small business stationary source technical and  
1617 environmental compliance assistance program that conforms with Title V of the 1990 Clean  
1618 Air Act to assist small businesses to comply with state and federal air pollution laws.
- 1619 (2) There is created the Compliance Advisory Panel to advise and monitor the  
1620 program created in Subsection (1). The seven panel members are:
- 1621 (a) two members who are not owners or representatives of owners of small business  
1622 stationary air pollution sources, selected by the governor to represent the general public;
- 1623 (b) four members who are owners or who represent owners of small business  
1624 stationary sources selected by leadership of the Utah Legislature as follows:
- 1625 (i) one member selected by the majority leader of the Senate;

- 1626 (ii) one member selected by the minority leader of the Senate;
- 1627 (iii) one member selected by the majority leader of the House of Representatives; and
- 1628 (iv) one member selected by the minority leader of the House of Representatives; and
- 1629 (c) one member selected by the executive director to represent the Division of Air
- 1630 Quality, Department of Environmental Quality.

1631 (3) (a) Except as required by Subsection (3)(b), as terms of current panel members  
1632 expire, the department shall appoint each new member or reappointed member to a four-year  
1633 term.

1634 (b) Notwithstanding the requirements of Subsection (3)(a), the department shall, at the  
1635 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
1636 panel members are staggered so that approximately half of the panel is appointed every two  
1637 years.

1638 (4) Members may serve more than one term.

1639 (5) Members shall hold office until the expiration of their terms and until their  
1640 successors are appointed, but not more than 90 days after the expiration of their terms.

1641 (6) When a vacancy occurs in the membership for any reason, the replacement shall be  
1642 appointed for the unexpired term.

1643 (7) Every two years, the panel shall elect a chair from its members.

1644 (8) (a) The panel shall meet as necessary to carry out its duties. Meetings may be  
1645 called by the chair, the executive secretary, or upon written request of three of the members of  
1646 the panel.

1647 (b) Three days' notice shall be given to each member of the panel prior to a meeting.

1648 (9) Four members constitute a quorum at any meeting, and the action of the majority  
1649 of members present is the action of the panel.

1650 (10) (a) (i) Members who are not government employees shall receive no  
1651 compensation or benefits for their services, but may receive per diem and expenses incurred in  
1652 the performance of the member's official duties at the rates established by the Division of  
1653 Finance under Sections 63A-3-106 and 63A-3-107.

- 1654 (ii) Members may decline to receive per diem and expenses for their service.  
1655 (b) (i) State government officer and employee members who do not receive salary, per  
1656 diem, or expenses from their agency for their service may receive per diem and expenses  
1657 incurred in the performance of their official duties from the panel at the rates established by  
1658 the Division of Finance under Sections 63A-3-106 and 63A-3-107.  
1659 (ii) State government officer and employee members may decline to receive per diem  
1660 and expenses for their service.  
1661 (c) Legislators on the committee shall receive compensation and expenses as provided  
1662 by law and legislative rule.

1663 Section 41. Section **19-2-113** is amended to read:

1664 **19-2-113. Variances -- Judicial review.**

1665 (1) (a) Any person who owns or is in control of any plant, building, structure,  
1666 establishment, process, or equipment may apply to the board for a variance from its rules.

1667 (b) The board may grant the requested variance following an announced public  
1668 meeting, if it finds, after considering the endangerment to human health and safety and other  
1669 relevant factors, that compliance with the rules from which variance is sought would produce  
1670 serious hardship without equal or greater benefits to the public.

1671 (2) A variance may not be granted under this section until the board has considered  
1672 the relative interests of the applicant, other owners of property likely to be affected by the  
1673 discharges, and the general public.

1674 (3) Any variance or renewal of a variance shall be granted within the requirements of  
1675 Subsection (1) and for time periods and under conditions consistent with the reasons for it,  
1676 and within the following limitations:

1677 (a) if the variance is granted on the grounds that there are no practicable means known  
1678 or available for the adequate prevention, abatement, or control of the air pollution involved, it  
1679 shall be only until the necessary means for prevention, abatement, or control become known  
1680 and available, and subject to the taking of any substitute or alternate measures that the board  
1681 may prescribe;

1682 (b) (i) if the variance is granted on the grounds that compliance with the requirements  
1683 from which variance is sought will require that measures, because of their extent or cost, must  
1684 be spread over a long period of time, the variance shall be granted for a reasonable time that,  
1685 in the view of the board, is required for implementation of the necessary measures; and

1686 (ii) a variance granted on this ground shall contain a timetable for the implementation  
1687 of remedial measures in an expeditious manner and shall be conditioned on adherence to the  
1688 timetable; or

1689 (c) if the variance is granted on the ground that it is necessary to relieve or prevent  
1690 hardship of a kind other than that provided for in Subsection (3)(a) or (b), it shall not be  
1691 granted for more than one year.

1692 (4) (a) Any variance granted under this section may be renewed on terms and  
1693 conditions and for periods that would be appropriate for initially granting a variance.

1694 (b) If a complaint is made to the board because of the variance, a renewal may not be  
1695 granted unless, following an announced public meeting, the board finds that renewal is  
1696 justified.

1697 (c) To receive a renewal, an applicant shall submit a request for agency action to the  
1698 board requesting a renewal.

1699 (d) Immediately upon receipt of an application for renewal, the board shall give public  
1700 notice of the application as required by its rules.

1701 (5) (a) A variance or renewal is not a right of the applicant or holder but may be  
1702 granted at the board's discretion.

1703 (b) A person aggrieved by the board's decision may obtain judicial review.

1704 (c) Venue for judicial review of informal adjudicative proceedings is in the district  
1705 court in which the air contaminant source is situated.

1706 (6) (a) The board may review any variance during the term for which it was granted.

1707 (b) The review procedure is the same as that for an original application.

1708 (c) The variance may be revoked upon a finding that:

1709 (i) the nature or amount of emission has changed or increased; or

1710 (ii) if facts existing at the date of the review had existed at the time of the original  
1711 application, the variance would not have been granted.

1712 (7) Nothing in this section and no variance or renewal granted pursuant to it shall be  
1713 construed to prevent or limit the application of the emergency provisions and procedures of  
1714 Section 19-2-112 to any person or property.

1715 Section 42. Section **19-5-115** is amended to read:

1716 **19-5-115. Violations -- Penalties -- Civil actions by board -- Ordinances and**  
1717 **rules of political subdivisions.**

1718 (1) The terms "knowingly," "willfully," and "criminal negligence" shall mean as  
1719 defined in Section 76-2-103.

1720 (2) Any person who violates this chapter, or any permit, rule, or order adopted under  
1721 it, upon a showing that the violation occurred, is subject in a civil proceeding to a civil penalty  
1722 not to exceed \$10,000 per day of violation.

1723 (3) (a) A person is guilty of a class A misdemeanor and is subject to imprisonment  
1724 under Section 76-3-204 and a fine not exceeding \$25,000 per day who with criminal  
1725 negligence:

1726 (i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any  
1727 condition or limitation included in a permit issued under Subsection 19-5-107(3);

1728 (ii) violates Section 19-5-113;

1729 (iii) violates a pretreatment standard or toxic effluent standard for publicly owned  
1730 treatment works; or

1731 (iv) manages sewage sludge in violation of this chapter or rules adopted under it.

1732 (b) A person is guilty of a third degree felony and is subject to imprisonment under  
1733 Section 76-3-203 and a fine not to exceed \$50,000 per day of violation who knowingly:

1734 (i) discharges pollutants in violation of Subsection 19-5-107(1) or in violation of any  
1735 condition or limitation included in a permit issued under Subsection 19-5-107(3);

1736 (ii) violates Section 19-5-113;

1737 (iii) violates a pretreatment standard or toxic effluent standard for publicly-owned

1738 treatment works; or

1739 (iv) manages sewage sludge in violation of this chapter or rules adopted under it.

1740 (4) A person is guilty of a third degree felony and subject to imprisonment under

1741 Section 76-3-203 and shall be punished by a fine not exceeding \$10,000 per day of violation if

1742 that person knowingly:

1743 (a) makes a false material statement, representation, or certification in any application,

1744 record, report, plan, or other document filed or required to be maintained under this chapter, or

1745 by any permit, rule, or order issued under it; or

1746 (b) falsifies, tampers with, or knowingly renders inaccurate any monitoring device or

1747 method required to be maintained under this chapter.

1748 (5) (a) As used in this section:

1749 (i) "Organization" means a legal entity, other than a government, established or

1750 organized for any purpose, and includes a corporation, company, association, firm,

1751 partnership, joint stock company, foundation, institution, trust, society, union, or any other

1752 association of persons.

1753 (ii) "Serious bodily injury" means bodily injury which involves a substantial risk of

1754 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or

1755 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

1756 (b) A person is guilty of a second degree felony and, upon conviction, is subject to

1757 imprisonment under Section 76-3-203 and a fine of not more than \$250,000 if that person:

1758 (i) knowingly violates this chapter, or any permit, rule, or order adopted under it; and

1759 (ii) knows at that time that he is placing another person in imminent danger of death

1760 or serious bodily injury.

1761 (c) If a person is an organization, it shall, upon conviction of violating Subsection

1762 (5)(a), be subject to a fine of not more than \$1,000,000.

1763 (d) (i) A defendant who is an individual is considered to have acted knowingly if:

1764 (A) the defendant's conduct placed another person in imminent danger of death or

1765 serious bodily injury; and

1766 (B) the defendant was aware of or believed that there was an imminent danger of death  
1767 or serious bodily injury to another person.

1768 (ii) Knowledge possessed by a person other than the defendant may not be attributed  
1769 to the defendant.

1770 (iii) Circumstantial evidence may be used to prove that the defendant possessed actual  
1771 knowledge, including evidence that the defendant took affirmative steps to be shielded from  
1772 receiving relevant information.

1773 (e) (i) It is an affirmative defense to prosecution under Subsection (5) that the conduct  
1774 charged was consented to by the person endangered and that the danger and conduct charged  
1775 were reasonably foreseeable hazards of:

1776 (A) an occupation, a business, or a profession; or

1777 (B) medical treatment or medical or scientific experimentation conducted by  
1778 professionally approved methods and the other person was aware of the risks involved prior to  
1779 giving consent.

1780 (ii) The defendant has the burden of proof to establish any affirmative defense under  
1781 this Subsection (5)(e) and must prove that defense by a preponderance of the evidence.

1782 (6) For purposes of Subsections 19-5-115(3) through (5), a single operational upset  
1783 which leads to simultaneous violations of more than one pollutant parameter shall be treated as  
1784 a single violation.

1785 (7) (a) The board may begin a civil action for appropriate relief, including a permanent  
1786 or temporary injunction, for any violation or threatened violation for which it is authorized to  
1787 issue a compliance order under Section 19-5-111.

1788 (b) Actions shall be brought in the district court where the violation or threatened  
1789 violation occurs.

1790 (8) (a) The attorney general is the legal advisor for the board and its executive  
1791 secretary and shall defend them in all actions or proceedings brought against them.

1792 (b) The county attorney or district attorney as appropriate under Sections 17-18-1,  
1793 17-18-1.5, and 17-18-1.7 in the county in which a cause of action arises, shall bring any

1794 action, civil or criminal, requested by the board, to abate a condition that exists in violation of,  
1795 or to prosecute for the violation of, or to enforce, the laws or the standards, orders, and rules of  
1796 the board or the executive secretary issued under this chapter.

1797 (c) The board may itself initiate any action under this section and be represented by  
1798 the attorney general.

1799 (9) If any person fails to comply with a cease and desist order that is not subject to a  
1800 stay pending administrative or judicial review, the board may, through its executive secretary,  
1801 initiate an action for and be entitled to injunctive relief to prevent any further or continued  
1802 violation of the order.

1803 (10) Any political subdivision of the state may enact and enforce ordinances or rules  
1804 for the implementation of this chapter that are not inconsistent with this chapter.

1805 (11) (a) Except as provided in Subsection (11)(b), all penalties assessed and collected  
1806 under the authority of this section shall be deposited in the General Fund.

1807 (b) The department may reimburse itself and local governments from monies collected  
1808 from civil penalties for extraordinary expenses incurred in environmental enforcement  
1809 activities.

1810 (c) The department shall regulate reimbursements by making rules that:

1811 (i) define qualifying environmental enforcement activities; and

1812 (ii) define qualifying extraordinary expenses.

1813 Section 43. Section **19-6-108.5** is amended to read:

1814 **19-6-108.5. Management of hazardous waste generated outside Utah.**

1815 (1) On and after July 1, 1992, any waste entering Utah for disposal or treatment,  
1816 excluding incineration, that is classified by Utah as nonhazardous solid waste and by the state  
1817 of origin as hazardous waste, and that exceeds the base volume provided in Subsection (2) for  
1818 each receiving facility or site, shall be treated according to the same treatment standards to  
1819 which it would have been subject had it remained in the state where it originated. However, if  
1820 those standards are less protective of human health or the environment than the treatment  
1821 standards applicable under Utah law, the waste shall be treated in compliance with the Utah

1822 standards.

1823 (2) The base volume provided in Subsection (1) for each receiving facility or site is the  
1824 average of the annual quantities of nonhazardous solid waste that originated outside Utah and  
1825 were received by the facility or site in calendar years 1990 and 1991.

1826 (3) (a) The base volume for each receiving facility or site that has an operating plan  
1827 approved prior to July 1, 1992, but did not receive nonhazardous solid waste originating  
1828 outside Utah during calendar years 1990 and 1991, shall be the average of annual quantities of  
1829 out-of-state nonhazardous waste the facility or site received during the 24 months following  
1830 the date of initial receipt of nonhazardous waste originating outside Utah.

1831 (b) The base determined under Subsection (3)(a) applies to the facility or site on and  
1832 after July 1, 1995, regardless of the amount of nonhazardous waste originating outside Utah  
1833 received by the facility or site prior to this date.

1834 Section 44. Section **19-6-316** is amended to read:

1835 **19-6-316. Liability for costs of remedial investigations -- Liability agreements.**

1836 (1) The executive director may recover only a proportionate share of costs of any  
1837 remedial investigation performed under Sections 19-6-314 and 19-6-315 from each  
1838 responsible party, as provided in this section.

1839 (2) (a) In apportioning responsibility for the remedial investigation, or liability for the  
1840 costs of the remedial investigation, in any administrative proceeding or judicial action, the  
1841 following standards apply:

1842 (i) liability shall be apportioned in proportion to each responsible party's respective  
1843 contribution to the release;

1844 (ii) the apportionment of liability shall be based on equitable factors, including the  
1845 quantity, mobility, persistence, and toxicity of hazardous substances contributed by a  
1846 responsible party, and the comparative behavior of a responsible party in contributing to the  
1847 release, relative to other responsible parties.

1848 (b) Liability may not be apportioned against a current or previous owner or operator  
1849 who acquired or became the operator of the facility before March 18, 1985, who may

1850 otherwise be a responsible party but who did not know that any hazardous material which is  
1851 the subject of a release was on, in, or at the facility prior to acquisition or operation of the  
1852 facility, and the release is not the result of an act or omission of the current or previous owner  
1853 or operator.

1854 (c) Liability may not be apportioned against a current or previous owner or operator  
1855 who acquired or became the operator of the facility on or after March 18, 1985, who may  
1856 otherwise be a responsible party but who did not know and had no reason to know, after  
1857 having taken all appropriate inquiry into the previous ownership and uses of the facility,  
1858 consistent with good commercial or customary practice at the time of the purchase, that any  
1859 hazardous material which is the subject of a release was on, in, or at the facility prior to  
1860 acquisition or operation of the facility, and the release is not the result of an act or omission of  
1861 the current or previous owner or operator.

1862 (d) A responsible party who is not exempt under Subsection (2)(b) or (c) may be  
1863 considered to have contributed to the release and may be liable for a proportionate share of  
1864 costs as provided under this section either by affirmatively causing a release or by failing to  
1865 take action to prevent or abate a release which has originated at or from the facility. A person  
1866 whose property is contaminated by migration from an offsite release is not considered to have  
1867 contributed to the release unless the person takes actions which exacerbate the release.

1868 (e) A responsible party who meets the criteria in Subsection (2)(b) or (c) or a person  
1869 who is not considered to have contributed to a release under Subsection (2)(d) is not  
1870 considered to have contributed to a release solely by failing to take abatement or remedial  
1871 action pursuant to an administrative order.

1872 (f) (i) The burden of proving proportionate contribution shall be borne by each  
1873 responsible party.

1874 (ii) If a responsible party does not prove his proportionate contribution, the court or  
1875 the executive director shall apportion liability to the party based solely on available evidence  
1876 and the standards of Subsection (2)(a).

1877 (iii) The ability of a responsible party to pay is not a factor in the apportionment of

1878 liability.

1879 (g) The court may not impose joint and several liability.

1880 (h) Each responsible party is strictly liable solely for his proportionate share of  
1881 investigation costs.

1882 (3) The failure of the executive director to name all responsible parties is not a defense  
1883 to an action under this section.

1884 (4) (a) Any party who incurs costs under this part in excess of his liability may seek  
1885 contribution from any other party who is or may be liable under this part for the excess costs  
1886 in district court.

1887 (b) In resolving claims made under Subsection (4)(a), the court shall allocate costs  
1888 using the standards set forth in Subsection (2).

1889 (5) (a) A party who has resolved his liability in an agreement under Sections 19-6-314  
1890 through this section is not liable for claims for contribution regarding matters addressed in the  
1891 settlement.

1892 (b) (i) An agreement does not discharge any of the liability of responsible parties who  
1893 are not parties to the agreement, unless the terms of the agreement provide otherwise.

1894 (ii) An agreement made under this Subsection (5)(b) reduces the potential liability of  
1895 other responsible parties by the amount of the agreement.

1896 (6) (a) If the executive director obtains less than complete relief from a party who has  
1897 resolved his liability in an agreement under Sections 19-6-314 through this section, the  
1898 executive director may bring an action against any party who has not resolved his liability in  
1899 an agreement.

1900 (b) In apportioning liability, the standards of Subsection (2) apply.

1901 (c) A party who resolved his liability for some or all of the costs in an agreement under  
1902 Sections 19-6-314 through this section may seek contribution from any person who is not  
1903 party to an agreement under Sections 19-6-314 through this section.

1904 (7) (a) An agreement made under Sections 19-6-314 through this section may provide  
1905 that the executive director will pay for costs of actions that the parties have agreed to perform,

1906 but which the executive director has agreed to finance, under the agreement.

1907 (b) If the executive director makes payments from the fund, he may recover the  
1908 amount paid using the authority of Sections 19-6-314 through this section or any other  
1909 applicable authority.

1910 Section 45. Section **19-6-318** is amended to read:

1911 **19-6-318. Remedial action liability -- Liability agreements.**

1912 (1) (a) In apportioning responsibility for the remedial action in any administrative  
1913 proceeding or judicial action under Sections 19-6-317 and 19-6-319, the following standards  
1914 apply:

1915 (i) liability shall be apportioned in proportion to each responsible party's respective  
1916 contribution to the release;

1917 (ii) the apportionment of liability shall be based on equitable factors, including the  
1918 quantity, mobility, persistence, and toxicity of hazardous substances contributed by a  
1919 responsible party, and the comparative behavior of a responsible party in contributing to the  
1920 release, relative to other responsible parties.

1921 (b) Liability may not be apportioned against a current or previous owner or operator  
1922 who acquired or became the operator of the facility before March 18, 1985, who may  
1923 otherwise be a responsible party but who did not know that any hazardous material which is  
1924 the subject of a release was on, in, or at the facility prior to acquisition or operation of the  
1925 facility, and the release is not the result of an act or omission of the current or previous owner  
1926 or operator.

1927 (c) Liability may not be apportioned against a current or previous owner or operator  
1928 who acquired or became the operator of the facility on or after March 18, 1985, who may  
1929 otherwise be a responsible party but who did not know and had no reason to know, after  
1930 having taken all appropriate inquiry into the previous ownership and uses of the facility,  
1931 consistent with good commercial or customary practice at the time of the purchase, that any  
1932 hazardous material which is the subject of a release was on, in, or at the facility prior to  
1933 acquisition or operation of the facility, and the release is not the result of an act or omission of

1934 the current or previous owner or operator.

1935 (d) A responsible party who is not exempt under Subsection (1)(b) or (c) may be  
1936 considered to have contributed to the release and may be liable for a proportionate share of  
1937 costs as provided under this section either by affirmatively causing a release or by failing to  
1938 take action to prevent or abate a release which has originated at or from the facility. A person  
1939 whose property is contaminated by migration from an offsite release is not considered to have  
1940 contributed to the release unless the person takes actions which exacerbate the release.

1941 (e) A responsible party who meets the criteria in Subsection (1)(b) or (c) or a person  
1942 who is not considered to have contributed to a release under Subsection (1)(d) is not  
1943 considered to have contributed to a release solely by failing to take abatement or remedial  
1944 action pursuant to an administrative order.

1945 (f) (i) The burden of proving proportionate contribution shall be borne by each  
1946 responsible party.

1947 (ii) If a responsible party does not prove his proportionate contribution, the court or  
1948 the director shall apportion liability to the party solely based on available evidence and the  
1949 standards of Subsection (1)(a).

1950 (iii) The ability of a responsible party to pay is not a factor in the apportionment of  
1951 liability.

1952 (g) The court may not impose joint and several liability.

1953 (h) Each responsible party is strictly liable solely for his proportionate share of  
1954 remedial action costs.

1955 (2) The failure of the executive director to name all responsible parties is not a defense  
1956 to an action under this section.

1957 (3) (a) Any party who incurs costs under Sections 19-6-317 through 19-6-320 in  
1958 excess of his liability may seek contribution from any other party who is or may be liable  
1959 under Sections 19-6-317 through 19-6-320 for the excess costs in district court.

1960 (b) In resolving claims made under Subsection (3)(a), the court shall allocate costs  
1961 using the standards set forth in Subsection (1).

1962 (4) (a) A party who has resolved his liability in an agreement under Sections 19-6-317  
1963 through 19-6-320 is not liable for claims for contribution regarding matters addressed in the  
1964 settlement.

1965 (b) (i) An agreement does not discharge any of the liability of responsible parties who  
1966 are not parties to the agreement, unless the terms of the agreement provide otherwise.

1967 (ii) An agreement made under this Subsection (4)(b) reduces the potential liability of  
1968 other responsible parties by the amount of the agreement.

1969 (5) (a) If the executive director obtains less than complete relief from a party who has  
1970 resolved his liability in an agreement under Sections 19-6-317 through 19-6-320, the executive  
1971 director may bring an action against any party who has not resolved his liability in an  
1972 agreement.

1973 (b) In apportioning liability, the standards of Subsection (1) apply.

1974 (c) A party who resolved his liability for some or all of the costs in an agreement under  
1975 Sections 19-6-317 through 19-6-320 may seek contribution from any person who is not party  
1976 to an agreement under Sections 19-6-317 through 19-6-320.

1977 (6) (a) An agreement made under Sections 19-6-317 through 19-6-320 may provide  
1978 that the executive director will pay for costs of actions that the parties have agreed to perform,  
1979 but which the executive director has agreed to finance, under the agreement.

1980 (b) If the executive director makes payments, he may recover the amount using the  
1981 authority of Sections 19-6-317 through 19-6-320 or any other applicable authority.

1982 Section 46. Section **19-6-325** is amended to read:

1983 **19-6-325. Voluntary agreements -- Parties -- Funds -- Enforcement.**

1984 (1) (a) Under this part, and subject to Subsection (1)(b), the executive director may  
1985 enter into a voluntary agreement with a responsible party providing for the responsible party to  
1986 conduct an investigation or a cleanup action on sites that contain hazardous materials.

1987 (b) The executive director and a responsible party may not enter into a voluntary  
1988 agreement under this part unless all known potentially responsible parties:

1989 (i) have been notified by either the executive director or the responsible party of the

1990 proposed agreement; and

1991 (ii) have been given an opportunity to comment on the proposed agreement prior to  
1992 the parties' entering into the agreement.

1993 (2) (a) The executive director may receive funds from any responsible party that signs  
1994 a voluntary agreement allowing the executive director to:

1995 (i) review any proposals outlining how the investigation or cleanup action is to be  
1996 performed; and

1997 (ii) oversee the investigation or cleanup action.

1998 (b) Funds received by the executive director under this section shall be deposited in  
1999 the fund and used by the executive director as provided in the voluntary agreement.

2000 (3) If a responsible party fails to perform as required under a voluntary agreement  
2001 entered into under this part, the executive director may take action and seek penalties to  
2002 enforce the agreement as provided in the agreement.

2003 (4) The executive director may not use the provisions of Section 19-6-310, 19-6-316,  
2004 or 19-6-318 to recover costs received or expended pursuant to a voluntary agreement from any  
2005 person not a party to that agreement.

2006 (5) (a) Any party who incurs costs under a voluntary agreement in excess of his  
2007 liability may seek contribution from any other party who is or may be liable under this part for  
2008 the excess costs in district court.

2009 (b) In resolving claims made under Subsection (5)(a), the court shall allocate costs  
2010 using the standards in Subsection 19-6-310(2).

2011 (6) This section takes precedence over conflicting provisions in this chapter regarding  
2012 agreements with responsible parties to conduct an investigation or cleanup action.

2013 Section 47. Section **19-6-402** is amended to read:

2014 **19-6-402. Definitions.**

2015 As used in this part:

2016 (1) "Abatement action" means action taken to limit, reduce, mitigate, or eliminate a  
2017 release from an underground storage tank or petroleum storage tank, or to limit or reduce,

2018 mitigate, or eliminate the damage caused by that release.

2019 (2) "Board" means the Solid and Hazardous Waste Control Board created in Section  
2020 19-1-106.

2021 (3) "Bodily injury" means bodily harm, sickness, disease, or death sustained by any  
2022 person.

2023 (4) "Certificate of compliance" means a certificate issued to a facility by the executive  
2024 secretary:

2025 (a) demonstrating that an owner or operator of a facility containing one or more  
2026 petroleum storage tanks has met the requirements of this part; and

2027 (b) listing all tanks at the facility, specifying which tanks may receive petroleum and  
2028 which tanks have not met the requirements for compliance.

2029 (5) "Certificate of registration" means a certificate issued to a facility by the executive  
2030 secretary demonstrating that an owner or operator of a facility containing one or more  
2031 underground storage tanks has:

2032 (a) registered the tanks; and

2033 (b) paid the annual underground storage tank fee.

2034 (6) (a) "Certified underground storage tank consultant" means any person who:

2035 (i) meets the education and experience standards established by the board under  
2036 Subsection 19-6-403(1)(a)(vi) in order to provide or contract to provide information, opinions,  
2037 or advice relating to underground storage tank management, release abatement, investigation,  
2038 corrective action, or evaluation for a fee, or in connection with the services for which a fee is  
2039 charged; and

2040 (ii) has submitted an application to the board and received a written statement of  
2041 certification from the board.

2042 (b) "Certified underground storage tank consultant" does not include:

2043 (i) an employee of the owner or operator of the underground storage tank, or an  
2044 employee of a business operation that has a business relationship with the owner or operator of  
2045 the underground storage tank, and that markets petroleum products or manages underground

2046 storage tanks; or

2047 (ii) persons licensed to practice law in this state who offer only legal advice on  
2048 underground storage tank management, release abatement, investigation, corrective action, or  
2049 evaluation.

2050 (7) "Closed" means an underground storage tank no longer in use that has been:

2051 (a) emptied and cleaned to remove all liquids and accumulated sludges; and

2052 (b) either removed from the ground or filled with an inert solid material.

2053 (8) "Corrective action plan" means a plan for correcting a release from a petroleum  
2054 storage tank that includes provisions for all or any of the following:

2055 (a) cleanup or removal of the release;

2056 (b) containment or isolation of the release;

2057 (c) treatment of the release;

2058 (d) correction of the cause of the release;

2059 (e) monitoring and maintenance of the site of the release;

2060 (f) provision of alternative water supplies to persons whose drinking water has become  
2061 contaminated by the release; or

2062 (g) temporary or permanent relocation, whichever is determined by the executive  
2063 secretary to be more cost-effective, of persons whose dwellings have been determined by the  
2064 executive secretary to be no longer habitable due to the release.

2065 (9) "Costs" means any monies expended for:

2066 (a) investigation;

2067 (b) abatement action;

2068 (c) corrective action;

2069 (d) judgments, awards, and settlements for bodily injury or property damage to third  
2070 parties;

2071 (e) legal and claims adjusting costs incurred by the state in connection with  
2072 judgments, awards, or settlements for bodily injury or property damage to third parties; or

2073 (f) costs incurred by the state risk manager in determining the actuarial soundness of

2074 the fund.

2075 (10) "Covered by the fund" means the requirements of Section 19-6-424 have been  
2076 met.

2077 (11) "Dwelling" means a building that is usually occupied by a person lodging there at  
2078 night.

2079 (12) "Enforcement proceedings" means a civil action or the procedures to enforce  
2080 orders established by Section 19-6-425.

2081 (13) "Executive secretary" means the executive secretary of the board.

2082 (14) "Facility" means all underground storage tanks located on a single parcel of  
2083 property or on any property adjacent or contiguous to that parcel.

2084 (15) "Fund" means the Petroleum Storage Tank Trust Fund created in Section  
2085 19-6-409.

2086 (16) "Loan fund" means the Petroleum Storage Tank Loan Fund created in Section  
2087 19-6-405.3.

2088 (17) "Operator" means any person in control of or who is responsible on a daily basis  
2089 for the maintenance of an underground storage tank that is in use for the storage, use, or  
2090 dispensing of a regulated substance.

2091 (18) "Owner" means:

2092 (a) in the case of an underground storage tank in use on or after November 8, 1984,  
2093 any person who owns an underground storage tank used for the storage, use, or dispensing of a  
2094 regulated substance; and

2095 (b) in the case of any underground storage tank in use before November 8, 1984, but  
2096 not in use on or after November 8, 1984, any person who owned the tank immediately before  
2097 the discontinuance of its use for the storage, use, or dispensing of a regulated substance.

2098 (19) "Petroleum" includes crude oil or any fraction of crude oil that is liquid at 60  
2099 degrees Fahrenheit and at a pressure of 14.7 pounds per square inch absolute.

2100 (20) "Petroleum storage tank" means a tank that:

2101 (a) (i) is underground;

2102 (ii) is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42  
2103 U.S.C. Section 6991c, et seq.; and

2104 (iii) contains petroleum; or

2105 (b) is a tank that the owner or operator voluntarily submits for participation in the  
2106 Petroleum Storage Tank Trust Fund under Section 19-6-415.

2107 (21) "Petroleum Storage Tank Restricted Account" means the account created in  
2108 Section 19-6-405.5.

2109 (22) "Program" means the Environmental Assurance Program under Section  
2110 19-6-410.5.

2111 (23) "Property damage" means physical injury to or destruction of tangible property  
2112 including loss of use of that property.

2113 (24) "Regulated substance" means petroleum and petroleum-based substances  
2114 comprised of a complex blend of hydrocarbons derived from crude oil through processes of  
2115 separation, conversion, upgrading, and finishing, and includes motor fuels, jet fuels, distillate  
2116 fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

2117 (25) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching,  
2118 or disposing from an underground storage tank or petroleum storage tank. The entire release is  
2119 considered a single release.

2120 (26) (a) "Responsible party" means any person who:

2121 (i) is the owner or operator of a facility;

2122 (ii) owns or has legal or equitable title in a facility or an underground storage tank;

2123 (iii) owned or had legal or equitable title in the facility at the time any petroleum was  
2124 received or contained at the facility;

2125 (iv) operated or otherwise controlled activities at the facility at the time any petroleum  
2126 was received or contained at the facility; or

2127 (v) is an underground storage tank installation company.

2128 (b) "Responsible party" as defined in Subsections (26)(a)(i), (ii), and (iii) does not  
2129 include:

2130 (i) any person who is not an operator and, without participating in the management of  
2131 a facility and otherwise not engaged in petroleum production, refining, and marketing, holds  
2132 indicia of ownership:

2133 (A) primarily to protect his security interest in the facility; or

2134 (B) as a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under  
2135 an employee benefit plan; or

2136 (ii) governmental ownership or control of property by involuntary transfers as  
2137 provided in CERCLA Section 101(20)(D), 42 U.S.C. Sec. 9601(20)(D).

2138 (c) The exemption created by Subsection (26)(b)(i)(B) does not apply to actions taken  
2139 by the state or its officials or agencies under this part.

2140 (d) The terms and activities "indicia of ownership," "primarily to protect a security  
2141 interest," "participation in management," and "security interest" under this part are in  
2142 accordance with 40 CFR Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9).

2143 (e) The terms "participate in management" and "indicia of ownership" as defined in 40  
2144 CFR Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9) include and apply to  
2145 the fiduciaries listed in Subsection (26)(b)(i)(B).

2146 (27) "Soil test" means a test, established or approved by board rule, to detect the  
2147 presence of petroleum in soil.

2148 (28) "State cleanup appropriation" means the money appropriated by the Legislature to  
2149 the department to fund the investigation, abatement, and corrective action regarding releases  
2150 not covered by the fund.

2151 (29) "Underground storage tank" means any tank regulated under Subtitle I, Resource  
2152 Conservation and Recovery Act, 42 U.S.C. Sec. 6991c, et seq., including:

2153 (a) a petroleum storage tank;

2154 (b) underground pipes and lines connected to a storage tank; and

2155 (c) any underground ancillary equipment and containment system.

2156 (30) "Underground storage tank installation company" means any person, firm,  
2157 partnership, corporation, governmental entity, association, or other organization who installs

2158 underground storage tanks.

2159 (31) "Underground storage tank installation company permit" means a permit issued  
2160 to an underground storage tank installation company by the executive secretary.

2161 (32) "Underground storage tank technician" means a person employed by and acting  
2162 under the direct supervision of a certified underground storage tank consultant to assist in  
2163 carrying out the functions described in Subsection (6)(a).

2164 Section 48. Section **19-6-703** is amended to read:

2165 **19-6-703. Definitions.**

2166 (1) "Board" means the Solid and Hazardous Waste Control Board created in Section  
2167 19-1-106.

2168 (2) "Commission" means the State Tax Commission.

2169 (3) "Department" means the Department of Environmental Quality created in Title 19,  
2170 Chapter 1, General Provisions.

2171 (4) "Division" means the Division of Solid and Hazardous Waste as created in Section  
2172 19-1-105.

2173 (5) "DIY" means do it yourself.

2174 (6) "DIYer" means a person who generates used oil through household activities,  
2175 including maintenance of personal vehicles.

2176 (7) "DIYer used oil" means used oil a person generates through household activities,  
2177 including maintenance of personal vehicles.

2178 (8) "DIYer used oil collection center" means any site or facility that accepts or  
2179 aggregates and stores used oil collected only from DIYers.

2180 (9) "Executive secretary" means the executive secretary of the board.

2181 (10) "Hazardous waste" means any substance defined as hazardous waste under Title  
2182 19, Chapter 6, Hazardous Substances.

2183 (11) "Lubricating oil" means the fraction of crude oil or synthetic oil used to reduce  
2184 friction in an industrial or mechanical device. Lubricating oil includes rerefined oil.

2185 (12) "Lubricating oil vendor" means the person making the first sale of a lubricating

2186 oil in Utah.

2187 (13) "Manifest" means the form used for identifying the quantity and composition and  
2188 the origin, routing, and destination of used oil during its transportation from the point of  
2189 collection to the point of storage, processing, use, or disposal.

2190 (14) "Off-specification used oil" means used oil that exceeds levels of constituents and  
2191 properties as specified by board rule and consistent with 40 CFR 279, Standards for the  
2192 Management of Used Oil.

2193 (15) "On-specification used oil" means used oil that does not exceed levels of  
2194 constituents and properties as specified by board rule and consistent with 40 CFR 279,  
2195 Standards for the Management of Used Oil.

2196 (16) (a) "Processing" means chemical or physical operations under Subsection (16)(b)  
2197 designed to produce from used oil, or to make used oil more amenable for production of:

- 2198 (i) gasoline, diesel, and other petroleum derived fuels;
- 2199 (ii) lubricants; or
- 2200 (iii) other products derived from used oil.

2201 (b) "Processing" includes:

- 2202 (i) blending used oil with virgin petroleum products;
- 2203 (ii) blending used oils to meet fuel specifications;
- 2204 (iii) filtration;
- 2205 (iv) simple distillation;
- 2206 (v) chemical or physical separation; and
- 2207 (vi) rerefining.

2208 (17) "Recycled oil" means oil reused for any purpose following its original use,  
2209 including:

- 2210 (a) the purpose for which the oil was originally used; and
- 2211 (b) used oil processed or burned for energy recovery.

2212 (18) "Rerefining distillation bottoms" means the heavy fraction produced by vacuum  
2213 distillation of filtered and dehydrated used oil. The composition varies with column operation

2214 and feedstock.

2215 (19) "Used oil" means any oil, refined from crude oil or a synthetic oil, that has been  
2216 used and as a result of that use is contaminated by physical or chemical impurities.

2217 (20) (a) "Used oil aggregation point" means any site or facility that accepts,  
2218 aggregates, or stores used oil collected only from other used oil generation sites owned or  
2219 operated by the owner or operator of the aggregation point, from which used oil is transported  
2220 to the aggregation point in shipments of no more than 55 gallons.

2221 (b) A used oil aggregation point may also accept oil from DIYers.

2222 (21) "Used oil burner" means a person who burns used oil for energy recovery.

2223 (22) "Used oil collection center" means any site or facility registered with the state to  
2224 manage used oil and that accepts or aggregates and stores used oil collected from used oil  
2225 generators, other than DIYers, who are regulated under this part and bring used oil to the  
2226 collection center in shipments of no more than 55 gallons and under the provisions of this part.  
2227 Used oil collection centers may accept DIYer used oil also.

2228 (23) "Used oil fuel marketer" means any person who:

2229 (a) directs a shipment of off-specification used oil from its facility to a used oil burner;  
2230 or

2231 (b) first claims the used oil to be burned for energy recovery meets the used oil fuel  
2232 specifications of 40 CFR 279, Standards for the Management of Used Oil, except when the oil  
2233 is to be burned in accordance with rules for on-site burning in space heaters in accordance  
2234 with 40 CFR 279.

2235 (24) "Used oil generator" means any person, by site, whose act or process produces  
2236 used oil or whose act first causes used oil to become subject to regulation.

2237 (25) "Used oil handler" means a person generating used oil, collecting used oil,  
2238 transporting used oil, operating a transfer facility or aggregation point, processing or rerefining  
2239 used oil, or marketing used oil.

2240 (26) "Used oil processor or rerefiner" means a facility that processes used oil.

2241 (27) "Used oil transfer facility" means any transportation-related facility, including

2242 loading docks, parking areas, storage areas, and other areas where shipments of used oil are  
2243 held for more than 24 hours during the normal course of transportation and not longer than 35  
2244 days.

2245 (28) (a) "Used oil transporter" means the following persons unless they are exempted  
2246 under Subsection (28)(b):

2247 (i) any person who transports used oil;

2248 (ii) any person who collects used oil from more than one generator and transports the  
2249 collected oil;

2250 (iii) except as exempted under Subsection (28)(b)(i), (ii), or (iii), any person who  
2251 transports collected DIYer used oil from used oil generators, collection centers, aggregation  
2252 points, or other facilities required to be permitted or registered under this part and where  
2253 household DIYer used oil is collected; and

2254 (iv) owners and operators of used oil transfer facilities.

2255 (b) "Used oil transporter" does not include:

2256 (i) persons who transport oil on site;

2257 (ii) generators who transport shipments of used oil totalling 55 gallons or less from the  
2258 generator to a used oil collection center as allowed under 40 CFR 279.24, Off-site Shipments;

2259 (iii) generators who transport shipments of used oil totalling 55 gallons or less from  
2260 the generator to a used oil aggregation point owned or operated by the same generator as  
2261 allowed under 40 CFR 279.24, Off-site Shipments;

2262 (iv) persons who transport used oil generated by DIYers from the initial generator to a  
2263 used oil generator, used oil collection center, used oil aggregation point, used oil processor or  
2264 rerefiner, or used oil burner subject to permitting or registration under this part; or

2265 (v) railroads that transport used oil and are regulated under 49 U.S.C. Subtitle V, Rail  
2266 Programs, and 49 U.S.C. 5101 et seq., federal Hazardous Materials Transportation Uniform  
2267 Safety Act.

2268 Section 49. Section **19-6-706** is amended to read:

2269 **19-6-706. Disposal of used oil -- Prohibitions.**

2270 (1) (a) Except as authorized by the board or exempted in this section, a person may not  
2271 place, discard, or otherwise dispose of used oil:

2272 (i) in any solid waste treatment, storage, or disposal facility operated by a political  
2273 subdivision or a private entity, except as authorized for the disposal of used oil that is  
2274 hazardous waste under state law;

2275 (ii) in sewers, drainage systems, septic tanks, surface or ground waters, watercourses,  
2276 or any body of water; or

2277 (iii) on the ground.

2278 (b) A person who unknowingly disposes of used oil in violation of Subsection (1)(a)(i)  
2279 is not guilty of a violation of this section.

2280 (2) (a) A person may dispose of an item or substance that contains de minimis  
2281 amounts of oil in disposal facilities under Subsection (1)(a)(i) if:

2282 (i) to the extent reasonably possible all oil has been removed from the item or  
2283 substance; and

2284 (ii) no free flowing oil remains in the item or substance.

2285 (b) (i) A nonterne plated used oil filter complies with this section if it is not mixed  
2286 with hazardous waste and the oil filter has been gravity hot-drained by one of the following  
2287 methods:

2288 (A) puncturing the filter antidrain back valve or the filter dome end and gravity  
2289 hot-draining;

2290 (B) gravity hot-draining and crushing;

2291 (C) dismantling and gravity hot-draining; or

2292 (D) any other equivalent gravity hot-draining method that will remove used oil from  
2293 the filter at least as effectively as the methods listed in this Subsection (2)(b)(i).

2294 (ii) As used in this Subsection (2), "gravity hot-drained" means drained for not less  
2295 than 12 hours near operating temperature but above 60 degrees Fahrenheit.

2296 (3) A person may not mix or commingle used oil with the following substances, except  
2297 as incidental to the normal course of processing, mechanical, or industrial operations:

2298 (a) solid waste that is to be disposed of in any solid waste treatment, storage, or  
2299 disposal facility, except as authorized by the board under this chapter; or

2300 (b) any hazardous waste so the resulting mixture may not be recycled or used for other  
2301 beneficial purpose as authorized under this part.

2302 (4) (a) This section does not apply to releases to land or water of de minimis quantities  
2303 of used oil, except:

2304 (i) the release of de minimis quantities of used oil is subject to any regulation or  
2305 prohibition under the authority of the department; and

2306 (ii) the release of de minimis quantities of used oil is subject to any rule made by the  
2307 board under this part prohibiting the release of de minimis quantities of used oil to the land or  
2308 water from tanks, pipes, or other equipment in which used oil is processed, stored, or  
2309 otherwise managed by used oil handlers, except wastewater under Subsection 19-6-708(2)(j).

2310 (b) As used in this Subsection (4), "de minimis quantities of used oil:"

2311 (i) means small spills, leaks, or drippings from pumps, machinery, pipes, and other  
2312 similar equipment during normal operations; and

2313 (ii) does not include used oil discarded as a result of abnormal operations resulting in  
2314 substantial leaks, spills, or other releases.

2315 (5) Used oil may not be used for road oiling, dust control, weed abatement, or other  
2316 similar uses that have the potential to release used oil in the environment, except in  
2317 compliance with Section 19-6-711 and board rule.

2318 (6) (a) (i) Facilities in existence on July 1, 1993, and subject to this section may apply  
2319 to the executive secretary for an extension of time beyond that date to meet the requirements of  
2320 this section.

2321 (ii) The executive secretary may grant an extension of time beyond July 1, 1993, upon  
2322 a finding of need under Subsection (6)(b) or (c).

2323 (iii) The total of all extensions of time granted to one applicant under this Subsection  
2324 (6)(a) may not extend beyond January 1, 1995.

2325 (b) The executive secretary upon receipt of a request for an extension of time may

2326 request from the facility any information the executive secretary finds reasonably necessary to  
2327 evaluate the need for an extension. This information may include:

2328 (i) why the facility is unable to comply with the requirements of this section on or  
2329 before July 1, 1993;

2330 (ii) the processes or functions which prevent compliance on or before July 1, 1993;

2331 (iii) measures the facility has taken and will take to achieve compliance; and

2332 (iv) a proposed compliance schedule, including a proposed date for being in  
2333 compliance with this section.

2334 (c) Additional extensions of time may be granted by the executive secretary upon  
2335 application by the facility and a showing by the facility that:

2336 (i) the additional extension is reasonably necessary; and

2337 (ii) the facility has made a diligent and good faith effort to comply with this section  
2338 within the time frame of the prior extension.

2339 Section 50. Section **20A-1-703** is amended to read:

2340 **20A-1-703. Proceedings by registered voter.**

2341 (1) Any registered voter who has information that any provisions of this title have  
2342 been violated by any candidate for whom the registered voter had the right to vote, by any  
2343 personal campaign committee of that candidate, by any member of that committee, or by any  
2344 election official, may file a verified petition with the lieutenant governor.

2345 (2) (a) The lieutenant governor shall gather information and determine if a special  
2346 investigation is necessary.

2347 (b) If the lieutenant governor determines that a special investigation is necessary, the  
2348 lieutenant governor shall refer the information to the attorney general, who shall:

2349 (i) bring a special proceeding to investigate and determine whether or not there has  
2350 been a violation; and

2351 (ii) appoint special counsel to conduct that proceeding on behalf of the state.

2352 (3) If it appears from the petition or otherwise that sufficient evidence is obtainable to  
2353 show that there is probable cause to believe that a violation has occurred, the attorney general

2354 shall:

2355 (a) grant leave to bring the proceeding; and

2356 (b) appoint special counsel to conduct the proceeding.

2357 (4) (a) If leave is granted, the registered voter may, by a special proceeding brought in  
2358 the district court in the name of the state upon the relation of the registered voter, investigate  
2359 and determine whether or not the candidate, candidate's personal campaign committee, any  
2360 member of the candidate's personal campaign committee, or any election officer has violated  
2361 any provision of this title.

2362 (b) (i) In the proceeding, the complaint shall:

2363 (A) be served with the summons; and

2364 (B) set forth the name of the person or persons who have allegedly violated this title  
2365 and the grounds of those violations in detail.

2366 (ii) The complaint may not be amended except by leave of the court.

2367 (iii) The summons and complaint in the proceeding shall be filed with the court no  
2368 later than five days after they are served.

2369 (c) (i) The answer to the complaint shall be served and filed within 10 days after the  
2370 service of the summons and complaint.

2371 (ii) Any allegation of new matters in the answer shall be considered controverted by  
2372 the adverse party without reply, and the proceeding shall be considered at issue and stand  
2373 ready for trial upon five days' notice of trial.

2374 (d) (i) All proceedings initiated under this section have precedence over any other civil  
2375 actions.

2376 (ii) The court shall always be considered open for the trial of the issues raised in this  
2377 proceeding.

2378 (iii) The proceeding shall be tried and determined as a civil action without a jury, with  
2379 the court determining all issues of fact and issues of law.

2380 (iv) If more than one proceeding is pending or the election of more than one person is  
2381 investigated and contested, the court may:

- 2382 (A) order the proceedings consolidated and heard together; and  
2383 (B) equitably apportion costs and disbursements.
- 2384 (e) (i) Either party may request a change of venue as provided by law in civil actions,  
2385 but application for a change of venue must be made within five days after service of summons  
2386 and complaint.
- 2387 (ii) The judge shall decide the request for a change of venue and issue any necessary  
2388 orders within three days after the application is made.
- 2389 (iii) If a party fails to request a change of venue within five days of service, he has  
2390 waived his right to a change of venue.
- 2391 (f) (i) If judgment is in favor of the plaintiff, the relator may petition the judge to  
2392 recover his taxable costs and disbursements against the person whose right to the office is  
2393 contested.
- 2394 (ii) The judge may not award costs to the defendant unless it appears that the  
2395 proceeding was brought in bad faith.
- 2396 (iii) Subject to the limitations contained in Subsection (4)(f), the judge may decide  
2397 whether or not to award costs and disbursements.
- 2398 (5) Nothing in this section may be construed to prohibit any other civil or criminal  
2399 actions or remedies against alleged violators.
- 2400 (6) In the event a witness asserts a privilege against self-incrimination, testimony and  
2401 evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of  
2402 Immunity.
- 2403 Section 51. Section **20A-3-307** is amended to read:  
2404 **20A-3-307. Processing of absentee ballot.**
- 2405 (1) Except as provided in Subsection (2), upon receipt of an envelope containing an  
2406 absentee ballot, the election officer shall:
- 2407 (a) enclose the unopened envelope containing the absentee ballot and the written  
2408 application of the absentee voter in a larger envelope;
- 2409 (b) seal that envelope and endorse it with:

2410 (i) the name or number of the proper voting precinct;  
2411 (ii) the name and official title of the election officer; and  
2412 (iii) the words "This envelope contains an absentee ballot and may only be opened on  
2413 election day at the polls while the polls are open."; and

2414 (c) safely keep the envelope in his office until it is delivered by him to the proper  
2415 election judges.

2416 (2) If the election officer receives envelopes containing absentee ballots too late to  
2417 transmit them to the election judges on election day, the election officer shall retain those  
2418 absentee ballots in a safe and secure place until they can be processed as provided in Section  
2419 20A-3-309.

2420 (3) (a) Except as provided in Subsection (3)(c), when reasonably possible, the election  
2421 officer shall deliver or mail valid absentee ballots to the appropriate voting precinct election  
2422 judges so that they may be processed at the voting precinct on election day.

2423 (b) If the election officer is unable to determine the voting precinct to which an  
2424 absentee ballot should be sent, or if a valid absentee ballot is received too late for delivery on  
2425 election day to election judges, the election officer shall retain the absentee ballot in a safe  
2426 place until it can be processed as required by Section 20A-3-309.

2427 (c) When the absentee ballots will be centrally counted, the election officer shall  
2428 deliver those absentee ballots to the counting center on election day for counting.

2429 Section 52. Section **20A-7-501** is amended to read:

2430 **20A-7-501. Initiatives.**

2431 (1) (a) Except as provided in Subsection (1)(b), a person seeking to have an initiative  
2432 submitted to a local legislative body or to a vote of the people for approval or rejection shall  
2433 obtain legal signatures equal to:

2434 (i) 10% of all the votes cast in the county, city, or town for all candidates for governor  
2435 at the last election at which a governor was elected if the total number of votes exceeds  
2436 25,000;

2437 (ii) 12-1/2% of all the votes cast in the county, city, or town for all candidates for

2438 governor at the last election at which a governor was elected if the total number of votes does  
2439 not exceed 25,000 but is more than 10,000;

2440 (iii) 15% of all the votes cast in the county, city, or town for all candidates for  
2441 governor at the last election at which a governor was elected if the total number of votes does  
2442 not exceed 10,000 but is more than 2,500;

2443 (iv) 20% of all the votes cast in the county, city, or town for all candidates for  
2444 governor at the last election at which a governor was elected if the total number of votes does  
2445 not exceed 2,500 but is more than 500;

2446 (v) 25% of all the votes cast in the county, city, or town for all candidates for governor  
2447 at the last election at which a governor was elected if the total number of votes does not exceed  
2448 500 but is more than 250; and

2449 (vi) 30% of all the votes cast in the county, city, or town for all candidates for  
2450 governor at the last election at which a governor was elected if the total number of votes does  
2451 not exceed 250.

2452 (b) In addition to the signature requirements of Subsection (1)(a), a person seeking to  
2453 have an initiative submitted to a local legislative body or to a vote of the people for approval  
2454 or rejection in a county, city, or town where the local legislative body is elected from council  
2455 districts shall obtain, from each of a majority of council districts, legal signatures equal to the  
2456 percentages established in Subsection (1)(a).

2457 (2) If the total number of certified names from each verified signature sheet equals or  
2458 exceeds the number of names required by this section, the clerk or recorder shall deliver the  
2459 proposed law to the local legislative body at its next meeting.

2460 (3) (a) The local legislative body shall either adopt or reject the proposed law without  
2461 change or amendment within 30 days of receipt of the proposed law.

2462 (b) The local legislative body may:

2463 (i) adopt the proposed law and refer it to the people;

2464 (ii) adopt the proposed law without referring it to the people; or

2465 (iii) reject the proposed law.

2466 (c) If the local legislative body adopts the proposed law but does not refer it to the  
2467 people, it is subject to referendum as with other local laws.

2468 (d) (i) If a county legislative body rejects a proposed county ordinance or amendment,  
2469 or takes no action on it, the county clerk shall submit it to the voters of the county at the next  
2470 regular general election.

2471 (ii) If a local legislative body rejects a proposed municipal ordinance or amendment,  
2472 or takes no action on it, the municipal recorder or clerk shall submit it to the voters of the  
2473 municipality at the next municipal general election.

2474 (e) (i) If the local legislative body rejects the proposed ordinance or amendment, or  
2475 takes no action on it, the local legislative body may adopt a competing local law.

2476 (ii) The local legislative body shall prepare and adopt the competing local law within  
2477 the 30 days allowed for its action on the measure proposed by initiative petition.

2478 (iii) If the local legislative body adopts a competing local law, the clerk or recorder  
2479 shall submit it to the voters of the county or municipality at the same election at which the  
2480 initiative proposal is submitted.

2481 (f) If conflicting local laws are submitted to the people at the same election and two or  
2482 more of the conflicting measures are approved by the people, then the measure that receives  
2483 the greatest number of affirmative votes shall control all conflicts.

2484 Section 53. Section **23-14-2.6** is amended to read:

2485 **23-14-2.6. Regional advisory councils -- Creation -- Membership -- Duties -- Per**  
2486 **diem and expenses.**

2487 (1) There are created five regional advisory councils which shall consist of 12 to 15  
2488 members each from the wildlife region whose boundaries are established for administrative  
2489 purposes by the division.

2490 (2) The members shall include individuals who represent the following groups and  
2491 interests:

2492 (a) agriculture;

2493 (b) sportsmen;

- 2494 (c) nonconsumptive wildlife;
- 2495 (d) locally elected public officials;
- 2496 (e) federal land agencies; and
- 2497 (f) the public at large.
- 2498 (3) The executive director of the Department of Natural Resources, in consultation
- 2499 with the director of the Division of Wildlife Resources, shall select the members from a list of
- 2500 nominees submitted by the respective interest group or agency.
- 2501 (4) The councils shall:
- 2502 (a) hear broad input, including recommendations, biological data, and information
- 2503 regarding the effects of wildlife;
- 2504 (b) gather information from staff, the public, and government agencies; and
- 2505 (c) make recommendations to the Wildlife Board in an advisory capacity.
- 2506 (5) (a) Except as required by Subsection (5)(b), each member shall serve a four-year
- 2507 term.
- 2508 (b) Notwithstanding the requirements of Subsection (5)(a), the executive director
- 2509 shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the
- 2510 terms of council members are staggered so that approximately half of the council is appointed
- 2511 every two years.
- 2512 (6) When a vacancy occurs in the membership for any reason, the replacement shall be
- 2513 appointed for the unexpired term.
- 2514 (7) The councils shall determine:
- 2515 (a) the time and place of meetings; and
- 2516 (b) any other procedural matter not specified in this chapter.
- 2517 (8) Members of the councils shall complete an orientation course as provided in
- 2518 Subsection 23-14-2(8).
- 2519 (9) (a) (i) Members who are not government employees shall receive no compensation
- 2520 or benefits for their services, but may receive per diem and expenses incurred in the
- 2521 performance of the member's official duties at the rates established by the Division of Finance

2522 under Sections 63A-3-106 and 63A-3-107.

2523 (ii) Members may decline to receive per diem and expenses for their service.

2524 (b) (i) State government officer and employee members who do not receive salary, per  
2525 diem, or expenses from their agency for their service may receive per diem and expenses  
2526 incurred in the performance of their official duties from the council at the rates established by  
2527 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

2528 (ii) State government officer and employee members may decline to receive per diem  
2529 and expenses for their service.

2530 (c) (i) Local government members who do not receive salary, per diem, or expenses  
2531 from the entity that they represent for their service may receive per diem and expenses  
2532 incurred in the performance of their official duties at the rates established by the Division of  
2533 Finance under Sections 63A-3-106 and 63A-3-107.

2534 (ii) Local government members may decline to receive per diem and expenses for their  
2535 service.

2536 Section 54. Section **23-22-2** is amended to read:

2537 **23-22-2. Acceptance of Acts of Congress.**

2538 (1) The state assents to the provisions of 16 U.S.C. Sec. 669 et seq., Wildlife  
2539 Restoration Act and 16 U.S.C. 777 et seq., Sport Fish Restoration Act.

2540 (2) The division shall conduct and establish cooperative fish and wildlife restoration  
2541 projects as provided by the acts specified in Subsection (1) and rules promulgated under those  
2542 acts.

2543 (3) The following revenues received by the state may not be used for any purpose  
2544 other than the administration of the division:

2545 (a) revenue from the sale of any license, permit, tag, stamp, or certificate of  
2546 registration that conveys to a person the privilege to take wildlife for sport or recreation, less  
2547 reasonable vendor fees;

2548 (b) revenue from the sale, lease, rental, or other granting of rights of real or personal  
2549 property acquired with revenue specified in Subsection (3)(a);

2550 (c) interest, dividends, or other income earned on revenue specified in Subsection  
2551 (3)(a) or (b); and

2552 (d) federal aid project reimbursements to the extent that revenue specified in  
2553 Subsection (3)(a) or (b) originally funded the project for which the reimbursement is being  
2554 made.

2555 Section 55. Section **26-18-102** is amended to read:

2556 **26-18-102. DUR Board -- Creation and membership -- Expenses.**

2557 (1) There is created a 12-member Drug Utilization Review Board responsible for  
2558 implementation of a retrospective and prospective DUR program.

2559 (2) (a) Except as required by Subsection (2)(b), as terms of current board members  
2560 expire, the executive director shall appoint each new member or reappointed member to a  
2561 four-year term.

2562 (b) Notwithstanding the requirements of Subsection (2)(a), the executive director  
2563 shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the  
2564 terms of board members are staggered so that approximately half of the board is appointed  
2565 every two years.

2566 (c) Persons appointed to the board may be reappointed upon completion of their terms,  
2567 but may not serve more than two consecutive terms.

2568 (d) The executive director shall provide for geographic balance in representation on  
2569 the board.

2570 (3) When a vacancy occurs in the membership for any reason, the replacement shall be  
2571 appointed for the unexpired term.

2572 (4) The membership shall be comprised of the following:

2573 (a) four physicians who are actively engaged in the practice of medicine or osteopathic  
2574 medicine in this state, to be selected from a list of nominees provided by the Utah Medical  
2575 Association;

2576 (b) one physician in this state who is actively engaged in academic medicine;

2577 (c) three pharmacists who are actively practicing in retail pharmacy in this state, to be

2578 selected from a list of nominees provided by the Utah Pharmaceutical Association;

2579 (d) one pharmacist who is actively engaged in academic pharmacy;

2580 (e) one person who shall represent consumers;

2581 (f) one person who shall represent pharmaceutical manufacturers, to be recommended

2582 by the Pharmaceutical Manufacturers Association; and

2583 (g) one dentist licensed to practice in this state under Title 58, Chapter 69, Dentists

2584 and Dental Hygienists Act, who is actively engaged in the practice of dentistry, nominated by

2585 the Utah Dental Association.

2586 (5) Physician and pharmacist members of the board shall have expertise in clinically

2587 appropriate prescribing and dispensing of outpatient drugs.

2588 (6) The board shall elect a chair from among its members who shall serve a one-year

2589 term, and may serve consecutive terms.

2590 (7) (a) Members shall receive no compensation or benefits for their services, but may

2591 receive per diem and expenses incurred in the performance of the member's official duties at

2592 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

2593 (b) Members may decline to receive per diem and expenses for their service.

2594 (c) (i) Higher education members who do not receive salary, per diem, or expenses

2595 from the entity that they represent for their service may receive per diem and expenses

2596 incurred in the performance of their official duties from the committee at the rates established

2597 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

2598 (ii) Higher education members may decline to receive per diem and expenses for their

2599 service.

2600 Section 56. Section **26A-1-111** is amended to read:

2601 **26A-1-111. Removal of local health officer.**

2602 (1) The local health officer may be removed for cause in accordance with this section

2603 by:

2604 (a) the board; or

2605 (b) a majority of the counties in the local health department if the county executives

2606 rescind, or withdraw, in writing the ratification of the local health officer.

2607 (2) (a) A hearing shall be granted, if requested by the local health officer, prior to  
2608 removal of the local health officer.

2609 (b) If a hearing is requested, it shall be conducted by a five-member panel with:

2610 (i) two elected members from the county or counties in the local health department,  
2611 selected by the county executives;

2612 (ii) two members of the board of the local health department who are not elected  
2613 officials of the counties in the local health department, selected by the board; and

2614 (iii) one member selected by the members appointed under Subsections (2)(b)(i) and  
2615 (ii), however, the member appointed under this Subsection (2)(b)(iii) may not be an elected  
2616 official of the counties in the local health department and may not be a member of the board of  
2617 the local health department.

2618 (c) (i) The hearing panel shall report its decision regarding termination to the board  
2619 and to the counties in the local health department.

2620 (ii) The counties and board receiving the report shall vote on whether to retain or  
2621 terminate the local health officer.

2622 (iii) The health officer is terminated if:

2623 (A) the board votes to terminate; or

2624 (B) a majority of the counties in the local health department vote to terminate.

2625 Section 57. Section **31A-5-217.5** is amended to read:

2626 **31A-5-217.5. Variable contract law.**

2627 (1) This section applies to all separate accounts that are used to support any one or  
2628 more of the following:

2629 (a) variable life insurance policies that satisfy the requirements of Section 817,  
2630 Internal Revenue Code;

2631 (b) variable annuity contracts, including modified guaranteed annuities; or

2632 (c) benefits under plans governed by the Employee Retirement Income Security Act of  
2633 1974.

2634           (2) In the event of a conflict between this section and any other section of this title as  
2635 it relates to these accounts, this section prevails.

2636           (3) A domestic life insurance company may establish one or more separate accounts,  
2637 and may allocate to those accounts amounts, which include proceeds applied under optional  
2638 modes of settlement or under dividend options, to provide for life insurance or annuities, and  
2639 benefits incidental to life insurance or annuities, payable in fixed or variable amounts or both,  
2640 subject to the following:

2641           (a) The income, gains, and losses, realized or unrealized, from assets allocated to a  
2642 separate account shall be credited to or charged against the account, without regard to other  
2643 income, gains, or losses of the company.

2644           (b) Except as may be provided with respect to reserves for guaranteed benefits and  
2645 funds referred to in Subsection (3)(c):

2646           (i) amounts allocated to any separate account and accumulations on such amounts  
2647 may be invested and reinvested without regard to any requirements or limitations prescribed  
2648 by the laws of this state governing the investments of life insurance companies; and

2649           (ii) the investments in any such separate account may not be taken into account in  
2650 applying the investment limitations that otherwise apply to the investments of the company.

2651           (c) Except with the approval of the commissioner and under any conditions as to  
2652 investments and other matters as he may prescribe, which shall recognize the guaranteed  
2653 nature of the benefits provided, reserves for benefits guaranteed as to dollar amount and  
2654 duration, and funds guaranteed as to principal amount or stated rate of interest may not be  
2655 maintained in a separate account.

2656           (d) Unless otherwise approved by the commissioner, assets allocated to a separate  
2657 account shall be valued at their market value on the date of valuation, or if there is no readily  
2658 available market, then as provided under the terms of the contract or the rules or other written  
2659 agreement that applies to the separate account. However, unless otherwise approved by the  
2660 commissioner, the portion of any of the assets of the separate account equal to the company's  
2661 reserve liability with regard to the guaranteed benefits and funds referred to in Subsection

2662 (3)(c) shall be valued in accordance with the rules that otherwise apply to the company's  
2663 assets.

2664 (e) Amounts allocated to a separate account in the exercise of the power granted by  
2665 this section shall be owned by the company, and the company may not be, nor hold itself out  
2666 to be, a trustee with respect to those amounts. If, and to the extent provided under the  
2667 applicable contracts, that portion of the assets of any separate account that is equal to the  
2668 reserves and other contract liabilities with respect to the account may not be chargeable with  
2669 liabilities arising out of any other business the company may conduct.

2670 (f) A sale, exchange, or other transfer of assets may not be made by a company  
2671 between any of its separate accounts or between any other investment account and one or more  
2672 of its separate accounts unless, in case of a transfer into a separate account, the transfer is  
2673 made solely to establish the account or to support the operation of the contracts with respect to  
2674 the separate account to which the transfer is made, and unless the transfer, whether into or  
2675 from a separate account, is made by a transfer of cash, or by a transfer of securities having a  
2676 readily determinable market value, if the transfer of securities is approved by the  
2677 commissioner. The commissioner may approve other transfers among such accounts if, in his  
2678 opinion, the transfers would not be inequitable.

2679 (g) To the extent a company considers it necessary to comply with any applicable  
2680 federal or state laws, the company, with respect to any separate account, including any  
2681 separate account which is a management investment company or a unit investment trust, may  
2682 provide for persons having an interest in the account appropriate voting and other rights and  
2683 special procedures for the conduct of the business of the account, including special rights and  
2684 procedures relating to investment policy, investment advisory services, selection of  
2685 independent public accountants, and the selection of a committee, the members of which need  
2686 not be otherwise affiliated with the company, to manage the business of the account.

2687 (4) Any contract providing benefits payable in variable amounts delivered or issued  
2688 for delivery in this state shall contain a statement of the essential features of the procedures to  
2689 be followed by the insurance company in determining the dollar amount of the variable

2690 benefits. Any contract under which the benefits vary to reflect investment experience,  
2691 including a group contract and any certificate in evidence of variable benefits issued under a  
2692 group contract, shall state that the dollar amount will vary according to investment experience.  
2693 The contract shall contain on its first page a statement to the effect that the benefits under the  
2694 contract are on a variable basis.

2695 (5) (a) A company may not deliver or issue for delivery within this state variable  
2696 contracts unless it is licensed or organized to do a life insurance or annuity business in this  
2697 state, and the commissioner is satisfied that its condition or method of operation in connection  
2698 with the issuance of such contracts will not render its operation hazardous to the public or its  
2699 policyholders in this state. In this connection, the commissioner shall consider among other  
2700 things:

2701 (i) the history and financial condition of the company;

2702 (ii) the character, responsibility, and fitness of the officers and directors of the  
2703 company; and

2704 (iii) (A) the law and regulation under which the company is authorized in the state of  
2705 domicile to issue variable contracts[-]; and

2706 (B) the state of entry of an alien company shall be considered its place of domicile for  
2707 the purposes of Subsection (5)(a)(iii)(A).

2708 (b) If the company is a subsidiary of an admitted life insurance company, or affiliated  
2709 with such a company through common management or ownership, it may be considered by the  
2710 commissioner to have met the provisions of this section if either it or the parent or the  
2711 affiliated company meets the requirements of this section.

2712 (6) Notwithstanding any other provision of law, the commissioner shall have sole  
2713 authority to regulate the issuance and sale of variable contracts, and to make rules necessary  
2714 and appropriate to carry out the purposes and provisions of this chapter.

2715 (7) (a) Except for Sections 31A-22-402, 31A-22-407, and 31A-22-409, in the case of  
2716 a variable annuity contract and Sections 31A-22-402, 31A-22-407, and 31A-22-408 in the  
2717 case of a variable life insurance policy, and except as otherwise provided in this chapter, all

2718 pertinent provisions of this title apply to separate accounts and contracts relating to the  
2719 separate accounts. Any individual variable life insurance contract, delivered or issued for  
2720 delivery in this state shall contain grace, reinstatement, and nonforfeiture provisions  
2721 appropriate to the contract.

2722 (b) The reserve liability for variable contracts shall be established in accordance with  
2723 actuarial procedures that recognize the variable nature of the benefits provided and any  
2724 mortality guarantees.

2725 Section 58. Section **31A-8-103** is amended to read:

2726 **31A-8-103. Applicability to other provisions of law.**

2727 (1) (a) Except for exemptions specifically granted under this title, an organization is  
2728 subject to regulation under all of the provisions of this title.

2729 (b) Notwithstanding any provision of this title, an organization licensed under this  
2730 chapter:

2731 (i) is wholly exempt from:

2732 (A) Chapter 7, Nonprofit Health Service Insurance Corporations;

2733 (B) Chapter 9, Insurance Fraternal;

2734 (C) Chapter 10, Annuities;

2735 (D) Chapter 11, Motor Clubs;

2736 (E) Chapter 12, State Risk Management Fund;

2737 (F) Chapter 13, Employee Welfare Funds and Plans;

2738 (G) Chapter 19a, Utah Rate Regulation Act; and

2739 (H) Chapter 28, Guaranty Associations; and

2740 (ii) is not subject to:

2741 (A) Chapter 3, Department Funding, Fees, and Taxes, except for Part 1, Funding the  
2742 Insurance Department;

2743 (B) Section 31A-4-107;

2744 (C) Chapter 5, Domestic Stock and Mutual Insurance Corporations, except for  
2745 provisions specifically made applicable by this chapter;

2746 (D) Chapter 14, Foreign Insurers, except for provisions specifically made applicable  
2747 by this chapter;

2748 (E) Chapter 17, Determination of Financial Condition, except:

2749 (I) ~~[Parts 2 and 6]~~ Part 2, Qualified Assets, and Part 6, Risk-Based Capital; or

2750 (II) as made applicable by the commissioner by rule consistent with this chapter;

2751 (F) Chapter 18, Investments, except as made applicable by the commissioner by rule  
2752 consistent with this chapter; and

2753 (G) Chapter 22, Contracts in Specific Lines, except for ~~[Parts 6, 7, and 12]~~ Part 6,  
2754 Accident and Health Insurance, Part 7, Group Accident and Health Insurance, and Part 12,  
2755 Reinsurance.

2756 (2) The commissioner may by rule waive other specific provisions of this title that the  
2757 commissioner considers inapplicable to health maintenance organizations or limited health  
2758 plans, upon a finding that the waiver will not endanger the interests of:

2759 (a) enrollees;

2760 (b) investors; or

2761 (c) the public.

2762 (3) Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, and Title 16,  
2763 Chapter 10a, Utah Revised Business Corporation Act, do not apply to an organization except  
2764 as specifically made applicable by:

2765 (a) this chapter;

2766 (b) a provision referenced under this chapter; or

2767 (c) a rule adopted by the commissioner to deal with corporate law issues of health  
2768 maintenance organizations that are not settled under this chapter.

2769 (4) (a) Whenever in this chapter, Chapter 5, Domestic Stock and Mutual Insurance  
2770 Corporations, or Chapter 14, Foreign Insurers, is made applicable to an organization, the  
2771 application is:

2772 (i) of those provisions that apply to a mutual corporation if the organization is  
2773 nonprofit; and

2774 (ii) of those that apply to a stock corporation if the organization is for profit.

2775 (b) When Chapter 5, Domestic Stock and Mutual Insurance Corporations, or Chapter  
2776 14, Foreign Insurers, is made applicable to an organization under this chapter, "mutual" means  
2777 nonprofit organization.

2778 (5) Solicitation of enrollees by an organization is not a violation of any provision of  
2779 law relating to solicitation or advertising by health professionals if that solicitation is made in  
2780 accordance with:

2781 (a) this chapter; and

2782 (b) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and  
2783 Reinsurance Intermediaries.

2784 (6) This title does not prohibit any health maintenance organization from meeting the  
2785 requirements of any federal law that enables the health maintenance organization to:

2786 (a) receive federal funds; or

2787 (b) obtain or maintain federal qualification status.

2788 (7) Except as provided in Section 31A-8-501, an organization is exempt from statutes  
2789 in this title or department rules that restrict or limit the organization's freedom of choice in  
2790 contracting with or selecting health care providers, including Section 31A-22-618.

2791 (8) An organization is exempt from the assessment or payment of premium taxes  
2792 imposed by Sections 59-9-101 through 59-9-104.

2793 Section 59. Section **31A-15-202** is amended to read:

2794 **31A-15-202. Definitions.**

2795 As used in this part:

2796 (1) "Completed operations liability" means liability, including liability for activities  
2797 which are completed or abandoned before the date of the occurrence giving rise to the liability,  
2798 arising out of the installation, maintenance, or repair of any product at a site which is not  
2799 owned or controlled by:

2800 (a) any person who performs that work; or

2801 (b) any person who hires an independent contractor to perform that work.

2802 (2) "Domicile," for purposes of determining the state in which a purchasing group is  
2803 domiciled, means:

2804 (a) for a corporation, the state in which the purchasing group is incorporated; and

2805 (b) for an unincorporated entity, the state of its principal place of business.

2806 (3) "Hazardous financial condition" means that a risk retention group, based on its  
2807 present or reasonably anticipated financial condition, although not yet financially impaired or  
2808 insolvent, is unlikely to be able:

2809 (a) to meet obligations to policyholders with respect to known claims and reasonably  
2810 anticipated claims; or

2811 (b) to pay other obligations in the normal course of business.

2812 (4) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines  
2813 insurance, and any other arrangement for shifting and distributing risk which is determined to  
2814 be insurance under the laws of this state.

2815 (5) (a) "Liability" means legal liability for damages, including costs of defense, legal  
2816 costs and fees, and other claims expenses because of injuries to other persons, damage to their  
2817 property, or other damage or loss to other persons, resulting from or arising out of:

2818 (i) any profit or nonprofit business, trade, product, professional or other services,  
2819 premises, or operations; or

2820 (ii) any activity of any state or local government or any agency or political subdivision  
2821 of any state or local government.

2822 (b) "Liability" does not include personal risk liability and an employer's liability with  
2823 respect to its employees other than legal liability under the federal Employers' Liability Act.

2824 (6) "NAIC" means the National Association of Insurance Commissioners.

2825 (7) "Personal risk liability" means liability for damages because of injury to any  
2826 person, damage to property, or other loss or damage resulting from any personal, familial, or  
2827 household responsibilities or activities rather than from responsibilities or activities referred to  
2828 in Subsection (5).

2829 (8) "Plan of operation or a feasibility study" means an analysis which presents the

2830 expected activities and results of a risk retention group, including:

2831 (a) information sufficient to verify that its members are engaged in businesses or  
2832 activities similar or related with respect to the liability to which members are exposed by  
2833 virtue of any related, similar or common business, trade, product, services, premises or  
2834 operations;

2835 (b) for each state in which it intends to operate, the coverages, deductibles, coverage  
2836 limits, rates, and rating classification systems for each line of insurance the group intends to  
2837 offer;

2838 (c) historical and expected loss experience of the proposed members and national  
2839 experience of similar exposures to the extent that this experience is reasonably available;

2840 (d) pro forma financial statements and projections;

2841 (e) appropriate opinions by a qualified, independent casualty actuary, including a  
2842 determination of minimum premium or participation levels required to commence operations  
2843 and to prevent a hazardous financial condition;

2844 (f) identification of management, underwriting and claims procedures, marketing  
2845 methods, managerial oversight methods, investment policies, and reinsurance agreements;

2846 (g) identification of each state in which the risk retention group has obtained, or  
2847 sought to obtain, a charter and license, and a description of its status in each such state; and

2848 (h) any other matters required by the commissioner of the state in which the risk  
2849 retention group is chartered for liability insurance companies authorized by the insurance laws  
2850 of that state.

2851 (9) (a) "Product liability" means liability for damages because of any personal injury,  
2852 death, emotional harm, consequential economic damage, or property damage, including  
2853 damages resulting from the loss of use of property, if the liability arises out of the  
2854 manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product.

2855 (b) "Product liability" does not include the liability of any person for those damages  
2856 described in Subsection (9)(a) if the product involved was in the possession of the person  
2857 when the incident giving rise to the claim occurred.

- 2858 (10) "Purchasing group" means any group which:
- 2859 (a) has as one of its purposes the purchase of liability insurance on a group basis;
- 2860 (b) purchases liability insurance only for its group members and only to cover their
- 2861 similar or related liability exposure, as described in Subsection (10)(c);
- 2862 (c) is composed of members whose businesses or activities are similar or related with
- 2863 respect to the liability to which members are exposed by virtue of any related, similar, or
- 2864 common business, trade, products, services, premises, or operations; and
- 2865 (d) is domiciled in any state.
- 2866 (11) "Risk retention group" means any corporation or other limited liability
- 2867 association:
- 2868 (a) whose primary activity consists of assuming and spreading all, or any portion of,
- 2869 the liability exposure of its group members;
- 2870 (b) which is organized for the primary purpose of conducting the activity described
- 2871 under Subsection (11)(a);
- 2872 (c) which:
- 2873 (i) is chartered and licensed as a liability insurance company and authorized to engage
- 2874 in the business of insurance under the laws of any state; or
- 2875 (ii) (A) before January 1, 1985, was chartered or licensed and authorized to engage in
- 2876 the business of insurance under the laws of Bermuda or the Cayman Islands and, before
- 2877 January 1, 1985, had certified to the insurance commissioner of at least one state that it
- 2878 satisfied the capitalization requirements of that state;
- 2879 (B) however, any such group as described in Subsection (11)(c)(ii)(A) shall be
- 2880 considered to be a risk retention group only if it has been engaged in business continuously
- 2881 since January 1, 1985, and only for the purpose of continuing to provide insurance to cover
- 2882 product liability or completed operations liability, as these terms were defined in the Product
- 2883 Liability Risk Retention Act of 1981 before the date of the enactment of the Liability Risk
- 2884 Retention Act of 1986;
- 2885 (d) which does not exclude any person from membership in the group solely to

2886 provide for members of the group a competitive advantage over the excluded person;

2887 (e) which:

2888 (i) has as its owners only persons who comprise the membership of the risk retention  
2889 group and who are provided insurance by the group; or

2890 (ii) has as its sole owner an organization which:

2891 (A) has as its members only persons who comprise the membership of the risk  
2892 retention group; and

2893 (B) has as its owners only persons who comprise the membership of the risk retention  
2894 group and who are provided insurance by the group;

2895 (f) whose members are engaged in businesses or activities similar or related with  
2896 respect to the liability to which the members are exposed by virtue of any related, similar, or  
2897 common business trade, products, services, premises or operations;

2898 (g) whose activities do not include providing insurance other than:

2899 (i) liability insurance for assuming and spreading all or any portion of the liability of  
2900 its group members; and

2901 (ii) reinsurance with respect to the liability of any other risk retention group, or any  
2902 members of the other group, which is engaged in businesses or activities so that the group or  
2903 member meets the requirement described in Subsection (11)(f) for membership in the risk  
2904 retention group which provides the reinsurance; and

2905 (h) the name of which includes the phrase "risk retention group."

2906 Section 60. Section **31A-16-106** is amended to read:

2907 **31A-16-106. Standards and management of an insurer within a holding**  
2908 **company system.**

2909 (1) (a) Transactions within a holding company system to which an insurer subject to  
2910 registration is a party are subject to the following standards:

2911 (i) the terms shall be fair and reasonable;

2912 (ii) charges or fees for services performed shall be reasonable;

2913 (iii) expenses incurred and payment received shall be allocated to the insurer in

2914 conformity with customary insurance accounting practices consistently applied;  
2915 (iv) the books, accounts, and records of each party to all transactions shall be so  
2916 maintained as to clearly and accurately disclose the nature and details of the transactions,  
2917 including the accounting information necessary to support the reasonableness of the charges or  
2918 fees to the respective parties; and

2919 (v) the insurer's surplus held for policyholders, following any dividends or  
2920 distributions to shareholder affiliates, shall be reasonable in relation to the insurer's  
2921 outstanding liabilities and shall be adequate to its financial needs.

2922 (b) The following transactions involving a domestic insurer and any person in its  
2923 holding company system may not be entered into unless the insurer has notified the  
2924 commissioner in writing of its intention to enter into the transaction at least 30 days prior to  
2925 entering into the transaction, or within any shorter period the commissioner may permit, if the  
2926 commissioner has not disapproved the transaction within the period:

2927 (i) sales, purchases, exchanges, loans or extensions of credit, guarantees, or  
2928 investments if the transactions are equal to, or exceed as of the next preceding December 31:

2929 (A) for nonlife insurers, the lesser of 3% of the insurer's admitted assets or 25% of  
2930 surplus held for policyholders;

2931 (B) for life insurers, 3% of the insurer's admitted assets;

2932 (ii) loans or extensions of credit made to any person who is not an affiliate, if the  
2933 insurer makes the loans or extensions of credit with the agreement or understanding that the  
2934 proceeds of the transactions, in whole or in substantial part, are to be used to make loans or  
2935 extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the  
2936 insurer making the loans or extensions of credit if the transactions are equal to, or exceed as of  
2937 the next preceding December 31:

2938 (A) for nonlife insurers, the lesser of 3% of the insurer's admitted assets or 25% of  
2939 surplus held for policyholders;

2940 (B) for life insurers, 3% of the insurer's admitted assets;

2941 (iii) reinsurance agreements or modifications to reinsurance agreements in which the

2942 reinsurance premium or a change in the insurer's liabilities equals or exceeds 5% of the  
2943 insurer's surplus held for policyholders, as of the next preceding December 31, including those  
2944 agreements which may require as consideration the transfer of assets from an insurer to a  
2945 nonaffiliate, if an agreement or understanding exists between the insurer and the nonaffiliate  
2946 that any portion of the assets will be transferred to one or more affiliates of the insurer;

2947 (iv) all management agreements, service contracts, and all cost-sharing arrangements;

2948 (v) any material transactions, specified by rule, which the commissioner determines  
2949 may adversely affect the interests of the insurer's policyholders; and

2950 (vi) this subsection may not be interpreted to authorize or permit any transactions  
2951 which would be otherwise contrary to law in the case of an insurer not a member of the same  
2952 holding company system.

2953 (c) A domestic insurer may not enter into transactions which are part of a plan or  
2954 series of like transactions with persons within the holding company system if the purpose of  
2955 the separate transactions is to avoid the statutory threshold amount and thus to avoid the  
2956 review by the commissioner that would occur otherwise. If the commissioner determines that  
2957 the separate transactions were entered into over any 12 month period for such a purpose, he  
2958 may exercise his authority under Section 31A-16-110.

2959 (d) The commissioner, in reviewing transactions pursuant to Subsection (1)(b), shall  
2960 consider whether the transactions comply with the standards set forth in Subsection (1)(a) and  
2961 whether they may adversely affect the interests of policyholders.

2962 (e) The commissioner shall be notified within 30 days of any investment of the  
2963 domestic insurer in any one corporation, if the total investment in the corporation by the  
2964 insurance holding company system exceeds 10% of the corporation's voting securities.

2965 (2) (a) A domestic insurer may not pay any extraordinary dividend or make any other  
2966 extraordinary distribution to its shareholders until:

2967 (i) 30 days after the commissioner has received notice of the declaration of the  
2968 dividend and has not within the 30-day period disapproved the payment; or

2969 (ii) the commissioner has approved the payment within the 30-day period.

2970 (b) For purposes of this subsection, an extraordinary dividend or distribution includes  
2971 any dividend or distribution of cash or other property, fair market value of which, together  
2972 with that of other dividends or distributions made within the preceding 12 months, exceeds the  
2973 lesser of:

2974 (i) 10% of the insurer's surplus held for policyholders as of the next preceding  
2975 December 31; or

2976 (ii) the net gain from operations of the insurer, if the insurer is a life insurer, or the net  
2977 income, if the insurer is not a life insurer, not including realized capital gains, for the  
2978 12-month period ending the next preceding December 31;

2979 (iii) an extraordinary dividend does not include pro rata distributions of any class of  
2980 the insurer's own securities.

2981 (c) In determining whether a dividend or distribution is extraordinary, an insurer other  
2982 than a life insurer may carry forward net income from the previous two calendar years that has  
2983 not already been paid out as dividends. This carry-forward shall be computed by taking the  
2984 net income from the second and third preceding calendar years, not including realized capital  
2985 gains, less dividends paid in the second and immediate preceding calendar years.

2986 (d) Notwithstanding any other provision of law, an insurer may declare an  
2987 extraordinary dividend or distribution, which is conditioned upon the commissioner's approval  
2988 of the dividend or distribution, and the declaration shall confer no rights upon shareholders  
2989 until:

2990 (i) the commissioner has approved the payment of the dividend or distribution; or

2991 (ii) the commissioner has not disapproved the payment within the 30-day period  
2992 referred to in Subsection (2)(a).

2993 (3) (a) Notwithstanding the control of a domestic insurer by any person, the officers  
2994 and directors of the insurer may not be relieved of any obligation or liability to which they  
2995 would otherwise be subject by law, and the insurer shall be managed so as to assure its  
2996 separate operating identity consistent with this chapter.

2997 (b) Nothing in this section precludes a domestic insurer from having or sharing a

2998 common management or cooperative or joint use of personnel, property, or services with one  
2999 or more other persons under arrangements meeting the standards of Subsection (1)(a).

3000 Section 61. Section **31A-17-506** is amended to read:

3001 **31A-17-506. Computation of minimum standard by calendar year of issue.**

3002 (1) Applicability of Section 31A-17-506: The interest rates used in determining the  
3003 minimum standard for the valuation shall be the calendar year statutory valuation interest rates  
3004 as defined in this section for:

3005 (a) all life insurance policies issued in a particular calendar year, on or after the  
3006 operative date of Subsection 31A-22-408(6)(d);

3007 (b) all individual annuity and pure endowment contracts issued in a particular calendar  
3008 year on or after January 1, 1982;

3009 (c) all annuities and pure endowments purchased in a particular calendar year on or  
3010 after January 1, 1982, under group annuity and pure endowment contracts; and

3011 (d) the net increase, if any, in a particular calendar year after January 1, 1982, in  
3012 amounts held under guaranteed interest contracts.

3013 (2) Calendar year statutory valuation interest rates:

3014 (a) The calendar year statutory valuation interest rates, "I," shall be determined as  
3015 follows and the results rounded to the nearer 1/4 of 1%:

3016 (i) for life insurance:

3017  $I = .03 + W(R1 - .03) + (W/2)(R2 - .09)$ ;

3018 (ii) for single premium immediate annuities and for annuity benefits involving life  
3019 contingencies arising from other annuities with cash settlement options and from guaranteed  
3020 interest contracts with cash settlement options:

3021  $I = .03 + W(R - .03)$ ,

3022 where R1 is the lesser of R and .09,

3023 R2 is the greater of R and .09,

3024 R is the reference interest rate defined in Subsection (4), and

3025 W is the weighting factor defined in this section;

3026 (iii) for other annuities with cash settlement options and guaranteed interest contracts  
 3027 with cash settlement options, valued on an issue year basis, except as stated in Subsection  
 3028 (2)(a)(ii), the formula for life insurance stated in Subsection (2)(a)(i) shall apply to annuities  
 3029 and guaranteed interest contracts with guarantee durations in excess of 10 years, and the  
 3030 formula for single premium immediate annuities stated in Subsection (2)(a)(ii) shall apply to  
 3031 annuities and guaranteed interest contracts with guarantee duration of 10 years or less;

3032 (iv) for other annuities with no cash settlement options and for guaranteed interest  
 3033 contracts with no cash settlement options, the formula for single premium immediate annuities  
 3034 stated in Subsection (2)(a)(ii) shall apply[-]; and

3035 (v) for other annuities with cash settlement options and guaranteed interest contracts  
 3036 with cash settlement options, valued on a change in fund basis, the formula for single premium  
 3037 immediate annuities stated in Subsection (2)(a)(ii) shall apply.

3038 (b) However, if the calendar year statutory valuation interest rate for any life insurance  
 3039 policies issued in any calendar year determined without reference to this sentence differs from  
 3040 the corresponding actual rate for similar policies issued in the immediately preceding calendar  
 3041 year by less than 1/2 of 1% the calendar year statutory valuation interest rate for such life  
 3042 insurance policies shall be equal to the corresponding actual rate for the immediately  
 3043 preceding calendar year. For purposes of applying the immediately preceding sentence, the  
 3044 calendar year statutory valuation interest rate for life insurance policies issued in a calendar  
 3045 year shall be determined for 1980, using the reference interest rate defined in 1979, and shall  
 3046 be determined for each subsequent calendar year regardless of when Subsection  
 3047 31A-22-408(6)(d) becomes operative.

3048 (3) Weighting factors:

3049 (a) The weighting factors referred to in the formulas stated in Subsection (2) are given  
 3050 in the following tables:

3051 (i) (A) Weighting factors for life insurance:

Guarantee Duration (Years)	Weighting Factors
10 or less:	.50

3054 More than 10, but less than 20: .45

3055 More than 20: .35

3056 (B) For life insurance, the guarantee duration is the maximum number of years the life  
 3057 insurance can remain in force on a basis guaranteed in the policy or under options to convert  
 3058 to plans of life insurance with premium rates or nonforfeiture values or both which are  
 3059 guaranteed in the original policy;

3060 (ii) Weighting factor for single premium immediate annuities and for annuity benefits  
 3061 involving life contingencies arising from other annuities with cash settlement options and  
 3062 guaranteed interest contracts with cash settlement options: .80

3063 (iii) Weighting factors for other annuities and for guaranteed interest contracts, except  
 3064 as stated in Subsection (3)(a)(ii), shall be as specified in the tables in Subsections  
 3065 (3)(a)(iii)(A), (B), and (C) [~~below~~], according to the rules and definitions in [~~(D), (E), and (F)~~  
 3066 ~~below~~] Subsection (3)(b):

3067 (A) For annuities and guaranteed interest contracts valued on an issue year basis:

3068 Guarantee Duration (Years)	3068 Weighting Factors for Plan Type		
	3069 A	3069 B	3069 C
3070 5 or less:	.80	.60	.50
3071 More than 5, but not more than 10:	.75	.60	.50
3072 More than 10, but not more than 20:	.65	.50	.45
3073 More than 20:	.45	.35	.35

3074	3074 Plan Type		
	3075 A	3075 B	3075 C

3076 (B) For annuities and guaranteed interest  
 3077 contracts valued on a change in fund basis, the

3078 factors shown in Subsection (3)(a)(iii)(A) [~~above~~]

3079 increased by: .15 .25 .05

3080	3080 Plan Type		
	3081 A	3081 B	3081 C

3082 (C) For annuities and guaranteed interest  
 3083 contracts valued on an issue year basis, other than  
 3084 those with no cash settlement options, which do  
 3085 not guarantee interest on considerations received  
 3086 more than one year after issue or purchase and for  
 3087 annuities and guaranteed interest contracts valued  
 3088 on a change in fund basis which do not guarantee  
 3089 interest rates on considerations received more  
 3090 than 12 months beyond the valuation date, the  
 3091 factors shown in Subsection (3)(a)(iii)(A) or  
 3092 derived in Subsection (3)(a)(iii)(B) increased by: .05 .05 .05.

3093 ~~(D)~~ (b) (i) For other annuities with cash settlement options and guaranteed interest  
 3094 contracts with cash settlement options, the guarantee duration is the number of years for which  
 3095 the contract guarantees interest rates in excess of the calendar year statutory valuation interest  
 3096 rate for life insurance policies with guarantee duration in excess of 20 years. For other  
 3097 annuities with no cash settlement options and for guaranteed interest contracts with no cash  
 3098 settlement options, the guaranteed duration is the number of years from the date of issue or  
 3099 date of purchase to the date annuity benefits are scheduled to commence.

3100 ~~(E)~~ (ii) Plan type as used in the above tables is defined as follows:

3101 (A) Plan Type A: At any time policyholder may withdraw funds only:

3102 (I) with an adjustment to reflect changes in interest rates or asset values since receipt  
 3103 of the funds by the insurance company~~;~~ or

3104 (II) without such adjustment but installments over five years or more~~;~~ or

3105 (III) as an immediate life annuity~~;~~ or

3106 (IV) no withdrawal permitted.

3107 (B) (I) Plan Type B: Before expiration of the interest rate guarantee, policyholder  
 3108 withdraw funds only:

3109 ~~(F)~~ (Aa) with an adjustment to reflect changes in interest rates or asset values since

3110 receipt of the funds by the insurance company[~~;~~ ~~or (H)~~];

3111 (Bb) without such adjustment but in installments over five years or more[;]; or [~~(HH)~~]

3112 (Cc) no withdrawal permitted.

3113 (II) At the end of interest rate guarantee, funds may be withdrawn without such

3114 adjustment in a single sum or installments over less than five years.

3115 (C) Plan Type C: Policyholder may withdraw funds before expiration of interest rate  
3116 guarantee in a single sum or installments over less than five years either:

3117 (I) without adjustment to reflect changes in interest rates or asset values since receipt  
3118 of the funds by the insurance company[;]; or

3119 (II) subject only to a fixed surrender charge stipulated in the contract as a percentage  
3120 of the fund.

3121 [~~(F)~~] (iii) A company may elect to value guaranteed interest contracts with cash  
3122 settlement options and annuities with cash settlement options on either an issue year basis or  
3123 on a change in fund basis. Guaranteed interest contracts with no cash settlement options and  
3124 other annuities with no cash settlement options must be valued on an issue year basis. As used  
3125 in this section, an issue year basis of valuation refers to a valuation basis under which the  
3126 interest rate used to determine the minimum valuation standard for the entire duration of the  
3127 annuity or guaranteed interest contract is the calendar year valuation interest rate for the year  
3128 of issue or year of purchase of the annuity or guaranteed interest contract, and the change in  
3129 fund basis of valuation refers to a valuation basis under which the interest rate used to  
3130 determine the minimum valuation standard applicable to each change in the fund held under  
3131 the annuity or guaranteed interest contract is the calendar year valuation interest rate for the  
3132 year of the change in the fund.

3133 (4) Reference interest rate: "Reference interest rate" referred to in Subsection (2)(a) is  
3134 defined as follows:

3135 (a) For all life insurance, the lesser of the average over a period of 36 months and the  
3136 average over a period of 12 months, ending on June 30 of the calendar year next preceding the  
3137 year of issue, of the Monthly Average of the composite Yield on Seasoned Corporate Bonds,

3138 as published by Moody's Investors Service, Inc.

3139 (b) For single premium immediate annuities and for annuity benefits involving life  
3140 contingencies arising from other annuities with cash settlement options and guaranteed  
3141 interest contracts with cash settlement options, the average over a period of 12 months, ending  
3142 on June 30 of the calendar year of issue or year of purchase, of the Monthly Average of the  
3143 Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service,  
3144 Inc.

3145 (c) For other annuities with cash settlement options and guaranteed interest contracts  
3146 with cash settlement options, valued on a year of issue basis, except as stated in Subsection  
3147 (4)(b), with guarantee duration in excess of 10 years, the lesser of the average over a period of  
3148 36 months and the average over a period of 12 months, ending on June 30 of the calendar year  
3149 of issue or purchase, of the Monthly Average of the Composite Yield on Seasoned Corporate  
3150 Bonds, as published by Moody's Investors Service, Inc.

3151 (d) For other annuities with cash settlement options and guaranteed interest contracts  
3152 with cash settlement options, valued on a year of issue basis, except as stated in Subsection  
3153 (4)(b), with guarantee duration of 10 years or less, the average over a period of 12 months,  
3154 ending on June 30 of the calendar year of issue or purchase, of the Monthly Average of the  
3155 Composite Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service,  
3156 Inc.

3157 (e) For other annuities with no cash settlement options and for guaranteed interest  
3158 contracts with no cash settlement options, the average over a period of 12 months, ending on  
3159 June 30 of the calendar year of issue or purchase, of the Monthly Average of the Composite  
3160 Yield on Seasoned Corporate Bonds, as published by Moody's Investors Service, Inc.

3161 (f) For other annuities with cash settlement options and guaranteed interest contracts  
3162 with cash settlement options, valued on a change in fund basis, except as stated in Subsection  
3163 (4)(b), the average over a period of 12 months, ending on June 30 of the calendar year of the  
3164 change in the fund, of the Monthly Average of the Composite Yield on Seasoned Corporate  
3165 Bonds, as published by Moody's Investors Service, Inc.

3166 (5) Alternative method for determining reference interest rates: In the event that the  
3167 Monthly Average of the Composite Yield on Seasoned Corporate Bonds is no longer  
3168 published by Moody's Investors Service, Inc. or in the event that the National Association of  
3169 Insurance Commissioners determines that the Monthly Average of the Composite Yield on  
3170 Seasoned Corporate Bonds as published by Moody's Investors Service, Inc. is no longer  
3171 appropriate for the determination of the reference interest rate, then an alternative method for  
3172 determination of the reference interest rate, which is adopted by the National Association of  
3173 Insurance Commissioners and approved by rule promulgated by the commissioner, may be  
3174 substituted.

3175 Section 62. Section **36-20-2** is amended to read:

3176 **36-20-2. Judicial Rules Review Committee.**

3177 (1) There is created a six member Judicial Rules Review Committee.

3178 (2) (a) The committee shall be composed of three members of the Senate, at least one  
3179 from each political party, appointed by the president of the Senate, and three members of the  
3180 House, at least one from each political party, appointed by the speaker of the House of  
3181 Representatives.

3182 (b) Members shall serve for two-year terms or until their successors are appointed.

3183 (c) A vacancy exists whenever a committee member ceases to be a member of the  
3184 Legislature or when a member resigns from the committee. Vacancies shall be filled by the  
3185 appointing authority, and the replacement shall serve out the unexpired term.

3186 (d) The members may meet as needed to review or recommend:

3187 (i) court rules or proposals for court rules;

3188 (ii) any conflicts between court rules or proposals for court rules and statute or state  
3189 constitution; and

3190 (iii) proposed legislative action relating to Subsections (2)(d)(i) and (ii).

3191 Section 63. Section **39-1-1** is amended to read:

3192 **39-1-1. Militia -- How constituted -- Persons exempted.**

3193 (1) All able-bodied citizens, and all able-bodied persons of foreign birth who have

3194 declared their intention to become citizens, who are 18 years of age or older and younger than  
3195 45 years of age, who are residents of this state, constitute the militia, subject to the following  
3196 exemptions:

3197 (a) persons exempted by laws of the United States;

3198 (b) persons exempted by the laws of this state;

3199 (c) all persons who have been honorably discharged from the army, air force, navy, or  
3200 volunteer forces of the United States;

3201 (d) active members of any regularly organized fire or police department in any city or  
3202 town, but no member of the active militia is relieved from duty because of his joining any  
3203 volunteer fire company or department;

3204 (e) judges and clerks of courts of record, state and county civil officers holding office  
3205 by election, state officers appointed by the governor for a specified term of office, ministers of  
3206 the gospel, practicing physicians, superintendents, officers and assistants of hospitals, prisons  
3207 and jails, conductors, brakemen, flagmen, engineers and firemen of railways, and all other  
3208 employees of railways actually employed in train service; and

3209 (f) idiots, lunatics, and persons convicted of infamous crime.

3210 (2) All exempted persons, except those enumerated in Subsections (1)(a) through (f),  
3211 are liable to military duty in case of war, insurrection, invasion, tumult, riot, or public disaster,  
3212 or imminent danger of any of these, or after they have voluntarily enlisted in the National  
3213 Guard of this state.

3214 Section 64. Section **40-6-6.5** is amended to read:

3215 **40-6-6.5. Pooling of interests for the development and operation of a drilling unit**

3216 **-- Board may order pooling of interests -- Payment of costs and royalty interests --**

3217 **Monthly accounting.**

3218 (1) Two or more owners within a drilling unit may bring together their interests for the  
3219 development and operation of the drilling unit.

3220 (2) (a) In the absence of a written agreement for pooling, the board may enter an order  
3221 pooling all interests in the drilling unit for the development and operation of the drilling unit.

- 3222 (b) The order shall be made upon terms and conditions that are just and reasonable.
- 3223 (c) The board may adopt terms appearing in an operating agreement:
- 3224 (i) for the drilling unit that is in effect between the consenting owners;
- 3225 (ii) submitted by any party to the proceeding; or
- 3226 (iii) submitted by its own motion.
- 3227 (3) (a) Operations incident to the drilling of a well upon any portion of a drilling unit
- 3228 covered by a pooling order shall be deemed for all purposes to be the conduct of the operations
- 3229 upon each separately owned tract in the drilling unit by the several owners.
- 3230 (b) The portion of the production allocated or applicable to a separately owned tract
- 3231 included in a drilling unit covered by a pooling order shall, when produced, be deemed for all
- 3232 purposes to have been produced from that tract by a well drilled on it.
- 3233 (4) (a) (i) Each pooling order shall provide for the payment of just and reasonable
- 3234 costs incurred in the drilling and operating of the drilling unit including, but not limited to:
- 3235 (A) the costs of drilling, completing, equipping, producing, gathering, transporting,
- 3236 processing, marketing, and storage facilities;
- 3237 (B) reasonable charges for the administration and supervision of operations; and
- 3238 (C) other costs customarily incurred in the industry.
- 3239 (ii) An owner is not liable under a pooling order for costs or losses resulting from the
- 3240 gross negligence or willful misconduct of the operator.
- 3241 (b) Each pooling order shall provide for reimbursement to the consenting owners for
- 3242 any nonconsenting owner's share of the costs out of production from the drilling unit
- 3243 attributable to his tract.
- 3244 (c) Each pooling order shall provide that each consenting owner shall own and be
- 3245 entitled to receive, subject to royalty or similar obligations:
- 3246 (i) the share of the production of the well applicable to his interest in the drilling unit;
- 3247 and
- 3248 (ii) unless he has agreed otherwise, his proportionate part of the nonconsenting
- 3249 owner's share of the production until costs are recovered as provided in Subsection (4)(d).

3250 (d) (i) Each pooling order shall provide that each nonconsenting owner shall be  
3251 entitled to receive, subject to royalty or similar obligations, the share of the production of the  
3252 well applicable to his interest in the drilling unit after the consenting owners have recovered  
3253 from the nonconsenting owner's share of production the following amounts less any cash  
3254 contributions made by the nonconsenting owner:

3255 (A) 100% of the nonconsenting owner's share of the cost of surface equipment beyond  
3256 the wellhead connections, including stock tanks, separators, treaters, pumping equipment, and  
3257 piping;

3258 (B) 100% of the nonconsenting owner's share of the estimated cost to plug and  
3259 abandon the well as determined by the board;

3260 (C) 100% of the nonconsenting owner's share of the cost of operation of the well  
3261 commencing with first production and continuing until the consenting owners have recovered  
3262 all costs; and

3263 (D) an amount to be determined by the board but not less than 150% nor greater than  
3264 300% of the nonconsenting owner's share of the costs of staking the location, wellsite  
3265 preparation, rights-of-way, rigging up, drilling, reworking, recompleting, deepening or  
3266 plugging back, testing, and completing, and the cost of equipment in the well to and including  
3267 the wellhead connections.

3268 (ii) The nonconsenting owner's share of the costs specified in Subsection (4)(d)(i) is  
3269 that interest which would have been chargeable to the nonconsenting owner had he initially  
3270 agreed to pay his share of the costs of the well from commencement of the operation.

3271 (iii) A reasonable interest charge may be included if the board finds it appropriate.

3272 (e) If there is any dispute about costs, the board shall determine the proper costs.

3273 (5) If a nonconsenting owner's tract in the drilling unit is subject to a lease or other  
3274 contract for the development of oil and gas, the pooling order shall provide that the consenting  
3275 owners shall pay any royalty interest or other interest in the tract not subject to the deduction  
3276 of the costs of production from the production attributable to that tract.

3277 (6) (a) If a nonconsenting owner's tract in the drilling unit is not subject to a lease or

3278 other contract for the development of oil and gas, the pooling order shall provide that the  
3279 nonconsenting owner shall receive as a royalty the average landowner's royalty attributable to  
3280 each tract within the drilling unit.

3281 (b) The royalty shall be:

3282 (i) determined prior to the commencement of drilling; and

3283 (ii) paid from production attributable to each tract until the consenting owners have  
3284 recovered the costs specified in Subsection (4)(d).

3285 (7) The operator of a well under a pooling order in which there are nonconsenting  
3286 owners shall furnish the nonconsenting owners with monthly statements specifying:

3287 (a) costs incurred;

3288 (b) the quantity of oil or gas produced; and

3289 (c) the amount of oil and gas proceeds realized from the sale of the production during  
3290 the preceding month.

3291 (8) Each pooling order shall provide that when the consenting owners recover from a  
3292 nonconsenting owner's relinquished interest the amounts provided for in Subsection (4)(d):

3293 (a) the relinquished interest of the nonconsenting owner shall automatically revert to  
3294 him;

3295 (b) the nonconsenting owner shall from that time:

3296 (i) own the same interest in the well and the production from it; and

3297 (ii) be liable for the further costs of the operation as if he had participated in the initial  
3298 drilling and operation; and

3299 (c) costs are payable out of production unless otherwise agreed between the  
3300 nonconsenting owner and the operator.

3301 (9) Each pooling order shall provide that in any circumstance where the  
3302 nonconsenting owner has relinquished his share of production to consenting owners or at any  
3303 time fails to take his share of production in-kind when he is entitled to do so, the  
3304 nonconsenting owner is entitled to:

3305 (a) an accounting of the oil and gas proceeds applicable to his relinquished share of

3306 production; and

3307 (b) payment of the oil and gas proceeds applicable to that share of production not  
3308 taken in-kind, net of costs.

3309 Section 65. Section **40-6-9** is amended to read:

3310 **40-6-9. Proceeds from sale of production -- Payment of proceeds --**  
3311 **Requirements -- Proceeding on petition to determine cause of nonpayment -- Remedies --**  
3312 **Penalties.**

3313 (1) (a) The oil and gas proceeds derived from the sale of production from any well  
3314 producing oil or gas in the state shall be paid to any person legally entitled to the payment of  
3315 the proceeds not later than 180 days after the first day of the month following the date of the  
3316 first sale and thereafter not later than 30 days after the end of the calendar month within which  
3317 payment is received by the payor for production, unless other periods or arrangements are  
3318 provided for in a valid contract with the person entitled to the proceeds.

3319 (b) The payment shall be made directly to the person entitled to the payment by the  
3320 payor.

3321 (c) The payment is considered to have been made upon deposit in the United States  
3322 mail.

3323 (2) Payments shall be remitted to any person entitled to oil and gas proceeds annually  
3324 for the aggregate of up to 12 months accumulation of proceeds, if the total amount owed is  
3325 \$100 or less.

3326 (3) (a) Any delay in determining whether a person is legally entitled to an interest in  
3327 the oil and gas proceeds does not affect payments to other persons entitled to payment.

3328 (b) (i) If accrued payments cannot be made within the time limits specified in  
3329 Subsection (1) or (2), the payor shall deposit all oil and gas proceeds credited to the eventual  
3330 oil and gas proceeds owner to an escrow account in a federally insured bank or savings and  
3331 loan institution using a standard escrow document form.

3332 (ii) The deposit shall earn interest at the highest rate being offered by that institution  
3333 for the amount and term of similar demand deposits.

3334 (iii) The escrow agent may commingle money received into escrow from any one  
3335 lessee or operator, purchaser, or other person legally responsible for payment.

3336 (iv) Payment of principal and accrued interest from the escrow account shall be made  
3337 by the escrow agent to the person legally entitled to them within 30 days from the date of  
3338 receipt by the escrow agent of final legal determination of entitlement to the payment.

3339 (v) Applicable escrow fees shall be deducted from the payments.

3340 (4) Any person entitled to oil and gas proceeds may file a petition with the board to  
3341 conduct a hearing to determine why the proceeds have not been paid.

3342 (5) Upon receipt of the petition, the board shall set the matter for investigation and  
3343 negotiation by the division within 60 days.

3344 (6) (a) If the matter cannot be resolved by negotiation as of that date, the board may  
3345 set a hearing within 30 days.

3346 (b) If the board does not set a hearing, any information gathered during the  
3347 investigation and negotiation shall be given to the petitioner who may then seek a remedy in a  
3348 court of competent jurisdiction.

3349 (7) (a) If, after a hearing, the board finds the proceeds have not been deposited in an  
3350 interest bearing escrow account in accordance with Subsection (3), the board may order that:

3351 (i) a complete accounting be made; and

3352 (ii) the proceeds be subject to an interest rate of 1-1/2% per month, as a substitute for  
3353 an escrow account interest rate, accruing from the date the payment should have been  
3354 suspended in accordance with Subsection (3).

3355 (b) If, after a hearing, the board finds the delay of payment is without reasonable  
3356 justification, the board may:

3357 (i) if the proceeds have been deposited in an interest bearing escrow account in  
3358 accordance with Subsection (3):

3359 (A) order a complete accounting;

3360 (B) require the proceeds and accruing interest to remain in the escrow account; and

3361 (C) assess a penalty of up to 25% of the total proceeds and interest in the escrow

3362 account; or

3363 (ii) if the proceeds have not been deposited in an interest bearing escrow account in  
3364 accordance with Subsection (3), assess a penalty of up to 25% of the total proceeds and  
3365 interest as determined under Subsection (7)(a).

3366 (c) (i) Upon finding that the delay of payment is without reasonable justification, the  
3367 board shall set a date not later than 90 days from the hearing for final distribution of the total  
3368 sum.

3369 (ii) If payment is not made by the required date, the total proceeds, interest, and any  
3370 penalty as provided in Subsection (7)(b) shall be subject to interest at a rate of 1-1/2% per  
3371 month until paid.

3372 (d) If, after a hearing, the board finds the delay of payment is with reasonable  
3373 justification and the proceeds have been deposited in an interest bearing escrow account in  
3374 accordance with Subsection (3), the payor may not be required to make an accounting or  
3375 payment of appropriately suspended proceeds until the condition which justified suspension  
3376 has been satisfied.

3377 (8) The circumstances under which the board may find the suspension of payment of  
3378 proceeds is made with reasonable justification, such that the penalty provisions of Subsections  
3379 (7)(b) and (7)(c)(ii) do not apply, include, but are not limited to, the following:

3380 (a) the payor:

3381 (i) fails to make the payment in good faith reliance upon a title opinion by a licensed  
3382 Utah attorney objecting to the lack of good and marketable title of record of the person  
3383 claiming entitlement to payment; and

3384 (ii) furnishes a copy of the relevant portions of the opinion to the person for necessary  
3385 curative action;

3386 (b) the payor receives information which:

3387 (i) in the payor's good faith judgment, brings into question the entitlement of the  
3388 person claiming the right to the payment to receive that payment;

3389 (ii) has rendered the title unmarketable; or

3390 (iii) may expose the payor to the risk of liability to third parties if the payment is  
3391 made;

3392 (c) the total amount of oil and gas proceeds in possession of the payor owed to the  
3393 person making claim to payment is less than \$100 at the end of any month; or

3394 (d) the person entitled to payment has failed or refused to execute a division or transfer  
3395 order acknowledging the proper interest to which the person claims to be entitled and setting  
3396 forth the mailing address to which payment may be directed, provided the division or transfer  
3397 order does not alter or amend the terms of the lease.

3398 (9) If the circumstances described in Subsection (8)(a) or (b) arise, the payor may:

3399 (a) suspend and escrow the payments in accordance with Subsection (3); or

3400 (b) at the request and expense of the person claiming entitlement to the payment, make  
3401 the payment into court on an interpleader action to resolve the claim and avoid liability under  
3402 this chapter.

3403 Section 66. Section **40-10-3** is amended to read:

3404 **40-10-3. Definitions.**

3405 For the purposes of this chapter:

3406 (1) "Adjudicative proceeding" means:

3407 (a) a division or board action or proceeding determining the legal rights, duties,  
3408 privileges, immunities, or other legal interests of one or more identifiable persons, including  
3409 actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right,  
3410 permit, or license; or

3411 (b) judicial review of a division or board action or proceeding specified in Subsection  
3412 (1)(a).

3413 (2) "Alluvial valley floors" mean the unconsolidated stream laid deposits holding  
3414 streams where water availability is sufficient for subirrigation or flood irrigation agricultural  
3415 activities but does not include upland areas which are generally overlain by a thin veneer of  
3416 colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated  
3417 runoff or slope wash, together with talus, other mass movement accumulation and windblown

3418 deposits.

3419 (3) "Approximate original contour" means that surface configuration achieved by  
3420 backfilling and grading of the mined area so that the reclaimed area, including any terracing or  
3421 access roads, closely resembles the general surface configuration of the land prior to mining  
3422 and blends into and complements the drainage pattern of the surrounding terrain, with all  
3423 highwalls and spoil piles eliminated; but water impoundments may be permitted where the  
3424 division determines that they are in compliance with Subsection 40-10-17(2)(h).

3425 (4) "Board" means the Board of Oil, Gas, and Mining and the board shall not be  
3426 defined as an employee of the division.

3427 (5) "Division" means the Division of Oil, Gas, and Mining.

3428 (6) "Imminent danger to the health and safety of the public" means the existence of  
3429 any condition or practice, or any violation of a permit or other requirement of this chapter in a  
3430 surface coal mining and reclamation operation, which condition, practice, or violation could  
3431 reasonably be expected to cause substantial physical harm to persons outside the permit area  
3432 before the condition, practice, or violation can be abated. A reasonable expectation of death or  
3433 serious injury before abatement exists if a rational person, subjected to the same conditions or  
3434 practices giving rise to the peril, would not expose himself or herself to the danger during the  
3435 time necessary for abatement.

3436 (7) "Employee" means those individuals in the employ of the division and excludes  
3437 the board.

3438 (8) "Lands eligible for remining" means those lands that would otherwise be eligible  
3439 for expenditures under Section 40-10-25 or 40-10-25.1.

3440 (9) "Operator" means any person, partnership, or corporation engaged in coal mining  
3441 who removes or intends to remove more than 250 tons of coal from the earth by coal mining  
3442 within 12 consecutive calendar months in any one location.

3443 (10) "Other minerals" mean clay, stone, sand, gravel, metalliferous and  
3444 nonmetalliferous ores, and any other solid material or substances of commercial value  
3445 excavated in solid or solution form from natural deposits on or in the earth, exclusive of coal

3446 and those minerals which occur naturally in liquid or gaseous form.

3447 (11) "Permit" means a permit to conduct surface coal mining and reclamation  
3448 operations issued by the division.

3449 (12) "Permit applicant" or "applicant" means a person applying for a permit.

3450 (13) "Permitting agency" means the division.

3451 (14) "Permit area" means the area of land indicated on the approved map submitted by  
3452 the operator with his application, which area of land shall be covered by the operator's bond as  
3453 required by Section 40-10-15 and shall be readily identifiable by appropriate markers on the  
3454 site.

3455 (15) "Permittee" means a person holding a permit.

3456 (16) "Person" means an individual, partnership, association, society, joint stock  
3457 company, firm, company, corporation, or other governmental or business organization.

3458 (17) "Prime farmland" means the same as prescribed by the United States Department  
3459 of Agriculture on the basis of such factors as moisture availability, temperature regime,  
3460 chemical balance, permeability, surface layer composition, susceptibility to flooding, and  
3461 erosion characteristics.

3462 (18) "Reclamation plan" means a plan submitted by an applicant for a permit which  
3463 sets forth a plan for reclamation of the proposed surface coal mining operations pursuant to  
3464 Section 40-10-10.

3465 (19) "Surface coal mining and reclamation operations" mean surface mining  
3466 operations and all activities necessary and incident to the reclamation of these operations after  
3467 the effective date of this chapter.

3468 (20) "Surface coal mining operations" mean:

3469 (a) Activities conducted on the surface of lands in connection with a surface coal mine  
3470 or subject to the requirements of Section 40-10-18, surface operations and surface impacts  
3471 incident to an underground coal mine, the products of which enter commerce or the operations  
3472 of which directly or indirectly affect interstate commerce. These activities include excavation  
3473 for the purpose of obtaining coal, including such common methods as contour, strip, auger,

3474 mountaintop removal box cut, open pit, and area mining, the uses of explosives and blasting,  
3475 and in situ distillation or retorting, leaching or other chemical or physical processing, and the  
3476 cleaning, concentrating, or other processing or preparation, loading of coal for interstate  
3477 commerce at or near the mine site; but these activities do not include the extraction of coal  
3478 incidental to the extraction of other minerals where coal does not exceed 16-2/3% of the  
3479 tonnage of minerals removed for purposes of commercial use or sale or coal explorations  
3480 subject to Section 40-10-8.

3481 (b) The areas upon which the activities occur or where the activities disturb the natural  
3482 land surface. These areas shall also include any adjacent land the use of which is incidental to  
3483 the activities, all lands affected by the construction of new roads or the improvement or use of  
3484 existing roads to gain access to the site of the activities and for haulage and excavations,  
3485 workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps,  
3486 stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair  
3487 areas, storage areas, processing areas, shipping areas, and other areas upon which are sited  
3488 structures, facilities, or other property or materials on the surface resulting from or incident to  
3489 the activities.

3490 (21) "Unanticipated event or condition" means an event or condition encountered in a  
3491 remining operation that was not contemplated by the applicable surface coal mining and  
3492 reclamation permit.

3493 (22) "Unwarranted failure to comply" means the failure of a permittee to prevent the  
3494 occurrence of any violation of his permit or any requirement of this chapter due to  
3495 indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation  
3496 of the permit or this chapter due to indifference, lack of diligence, or lack of reasonable care.

3497 Section 67. Section **40-10-18** is amended to read:

3498 **40-10-18. Underground coal mining -- Rules regarding surface effects --**  
3499 **Operator requirements -- Repair or compensation for damage -- Replacement of water.**

3500 (1) The board shall adopt rules directed toward the surface effects of underground coal  
3501 mining operations that incorporate the requirements provided in this section. In adopting any

3502 rules, the board shall consider the distinct difference between surface coal mining and  
3503 underground coal mining methods.

3504 (2) Each permit relating to underground coal mining issued pursuant to this chapter  
3505 shall require the operator to comply with this section.

3506 (3) (a) Except in those instances where the mining technology used requires planned  
3507 subsidence in a predictable and controlled manner, the operator shall adopt measures  
3508 consistent with known technology to:

3509 (i) prevent subsidence from causing material damage, to the extent technologically and  
3510 economically feasible;

3511 (ii) maximize mine stability; and

3512 (iii) maintain the value and reasonably foreseeable use of the surface lands.

3513 (b) Nothing in Subsection (3)(a) shall be construed to prohibit the standard method of  
3514 room and pillar mining.

3515 (4) The operator shall seal all portals, entryways, drifts, shafts, or other openings  
3516 between the surface and underground mine working when no longer needed for the conduct of  
3517 the mining operations.

3518 (5) The operator shall fill or seal exploratory holes no longer necessary for mining,  
3519 maximizing to the extent technologically and economically feasible, the return of mine and  
3520 processing waste, tailings, and any other waste incident to the mining operation, to the mine  
3521 workings or excavations.

3522 (6) (a) With respect to surface disposal of mine wastes, tailings, coal processing  
3523 wastes, and other wastes in areas other than the mine workings or excavations, the operator  
3524 shall stabilize all waste piles created from current operations through construction in  
3525 compacted layers, including the use of incombustible and impervious materials, if necessary.

3526 (b) The operator shall assure that:

3527 (i) the leachate will not degrade surface or ground waters below water quality  
3528 standards established pursuant to applicable federal and state law;

3529 (ii) the final contour of the waste accumulation will be compatible with natural

3530 surroundings; and

3531 (iii) the site is stabilized and revegetated according to the provisions of this section.

3532 (7) In accordance with the standards and criteria developed pursuant to Section  
3533 40-10-17, the operator shall design, locate, construct, operate, maintain, enlarge, modify, and  
3534 remove or abandon all existing and new coal mine waste piles consisting of mine wastes,  
3535 tailings, coal processing wastes, or other liquid and solid wastes that are used either  
3536 temporarily or permanently as dams or embankments.

3537 (8) The operator shall establish on regraded areas and all other lands affected, a  
3538 diverse and permanent vegetative cover that is:

3539 (a) capable of self-regeneration and plant succession; and

3540 (b) at least equal in extent of cover to the natural vegetation of the area.

3541 (9) The operator shall protect offsite areas from damages which may result from the  
3542 mining operations.

3543 (10) The operator shall eliminate fire hazards and other conditions which constitute a  
3544 hazard to health and safety of the public.

3545 (11) The operator shall minimize the disturbances of the prevailing hydrologic balance  
3546 at the mine site and in associated offsite areas and to the quantity of water in surface and  
3547 groundwater systems both during and after coal mining operations and during reclamation by:

3548 (a) avoiding acid or other toxic mine drainage by such measures as, but not limited to:

3549 (i) preventing or removing water from contact with toxic-producing deposits;

3550 (ii) treating drainage to reduce toxic content which adversely affects downstream  
3551 water upon being released to water courses; or

3552 (iii) casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or  
3553 other toxic drainage from entering ground and surface waters;

3554 (b) conducting surface coal mining operations to prevent, to the extent possible using  
3555 the best technology currently available, additional contributions of suspended solids to  
3556 streamflow or runoff outside the permit area, but in no event shall these contributions be in  
3557 excess of requirements set by applicable state or federal law; and

3558 (c) avoiding channel deepening or enlargement in operations requiring the discharge  
3559 of water from mines.

3560 (12) (a) The standards established under Section 40-10-17 for surface coal mining  
3561 operations shall apply to:

3562 (i) the construction of new roads or the improvement or use of existing roads to gain  
3563 access to the site of activities conducted on the surface of lands in connection with an  
3564 underground coal mine and for haulage;

3565 (ii) repair areas, storage areas, processing areas, shipping areas, and other areas upon  
3566 which are sited structures, facilities, or other property or materials on the surface, resulting  
3567 from or incident to activities conducted on the surface of land in connection with an  
3568 underground coal mine; and

3569 (iii) other surface impacts of underground coal mining not specified in this section.

3570 (b) The division shall make the modification in the requirements imposed by  
3571 Subsection (12)(a) as are necessary to accommodate the distinct difference between surface  
3572 and underground coal mining methods.

3573 (13) To the extent possible using the best technology currently available, minimize  
3574 disturbances and adverse impacts of the operation on fish, wildlife, and related environmental  
3575 values, and achieve enhancement of these resources where practicable.

3576 (14) The operator shall locate openings for all new drift mines working acid producing  
3577 or iron producing coal seams in a manner as to prevent a gravity discharge of water from the  
3578 mine.

3579 (15) (a) Underground coal mining operations conducted after October 24, 1992, shall  
3580 be subject to the requirements specified in Subsections (15)(b) and (c).

3581 (b) (i) The permittee shall promptly repair, or compensate for, material damage  
3582 resulting from subsidence caused to any occupied residential dwelling and related structures or  
3583 noncommercial building due to underground coal mining operations.

3584 (ii) Repair of damage will include rehabilitation, restoration, or replacement of the  
3585 damaged occupied residential dwelling and related structures or noncommercial building.

3586 (iii) Compensation shall be provided to the owner of the damaged occupied residential  
3587 dwelling and related structures or noncommercial building and will be in the full amount of  
3588 the diminution in value resulting from the subsidence.

3589 (iv) Compensation may be accomplished by the purchase, prior to mining, of a  
3590 noncancellable premium prepaid insurance policy.

3591 (c) Subject to the provisions of Section 40-10-29, the permittee shall promptly replace  
3592 any state-appropriated water in existence prior to the application for a surface coal mining and  
3593 reclamation permit, which has been affected by contamination, diminution, or interruption  
3594 resulting from underground coal mining operations.

3595 (d) Nothing in this Subsection (15) shall be construed to prohibit or interrupt  
3596 underground coal mining operations.

3597 (e) Within one year after the date of enactment of this Subsection (15), the board shall  
3598 adopt final rules to implement this Subsection (15).

3599 Section 68. Section **41-1a-510** is amended to read:

3600 **41-1a-510. Sales tax payment required.**

3601 (1) (a) Except as provided in Subsection (1)(b), the division before issuing a certificate  
3602 of title to a vehicle, vessel, or outboard motor shall require from every applicant:

3603 (i) a receipt from the division showing that the sales tax has been paid to the state on  
3604 the sale of the vehicle, vessel, or outboard motor upon which application for certificate of title  
3605 has been made; or

3606 (ii) a certificate from the division showing that no sales tax is due.

3607 (b) If a licensed dealer has made a report of sale, no receipt or certificate is required.

3608 (2) The division may also issue an Affidavit of Mobile Home Affixture for a  
3609 manufactured home or mobile home if the applicant complies with Subsection (1).

3610 Section 69. Section **41-1a-1001** is amended to read:

3611 **41-1a-1001. Definitions.**

3612 As used in Sections 41-1a-1001 through 41-1a-1008:

3613 (1) "Certified vehicle inspector" means a person employed by the Motor Vehicle

3614 Enforcement Division as qualified through experience, training, or both to identify and  
3615 analyze damage to vehicles with either unibody or conventional frames.

3616 (2) "Major component part" means:

3617 (a) the front body component of a motor vehicle consisting of the structure forward of  
3618 the firewall;

3619 (b) the passenger body component of a motor vehicle including the firewall, roof, and  
3620 extending to and including the rear-most seating;

3621 (c) the rear body component of a motor vehicle consisting of the main cross member  
3622 directly behind the rear-most seating excluding any auxiliary seating and structural body  
3623 assembly rear of the cross members; and

3624 (d) the frame of a motor vehicle consisting of the structural member that supports the  
3625 auto body.

3626 (3) (a) "Major damage" means damage to a major component part of the motor vehicle  
3627 requiring 10 or more hours to repair or replace, as determined by a collision estimating guide  
3628 recognized by the Motor Vehicle Enforcement Division.

3629 (b) For purposes of Subsection (3)(a) repair or replacement hours do not include time  
3630 spent on cosmetic repairs.

3631 (4) "Owner" means the person who has the legal right to possession of the vehicle.

3632 (5) (a) "Salvage certificate" means a certificate of ownership issued for a salvage  
3633 vehicle before a new certificate of title is issued for the vehicle.

3634 (b) A salvage certificate is not valid for registration purposes.

3635 (6) "Salvage vehicle" means any vehicle:

3636 (a) damaged by collision, flood, or other occurrence to the extent that the cost of  
3637 repairing the vehicle for safe operation exceeds its fair market value; or

3638 (b) that has been declared a salvage vehicle by an insurer or other state or jurisdiction,  
3639 but is not precluded from further registration and titling.

3640 (7) "Unbranded title" means a certificate of title for a previously damaged motor  
3641 vehicle without any designation that the motor vehicle has been damaged.

3642 (8) "Vehicle damage disclosure statement" means the form designed and furnished by  
3643 the Motor Vehicle Enforcement Division for a damaged motor vehicle inspection under  
3644 Section 41-1a-1002.

3645 Section 70. Section **41-1a-1002** is amended to read:

3646 **41-1a-1002. Unbranded title -- Prerepair inspections -- Interim repair**  
3647 **inspections -- Repair.**

3648 (1) To obtain an unbranded title to a salvage vehicle:

3649 (a) the vehicle must:

3650 (i) be a motor vehicle;

3651 (ii) (A) have an unbranded Utah title or a Utah salvage certificate issued to replace an  
3652 unbranded Utah title at the time the motor vehicle is inspected under Subsection (1)(a)(iii); or

3653 (B) have an unbranded title from another jurisdiction and the motor vehicle shall have  
3654 been damaged in Utah as evidenced by an accident report;

3655 (iii) be inspected by a certified vehicle inspector prior to any repairs on the motor  
3656 vehicle following any major damage; and

3657 (iv) have major damage in no more than one major component part;

3658 (b) the major damage identified by a certified vehicle inspector under Subsection  
3659 (1)(a) must be repaired in accordance with standards established by the Motor Vehicle  
3660 Enforcement Division;

3661 (c) any interim inspection required by a certified vehicle inspector must be completed  
3662 in accordance with the directions of the initial certified vehicle inspector and to the  
3663 satisfaction of the interim certified vehicle inspector; and

3664 (d) the owner must apply to the Motor Vehicle Enforcement Division for authorization  
3665 to obtain an unbranded title under Section 41-1a-1003.

3666 (2) A flood damaged motor vehicle does not qualify for an unbranded title.

3667 (3) A salvage vehicle that is seven years old or older at the time of application for  
3668 unbranding does not qualify for an unbranded title.

3669 (4) The prerepair motor vehicle inspection required under Subsection (1) shall include

3670 examination of the motor vehicle and its major component parts to determine:

3671 (a) the extent and location of the major damage to the motor vehicle;

3672 (b) that the identification numbers of the vehicle or its parts have not been removed,

3673 falsified, altered, defaced, or destroyed; and

3674 (c) there are no indications that the vehicle or any of its parts are stolen.

3675 (5) If the certified vehicle inspector determines in an inspection under Subsection (1)

3676 that the motor vehicle has major damage:

3677 (a) in more than one major component part, the certified vehicle inspector shall notify

3678 the Motor Vehicle Enforcement Division and the owner that the motor vehicle does not qualify

3679 for an unbranded title; or

3680 (b) requiring repair or replacement in one or no major component part he shall:

3681 (i) record on the vehicle damage disclosure statement the:

3682 (A) date of the inspection;

3683 (B) description of the motor vehicle including its vehicle identification number, make,

3684 model, and year of manufacture;

3685 (C) owner of the motor vehicle and name of the lienholder, if any, shown on the

3686 salvage certificate; and

3687 (D) major damage to the motor vehicle requiring repair or replacement;

3688 (ii) indicate that the motor vehicle may qualify for an unbranded title if the major

3689 damage is repaired or the damaged part is replaced;

3690 (iii) sign the vehicle damage disclosure statement and attest to the information's

3691 accuracy;

3692 (iv) indicate whether an interim inspection of the motor vehicle damage repairs is

3693 required and which repairs require inspection prior to completion of repair work;

3694 (v) give to the owner a copy of the vehicle damage disclosure statement and deliver or

3695 mail a copy of the statement to the lienholder, if any, shown on the salvage certificate; and

3696 (vi) file the original vehicle damage disclosure statement with the Motor Vehicle

3697 Enforcement Division.

3698 (6) (a) Upon receipt by the Motor Vehicle Enforcement Division of notification from a  
 3699 certified vehicle inspector that a motor vehicle has had a preresearch inspection, the Motor  
 3700 Vehicle Enforcement Division shall make a record of the inspection.

3701 (b) Any subsequent preresearch inspections shall be disregarded by the Motor Vehicle  
 3702 Enforcement Division in evaluating the major damage to the motor vehicle and the repairs  
 3703 required.

3704 (7) A person who repairs or replaces major damage identified by a certified vehicle  
 3705 inspector on a motor vehicle in accordance with Subsection (1) shall:

3706 (a) record on the vehicle damage disclosure statement:

3707 (i) a description of the repairs made to the motor vehicle including how they were  
 3708 made; and

3709 (ii) his signature following the repair description with an attestation that the  
 3710 description is accurate;

3711 (b) obtain the signature of the certified vehicle inspector who performs an interim  
 3712 inspection, attesting that the repairs identified for interim inspection were satisfactorily  
 3713 completed;

3714 (c) file the original vehicle damage disclosure statement containing the repair  
 3715 information with the Motor Vehicle Enforcement Division; and

3716 (d) give a copy of the vehicle damage disclosure statement to the owner.

3717 Section 71. Section **41-3-106** is amended to read:

3718 **41-3-106. Board -- Creation and composition -- Appointment, terms,**  
 3719 **compensation, and expenses of members -- Meetings -- Quorum -- Powers and duties --**  
 3720 **Officers' election and duties -- Voting.**

3721 (1) (a) There is created an advisory board of five members that shall assist and advise  
 3722 the administrator in the administration and enforcement of this chapter.

3723 (b) The members shall be appointed by the governor from among the licensed motor  
 3724 vehicle manufacturers, distributors, factory branch and distributor branch representatives,  
 3725 dealers, dismantlers, transporters, remanufacturers, and body shops.

3726 (c) (i) Except as required by Subsection (1)(c)(ii), each member shall be appointed for  
3727 a term of four years or until his successor is appointed and qualified.

3728 (ii) Notwithstanding the requirements of Subsection (1)(c)(i), the governor shall, at the  
3729 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
3730 board members are staggered so that approximately half of the board is appointed every two  
3731 years.

3732 (d) Three members of the board shall be selected as follows:

3733 (i) one from new motor vehicle dealers;

3734 (ii) one from used motor vehicle dealers; and

3735 (iii) one from manufacturers, transporters, dismantlers, crushers, remanufacturers, and  
3736 body shops.

3737 (e) (i) Members shall receive no compensation or benefits for their services, but may  
3738 receive per diem and expenses incurred in the performance of the member's official duties at  
3739 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

3740 (ii) Members may decline to receive per diem and expenses for their service.

3741 (f) A majority of the members of the board constitutes a quorum and may act upon  
3742 and resolve in the name of the board any matter, thing, or question referred to it by the  
3743 administrator, or that the board has power to determine.

3744 (g) When a vacancy occurs in the membership for any reason, the replacement shall be  
3745 appointed for the unexpired term.

3746 (2) (a) The board shall on the first day of each July, or as soon thereafter as  
3747 practicable, elect a chair, vice chair, secretary, and assistant secretary from among its  
3748 members, who shall each hold office until his successor is elected.

3749 (b) As soon as the board elects its officers, the elected secretary shall certify the results  
3750 of the election to the administrator.

3751 (c) The chair shall preside at all meetings of the board and the secretary shall make a  
3752 record of the proceedings, which shall be preserved in the office of the administrator.

3753 (d) If the chair is absent from any meeting of the board, his duties shall be discharged

3754 by the vice chair, and if the secretary is absent, his duties shall be discharged by the assistant  
3755 secretary.

3756 (e) All members of the board may vote on any question, matter, or thing that properly  
3757 comes before it.

3758 Section 72. Section **48-2a-402** is amended to read:

3759 **48-2a-402. Events of withdrawal.**

3760 Except as approved by the specific written consent of all partners at the time thereof  
3761 with respect to Subsections (4) through (10), a person ceases to be a general partner of a  
3762 limited partnership upon the happening of any of the following events of withdrawal:

3763 (1) The general partner withdraws from the limited partnership as provided in Section  
3764 48-2a-602.

3765 (2) The general partner ceases to be a member of the limited partnership as provided in  
3766 Section 48-2a-702.

3767 (3) The general partner is removed as a general partner in accordance with the  
3768 partnership agreement.

3769 (4) Unless otherwise provided in the partnership agreement, the general partner:

3770 (a) makes an assignment for the benefit of creditors;

3771 (b) files a voluntary petition in bankruptcy;

3772 (c) is adjudicated as bankrupt or insolvent;

3773 (d) files a petition or answer seeking for himself any reorganization, arrangement,  
3774 composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or  
3775 regulation;

3776 (e) files an answer or other pleading admitting or failing to contest the material  
3777 allegations of a petition filed against him in any proceeding described in Subsection (4)(d); or

3778 (f) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or  
3779 liquidator of the general partner or of all or any substantial part of his properties.

3780 (5) Unless otherwise provided in the partnership agreement, if within 120 days after  
3781 the commencement of any proceeding against the general partner seeking reorganization,

3782 arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any  
3783 statute, law, or regulation, the proceeding has not been dismissed, or if within 90 days after the  
3784 appointment without his consent or acquiescence of a trustee, receiver, or liquidator of the  
3785 general partner or of all or any substantial part of his properties, the appointment is not  
3786 vacated or stayed or within 90 days after the expiration of any such stay, the appointment is  
3787 not vacated.

3788 (6) In the case of a general partner who is a natural person:

3789 (a) his death; or

3790 (b) the entry of an order by a court of competent jurisdiction adjudicating him  
3791 incompetent to manage his person or his estate.

3792 (7) In the case of a general partner who is acting as a general partner by virtue of being  
3793 a trustee of a trust, the distribution by the trustee of the trust's entire interest in the partnership,  
3794 but not merely the substitution of a new trustee.

3795 (8) In the case of a general partner that is a separate partnership, the dissolution and  
3796 completion of winding up of the separate partnership.

3797 (9) In the case of a general partner that is a corporation, the issuance of a certificate of  
3798 dissolution or its equivalent, or of a judicial decree of dissolution, for the corporation or the  
3799 revocation of its charter.

3800 (10) In the case of a person who is acting as a general partner by virtue of being a  
3801 fiduciary of an estate, the distribution by the fiduciary of the estate's entire interest in the  
3802 partnership.

3803 Section 73. Section **52-3-1** is amended to read:

3804 **52-3-1. Employment of relatives prohibited -- Exceptions.**

3805 (1) For purposes of this section:

3806 (a) "Appointee" means an employee whose salary, wages, pay, or compensation is paid  
3807 from public funds.

3808 (b) "Chief administrative officer" means the person who has ultimate responsibility for  
3809 the operation of the department or agency of the state or a political subdivision.

3810 (c) "Public officer" means a person who holds a position that is compensated by  
3811 public funds.

3812 (d) "Relative" means a father, mother, husband, wife, son, daughter, sister, brother,  
3813 uncle, aunt, nephew, niece, first cousin, mother-in-law, father-in-law, brother-in-law,  
3814 sister-in-law, son-in-law, or daughter-in-law.

3815 (2) (a) No public officer may employ, appoint, or vote for or recommend the  
3816 appointment of a relative in or to any position or employment, when the salary, wages, pay, or  
3817 compensation of the appointee will be paid from public funds and the appointee will be  
3818 directly supervised by a relative, except as follows:

3819 (i) the appointee is eligible or qualified to be employed by a department or agency of  
3820 the state or a political subdivision of the state as a result of his compliance with civil service  
3821 laws or regulations, or merit system laws or regulations;

3822 (ii) the appointee will be compensated from funds designated for vocational training;

3823 (iii) the appointee will be employed for a period of 12 weeks or less;

3824 (iv) the appointee is a volunteer as defined by the employing entity;

3825 (v) the appointee is the only person available, qualified, or eligible for the position; or

3826 (vi) the chief administrative officer determines that the public officer is the only  
3827 person available or best qualified to perform supervisory functions for the appointee.

3828 (b) No public officer may directly supervise an appointee who is a relative when the  
3829 salary, wages, pay, or compensation of the relative will be paid from public funds, except as  
3830 follows:

3831 (i) the relative was appointed or employed before the public officer assumed his  
3832 position, if the relative's appointment did not violate the provisions of this chapter in effect at  
3833 the time of his appointment;

3834 (ii) the appointee is eligible or qualified to be employed by a department or agency of  
3835 the state or a political subdivision of the state as a result of his compliance with civil service  
3836 laws or regulations, or merit system laws or regulations;

3837 (iii) the appointee will be compensated from funds designated for vocational training;

- 3838 (iv) the appointee will be employed for a period of 12 weeks or less;
- 3839 (v) the appointee is a volunteer as defined by the employing entity;
- 3840 (vi) the appointee is the only person available, qualified, or eligible for the position; or
- 3841 (vii) the chief administrative officer determines that the public officer is the only
- 3842 person available or best qualified to perform supervisory functions for the appointee.
- 3843 (c) When a public officer supervises a relative under Subsection (2)(b):
- 3844 (i) the public officer shall make a complete written disclosure of the relationship to the
- 3845 chief administrative officer of the agency or institution; and
- 3846 (ii) the public officer who exercises authority over a relative may not evaluate the
- 3847 relative's job performance or recommend salary increases for the relative.
- 3848 (3) No appointee may accept or retain employment if he is paid from public funds, and
- 3849 he is under the direct supervision of a relative, except as follows:
- 3850 (a) the relative was appointed or employed before the public officer assumed his
- 3851 position, if the relative's appointment did not violate the provisions of this chapter in effect at
- 3852 the time of his appointment;
- 3853 (b) the appointee was or is eligible or qualified to be employed by a department or
- 3854 agency of the state or a political subdivision of the state as a result of his compliance with civil
- 3855 service laws or regulations, or merit system laws or regulations;
- 3856 (c) the appointee is the only person available, qualified, or eligible for the position;
- 3857 (d) the appointee is compensated from funds designated for vocational training;
- 3858 (e) the appointee is employed for a period of 12 weeks or less;
- 3859 (f) the appointee is a volunteer as defined by the employing entity; or
- 3860 (g) the chief administrative officer has determined that the appointee's relative is the
- 3861 only person available or qualified to supervise the appointee.

3862 Section 74. Section **53-3-213** is amended to read:

3863 **53-3-213. Age and experience requirements to drive school bus or certain other**  
3864 **carriers -- Misdemeanor to drive unauthorized class of motor vehicle -- Waiver of**  
3865 **driving examination by third party certification.**

- 3866 (1) (a) A person must be at least 21 years of age:  
3867 (i) to drive any school bus;  
3868 (ii) to drive any commercial motor vehicle outside this state; or  
3869 (iii) while transporting passengers for hire or hazardous materials.
- 3870 (b) Subject to the requirements of Subsection (1)(a), the division may grant a  
3871 commercial driver license to any applicant who is at least 18 years of age and has had at least  
3872 one year of previous driving experience.
- 3873 (c) It is a class C misdemeanor for any person to drive a class of motor vehicle for  
3874 which he is not licensed.
- 3875 (2) (a) At the discretion of the commissioner and under standards established by the  
3876 division, persons employed as commercial drivers may submit a third party certification as  
3877 provided in Part 4 [~~of this chapter~~], Uniform Commercial Driver License Act, in lieu of the  
3878 driving segment of the examination.
- 3879 (b) The division shall maintain necessary records and set standards to certify  
3880 companies desiring to qualify under Subsection (2)(a).
- 3881 Section 75. Section **53-3-225** is amended to read:  
3882 **53-3-225. Eligibility for new license after revocation.**
- 3883 (1) (a) Except as provided in Subsections (1)(b) and (c), a person whose license has  
3884 been revoked under this chapter may not apply for or receive any new license until the  
3885 expiration of one year from the date the former license was revoked.
- 3886 (b) A person's license may be revoked for a longer period as provided in:  
3887 (i) Section 53-3-220, for driving a motor vehicle while the person's license is revoked,  
3888 or involvement as a driver in an accident or violation of the motor vehicle laws; and  
3889 (ii) Section 53-3-221, for failing to comply with the terms of a traffic citation.
- 3890 (c) (i) The length of the revocation required by Subsection 53-3-220(1)(a)(xi), (a)(xii),  
3891 (b)(i), or (b)(ii) shall be specified in an order of the court adjudicating or convicting the person  
3892 of the offense.
- 3893 (ii) If the person adjudicated of the offense is younger than 16 years of age, the license

3894 or driving privilege shall be revoked for a minimum of one year, from age 16, but not to  
3895 exceed the date the person turns 21 years of age.

3896 (iii) If the person adjudicated or convicted of the offense is 16 years of age or older,  
3897 the license or driving privilege shall be revoked for a minimum of one year, but not to exceed  
3898 five years.

3899 (d) A revoked license may not be renewed.

3900 (e) Application for a new license shall be filed in accordance with Section 53-3-205.

3901 (f) The new license is subject to all provisions of an original license.

3902 (g) The division may not grant the license until an investigation of the character,  
3903 driving abilities, and habits of the driver has been made to indicate whether it is safe to grant  
3904 him a license.

3905 (2) Any resident or nonresident whose license to drive a motor vehicle in this state has  
3906 been suspended or revoked under this chapter may not drive a motor vehicle in this state under  
3907 a license, permit, or registration certificate issued by any other jurisdiction or other source  
3908 during suspension or after revocation until a new license is obtained under this chapter.

3909 Section 76. Section **53-3-416** is amended to read:

3910 **53-3-416. Driving record and other information to be provided to employer.**

3911 (1) Each person who drives a commercial motor vehicle who has a CDL issued by this  
3912 state and who is convicted of violating, in any type of motor vehicle, a state or local law  
3913 relating to motor vehicle traffic, other than a parking violation, in this or any other state or  
3914 jurisdiction, shall notify both the division and his current employer of the conviction within 30  
3915 days of the date of conviction.

3916 (2) A driver shall notify his current employer before the end of the business day  
3917 following the day he receives notice that:

3918 (a) his CDL is suspended, revoked, or canceled by any state;

3919 (b) he loses the privilege to drive a commercial motor vehicle in any state or other  
3920 jurisdiction for any period; or

3921 (c) he is disqualified from driving a commercial motor vehicle for any period.

3922 (3) A person who applies to be a commercial motor vehicle driver shall at the time of  
3923 application provide to the employer the following information for the 10 years prior to the date  
3924 of application:

3925 (a) a list of the names and addresses of the applicant's previous employers for which  
3926 the applicant was a driver of a commercial motor vehicle as any part of his employment;

3927 (b) the dates between which the applicant drove for each employer listed under  
3928 Subsection (3)(a); and

3929 (c) the reason the applicant's employment with each employer listed was terminated.

3930 (4) (a) An applicant shall certify that all information provided under this section is true  
3931 and complete to the best of his knowledge.

3932 (b) An employer receiving information under this section may require that an  
3933 applicant provide additional information.

3934 Section 77. Section **53-3-908** is amended to read:

3935 **53-3-908. Advisory committee.**

3936 (1) The governor shall appoint a five-member program advisory committee to assist in  
3937 the development and implementation of the program.

3938 (2) The committee members shall be appointed by the governor as follows:

3939 (a) one representative of motorcycle retail dealers;

3940 (b) one representative of peace officers;

3941 (c) one citizen not affiliated with a motorcycle dealer, manufacturer, or association;

3942 (d) one motorcycle safety foundation instructor or chief instructor; and

3943 (e) one member of an incorporated motorcycle rider organization.

3944 (3) All members of the advisory committee shall be licensed motorcyclists.

3945 (4) (a) Except as required by Subsection (4)(b), as terms of current committee  
3946 members expire, the governor shall appoint each new member or reappointed member to a  
3947 four-year term.

3948 (b) [~~Notwithstanding the requirements of Subsection (a), the~~] The governor shall, at  
3949 the time of appointment or reappointment, adjust the length of terms to ensure that the terms

3950 of committee members are staggered so that approximately half of the committee is appointed  
3951 every two years.

3952 (c) The committee shall meet at the call of the director.

3953 (5) When a vacancy occurs in the membership for any reason, the replacement shall be  
3954 appointed for the unexpired term.

3955 (6) (a) Members shall receive no compensation or benefits for their services, but may  
3956 receive per diem and expenses incurred in the performance of the member's official duties at  
3957 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

3958 (b) Members may decline to receive per diem and expenses for their service.

3959 Section 78. Section **53-5-703** is amended to read:

3960 **53-5-703. Board -- Membership -- Compensation -- Terms -- Duties.**

3961 (1) There is created within the division the Concealed Weapon Review Board.

3962 (2) (a) The board is comprised of not more than five members appointed by the  
3963 commissioner on a bipartisan basis.

3964 (b) The board shall include a member representing law enforcement and at least two  
3965 citizens, one of whom represents sporting interests.

3966 (3) (a) Except as required by Subsection (3)(b), as terms of current board members  
3967 expire, the commissioner shall appoint each new member or reappointed member to a  
3968 four-year term.

3969 (b) Notwithstanding the requirements of Subsection (3)(a), the commissioner shall, at  
3970 the time of appointment or reappointment, adjust the length of terms to ensure that the terms  
3971 of board members are staggered so that approximately half of the board is appointed every two  
3972 years.

3973 (4) When a vacancy occurs in the membership for any reason, the replacement shall be  
3974 appointed for the unexpired term.

3975 (5) (a) (i) Members who are not government employees shall receive no compensation  
3976 or benefits for their services, but may receive per diem and expenses incurred in the  
3977 performance of the member's official duties at the rates established by the Division of Finance

3978 under Sections 63A-3-106 and 63A-3-107.

3979 (ii) Members may decline to receive per diem and expenses for their service.

3980 (b) (i) State government officer and employee members who do not receive salary, per  
3981 diem, or expenses from their agency for their service may receive per diem and expenses  
3982 incurred in the performance of their official duties from the board at the rates established by  
3983 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

3984 (ii) State government officer and employee members may decline to receive per diem  
3985 and expenses for their service.

3986 (6) The board shall meet at least quarterly, unless the board has no business to conduct  
3987 during that quarter.

3988 (7) The board, upon receiving a timely filed petition for review, shall review within a  
3989 reasonable time the denial, suspension, or revocation of a permit or a temporary permit to  
3990 carry a concealed firearm.

3991 Section 79. Section **53-6-108** is amended to read:

3992 **53-6-108. Donations, contributions, grants, gifts, bequests, devises, or**  
3993 **endowments -- Authority to accept -- Disposition.**

3994 (1) The division may accept any donations, contributions, grants, gifts, bequests,  
3995 devises, or endowments of money or property, which shall be the property of the state.

3996 (2) (a) If the donor directs that the money or property be used in a specified manner,  
3997 then the division shall use it in accordance with these directions and state law.

3998 (b) All money and the proceeds from donated property not disposed of under  
3999 Subsection (2)(a) shall be deposited in the General Fund as restricted revenue for the division.

4000 Section 80. Section **53-6-302** is amended to read:

4001 **53-6-302. Applicants for certification examination -- Requirements.**

4002 (1) Before being allowed to take a dispatcher certification examination, each applicant  
4003 shall meet the following requirements:

4004 (a) be a United States citizen;

4005 (b) be 18 years of age or older at the time of employment as a dispatcher;

4006 (c) be a high school graduate or have a G.E.D. equivalent;

4007 (d) have not been convicted of a crime for which the applicant could have been  
4008 punished by imprisonment in a federal penitentiary or by imprisonment in the penitentiary of  
4009 this or another state;

4010 (e) have demonstrated good moral character, as determined by a background  
4011 investigation; and

4012 (f) be free of any physical, emotional, or mental condition that might adversely affect  
4013 the performance of the applicant's duty as a dispatcher.

4014 (2) (a) An application for certification shall be accompanied by a criminal history  
4015 background check of local, state, and national criminal history files and a background  
4016 investigation.

4017 (b) The costs of the background check and investigation shall be borne by the  
4018 applicant or the applicant's employing agency.

4019 (i) Conviction of any offense not serious enough to be covered under Subsection  
4020 (1)(d), involving dishonesty, unlawful sexual conduct, physical violence, or the unlawful use,  
4021 sale, or possession for sale of a controlled substance is an indication that an applicant may not  
4022 be of good moral character and may be grounds for denial of certification or refusal to give a  
4023 certification examination.

4024 (ii) An applicant may be allowed to take a certification examination provisionally,  
4025 pending completion of any background check or investigation required by this Subsection  
4026 (2)(b).

4027 (3) (a) Notwithstanding Sections 77-18-9 through 77-18-17 regarding expungements,  
4028 or a similar statute or rule of any other jurisdiction, any conviction obtained in this state or  
4029 other jurisdiction, including a conviction that has been expunged, dismissed, or treated in a  
4030 similar manner to either of these procedures, may be considered for purposes of this section.

4031 (b) Subsection (3)(a) applies to convictions entered both before and after May 1, 1995.

4032 (4) Any background check or background investigation performed pursuant to the  
4033 requirements of this section shall be to determine eligibility for admission to training programs

4034 or qualification for certification examinations and may not be used as a replacement for any  
4035 background investigations that may be required of an employing agency.

4036 Section 81. Section **53-7-102** is amended to read:

4037 **53-7-102. Definitions.**

4038 As used in this chapter:

4039 (1) "Director" means the state fire marshal appointed in accordance with Section  
4040 53-7-103.

4041 (2) "Division" means the State Fire Marshal Division created in Section 53-7-103.

4042 (3) "Fire officer" means:

4043 (a) the state fire marshal;

4044 (b) the state fire marshal's deputies or salaried assistants;

4045 (c) the fire chief or fire marshal of any county, city, or town fire department;

4046 (d) the fire officer of any fire district;

4047 (e) the fire officer of any special service district organized for fire protection purposes;

4048 and

4049 (f) authorized personnel of any of the persons specified in Subsections (3)(a) through  
4050 (e).

4051 (4) "State fire marshal" means the fire marshal appointed director by the commissioner  
4052 under Section 53-7-103.

4053 Section 82. Section **53-7-222** is amended to read:

4054 **53-7-222. Restrictions on the sale or use of fireworks.**

4055 (1) (a) The division shall test and approve a representative sample of each class C  
4056 common state approved explosive before the explosive may be sold to the public.

4057 (b) The division shall publish a list of all class C explosives that are approved for sale  
4058 to the public each year.

4059 (2) (a) Except as provided in Subsection (2)(b), class C dangerous explosives may not  
4060 be possessed, discharged, sold, or offered for retail sale.

4061 (b) (i) The following persons may purchase, possess, or discharge class C dangerous

4062 explosives:

4063 (A) display operators who receive a license from the division in accordance with  
4064 Section 53-7-223 and approval from their local licensing authority in accordance with Section  
4065 11-3-3.5; and

4066 (B) operators approved by the Division of Wildlife Resources or Department of  
4067 Agriculture and Food to discharge agricultural and wildlife fireworks.

4068 (ii) Importers and wholesalers licensed under Section 53-7-224 may possess, sell, and  
4069 offer to sell class C dangerous explosives.

4070 (3) Unclassified fireworks may not be sold, or offered for sale.

4071 Section 83. Section **53-7-309** is amended to read:

4072 **53-7-309. Classification of applicants and licensees.**

4073 (1) To administer this part, the board shall classify all applicants and licensees as  
4074 follows:

4075 (a) Class 1: a licensed dealer who:

4076 (i) is engaged in the business of installing gas appliances or systems for the use of  
4077 LPG;

4078 (ii) sells, fills, refills, delivers, or is permitted to deliver any LPG; or

4079 (iii) is involved under both Subsection (1)(a)(i) and (ii).

4080 (b) Class 2: a business engaged in the sale, transportation, and exchange of cylinders,  
4081 or engaged in more than one of these, but not transporting or transferring gas in liquid.

4082 (c) Class 3: a business not engaged in the sale of LPG, but engaged in the sale and  
4083 installation of gas appliances or LPG systems.

4084 (d) Class 4: those businesses not specifically within classification 1, 2, or 3 may at the  
4085 discretion of the board be issued special licenses.

4086 (2) (a) Any license granted under this section entitles the licensee to operate a staffed  
4087 plant or facility consistent with the license at one location, which is stated in the license, under  
4088 Section 53-7-310.

4089 (b) For each additional staffed plant or facility owned or operated by the licensee, the

4090 licensee shall register the additional location with the board and pay an additional annual fee,  
4091 to be set in accordance with Section 53-7-314.

4092 Section 84. Section **53-7-315** is amended to read:

4093 **53-7-315. Enforcement of part and rules.**

4094 (1) Except as provided in Subsection (6), this part, the rules made under it, and orders  
4095 issued by the board are enforced by:

4096 (a) the enforcing authority, unless otherwise provided by the board; and

4097 (b) the board.

4098 (2) (a) A person who knowingly violates or fails to comply with this part is guilty of a  
4099 class B misdemeanor and is punishable by a fine of not less than \$50 nor more than \$500.

4100 (b) A person previously convicted under Subsection (2)(a) who knowingly violates or  
4101 fails to comply with this part is guilty of a class B misdemeanor and is punishable by a fine of  
4102 not less than \$200 nor more than \$2,000.

4103 (c) Each day the violation or failure to comply continues constitutes a separate  
4104 offense.

4105 (3) The enforcing authority may enter the premises of a licensee under this part, or any  
4106 building or other premises open to the public, at any reasonable time, for the purpose of  
4107 determining and verifying compliance with this part and the rules and orders of the board.

4108 (4) An enforcing authority may declare any container, appliance, equipment, transport,  
4109 or system that does not conform to the safety requirements of this part or the rules or orders of  
4110 the board, or that is otherwise defective, as unsafe or dangerous for LPG service, and shall  
4111 attach a red tag in a conspicuous location.

4112 (5) (a) A person who knowingly sells, furnishes, delivers, or supplies LPG for storage  
4113 in, or use or consumption by, or through, a container, appliance, transport, or system to which  
4114 a red tag is attached is guilty of a class B misdemeanor punishable by a fine of not less than  
4115 \$100 and not more than \$2,000.

4116 (b) Liquefied petroleum gas shall be removed from a container to which a red tag is  
4117 attached only as provided by rules made by the board.

4118 (c) An unauthorized person who knowingly removes, destroys, or in any way  
4119 obliterates a red tag attached to a container, appliance, transport, or system is guilty of a class  
4120 B misdemeanor punishable by a fine of not less than \$50 and not more than \$2,000.

4121 (d) The enforcing authority may establish and collect a fee for any services or  
4122 inspections required by this part, the rules made under it, and orders issued by the board. The  
4123 fee shall be reasonable and may not exceed the amount of the cost of service or inspection  
4124 provided. Fees collected under this subsection may be retained by the enforcing authority, and  
4125 shall be applied to the expenses of providing these services.

4126 (6) (a) Except as provided in Subsection (6)(c), a person who fills a leased container in  
4127 violation of the terms of a written lease is liable in an action by the container lessor for the  
4128 greater of:

4129 (i) the actual damages to the container lessor, including incidental and consequential  
4130 damages and attorneys' fees; or

4131 (ii) \$500 for each violation.

4132 (b) (i) The burden of ascertaining the terms of a written lease for purposes of  
4133 Subsection (a) is on the person filling the container.

4134 (ii) A person has ascertained the terms of a written lease if he has:

4135 (A) read the lease;

4136 (B) received the assurance of the container owner that the lease does not prohibit the  
4137 person from filling the container;

4138 (C) obtained a signed, written statement from the lessee that the written lease does not  
4139 prohibit the person from filling the container; or

4140 (D) the leased container is clearly labelled as a container subject to lease terms  
4141 prohibiting the filling of the container without the lessor's permission.

4142 (c) If a lessee or lessor misrepresents his ownership or the terms of his written lease  
4143 under Subsection (6)(b), the lessee or lessor who made the misrepresentation, and not the  
4144 person filling the tank, is liable for the damages under Subsection (6)(a).

4145 (7) If a written container lease entered into after May 1, 1992, restricts the right to fill

4146 a leased container, the restriction shall be plainly stated in the lease in any manner designed to  
4147 draw the attention of the lessee to the lease provision, including:

4148 (a) typing the restriction in at least two point larger type than the majority of the  
4149 document type;

4150 (b) underlining the restriction; or

4151 (c) typing the restriction in boldface type.

4152 (8) A lessor whose container lease does not comply with Subsection (7) is disqualified  
4153 from protection under Subsection (6).

4154 Section 85. Section **53-10-211** is amended to read:

4155 **53-10-211. Notice required of arrest of school employee for controlled substance**  
4156 **or sex offense.**

4157 (1) The chief administrative officer of the law enforcement agency making the arrest  
4158 or receiving notice under Subsection (2) shall immediately notify the following individuals:

4159 (a) the administrator of teacher certification in the State Office of Education; and

4160 (b) the superintendent of schools of the employing public school district or, if the  
4161 offender is an employee of a private school, the administrator of that school.

4162 (2) Subsection (1) applies upon:

4163 (a) the arrest of any school employee for any offense:

4164 (i) in Section 58-37-8;

4165 (ii) in Title 76, Chapter 5, Part 4, Sexual Offenses; or

4166 (iii) involving sexual conduct; or

4167 (b) upon receiving notice from any other jurisdiction that a school employee has  
4168 committed an act which would, if committed in Utah, be an offense under Subsection (2)(a).

4169 Section 86. Section **53A-26a-305** is amended to read:

4170 **53A-26a-305. Exemptions from certification -- Temporary or restricted**  
4171 **certification.**

4172 (1) The following individuals may engage in the practice of a certified interpreter,  
4173 subject to the stated circumstances and limitations, without being certified under this chapter:

4174 (a) an individual serving in the Armed Forces of the United States, the United States  
4175 Public Health Service, the United States Department of Veterans Affairs, or other federal  
4176 agencies while engaged in activities regulated under this chapter as a part of employment with  
4177 that federal agency if the person holds a valid certificate or license to provide interpreter  
4178 services issued by any other state or jurisdiction recognized by the State Board of Education;

4179 (b) a student engaged in providing interpreter services while in training in a  
4180 recognized school approved by the State Board of Education to the extent the student's  
4181 activities are supervised by qualified faculty, staff, or designee, and the services are a defined  
4182 part of the training program;

4183 (c) an individual engaged in an internship, residency, apprenticeship, or on-the-job  
4184 training program approved by the State Board of Education while under the supervision of  
4185 qualified persons;

4186 (d) an individual residing in another state and certified or licensed to provide  
4187 interpreter services in that state, who is called in for a consultation by an individual certified to  
4188 provide interpreter services in this state, and the services provided are limited to that  
4189 consultation;

4190 (e) an individual who is invited by a recognized school, association, or other body  
4191 approved by the State Board of Education to conduct a lecture, clinic, or demonstration on  
4192 interpreter services if the individual does not establish a place of business or regularly engage  
4193 in the practice of providing interpreter services in this state; and

4194 (f) an individual licensed in another state or country who is in this state temporarily to  
4195 attend to the needs of an athletic team or group, except that the individual may only attend to  
4196 the needs of the team or group, including all individuals who travel with the team or group,  
4197 except as a spectator.

4198 (2) (a) An individual temporarily in this state who is exempted from certification  
4199 under Subsection (1) shall comply with each requirement of the jurisdiction from which the  
4200 individual derives authority to practice.

4201 (b) Violation of any limitation imposed by this section is grounds for removal of

4202 exempt status, denial of certification, or another disciplinary proceeding.

4203 (3) (a) Upon the declaration of a national, state, or local emergency, the State Board of  
4204 Education, in collaboration with the advisory board, may suspend the requirements for  
4205 permanent or temporary certification of persons who are certified or licensed in another state.

4206 (b) Individuals exempt under Subsection (3)(a) shall be exempt from certification for  
4207 the duration of the emergency while engaged in providing interpreter services for which they  
4208 are certified or licensed in the other state.

4209 (4) The State Board of Education, after consulting with the advisory board, may adopt  
4210 rules for the issuance of temporary or restricted certifications if their issuance is necessary to  
4211 or justified by:

4212 (a) a lack of necessary available interpretive services in any area or community of the  
4213 state, if the lack of services might be reasonably considered to materially jeopardize  
4214 compliance with state or federal law; or

4215 (b) a need to first observe an applicant for certification in a monitored or supervised  
4216 practice of providing interpretive services before a decision is made by the board either to  
4217 grant or deny the applicant a regular certification.

4218 Section 87. Section **53B-12-104** is amended to read:

4219 **53B-12-104. Guarantee Fund -- Sources -- Use -- Valuation and restoration of**  
4220 **assets -- Other funds.**

4221 (1) The authority shall establish the Utah Higher Education Assistance Authority  
4222 Guarantee Fund from the following sources:

4223 (a) insurance premiums;

4224 (b) money appropriated and made available by the state for the purpose of the  
4225 guarantee fund;

4226 (c) money directed by the authority to be transferred to the guarantee fund; and

4227 (d) other money made available to the authority for the purpose of the guarantee fund  
4228 from other sources.

4229 (2) (a) Money held in the guarantee fund shall be used only for payments required

4230 under the authority's guarantee agreements and for other purposes authorized by applicable  
4231 federal regulations.

4232 (b) Income or interest earned by the investment of money held in the guarantee fund  
4233 remains in the fund.

4234 (c) The authority may provide by resolution or guarantee agreement that it may not  
4235 guarantee a loan if the assets of the fund are less than 1% of the unpaid principal amount  
4236 outstanding upon all loans guaranteed by the fund, or a greater amount as determined by the  
4237 authority.

4238 (d) In computing the assets of the fund for the purposes of this section, securities are  
4239 valued at par, cost, or by such other method of valuation as the authority may provide by  
4240 resolution or agreement.

4241 (e) In the event assets in the fund are less than 1%, or a greater amount as determined  
4242 by the authority under Subsection (2)(c), the chairman of the authority shall annually, before  
4243 the second day of December, certify to the governor and to the Director of Finance the  
4244 amounts required to restore the assets of the fund to the required amount. The governor may  
4245 request an appropriation of the certified amount from the Legislature in order to restore the  
4246 required amount to the fund.

4247 (3) The authority may create and establish other subfunds as are necessary or desirable  
4248 for its purposes.

4249 Section 88. Section **53B-21-102** is amended to read:

4250 **53B-21-102. Bonds do not create state indebtedness -- Special obligations --**  
4251 **Discharge of bonded indebtedness -- Agreements and covenants by the board regarding**  
4252 **bonds -- Enforcement by court action.**

4253 (1) (a) The bonds issued under this chapter are not an indebtedness of the state, of the  
4254 institution for which they are issued, or of the board.

4255 (b) They are special obligations payable solely from the revenues derived from the  
4256 operation of the building and student building fees, land grant interest, net profits from  
4257 proprietary activities, and any other revenues pledged other than appropriations by the

4258 Legislature as provided in Sections 53B-21-101 and 53B-21-111.

4259 (c) (i) Notwithstanding any other provision of law, the chair of the board shall certify  
4260 annually by December 1 any amount required to:

4261 (A) restore any debt service reserve funds established by the board for bonds issued  
4262 under this chapter to the amount required by the related authorizing proceedings; or

4263 (B) meet projected shortfalls of payment of principal or interest or both for the  
4264 following year on any bonds issued under this chapter.

4265 (ii) The governor may request from the Legislature an appropriation of the amount  
4266 certified under Subsection (1)(c)(i) to restore the debt service reserve funds to their required  
4267 amounts or to meet any projected principal or interest payment deficiency.

4268 (d) (i) The state may not alter, impair, or limit the rights of bondholders or persons  
4269 contracting with the board until the bonds, including interest and other contractual obligations,  
4270 are fully met and discharged.

4271 (ii) Nothing in this chapter precludes an alteration, impairment, or limitation if  
4272 provision is made by law for the protection of bondholders or persons entering into contracts  
4273 with the board.

4274 (2) The board shall pledge all or any part of the revenues to the payment of principal  
4275 of and interest on the bonds.

4276 (3) In order to secure the prompt payment of principal and interest and the proper  
4277 application of the revenues pledged, the board may, by appropriate provisions in the resolution  
4278 authorizing the bonds:

4279 (a) covenant as to the use and disposition of the proceeds of the sale of the bonds;

4280 (b) covenant as to the operation of the building and the collection and disposition of  
4281 the revenues derived from the operation;

4282 (c) collect student building fees from all students, and pledge the fees to the payment  
4283 of building bonds;

4284 (d) covenant as to the rights, liabilities, powers, and duties arising from the breach of  
4285 any covenant or agreement into which it may enter in authorizing and issuing the bonds;

- 4286 (e) covenant and agree to carry insurance on the building, and its use and occupancy,  
4287 and provide that the cost of any insurance is part of the expense of operating the building;
- 4288 (f) vest in a trustee:
- 4289 (i) the right to receive all or any part of the income and revenues pledged and assigned  
4290 to or for the benefit of the holder or holders of the bonds issued under this chapter, and to  
4291 hold, apply, and dispose of the income and revenue; and
- 4292 (ii) the right to:
- 4293 (A) enforce any covenant made to secure the bonds;
- 4294 (B) execute and deliver a trust agreement which sets forth the powers and duties and  
4295 the remedies available to the trustee and limits the trustee's liabilities; and
- 4296 (C) prescribe the terms and conditions upon which the trustee or the holders of the  
4297 bonds in any specified amount or percentage may exercise such rights and enforce any or all  
4298 covenants and resort to any appropriate remedies;
- 4299 (g) (i) fix rents, charges, and fees, including student building fees, to be imposed in  
4300 connection with and for the use of the building and its facilities, which are:
- 4301 (A) income and revenues derived from the operation of the building; and
- 4302 (B) expressly required to be fully sufficient either by themselves or with land grant  
4303 interest and net profits from proprietary activities, or from sources other than by  
4304 appropriations by the Legislature to such issuing institutions to assure the prompt payment of  
4305 principal of and interest on the bonds as each becomes due; and
- 4306 (ii) make and enforce rules with reference to the use of the building and with reference  
4307 to requiring any class or classes of students to use the building as desirable for the welfare of  
4308 the institution and its students or for the accomplishment of the purposes of this chapter;
- 4309 (h) covenant to maintain a maximum percentage of occupancy of the building;
- 4310 (i) covenant against the issuance of any other obligations payable from the revenues to  
4311 be derived from the building, unless subordinated;
- 4312 (j) make provision for refunding;
- 4313 (k) covenant as to the use and disposition of sources of revenue other than those

4314 derived from appropriations by the Legislature, and pledge those sources of revenues to the  
4315 payment of bonds issued under this chapter;

4316 (l) make other covenants considered necessary or advisable to effect the purposes of  
4317 this chapter; and

4318 (m) delegate to the chair, vice-chair, or chair of the Budget and Finance Subcommittee  
4319 the authority:

4320 (i) to approve any changes with respect to interest rate, price, amount, redemption  
4321 features, and other terms of the bonds as are within reasonable parameters set forth in the  
4322 resolution; and

4323 (ii) to approve and execute all documents relating to the issuance of the bonds.

4324 (4) (a) The agreements and covenants entered into by the board under this section are  
4325 binding in all respects upon the board and its officials, agents, and employees, and upon its  
4326 successors.

4327 (b) They are enforceable by appropriate action or suit at law or in equity brought by  
4328 any holder or holders of bonds issued under this chapter.

4329 Section 89. Section **54-7-13.6** is amended to read:

4330 **54-7-13.6. Low-income assistance program.**

4331 (1) As used in this section, "eligible customer" means an electrical corporation or a gas  
4332 corporation customer:

4333 (a) that earns no more than:

4334 (i) 125% of the federal poverty level; or

4335 (ii) another percentage of the federal poverty level as determined by the commission  
4336 by order; and

4337 (b) whose eligibility is certified by the Utah Department of Community and Culture.

4338 (2) A customer's income eligibility for the program described in this section shall be  
4339 renewed annually.

4340 (3) An eligible customer may not receive assistance at more than one residential  
4341 location at any one time.

4342 (4) Notwithstanding Section 54-3-8, the commission may approve a low-income  
4343 assistance program to provide bill payment assistance to low-income residential customers of:

4344 (a) an electrical corporation with more than 50,000 customers; or

4345 (b) a gas corporation with more than 50,000 customers.

4346 (5) (a) (i) Subject to Subsection (5)(a)(ii), low-income assistance program funding  
4347 from each rate class may be in an amount determined by the commission.

4348 (ii) Low-income assistance program funding described in Subsection (5)(a)(i) may not  
4349 exceed 0.5% of the rate class's retail revenues.

4350 (b) (i) Low-income assistance program funding for bill payment assistance shall be  
4351 provided through a surcharge on the monthly bill of each Utah retail customer of the electrical  
4352 corporation or gas corporation providing the program.

4353 (ii) The surcharge described in Subsection (5)(b)(i) may not be collected from  
4354 customers currently participating in the low-income assistance program.

4355 (c) (i) Subject to Subsection (5)(c)(ii), the monthly surcharge described in Subsection  
4356 (5)(b)(i) shall be calculated as an equal percentage of revenues from all rate schedules.

4357 (ii) The monthly surcharge described in Subsection (5)(b)(i) may not exceed \$50 per  
4358 month for any customer, adjusted periodically as the commission determines appropriate for  
4359 inflation.

4360 (6) (a) An eligible customer shall receive a billing credit on the monthly electric or gas  
4361 bill for the customer's residence.

4362 (b) The amount of the billing credit described in Subsection (6)(a) shall be determined  
4363 by the commission based on:

4364 (i) the projected funding of the low-income assistance program;

4365 (ii) the projected customer participation in the low-income assistance program; and

4366 (iii) other factors that the commission determines relevant.

4367 (c) The monthly billing credit and the monthly surcharge shall be adjusted  
4368 concurrently with the final order in a general rate increase or decrease case under Section  
4369 54-7-12 for the electrical corporation or gas corporation providing the program or as

4370 determined by the commission.

4371 Section 90. Section **54-8b-13** is amended to read:

4372 **54-8b-13. Rules governing operator assisted services.**

4373 (1) The commission shall make rules to implement the following requirements  
4374 pertaining to the provision of operator assisted services:

4375 (a) Rates, surcharges, terms, or conditions for operator assisted services shall be  
4376 provided to customers upon request without charge.

4377 (b) A customer shall be made aware, prior to incurring any charges, of the identity of  
4378 the operator service provider handling the operator assisted call by a form of signage placed on  
4379 or near the telephone or by verbal identification by the operator service provider.

4380 (c) Any contract between an operator service provider and an aggregator shall contain  
4381 language which assures that any person making a telephone call on any telephone owned or  
4382 controlled by the aggregator or operator service provider can access:

4383 (i) where technically feasible, any other operator service provider operating in the  
4384 relevant geographic area; and

4385 (ii) the public safety emergency telephone numbers for the jurisdiction where the  
4386 aggregator's telephone service is geographically located.

4387 (d) No operator service provider shall transfer a call to another operator service  
4388 provider unless that transfer is accomplished at, and billed from, the call's place of origin. If  
4389 such a transfer is not technically possible, the operator service provider shall inform the caller  
4390 that the call cannot be transferred as requested and that the caller should hang up and attempt  
4391 to reach another operator service provider through the means provided by that other operator  
4392 service provider.

4393 (2) (a) The Division of Public Utilities shall be responsible for enforcing any rule  
4394 adopted by the commission under this section.

4395 (b) If the Division of Public Utilities determines that any person, or any officer or  
4396 employee of any person, is violating any rule adopted under this section, the division shall  
4397 serve written notice upon the alleged violator which:

- 4398 (i) specifies the violation;
- 4399 (ii) alleges the facts constituting the violation; and
- 4400 (iii) specifies the corrective action to be taken.

4401 (c) After serving notice as required in Subsection (2)(b), the division may request the  
4402 commission to issue an order to show cause. After a hearing, the commission may impose  
4403 penalties and, if necessary, may request the attorney general to enforce the order in district  
4404 court.

4405 (3) (a) Any person who violates any rule made under this section or fails to comply  
4406 with any order issued pursuant to this section is subject to a penalty not to exceed \$2,000 per  
4407 violation.

4408 (b) In the case of a continuing violation, each day that the violation continues  
4409 constitutes a separate and distinct offense.

4410 (4) A penalty assessment under this section does not relieve the person assessed from  
4411 civil liability for claims arising out of any act which was a violation of any rule under this  
4412 section.

4413 Section 91. Section **56-1-18.5** is amended to read:

4414 **56-1-18.5. Railroad property -- Duty of care.**

4415 (1) A person may not ride or climb or attempt to ride or climb on, off, under, over, or  
4416 across a railroad locomotive, car, or train.

4417 (2) A person may not walk, ride, or travel across, along, or upon railroad yards, tracks,  
4418 bridges, or active rights-of-way at any location other than public crossings.

4419 (3) A person may not intentionally obstruct or interfere with train operations or use  
4420 railroad property for recreational purposes.

4421 (4) (a) Except as provided under Subsection (4)(b), an owner or operator of a railroad,  
4422 including its officers, agents, and employees, owes no duty of care to keep railroad yards,  
4423 tracks, bridges, or active rights-of-way safe for entry for any person violating this section.

4424 (b) The owner or operator of a railroad may not intentionally, willfully, or maliciously  
4425 injure a person if the owner or operator has actual knowledge of the person's presence on the

4426 property.

4427 (5) This section does not apply to a railroad employee, business invitee, or other  
4428 person with express written or oral authorization to enter upon railroad property by the owner  
4429 or operator of the railroad.

4430 (6) This section does not modify any rights or duties of federal, state, county, or  
4431 municipal officials in the performance of their duties.

4432 Section 92. Section **57-11-7** is amended to read:

4433 **57-11-7. Public offering statement -- Contents -- Restrictions on use -- Alteration**  
4434 **or amendments.**

4435 (1) Every public offering statement shall disclose completely and accurately to  
4436 prospective purchasers:

4437 (a) the physical characteristics of the subdivided lands offered; and

4438 (b) unusual and material circumstances or features affecting the subdivided lands.

4439 (2) The proposed public offering statement submitted to the division shall be in a form  
4440 prescribed by its rules and, unless otherwise provided by the division, shall include the  
4441 following:

4442 (a) the name and principal address of the subdivider and the name and principal  
4443 address of each officer, director, general partner, other principal, or person occupying a similar  
4444 status or performing similar functions as defined by the rules of the division if the subdivider  
4445 is a person other than an individual;

4446 (b) a general description of the subdivided lands stating the total number of units in  
4447 the offering;

4448 (c) a statement summarizing in one place the significant terms of any encumbrances,  
4449 easements, liens, severed interests, and restrictions, including zoning and other regulations  
4450 affecting the subdivided lands and each unit, and a statement of all existing or proposed taxes  
4451 or special assessments which affect the subdivided lands;

4452 (d) a statement of the use for which the property is offered;

4453 (e) information concerning:

4454 (i) any improvements, including streets, curbs, and gutters, sidewalks, water supply  
4455 including a supply of culinary water, drainage and flood control systems, irrigation systems,  
4456 sewage disposal facilities, and customary utilities;

4457 (ii) the estimated cost to the purchaser, the estimated date of completion, and the  
4458 responsibility for construction and maintenance of existing and proposed improvements which  
4459 are referred to in connection with the offering or disposition; and

4460 (iii) if for any reason any of the improvements described in Subsections (2)(e)(i) and  
4461 (ii) cannot presently be constructed or maintained, a statement clearly setting forth this fact  
4462 and giving the reasons therefor;

4463 (f) (i) a statement of existing zoning or other planned land use designation of each unit  
4464 and the proposed use of each unit in the subdivision including uses as residential dwellings,  
4465 agriculture, churches, schools, low density apartments, high density apartments and hotels,  
4466 and a subdivision map showing the proposed use, the zoning, or other planned land use  
4467 designation, unless each unit has the same proposed use, zoning, or other planned land use  
4468 designation;

4469 (ii) if the subdivision consists of more than one tract or other smaller division, the  
4470 information and map required by Subsection (2)(f)(i) need only pertain to the tract or smaller  
4471 division in which the units offered for disposition are located;

4472 (g) a map, which need not be drawn to scale, enabling one unfamiliar with the area in  
4473 which the subdivision is located to reach the subdivision by road or other thoroughfare from a  
4474 nearby town or city;

4475 (h) (i) the boundary, course, dimensions, and intended use of the right-of-way and  
4476 easement grants of record;

4477 (ii) the location of existing underground and utility facilities; and

4478 (iii) any conditions or restrictions governing the location of the facilities within the  
4479 right-of-way, and easement grants of record, and utility facilities within the subdivision; and

4480 (i) any additional information the division may require to assure full and fair  
4481 disclosure to prospective purchasers.

4482           (3) (a) The public offering statement may not be used for any promotional purposes  
4483 either before registration of the subdivided lands or before the date the statement becomes  
4484 effective.

4485           (b) The statement may be used after it becomes effective only if it is used in its  
4486 entirety.

4487           (c) A person may not advertise or represent that the division approves or recommends  
4488 the subdivided lands or their disposition.

4489           (d) No portion of the public offering statement may be underscored, italicized, or  
4490 printed in larger, heavier, or different color type than the remainder of the statement, unless the  
4491 division requires it.

4492           (4) (a) The division may require the subdivider to alter or amend the proposed public  
4493 offering statement in order to assure full and fair disclosure to prospective purchasers.

4494           (b) A change in the substance of the promotional plan or plan of disposition or  
4495 development of the subdivision may not be made after registration without notifying and  
4496 receiving approval of the division and without making appropriate amendment of the public  
4497 offering statement.

4498           (c) A public offering statement is not current unless:

4499           (i) all amendments are incorporated;

4500           (ii) the subdivider has timely filed each renewal report required by Section 57-11-10;  
4501 and

4502           (iii) no cease and desist order issued pursuant to this chapter is in effect.

4503           (5) The subdivider must notify the division within five working days if he is convicted  
4504 of a crime involving fraud, deception, false pretenses, misrepresentation, false advertising, or  
4505 dishonest dealing in real estate transactions, or has been subject to any injunction or  
4506 administrative order restraining a false or misleading promotional plan involving land  
4507 dispositions.

4508           (6) The subdivider must notify the division within five working days if the person  
4509 which owns the subdivided lands files a petition in bankruptcy or if any other event occurs

4510 which may have a material adverse effect on the subdivision.

4511 Section 93. Section **58-1-201** is amended to read:

4512 **58-1-201. Boards -- Appointment -- Membership -- Terms -- Vacancies --**  
4513 **Quorum -- Per diem and expenses -- Chair -- Financial interest or faculty position in**  
4514 **professional school teaching continuing education prohibited.**

4515 (1) (a) The executive director shall appoint the members of the boards established  
4516 under this title. In appointing these members the executive director shall give consideration to  
4517 recommendations by members of the respective occupations and professions and by their  
4518 organizations.

4519 (b) Each board shall be composed of five members, four of whom shall be licensed or  
4520 certified practitioners in good standing of the occupation or profession the board represents,  
4521 and one of whom shall be a member of the general public, unless otherwise provided under the  
4522 specific licensing chapter.

4523 (c) The names of all persons appointed to boards shall be submitted to the governor for  
4524 confirmation or rejection. If an appointee is rejected by the governor, the executive director  
4525 shall appoint another person in the same manner as set forth in Subsection (1)(a).

4526 (2) (a) Except as required by Subsection (2)(b), as terms of current board members  
4527 expire, the executive director shall appoint each new member or reappointed member to a  
4528 four-year term.

4529 (b) Notwithstanding the requirements of Subsection (2)(a), the executive director  
4530 shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the  
4531 terms of board members are staggered so that approximately half of the board is appointed  
4532 every two years.

4533 (c) A board member may not serve more than two consecutive terms, and a board  
4534 member who ceases to serve on a board may not serve again on that board until after the  
4535 expiration of a two-year period beginning from that cessation of service.

4536 (d) (i) When a vacancy occurs in the membership for any reason, the replacement shall  
4537 be appointed for the unexpired term.

4538 (ii) After filling that term, the replacement member may be appointed for only one  
4539 additional full term.

4540 (e) If a board member fails or refuses to fulfill the responsibilities and duties of a  
4541 board member, including the attendance at board meetings, the executive director with the  
4542 approval of the board may remove the board member and replace the member in accordance  
4543 with this section.

4544 (3) A majority of the board members constitutes a quorum. A quorum is sufficient  
4545 authority for the board to act.

4546 (4) (a) (i) Members who are not government employees shall receive no compensation  
4547 or benefits for their services, but may receive per diem and expenses incurred in the  
4548 performance of the member's official duties at the rates established by the Division of Finance  
4549 under Sections 63A-3-106 and 63A-3-107.

4550 (ii) Members may decline to receive per diem and expenses for their service.

4551 (b) (i) State government officer and employee members who do not receive salary, per  
4552 diem, or expenses from their agency for their service may receive per diem and expenses  
4553 incurred in the performance of their official duties from the board at the rates established by  
4554 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

4555 (ii) State government officer and employee members may decline to receive per diem  
4556 and expenses for their service.

4557 (5) Each board shall annually designate one of its members to serve as chair for a  
4558 one-year period.

4559 (6) A board member may not be a member of the faculty of or have any financial  
4560 interest in any vocational or professional college or school which provides continuing  
4561 education to any licensee if that continuing education is required by statute or rule.

4562 Section 94. Section **58-41-4** is amended to read:

4563 **58-41-4. Exemptions from chapter.**

4564 (1) In addition to the exemptions from licensure in Section 58-1-307, the following  
4565 persons may engage in the practice of speech-language pathology and audiology subject to the

4566 stated circumstances and limitations without being licensed under this chapter:

4567           (a) a qualified person licensed in this state under any law existing in this state prior to  
4568 May 13, 1975, from engaging in the profession for which he is licensed;

4569           (b) a medical doctor, physician, or surgeon licensed in this state, from engaging in his  
4570 specialty in the practice of medicine;

4571           (c) a hearing aid dealer or salesman from selling, fitting, adjusting, and repairing  
4572 hearing aids, and conducting hearing tests solely for that purpose. However, a hearing aid  
4573 dealer may not conduct audiologic testing on persons under the age of 18 years except under  
4574 the direct supervision of an audiologist licensed under this chapter;

4575           (d) a person who has obtained a valid and current credential issued by the Utah State  
4576 Office of Education while performing specifically the functions of a speech-language  
4577 pathologist or audiologist, in no way in his own interest, solely within the confines of and  
4578 under the direction and jurisdiction of and only in the academic interest of the schools by  
4579 which employed in this state;

4580           (e) a person employed as a speech-language pathologist or audiologist by federal  
4581 government agencies or subdivisions or, prior to July 1, 1989, by state or local government  
4582 agencies or subdivisions, while specifically performing speech-language pathology or  
4583 audiology services in no way in his own interest, solely within the confines of and under the  
4584 direction and jurisdiction of and in the specific interest of that agency or subdivision;

4585           (f) a person identified in Subsections (1)(d) and (e) may offer lectures for a fee, or  
4586 monetary or other compensation, without being licensed; however, such person may elect to be  
4587 subject to the requirements of this chapter;

4588           (g) a person employed by accredited colleges or universities as a speech-language  
4589 pathologist or audiologist from performing the services or functions described in this chapter  
4590 when they are:

4591           (i) performed solely as an assigned teaching function of employment;

4592           (ii) solely in academic interest and pursuit as a function of that employment;

4593           (iii) in no way for their own interest; and

4594 (iv) provided for no fee, monetary or otherwise, other than their agreed institutional  
4595 salary;

4596 (h) a person pursuing a course of study leading to a degree in speech-language  
4597 pathology or audiology while enrolled in an accredited college or university, provided those  
4598 activities constitute an assigned, directed, and supervised part of his curricular study, and in  
4599 no other interest, and that all examinations, tests, histories, charts, progress notes, reports,  
4600 correspondence, and all documents and records which he produces be identified clearly as  
4601 having been conducted and prepared by a student in training and that such a person is  
4602 obviously identified and designated by appropriate title clearly indicating the training status  
4603 and provided that he does not hold himself out directly or indirectly as being qualified to  
4604 practice independently;

4605 (i) a person trained in elementary audiometry and qualified to perform basic  
4606 audiometric tests while employed by a licensed medical doctor to perform solely for him while  
4607 under his direct supervision, the elementary conventional audiometric tests of air conduction  
4608 screening, air conduction threshold testing, and tympanometry;

4609 (j) a person while performing as a speech-language pathologist or audiologist for the  
4610 purpose of obtaining required professional experience under the provisions of this chapter, if  
4611 he meets all training requirements and is professionally responsible to and under the  
4612 supervision of a speech-language pathologist or audiologist who holds the CCC or a state  
4613 license in speech-language pathology or audiology. This provision is applicable only during  
4614 the time that person is obtaining the required professional experience;

4615 (k) a corporation, partnership, trust, association, group practice, or like organization  
4616 engaging in speech-language pathology or audiology services without certification or license,  
4617 if it acts only through employees or consists only of persons who are licensed under this  
4618 chapter;

4619 (l) performance of speech-language pathology or audiology services in this state by a  
4620 speech-language pathologist or audiologist who is not a resident of this state and is not  
4621 licensed under this chapter if those services are performed for no more than one month in any

4622 calendar year in association with a speech-language pathologist or audiologist licensed under  
4623 this chapter, and if that person meets the qualifications and requirements for application for  
4624 licensure described in Section 58-41-5; and

4625 (m) a person certified under Title 53A, State System of Public Education, as a teacher  
4626 of the deaf, from providing the services or performing the functions he is certified to perform.

4627 (2) No person is exempt from the requirements of this chapter who performs or  
4628 provides any services as a speech-language pathologist or audiologist for which a fee, salary,  
4629 bonus, gratuity, or compensation of any kind paid by the recipient of the service; or who  
4630 engages any part of his professional work for a fee practicing in conjunction with, by  
4631 permission of, or apart from his position of employment as speech-language pathologist or  
4632 audiologist in any branch or subdivision of local, state, or federal government or as otherwise  
4633 identified in this section.

4634 Section 95. Section **58-54-3** is amended to read:

4635 **58-54-3. Board created -- Membership -- Duties.**

4636 (1) There is created a Radiology Technologist Licensing Board consisting of seven  
4637 members as follows:

- 4638 (a) four licensed radiology technologists;
- 4639 (b) one licensed radiology practical technician;
- 4640 (c) one radiologist; and
- 4641 (d) one member from the general public.

4642 (2) The board shall be appointed in accordance with Section 58-1-201.

4643 (3) The duties and responsibilities of the board shall be in accordance with Sections  
4644 58-1-202 and 58-1-203.

4645 (4) In accordance with Subsection 58-1-203(6), there is established an advisory peer  
4646 committee to the board consisting of eight members broadly representative of the state and  
4647 including:

- 4648 (a) one licensed physician and surgeon who is not a radiologist and who uses  
4649 radiology equipment in a rural office-based practice, appointed from among recommendations

4650 of the Physicians Licensing Board;

4651 (b) one licensed physician and surgeon who is not a radiologist and who uses  
4652 radiology equipment in an urban office-based practice, appointed from among  
4653 recommendations of the Physicians Licensing Board;

4654 (c) one licensed physician and surgeon who is a radiologist practicing in radiology,  
4655 appointed from among recommendations of the Physicians Licensing Board;

4656 (d) one licensed osteopathic physician, appointed from among recommendations of  
4657 the Osteopathic Physicians Licensing Board;

4658 (e) one licensed chiropractic physician, appointed from among recommendations of  
4659 the Chiropractors Licensing Board;

4660 (f) one licensed podiatric physician, appointed from among recommendations of the  
4661 Podiatric Physician Board;

4662 (g) one representative of the state agency with primary responsibility for regulation of  
4663 sources of radiation, recommended by that agency; and

4664 (h) one representative of a general acute hospital, as defined in Section 26-21-2, that is  
4665 located in a rural area of the state.

4666 (5) (a) Except as required by Subsection (5)(b), members of the advisory peer  
4667 committee shall be appointed to four-year terms by the director in collaboration with the board  
4668 from among the recommendations.

4669 (b) Notwithstanding the requirements of Subsection (5)(a), the director shall, at the  
4670 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
4671 committee members are staggered so that approximately half of the committee is appointed  
4672 every two years.

4673 (c) When a vacancy occurs in the membership for any reason, the replacement shall be  
4674 appointed for the unexpired term.

4675 (6) (a) (i) Members who are not government employees shall receive no compensation  
4676 or benefits for their services, but may receive per diem and expenses incurred in the  
4677 performance of the member's official duties at the rates established by the Division of Finance

4678 under Sections 63A-3-106 and 63A-3-107.

4679 (ii) Members may decline to receive per diem and expenses for their service.

4680 (b) (i) State government officer and employee members who do not receive salary, per  
4681 diem, or expenses from their agency for their service may receive per diem and expenses  
4682 incurred in the performance of their official duties from the committee at the rates established  
4683 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

4684 (ii) State government officer and employee members may decline to receive per diem  
4685 and expenses for their service.

4686 (7) The duties, responsibilities, and scope of authority of the advisory peer committee  
4687 are:

4688 (a) to advise the board with respect to the board's fulfillment of its duties, functions,  
4689 and responsibilities under Sections 58-1-202 and 58-1-203; and

4690 (b) to advise the division with respect to the examination the division is to adopt by  
4691 rule, by which a radiology practical technician may qualify for licensure under Section  
4692 58-54-5.

4693 Section 96. Section **58-57-7** is amended to read:

4694 **58-57-7. Exemptions from licensure.**

4695 (1) (a) For purposes of Subsection (2)(b), "qualified" means an individual who is a  
4696 registered polysomnographic technologist or a Diplomate certified by the American Board of  
4697 Sleep Medicine.

4698 (b) For purposes of Subsections (2)(f) and (g), "supervision" means one of the  
4699 following will be immediately available for consultation in person or by phone:

4700 (i) a practitioner;

4701 (ii) a respiratory therapist;

4702 (iii) a Diplomate of the American Board of Sleep Medicine; or

4703 (iv) a registered polysomnographic technologist.

4704 (2) In addition to the exemptions from licensure in Section 58-1-307, the following  
4705 persons may engage in the practice of respiratory therapy subject to the stated circumstances

4706 and limitations without being licensed under this chapter:

4707 (a) any person who provides gratuitous care for a member of his immediate family  
4708 without representing himself as a licensed respiratory care practitioner;

4709 (b) any person who is a licensed or qualified member of another health care  
4710 profession, if this practice is consistent with the accepted standards of the profession and if the  
4711 person does not represent himself as a respiratory care practitioner;

4712 (c) any person who serves in the Armed Forces of the United States or any other  
4713 agency of the federal government and is engaged in the performance of his official duties;

4714 (d) any person who acts under a certification issued pursuant to Title 26, Chapter 8a,  
4715 Utah Emergency Medical Services System Act, while providing emergency medical services;  
4716 [~~and~~]

4717 (e) any person who delivers, installs, or maintains respiratory related durable medical  
4718 equipment and who gives instructions regarding the use of that equipment in accordance with  
4719 Subsections 58-57-2(3) and (6), except that this exemption does not include any clinical  
4720 evaluation or treatment of the patient;

4721 (f) [~~(f)~~] any person who is working in a practitioner's office, acting under supervision;  
4722 and

4723 [~~(ii) for purposes of this Subsection (2)(f) and Subsection (g), "supervision" means~~  
4724 ~~one of the following will be immediately available for consultation in person or by phone:]~~

4725 [~~(A) a practitioner;~~]

4726 [~~(B) a respiratory therapist;~~]

4727 [~~(C) a Diplomate of the American Board of Sleep Medicine; or]~~

4728 [~~(D) a registered polysomnographic technologist; and]~~

4729 (g) a polysomnographic technician or trainee, acting under supervision, as long as they  
4730 only administer the following in a sleep lab, sleep center, or sleep facility:

4731 (i) oxygen titration; and

4732 (ii) positive airway pressure that does not include mechanical ventilation.

4733 (3) Nothing in this chapter permits a respiratory care practitioner to engage in the

4734 unauthorized practice of other health disciplines.

4735 Section 97. Section **58-73-401** is amended to read:

4736 **58-73-401. Grounds for denial of license -- Disciplinary proceedings --**

4737 **Limitation on division actions.**

4738 (1) Grounds for the following are in accordance with Section 58-1-401:

4739 (a) refusing to issue a license to an applicant;

4740 (b) refusing to renew the license of a licensee;

4741 (c) revoking, suspending, restricting, or placing on probation the license of a licensee;

4742 (d) issuing a public or private reprimand to a licensee; and

4743 (e) issuing a cease and desist order.

4744 (2) If a court of competent jurisdiction determines a chiropractic physician is  
4745 incompetent, mentally incompetent, incapable, or mentally ill, the director shall suspend the  
4746 license of that chiropractic physician, even if an appeal is pending.

4747 (3) (a) If it appears to the board there is reasonable cause to believe a chiropractic  
4748 physician who has not been judicially determined to be incompetent, mentally incompetent,  
4749 incapable, or mentally ill is unable to practice chiropractic with reasonable skill and safety to  
4750 patients by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any  
4751 other substance, or as a result of any mental or physical condition, a petition shall be served  
4752 upon that chiropractic physician for a hearing on the sole issue of the capacity of the  
4753 chiropractic physician to conduct properly the practice of the chiropractic physician.

4754 (b) Every chiropractic physician licensed by this state is considered to have:

4755 (i) agreed to submit to a mental or physical examination upon receipt of a written  
4756 direction given by the division with the approval of the board; and

4757 (ii) waived all objections to the admissibility of the examining chiropractic physician's  
4758 or other practitioner's testimony or examination reports on the ground they constitute a  
4759 privileged communication.

4760 (c) Failure of a chiropractic physician to submit to an examination under Subsection  
4761 (3)(b) when directed by the division, unless the failure was due to circumstances beyond his

4762 control, constitutes grounds for immediate suspension of the chiropractic physician's license  
4763 and an order of suspension of the license may be entered by the division without the taking of  
4764 testimony or the presentation of evidence.

4765 (d) A chiropractic physician whose license is suspended under this section shall, at  
4766 reasonable intervals, be afforded the opportunity to demonstrate he can resume the competent  
4767 practice of chiropractic with reasonable skill and safety to patients.

4768 (e) Neither the proceedings of the board nor the action taken by it under this section  
4769 may be used against a chiropractic physician in any other proceedings.

4770 (4) The terms of revocation, suspension, or probation under this chapter may include:

4771 (a) revoking the license to practice either permanently or with a stated date before  
4772 which the individual may not apply for licensure;

4773 (b) suspending, limiting, or restricting the license to practice chiropractic for up to five  
4774 years, including limiting the practice of the person to, or excluding from the person's practice,  
4775 one or more specific branches of medicine, including any limitation on practice within the  
4776 specified branches;

4777 (c) requiring the license holder to submit to care, counseling, or treatment by  
4778 physicians approved by or designated by the board, as a condition for licensure;

4779 (d) requiring the license holder to participate in a program of education prescribed by  
4780 the board;

4781 (e) requiring the license holder to practice under the direction of a physician  
4782 designated by the board for a specified period of time; or

4783 (f) other appropriate terms and conditions determined by the division in collaboration  
4784 with the board to be necessary to protect the public health, safety, or welfare.

4785 Section 98. Section **59-2-1114** is amended to read:

4786 **59-2-1114. Exemption of inventory or other tangible personal property held for**  
4787 **sale.**

4788 (1) Tangible personal property present in Utah on the assessment date, at noon, held  
4789 for sale in the ordinary course of business or for shipping to a final out-of-state destination

4790 within 12 months and which constitutes the inventory of any retailer, wholesaler, distributor,  
4791 processor, warehouseman, manufacturer, producer, gatherer, transporter, storage provider,  
4792 farmer, or livestock raiser, is exempt from property taxation.

4793 (2) This exemption does not apply to:

4794 (a) inventory which is not otherwise subject to personal property taxation;

4795 (b) mines;

4796 (c) natural deposits; or

4797 (d) a manufactured home or mobile home which is sited at a location where occupancy  
4798 could take place.

4799 (3) As used in this section:

4800 (a) "Assessment date" means:

4801 (i) for tangible personal property and vehicles other than vehicles described in  
4802 Subsection (3)(a)(ii), January 1; and

4803 (ii) for vehicles brought into Utah from out-of-state, the date the vehicles are brought  
4804 into Utah.

4805 (b) "Inventory" means all items of tangible personal property described as materials,  
4806 containers, goods in process, finished goods, severed minerals, and other personal property  
4807 owned by or in possession of the person claiming the exemption.

4808 (c) (i) "Mine" means a natural deposit of either metalliferous or nonmetalliferous  
4809 valuable mineral.

4810 (ii) "Mine" does not mean a severed mineral.

4811 (d) "Natural deposit" means a metalliferous or nonmetalliferous mineral located at or  
4812 below ground level that has not been severed or extracted from its natural state.

4813 (e) "Severed mineral" means any mineral that has been previously severed or extracted  
4814 from a natural deposit including severed or extracted minerals that:

4815 (i) are stored above, below, or within the ground; and

4816 (ii) are ultimately recoverable for future sale.

4817 (4) The commission may adopt rules to implement the inventory exemption.

4818 Section 99. Section **59-10-503** is amended to read:

4819 **59-10-503. Returns by husband and wife.**

4820 (1) A husband and wife may make a single return jointly with respect to the tax  
4821 imposed by this chapter even though one of the spouses has neither gross income nor  
4822 deductions, except as follows:

4823 (a) No joint return shall be made if the husband and wife are not permitted to file a  
4824 joint return for federal income tax purposes.

4825 (b) If the federal income tax liability of husband or wife is determined on a separate  
4826 return for federal income tax purposes, the income tax liability of each spouse shall be  
4827 determined on a separate return under this chapter.

4828 (c) If the federal income tax liabilities of husband and wife, other than a husband and  
4829 wife described in Subsection (1)(b), are determined on a joint federal return, they shall file a  
4830 joint return under this chapter and their tax liability shall be joint and several.

4831 (d) If neither spouse is required to file a federal income tax return and either or both  
4832 are required to file an income tax return under this chapter, they may elect to file separate or  
4833 joint returns and their tax liability shall be several or joint and several, in accordance with the  
4834 election made.

4835 (2) If either husband or wife is a resident and the other is a nonresident, they shall file  
4836 separate income tax returns in this state on such forms as may be required by the commission,  
4837 in which event their tax liability shall be several. They may elect to determine their joint  
4838 taxable income as if both were residents, in which event their tax liability shall be joint and  
4839 several.

4840 Section 100. Section **59-10-517** is amended to read:

4841 **59-10-517. Timely mailing treated as timely filing and paying.**

4842 (1) (a) If any return, claim, statement, or other document required to be filed, or any  
4843 payment required to be made, within a prescribed period or on or before a prescribed date  
4844 under authority of any provision of this chapter is, after such period or such date, delivered by  
4845 United States mail to the agency, officer, or office with which such return, claim, statement, or

4846 other document is required to be filed, or to which such payment is required to be made, the  
4847 date of the United States postmark stamped on the cover in which such return, claim,  
4848 statement, or other document, or payment, is mailed shall be deemed to be the date of delivery  
4849 or the date of payment, as the case may be.

4850 (b) Subsection (1)(a) shall apply only if:

4851 (i) the postmark date falls within the prescribed period or on or before the prescribed  
4852 date;

4853 (A) for the filing (including any extension granted for such filing) of the return, claim,  
4854 statement, or other document[;]; or

4855 (B) for making the payment (including any extension granted for making such  
4856 payment); and

4857 (ii) the return, claim, statement, or other document, or payment, was, within the time  
4858 prescribed in Subsection (1)(b)(i), deposited in the mail in the United States in an envelope or  
4859 other appropriate wrapper, postage prepaid, properly addressed to the agency, officer, or office  
4860 with which the return, claim, statement, or other document is required to be filed, or to which  
4861 such payment is required to be made.

4862 (2) This section shall apply in the case of postmarks not made by the United States  
4863 post office only if and to the extent provided by rules prescribed by the commission.

4864 (3) (a) For purposes of this section, if any such return, claim, statement, or other  
4865 document, or payment, is sent by United States registered mail:

4866 (i) such registration shall be prima facie evidence that the return, claim, statement, or  
4867 other document was delivered to the agency, officer, or office to which addressed; and

4868 (ii) the date of registration shall be deemed the postmark date.

4869 (b) The commission may provide by rule the extent to which the provisions of  
4870 Subsection (3)(a) with respect to prima facie evidence of delivery and the postmark date shall  
4871 apply to certified mail.

4872 (4) This section does not apply with respect to currency or other medium of payment  
4873 unless actually received and accounted for.

4874 (5) (a) If any deposit required to be made on or before a prescribed date is, after such  
4875 date, delivered by the United States mail to the commission, such deposit shall be deemed  
4876 received by the commission on the date the deposit was mailed.

4877 (b) Subsection (5)(a) applies only if the person required to make the deposit  
4878 establishes that:

4879 (i) the date of mailing falls on or before the second day before the prescribed date for  
4880 making the deposit (including any extension of time granted for making the deposit); and

4881 (ii) the deposit was, on or before such second day, mailed in the United States in an  
4882 envelope or other appropriate wrapper, postage prepaid, properly addressed to the commission.

4883 Section 101. Section **59-11-114** is amended to read:

4884 **59-11-114. Confidentiality of information.**

4885 (1) The confidentiality of returns and other information filed with the commission  
4886 shall be governed by Section 59-1-403, except that, by rule, the commission may authorize the  
4887 return of an estate to be open to inspection by or disclosure to:

4888 (a) the personal representative of the estate;

4889 (b) any heir at law, next of kin, or beneficiary under the will of the decedent, but only  
4890 if the commission finds that this heir at law, next of kin, or beneficiary has a material interest  
4891 which will be affected by information contained in the return; or

4892 (c) the attorney for the estate or its personal representative or the attorney-in-fact duly  
4893 authorized in writing by any of the persons described in Subsection (1)(a) or (b).

4894 (2) Reports and returns shall be preserved as provided in Section 59-1-403.

4895 (3) Any person who violates Subsection (1) is subject to the penalty provided in  
4896 Section 59-1-403.

4897 Section 102. Section **61-1-10** is amended to read:

4898 **61-1-10. Registration by qualification.**

4899 (1) Application may be made to register any security by qualification.

4900 (2) A registration statement under this section shall contain the following information  
4901 and be accompanied by the following documents in addition to the information specified in

- 4902 Subsection 61-1-11(3) and the consent to service of process required by Section 61-1-26:
- 4903 (a) with respect to the issuer and any significant subsidiary:
- 4904 (i) its name, address, and form of organization;
- 4905 (ii) the state or foreign jurisdiction and date of its organization;
- 4906 (iii) the general character and location of its business;
- 4907 (iv) a description of its physical properties and equipment; and
- 4908 (v) a statement of the general competitive conditions in the industry or business in
- 4909 which it is or will be engaged;
- 4910 (b) with respect to every director and officer of the issuer or person occupying a
- 4911 similar status or performing similar functions:
- 4912 (i) his name, address, and principal occupation for the past five years;
- 4913 (ii) the amount of securities of the issuer held by him as of a specified date within 30
- 4914 days of the filing of the registration statement;
- 4915 (iii) the amount of the securities covered by the registration statement to which he has
- 4916 indicated his intention to subscribe; and
- 4917 (iv) a description of any material interest in any material transaction with the issuer or
- 4918 any significant subsidiary affected within the past three years or proposed to be affected;
- 4919 (c) with respect to persons covered by Subsection (2)(b), the remuneration paid during
- 4920 the past 12 months and estimated to be paid during the next 12 months, directly or indirectly,
- 4921 by the issuer, together with all predecessors, parents, subsidiaries, and affiliates, to all those
- 4922 persons in the aggregate;
- 4923 (d) with respect to any person owning of record, or beneficially if known, 10% or
- 4924 more of the outstanding shares of any class of equity security of the issuer, the information
- 4925 specified in Subsection (2)(b) other than the person's occupation;
- 4926 (e) with respect to every promoter if the issuer was organized within the past three
- 4927 years, the information specified in Subsection (2)(b), any amount paid to the promoter within
- 4928 that period or intended to be paid to the promoter, and the consideration for any such payment;
- 4929 (f) with respect to any person on whose behalf any part of the offering is to be made in

- 4930 a nonissuer distribution:
- 4931 (i) the person's name and address;
- 4932 (ii) the amount of securities of the issuer held by the person as of the date of filing of  
4933 the registration statement;
- 4934 (iii) a description of any material interest in any material transaction with the issuer or  
4935 any significant subsidiary effected within the past three years or proposed to be effected; and
- 4936 (iv) a statement of the person's reasons for making the offering;
- 4937 (g) the capitalization and long-term debt, on both a current and pro forma basis, of the  
4938 issuer and any significant subsidiary, including a description of each security outstanding or  
4939 being registered or otherwise offered, and a statement of the amount and kind of consideration,  
4940 whether in the form of cash, physical assets, services, patents, goodwill, or anything else, for  
4941 which the issuer or any subsidiary has issued any of its securities within the past two years or  
4942 is obligated to issue any of its securities;
- 4943 (h) (i) the kind and amount of securities to be offered;
- 4944 (ii) the proposed offering price or the method by which it is to be computed;
- 4945 (iii) any variation therefrom at which any proportion of the offering is to be made to  
4946 any person or class of persons other than the underwriters, with a specification of any such  
4947 person or class;
- 4948 (iv) the basis upon which the offering is to be made if otherwise than for cash;
- 4949 (v) the estimated aggregate underwriting and selling discounts or commissions and  
4950 finders' fees, including separately cash, securities, contracts, or anything else of value to  
4951 accrue to the underwriters or finders in connection with the offering, or, if the selling  
4952 discounts or commissions are variable, the basis of determining them and their maximum and  
4953 minimum amounts;
- 4954 (vi) the estimated amounts of other selling expenses, including legal, engineering, and  
4955 accounting charges;
- 4956 (vii) the name and address of every underwriter and every recipient of a finder's fee;
- 4957 (viii) a copy of any underwriting or selling-group agreement under which the

4958 distribution is to be made, or the proposed form of any such agreement whose terms have not  
4959 yet been determined; and

4960 (ix) a description of the plan of distribution of any securities which are to be offered  
4961 otherwise than through an underwriter;

4962 (i) (i) the estimated cash proceeds to be received by the issuer from the offering;

4963 (ii) the purposes for which the proceeds are to be used by the issuer;

4964 (iii) the amount to be used for each purpose;

4965 (iv) the order or priority in which the proceeds will be used for the purposes stated;

4966 (v) the amounts of any funds to be raised from other sources to achieve the purposes  
4967 stated; the sources of any such funds; and

4968 (vi) if any part of the proceeds is to be used to acquire any property, including  
4969 goodwill, otherwise than in the ordinary course of business, the names and addresses of the  
4970 vendors, the purchase price, the names of any persons who have received commissions in  
4971 connection with the acquisition, and the amounts of any such commissions and any other  
4972 expense in connection with the acquisition, including the cost of borrowing money to finance  
4973 the acquisition;

4974 (j) a description of any stock options or other security options outstanding, or to be  
4975 created in connection with the offering, together with the amount of any such option held or to  
4976 be held by every person required to be named in ~~clause~~ Subsection (2)(b), (d), (e), (f), or (h)  
4977 and by any person who holds or will hold 10% or more in the aggregate of any such options;

4978 (k) (i) the dates of, parties to, and general effect concisely stated of, every management  
4979 or other material contract made or to be made otherwise than in the ordinary course of  
4980 business if it is to be performed in whole or in part at or after the filing of the registration  
4981 statement or was made within the past two years, together with a copy of every such contract;  
4982 and

4983 (ii) a description of any pending litigation or proceeding to which the issuer is a party  
4984 and which materially affects its business or assets, including any such litigation or proceeding  
4985 known to be contemplated by governmental authorities;

- 4986 (l) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other  
4987 sales literature intended as of the effective date to be used in connection with the offering;
- 4988 (m) (i) a specimen copy of the security being registered;
- 4989 (ii) a copy of the issuer's articles of incorporation, and bylaws, if any, or their  
4990 substantial equivalents, as currently in effect; and
- 4991 (iii) a copy of any indenture or other instrument covering the security to be registered;
- 4992 (n) a signed or conformed copy of an opinion of counsel as to the legality of the  
4993 security being registered, with an English translation if it is in a foreign language, which shall  
4994 state whether the security when sold will be legally issued, fully paid, and nonassessable, and  
4995 if a debt security, a binding obligation of the issuer;
- 4996 (o) the written consent of any accountant, engineer, appraiser, or other person whose  
4997 profession gives authority to a statement made by him, if that person is named as having  
4998 prepared or certified a report or valuation, other than a public and official document or  
4999 statement, which is used in connection with the registration statement;
- 5000 (p) (i) a balance sheet of the issuer as of a date within four months prior to the filing of  
5001 the registration statement;
- 5002 (ii) a profit and loss statement and analysis of retained earnings for each of the three  
5003 fiscal years preceding the date of the balance sheet and for any period between the close of the  
5004 last fiscal year and the date of the balance sheet, or for the period of the issuer's and any  
5005 predecessors' existence if less than three years; and
- 5006 (iii) if any part of the proceeds of the offering is to be applied to the purchase of any  
5007 business, the same financial statements which would be required if that business were the  
5008 registrant; and
- 5009 (q) such additional information or verification of any statement as the division  
5010 requires by rule or order.
- 5011 (3) A registration statement under this section becomes effective when the division so  
5012 orders.
- 5013 (4) As a condition of registration under this section, a prospectus containing the

5014 information, but not containing copies of contracts or agreements specified in Subsections  
5015 (2)(a)[, (b), (c), (d), (e), (f), (g), (h), (i), (j), (k),] through (k) and (p) shall be sent or given to  
5016 each person to whom an offer is made before or concurrently with:

5017 (a) the first written offer made to the person, otherwise than by means of a public  
5018 advertisement, by or for the account of the issuer or any other person on whose behalf the  
5019 offering is being made, or by any underwriter or broker-dealer who is offering part of an  
5020 unsold allotment or subscription taken by the person as a participant in the distribution;

5021 (b) the confirmation of any sale made by or for the account of any such person;

5022 (c) payment pursuant to any such sale; or

5023 (d) delivery of the security pursuant to any such sale, whichever occurs first.

5024 Section 103. Section **62A-3-206** is amended to read:

5025 **62A-3-206. Investigation of complaints -- Procedures.**

5026 (1) (a) The ombudsman shall investigate each complaint he receives. An investigation  
5027 may consist of a referral to another public agency, the collecting of facts and information over  
5028 the telephone, or an inspection of the long-term care facility that is named in the complaint.

5029 (b) The ombudsman shall notify any complainant of its decision to not pursue  
5030 investigation of a complaint after the initial investigation and the reasons for the decision.

5031 (2) In making any investigation, the ombudsman may engage in actions it deems  
5032 appropriate including, but not limited to:

5033 (a) making inquiries and obtaining information;

5034 (b) holding investigatory hearings;

5035 (c) entering upon and inspecting any premises, without notice to the facility, provided  
5036 the investigator identifies himself upon entering the premises as a person authorized by this  
5037 part to inspect the premises; and

5038 (d) inspecting or obtaining any book, file, medical record, or other record required by  
5039 law to be retained by the long-term care facility or governmental agency, pertaining to elderly  
5040 residents, subject to Subsection (3).

5041 (3) (a) Before reviewing a resident's records, the ombudsman shall seek to obtain

5042 written permission to review the records from the institutionalized elderly person or his legal  
5043 representative.

5044 (b) The effort to obtain permission under Subsection (3)(a) shall include personal  
5045 contact with the elderly resident or his legal representative. If the resident or legal  
5046 representative refuses to sign a release allowing access to records, the ombudsman shall record  
5047 and abide by this decision. If the attempt to obtain a signed release fails for any other reason,  
5048 the ombudsman may review the records.

5049 (4) Following any investigation, the ombudsman shall report its findings and  
5050 recommendations to the complainant, elderly residents of long-term care facilities affected by  
5051 the complaint, and to the long-term care facility or governmental agency involved.

5052 Section 104. Section **63A-3-203** is amended to read:

5053 **63A-3-203. Accounting control over state departments and agencies --**  
5054 **Prescription and approval of financial forms, accounting systems, and fees.**

5055 (1) The director of the Division of Finance shall:

5056 (a) exercise accounting control over all state departments and agencies except  
5057 institutions of higher education; and

5058 (b) prescribe the manner and method of certifying that funds are available and  
5059 adequate to meet all contracts and obligations.

5060 (2) The director shall audit all claims against the state for which an appropriation has  
5061 been made.

5062 (3) (a) The director shall:

5063 (i) prescribe all forms of requisitions, receipts, vouchers, bills, or claims to be used by  
5064 all state departments and agencies;

5065 (ii) prescribe the forms, procedures, and records to be maintained by all departmental,  
5066 institutional, or agency store rooms;

5067 (iii) exercise inventory control over the store rooms; and

5068 (iv) prescribe all forms to be used by the division.

5069 (b) Before approving the forms in Subsection (3)(a), the director shall obtain approval

5070 from the state auditor that the forms will adequately facilitate the post-audit of public  
5071 accounts.

5072 (4) Before implementation by any state department or agency, the director of the  
5073 Division of Finance shall review and approve:

5074 (a) any accounting system developed by a state department or agency; and

5075 (b) any fees established by any state department or agency to recover the costs of  
5076 operations.

5077 Section 105. Section **63A-4-103** is amended to read:

5078 **63A-4-103. Risk management -- Duties of state agencies.**

5079 (1) (a) Unless specifically authorized by statute to do so, a state agency may not:

5080 (i) purchase insurance or self-fund any risk unless authorized by the risk manager; or

5081 (ii) procure or provide liability insurance for the state.

5082 (b) (i) Notwithstanding the provisions of Subsection (1)(a), the State Board of Regents  
5083 may authorize higher education institutions to purchase insurance for, or self-fund, risks  
5084 associated with their programs and activities that are not covered through the risk manager.

5085 (ii) The State Board of Regents shall provide copies of those purchased policies to the  
5086 risk manager.

5087 (iii) The State Board of Regents shall ensure that the state is named as additional  
5088 insured on any of those policies.

5089 (2) Each state agency shall:

5090 (a) comply with reasonable risk related recommendations made by the risk manager;

5091 (b) participate in risk management training activities conducted or sponsored by the  
5092 risk manager;

5093 (c) include the insurance and liability provisions prescribed by the risk manager in all  
5094 state contracts, together with a statement certifying to the other party to the contract that the  
5095 insurance and liability provisions in the contract are those prescribed by the risk manager;

5096 (d) at each principal design stage, provide written notice to the risk manager that  
5097 construction and major remodeling plans relating to agency buildings and facilities to be

5098 covered by the fund are available for review, for risk control purposes, and make them  
5099 available to the risk manager for his review and recommendations; and

5100 (e) cooperate fully with requests from the risk manager for agency planning, program,  
5101 or risk related information, and allow the risk manager to attend agency planning and  
5102 management meetings.

5103 (3) Failure to include in the contract the provisions required by Subsection (2)(c) does  
5104 not make the contract unenforceable by the state.

5105 Section 106. Section **63A-5-302** is amended to read:

5106 **63A-5-302. Leasing responsibilities of the director.**

5107 (1) The director shall:

5108 (a) lease, in the name of the division, all real property space to be occupied by an  
5109 agency;

5110 (b) in leasing space, comply with:

5111 (i) Title 63G, Chapter 6, Utah Procurement Code; and

5112 (ii) any legislative mandates contained in the appropriations act or other specific  
5113 legislation;

5114 (c) apply the criteria contained in Subsection (1)(e) to prepare a report evaluating each  
5115 high-cost lease at least 12 months before it expires;

5116 (d) evaluate each lease under the division's control and apply the criteria contained in  
5117 Subsection (1)(e), when appropriate, to evaluate those leases;

5118 (e) in evaluating leases:

5119 (i) determine whether or not the lease is cost-effective when the needs of the agency to  
5120 be housed in the leased facilities are considered;

5121 (ii) determine whether or not another option such as construction, use of other  
5122 state-owned space, or a lease-purchase agreement is more cost-effective than leasing;

5123 (iii) determine whether or not the significant lease terms are cost-effective and provide  
5124 the state with sufficient flexibility and protection from liability;

5125 (iv) compare the proposed lease payments to the current market rates, and evaluate

5126 whether or not the proposed lease payments are reasonable under current market conditions;

5127 (v) compare proposed significant lease terms to the current market, and recommend

5128 whether or not these proposed terms are reasonable under current market conditions; and

5129 (vi) if applicable, recommend that the lease or modification to a lease be approved or

5130 disapproved;

5131 (f) based upon the evaluation, include in the report recommendations that identify

5132 viable alternatives to:

5133 (i) make the lease cost-effective; or

5134 (ii) meet the agency's needs when the lease expires; and

5135 (g) upon request, provide the information included in the report to:

5136 (i) the agency benefitted by the lease; and

5137 (ii) the Office of Legislative Fiscal Analyst.

5138 (2) The director may:

5139 (a) subject to legislative appropriation, enter into facility leases with terms of up to 10

5140 years when the length of the lease's term is economically advantageous to the state; and

5141 (b) with the approval of the State Building Board and subject to legislative

5142 appropriation, enter into facility leases with terms of more than 10 years when the length of

5143 the lease's term is economically advantageous to the state.

5144 Section 107. Section **63J-1-602** is amended to read:

5145 **63J-1-602. Nonlapsing accounts and funds.**

5146 (1) The following revenue collections, appropriations from a fund or account, and

5147 appropriations to a program are nonlapsing:

5148 (a) appropriations made to the Legislature and its committees;

5149 (b) funds collected by the grain grading program, as provided in Section 4-2-2;

5150 (c) the Salinity Offset Fund created in Section 4-2-8.5;

5151 (d) the Invasive Species Mitigation Fund created in Section 4-2-8.7;

5152 (e) funds collected by pesticide dealer license registration fees, as provided in Section

5153 4-14-3;

- 5154 (f) funds collected by pesticide applicator business registration fees, as provided in  
5155 Section 4-14-13;
- 5156 (g) the Rangeland Improvement Fund created in Section 4-20-2;
- 5157 (h) funds deposited as dedicated credits under the Insect Infestation Emergency  
5158 Control Act, as provided in Section 4-35-6;
- 5159 (i) the Percent-for-Art Program created in Section 9-6-404;
- 5160 (j) the Centennial History Fund created in Section 9-8-604;
- 5161 (k) the Uintah Basin Revitalization Fund, as provided in Section 9-10-108;
- 5162 (l) the Navajo Revitalization Fund created in Section 9-11-104;
- 5163 (m) the LeRay McAllister Critical Land Conservation Program created in Section  
5164 11-38-301;
- 5165 (n) the Clean Fuels and Vehicle Technology Fund created in Section 19-1-403;
- 5166 (o) fees deposited as dedicated credits for hazardous waste plan reviews, as provided  
5167 in Section 19-6-120;
- 5168 (p) an appropriation made to the Division of Wildlife Resources for the appraisal and  
5169 purchase of lands under the Pelican Management Act, as provided in Section 23-21a-6;
- 5170 (q) award monies under the Crime Reduction Assistance Program, as provided under  
5171 Section 24-1-19;
- 5172 (r) funds collected from the emergency medical services grant program, as provided in  
5173 Section 26-8a-207;
- 5174 (s) fees and other funding available to purchase training equipment and to administer  
5175 tests and conduct quality assurance reviews, as provided in Section 26-8a-208;
- 5176 (t) funds collected as a result of a sanction under Section 1919 of Title XIX of the  
5177 federal Social Security Act, as provided in Section 26-18-3;
- 5178 (u) the Utah Health Care Workforce Financial Assistance Program created in Section  
5179 26-46-102;
- 5180 (v) monies collected from subscription fees for publications prepared or distributed by  
5181 the insurance commissioner, as provided in Section 31A-2-208;

- 5182 (w) monies received by the Insurance Department for administering, investigating  
5183 under, and enforcing the Insurance Fraud Act, as provided in Section 31A-31-108;
- 5184 (x) certain monies received for penalties paid under the Insurance Fraud Act, as  
5185 provided in Section 31A-31-109;
- 5186 (y) the fund for operating the state's Federal Health Care Tax Credit Program, as  
5187 provided in Section 31A-38-104;
- 5188 (z) certain funds in the Department of Workforce Services' program for the education,  
5189 training, and transitional counseling of displaced homemakers, as provided in Section  
5190 35A-3-114;
- 5191 (aa) the Employment Security Administration Fund created in Section 35A-4-505;
- 5192 (bb) the Special Administrative Expense Fund created in Section 35A-4-506;
- 5193 (cc) funding for a new program or agency that is designated as nonlapsing under  
5194 Section 36-24-101;
- 5195 (dd) the Oil and Gas Conservation Account created in Section 40-6-14.5;
- 5196 (ee) funds available to the State Tax Commission for purchase and distribution of  
5197 license plates and decals, as provided in Section 41-1a-1201;
- 5198 (ff) certain fees for the cost of electronic payments under the Motor Vehicle Act, as  
5199 provided in Section 41-1a-1221;
- 5200 (gg) certain fees collected for administering and enforcing the Motor Vehicle Business  
5201 Regulation Act, as provided in Section 41-3-601;
- 5202 (hh) certain fees for the cost of electronic payments under the Motor Vehicle Business  
5203 Regulation Act, as provided in Section 41-3-604;
- 5204 (ii) the Off-Highway Access and Education Restricted Account created in Section  
5205 41-22-19.5;
- 5206 (jj) certain fees for the cost of electronic payments under the Motor Vehicle Act, as  
5207 provided in Section 41-22-36;
- 5208 (kk) monies collected under the Notaries Public Reform Act, as provided under  
5209 46-1-23;

5210 (ll) certain funds associated with the Law Enforcement Operations Account, as  
5211 provided in Section 51-9-411;

5212 (mm) the Public Safety Honoring Heroes Restricted Account created in Section  
5213 53-1-118;

5214 (nn) funding for the Search and Rescue Financial Assistance Program, as provided in  
5215 Section 53-2-107;

5216 (oo) appropriations made to the Department of Public Safety from the Department of  
5217 Public Safety Restricted Account, as provided in Section 53-3-106;

5218 (pp) appropriations to the Motorcycle Rider Education Program, as provided in  
5219 Section 53-3-905;

5220 (qq) fees collected by the State Fire Marshal Division under the Utah Fire Prevention  
5221 and Safety Act, as provided in Section 53-7-314;

5222 (rr) the DNA Specimen Restricted Account created in Section 53-10-407;

5223 (ss) the minimum school program, as provided in Section 53A-17a-105;

5224 (tt) certain funds appropriated from the Uniform School Fund to the State Board of  
5225 Education for new teacher bonus and performance-based compensation plans, as provided in  
5226 Section 53A-17a-148;

5227 (uu) certain funds appropriated from the Uniform School Fund to the State Board of  
5228 Education for implementation of proposals to improve mathematics achievement test scores,  
5229 as provided in Section 53A-17a-152;

5230 (vv) the School Building Revolving Account created in Section 53A-21-401;

5231 (ww) monies received by the State Office of Rehabilitation for the sale of certain  
5232 products or services, as provided in Section 53A-24-105;

5233 (xx) the State Board of Regents, as provided in Section 53B-6-104;

5234 (yy) certain funds appropriated from the General Fund to the State Board of Regents  
5235 for teacher preparation programs, as provided in Section 53B-6-104;

5236 (zz) a certain portion of monies collected for administrative costs under the School  
5237 Institutional Trust Lands Management Act, as provided under Section 53C-3-202;

5238           (aaa) certain surcharges on residence and business telecommunications access lines  
5239 imposed by the Public Service Commission, as provided in Section 54-8b-10;  
5240           (bbb) certain fines collected by the Division of Occupational and Professional  
5241 Licensing for violation of unlawful or unprofessional conduct that are used for education and  
5242 enforcement purposes, as provided in Section 58-17b-505;  
5243           (ccc) the Nurse Education and Enforcement Fund created in Section 58-31b-103;  
5244           (ddd) funding of the controlled substance database, as provided in Section 58-37-7.7;  
5245           (eee) the Certified Nurse Midwife Education and Enforcement Fund created in Section  
5246 58-44a-103;  
5247           (fff) funding for the building inspector's education program, as provided in Section  
5248 58-56-9;  
5249           (ggg) certain fines collected by the Division of Occupational and Professional  
5250 Licensing for use in education and enforcement of the Security Personnel Licensing Act, as  
5251 provided in Section 58-63-103;  
5252           (hhh) the Professional Geologist Education and Enforcement Fund created in Section  
5253 58-76-103;  
5254           (iii) certain monies in the Water Resources Conservation and Development Fund, as  
5255 provided in Section 59-12-103;  
5256           (jjj) funds paid to the Division of Real Estate for the cost of a criminal background  
5257 check for broker and sales agent licenses, as provided in Section 61-2-9;  
5258           (kkk) the Utah Housing Opportunity Restricted Account created in Section 61-2-28;  
5259           (III) funds paid to the Division of Real Estate for the cost of a criminal background  
5260 check for a mortgage loan license, as provided in Section 61-2c-202;  
5261           (mmm) funds paid to the Division of Real Estate in relation to examination of records  
5262 in an investigation, as provided in Section 61-2c-401;  
5263           (nnn) certain funds donated to the Department of Human Services, as provided in  
5264 Section 62A-1-111;  
5265           (ooo) certain funds donated to the Division of Child and Family Services, as provided

5266 in Section 62A-4a-110;

5267 (ppp) the Mental Health Therapist Grant and Scholarship Program, as provided in  
5268 Section 62A-13-109;

5269 (qqq) assessments for DUI violations that are forwarded to an account created by a  
5270 county treasurer, as provided in Section 62A-15-503;

5271 (rrr) appropriations to the Division of Services for People with Disabilities, as  
5272 provided in Section 62A-5-102;

5273 (sss) certain donations to the Division of Substance Abuse and Mental Health, as  
5274 provided in Section 62A-15-103;

5275 (ttt) certain funds received by the Division of Parks and Recreation from the sale or  
5276 disposal of buffalo, as provided under Section 63-11-19.2;

5277 (uuu) revenue for golf user fees at the Wasatch Mountain State Park, Palisades State  
5278 Park, or Jordan River State Park, as provided under Section 63-11-19.5;

5279 (vvv) revenue for golf user fees at the Green River State Park, as provided under  
5280 Section 63-11-19.6;

5281 (www) the Centennial Nonmotorized Paths and Trail Crossings Program created under  
5282 Section 63-11a-503;

5283 (xxx) the Bonneville Shoreline Trail Program created under Section 63-11a-504;

5284 (yyy) the account for the Utah Geological Survey, as provided in Section 63-73-10;

5285 (zzz) the Risk Management Fund created under Section 63A-4-201;

5286 (aaaa) the Child Welfare Parental Defense Fund created in Section 63A-11-203;

5287 (bbbb) the Constitutional Defense Restricted Account created in Section 63C-4-103;

5288 (cccc) a portion of the funds appropriated to the Utah Seismic Safety Commission, as  
5289 provided in Section 63C-6-104;

5290 (dddd) funding for the Medical Education Program administered by the Medical  
5291 Education Council, as provided in Section 63C-8-102;

5292 (eeee) certain monies payable for commission expenses of the Pete Suazo Utah  
5293 Athletic Commission, as provided under Section 63C-11-301;

5294 (ffff) funds collected for publishing the Division of Administrative Rules'  
5295 publications, as provided in Section 63G-3-402;

5296 (gggg) the appropriation to fund the Governor's Office of Economic Development's  
5297 Enterprise Zone Act, as provided in Section 63M-1-416;

5298 (hhhh) the Tourism Marketing Performance Account, as provided in Section  
5299 63M-1-1406;

5300 (iiii) certain funding for rural development provided to the Office of Rural  
5301 Development in the Governor's Office of Economic Development, as provided in Section  
5302 63M-1-1604;

5303 (jjjj) certain monies in the Development for Disadvantaged Rural Communities  
5304 Restricted Account, as provided in Section 63M-1-2003;

5305 (kkkk) appropriations to the Utah Science Technology and Research Governing  
5306 Authority, created under Section 63M-2-301, as provided under Section 63M-3-302;

5307 (llll) certain monies in the Rural Broadband Service Fund, as provided in Section  
5308 63M-1-2303;

5309 (mmmm) funds collected from monthly offender supervision fees, as provided in  
5310 Section 64-13-21.2;

5311 (nnnn) funds collected by the housing of state probationary inmates or state parole  
5312 inmates, as provided in Subsection 64-13e-104(2);

5313 (oooo) the Sovereign Lands Management account created in Section 65A-5-1;

5314 (pppp) certain forestry and fire control funds utilized by the Division of Forestry, Fire,  
5315 and State Lands, as provided in Section 65A-8-103;

5316 (qqqq) the Department of Human Resource Management user training program, as  
5317 provided in Section 67-19-6;

5318 (rrrr) funds for the University of Utah Poison Control Center program, as provided in  
5319 Section 69-2-5.5;

5320 (ssss) appropriations to the Transportation Corridor Preservation Revolving Loan  
5321 Fund, as provided in Section 72-2-117;

5322           (tttt) appropriations to the Local Transportation Corridor Preservation Fund, as  
5323 provided in Section 72-2-117.5;

5324           (uuuu) appropriations to the Tollway Restricted Special Revenue Fund, as provided in  
5325 Section 77-2-120;

5326           (vvvv) appropriations to the Aeronautics Construction Revolving Loan Fund, as  
5327 provided in Section 77-2-122;

5328           (www) appropriations to the State Park Access Highways Improvement Program, as  
5329 provided in Section 72-3-207;

5330           (xxxx) the Traffic Noise Abatement Program created in Section 72-6-112;

5331           (yyyy) certain funds received by the Office of the State Engineer for well drilling fines  
5332 or bonds, as provided in Section 73-3-25;

5333           (zzzz) certain monies appropriated to increase the carrying capacity of the Jordan  
5334 River that are transferred to the Division of Parks and Recreation, as provided in Section  
5335 73-10e-1;

5336           (aaaaa) certain fees for the cost of electronic payments under the State Boating Act, as  
5337 provided in Section 73-18-25;

5338           (bbbbb) certain monies appropriated from the Water Resources Conservation and  
5339 Development Fund, as provided in Section 73-23-2;

5340           (ccccc) the Lake Powell Pipeline Project Operation and Maintenance Fund created in  
5341 Section 73-28-404;

5342           (ddddd) certain funds in the Water Development and Flood Mitigation Reserve  
5343 Account, as provided in Section 73-103-1;

5344           (eeeee) certain funds appropriated for compensation for special prosecutors, as  
5345 provided in Section 77-10a-19;

5346           (fffff) the Indigent Aggravated Murder Defense Trust Fund created in Section  
5347 77-32-601;

5348           (ggggg) the Indigent Felony Defense Trust Fund created in Section 77-32-701;

5349           (hhhhh) funds donated or paid to a juvenile court by private sources, as provided in

5350 Subsection 78A-6-203(1)(c);

5351 (iiii) a state rehabilitative employment program, as provided in Section 78A-6-210;

5352 and

5353 (jjjj) fees from the issuance and renewal of licenses for certified court interpreters, as  
5354 provided in Section 78B-1-146.

5355 (2) No revenue collection, appropriation from a fund or account, or appropriation to a  
5356 program may be treated as nonlapsing unless:

5357 (a) it is expressly referenced by this section;

5358 (b) it is designated in a condition of appropriation in the appropriations bill; or

5359 (c) nonlapsing authority is granted under Section 63J-1-603.

5360 (3) Each legislative appropriations subcommittee shall review the accounts and funds  
5361 that have been granted nonlapsing authority under this section or Section 63J-1-603.

5362 Section 108. Section **63M-9-301** is amended to read:

5363 **63M-9-301. Local interagency council -- Composition -- Duties.**

5364 (1) Communities shall establish local interagency councils to improve service delivery  
5365 to children and youth at risk, who are experiencing multiple problems and require services  
5366 from more than one agency.

5367 (2) Each local interagency council shall consist of representatives from each agency  
5368 serving children and youth who are at risk and their families within the community.

5369 (a) At a minimum the council shall consist of a family advocate and a local  
5370 representative from the following:

5371 (i) child welfare;

5372 (ii) developmental disabilities;

5373 (iii) education;

5374 (iv) health;

5375 (v) juvenile justice;

5376 (vi) mental health;

5377 (vii) parents;

5378 (viii) substance abuse; and

5379 (ix) youth corrections.

5380 (b) The members of the local interagency council specified in Subsections (2)(a)(i)  
5381 through (ix) shall select three parents from the local community to serve on the local  
5382 interagency council, representative of families with children.

5383 (3) The local interagency council shall:

5384 (a) provide general staffing for individual at risk cases which require services from  
5385 more than one agency;

5386 (b) provide services to meet the needs of individual cases or create new services to fill  
5387 gaps in current service continuum;

5388 (c) develop an individualized and coordinated service plan for each child or youth at  
5389 risk and the child or youth's family; and

5390 (d) establish a case management process to implement individualized and coordinated  
5391 service plans.

5392 (4) Each local interagency council shall integrate into its operational procedures a  
5393 method to involve parents in the staffing and service planning process.

5394 (5) (a) Each local interagency council shall operate in accordance with a written  
5395 agreement entered into by the participating agencies.

5396 (b) The agreement shall include a provision that the participating agencies agree to  
5397 implement the service recommendations in the individualized and coordinated service plan  
5398 when not inconsistent with federal law.

5399 Section 109. Section **67-1-8.1** is amended to read:

5400 **67-1-8.1. Executive Residence Commission -- Recommendations as to restoration**  
5401 **of executive residence.**

5402 (1) The Legislature finds and declares that:

5403 (a) the state property known as the Kearns' mansion, the executive residence, is an  
5404 irreplaceable historic landmark possessing special and unique architectural qualities that  
5405 should be preserved; and

5406 (b) the deterioration that has taken place will continue unless remedial restoration  
5407 measures are undertaken.

5408 (2) (a) An Executive Residence Commission is established to make recommendations  
5409 to the Legislature for the budgeting of renovation, upkeep, historical maintenance, and  
5410 restoration of the executive residence.

5411 (b) The commission shall consist of three private citizens appointed by the governor,  
5412 all of whom have demonstrated an interest in historical preservation.

5413 (c) The commission shall also consist of one assigned representative from the Board of  
5414 the Utah Arts Council, one from the Board of State History, one from the building board, an  
5415 interior designer selected by the Utah chapter of ASID, and an architect selected by the Utah  
5416 chapter of the AIA.

5417 (3) (a) Except as required by Subsection (3)(b), as terms of current commission  
5418 members expire, the governor shall appoint each new member or reappointed member to a  
5419 four-year term ending on March 1.

5420 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the  
5421 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
5422 commission members are staggered so that approximately half of the commission is appointed  
5423 every two years.

5424 (4) (a) The governor shall appoint a chair from among the membership of the  
5425 commission.

5426 (b) Five members of the commission shall constitute a quorum, and either the chair or  
5427 two other members of the commission may call meetings of the commission.

5428 (5) When a vacancy occurs in the membership for any reason, the replacement shall be  
5429 appointed for the unexpired term.

5430 (6) (a) (i) Members who are not government employees shall receive no compensation  
5431 or benefits for their services, but may receive per diem and expenses incurred in the  
5432 performance of the member's official duties at the rates established by the Division of Finance  
5433 under Sections 63A-3-106 and 63A-3-107.

- 5434 (ii) Members may decline to receive per diem and expenses for their service.
- 5435 (b) (i) State government officer and employee members who do not receive salary, per  
5436 diem, or expenses from their agency for their service may receive per diem and expenses  
5437 incurred in the performance of their official duties from the commission at the rates  
5438 established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- 5439 (ii) State government officer and employee members may decline to receive per diem  
5440 and expenses for their service.
- 5441 Section 110. Section **67-19a-201** is amended to read:
- 5442 **67-19a-201. Career Service Review Board created -- Members -- Appointment --**  
5443 **Removal -- Terms -- Organization -- Per diem and expenses.**
- 5444 (1) There is created a Career Service Review Board.
- 5445 (2) (a) The governor shall appoint five members to the board no more than three of  
5446 which are members of the same political party.
- 5447 (b) The governor shall appoint members whose gender and ethnicity represent the  
5448 career service work force.
- 5449 (3) (a) The governor may remove any board member for cause.
- 5450 (b) When a vacancy occurs in the membership for any reason, the replacement shall be  
5451 appointed for the unexpired term.
- 5452 (4) The governor shall ensure that appointees to the board:
- 5453 (a) are qualified by knowledge of employee relations and merit system principles in  
5454 public employment; and
- 5455 (b) are not:
- 5456 (i) members of any local, state, or national committee of a political party;
- 5457 (ii) officers or members of a committee in any partisan political club; and
- 5458 (iii) holding or a candidate for a paid public office.
- 5459 (5) (a) Except as required by Subsection (5)(b), the governor shall appoint board  
5460 members to serve four-year terms beginning January 1.
- 5461 (b) Notwithstanding the requirements of Subsection (5)(a), the governor shall, at the

5462 time of appointment or reappointment, adjust the length of terms to ensure that the terms of  
5463 board members are staggered so that approximately half of the board is appointed every two  
5464 years.

5465 (c) The members of the board shall serve until their successors are appointed and  
5466 qualified.

5467 (6) Each year, the board shall choose a chair and vice chair from its own members.

5468 (7) (a) Three members of the board are a quorum for the transaction of business.

5469 (b) Action by a majority of members when a quorum is present is action of the board.

5470 (8) (a) Members shall receive no compensation or benefits for their services, but may  
5471 receive per diem and expenses incurred in the performance of the member's official duties at  
5472 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

5473 (b) Members may decline to receive per diem and expenses for their service.

5474 Section 111. Section **67-21-3** is amended to read:

5475 **67-21-3. Reporting of governmental waste or violations of law -- Employer**  
5476 **action -- Exceptions.**

5477 (1) (a) An employer may not take adverse action against an employee because the  
5478 employee, or a person authorized to act on behalf of the employee, communicates in good faith  
5479 the existence of any waste of public funds, property, or manpower, or a violation or suspected  
5480 violation of a law, rule, or regulation adopted under the law of this state, a political  
5481 subdivision of this state, or any recognized entity of the United States.

5482 (b) For purposes of Subsection (1)(a), an employee is presumed to have communicated  
5483 in good faith if he gives written notice or otherwise formally communicates the waste,  
5484 violation, or reasonable suspicion to the state auditor. This presumption may be rebutted by  
5485 showing that the employee knew or reasonably ought to have known that the report is  
5486 malicious, false, or frivolous.

5487 (2) An employer may not take adverse action against an employee because an  
5488 employee participates or gives information in an investigation, hearing, court proceeding,  
5489 legislative or other inquiry, or other form of administrative review held by the public body.

5490 (3) An employer may not take adverse action against an employee because the  
5491 employee has objected to or refused to carry out a directive that the employee reasonably  
5492 believes violates a law of this state, a political subdivision of this state, or the United States, or  
5493 a rule or regulation adopted under the authority of the laws of this state, a political subdivision  
5494 of this state, or the United States.

5495 (4) An employer may not implement rules or policies that unreasonably restrict an  
5496 employee's ability to document the existence of any waste of public funds, property, or  
5497 manpower, or a violation or suspected violation of any laws, rules, or regulations.

5498 Section 112. Section **70A-2a-219** is amended to read:

5499 **70A-2a-219. Risk of loss.**

5500 (1) Except in the case of a finance lease, risk of loss is retained by the lessor and does  
5501 not pass to the lessee. In the case of a finance lease, risk of loss passes to the lessee.

5502 (2) Subject to the provisions of this chapter on the effect of default on risk of loss as  
5503 provided in Section 70A-2a-220, if risk of loss is to pass to the lessee and the time of passage  
5504 is not stated, the following rules apply:

5505 (a) If the lease contract requires or authorizes the goods to be shipped by carrier:

5506 (i) and it does not require delivery at a particular destination, the risk of loss passes to  
5507 the lessee when the goods are duly delivered to the carrier; but

5508 (ii) if it does require delivery at a particular destination and the goods are there duly  
5509 tendered while in the possession of the carrier, the risk of loss passes to the lessee when the  
5510 goods are there duly so tendered as to enable the lessee to take delivery.

5511 (b) If the goods are held by a bailee to be delivered without being moved, the risk of  
5512 loss passes to the lessee on acknowledgment by the bailee of the lessee's right to possession of  
5513 the goods.

5514 (c) In any case not within Subsection (2)(a) or (b), the risk of loss passes to the lessee  
5515 on the lessee's receipt of the goods if the lessor, or, in the case of a finance lease, the supplier,  
5516 is a merchant; otherwise the risk passes to the lessee on tender of delivery.

5517 Section 113. Section **70A-2a-529** is amended to read:

5518 **70A-2a-529. Lessor's damages for lessee's default.**

5519 (1) After default by the lessee under the lease contract of the type described in  
5520 Subsection 70A-2a-523(1) or (3)(a), or, if agreed, after any other default by the lessee, if the  
5521 lessor complies with Subsection (2), the lessor may recover from the lessee as damages:

5522 (a) for goods accepted by the lessee and not repossessed by or tendered back to the  
5523 lessor and for conforming goods lost or damaged after risk of loss passes to the lessee as  
5524 provided in Section 70A-2a-219:

5525 (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor;

5526 (ii) the present value as of the date determined under Subsection (1)(a)(i) of the rent  
5527 for the then remaining lease term of the lease agreement; and

5528 (iii) any incidental damages allowed under Section 70A-2a-530, less expenses saved  
5529 in consequence of the lessee's default; and

5530 (b) for goods identified to the lease contract where the lessor has never delivered the  
5531 goods or has taken possession of them or the lessee has effectively tendered them back to the  
5532 lessor, if the lessor is unable after reasonable effort to dispose of them at a reasonable price or  
5533 the circumstances reasonably indicate that such an effort will be unavailing:

5534 (i) accrued and unpaid rent as of the date of entry of judgment in favor of the lessor;

5535 (ii) the present value as of the date determined under Subsection (1)(b)(i) of the rent  
5536 for the then remaining lease term of the lease agreement; and

5537 (iii) any incidental damages allowed under Section 70A-2a-530, less expenses saved  
5538 in consequence of the lessee's default.

5539 (2) Except as provided in Subsection (3), the lessor shall hold for the lessee for the  
5540 remaining term of the lease agreement any goods that have been identified to the lease contract  
5541 and are in the lessor's control.

5542 (3) The lessor may dispose of the goods at any time before collection of the judgment  
5543 for damages obtained pursuant to Subsection (1). If the disposition is before the end of the  
5544 remaining lease term of the lease agreement, the lessor's recovery against the lessee for  
5545 damages will be governed by Section 70A-2a-527 or 70A-2a-528, and the lessor will cause an

5546 appropriate credit to be provided against any judgment for damages to the extent that the  
5547 amount of the judgment exceeds the recovery available under Section 70A-2a-527 or  
5548 70A-2a-528.

5549 (4) Payment of the judgment for damages obtained pursuant to Subsection (1) entitles  
5550 the lessee to the use and possession of the goods not then disposed of for the remaining lease  
5551 term of and in accordance with the lease agreement if the lessee complies with all other terms  
5552 and conditions of the lease agreement.

5553 (5) After a lessee has wrongfully rejected or revoked acceptance of goods, has failed to  
5554 pay rent then due, or has repudiated as provided in Section 70A-2a-402, a lessor who is held  
5555 not entitled to rent under this section must nevertheless be awarded damages for  
5556 nonacceptance under Sections 70A-2a-527 and 70A-2a-528.

5557 Section 114. Section **70A-3-206** is amended to read:

5558 **70A-3-206. Restrictive indorsement.**

5559 (1) An indorsement limiting payment to a particular person or otherwise prohibiting  
5560 further transfer or negotiation of the instrument is not effective to prevent further transfer or  
5561 negotiation of the instrument.

5562 (2) An indorsement stating a condition to the right of the indorsee to receive payment  
5563 does not affect the right of the indorsee to enforce the instrument. A person paying the  
5564 instrument or taking it for value or collection may disregard the condition, and the rights and  
5565 liabilities of that person are not affected by whether the condition has been fulfilled.

5566 (3) If an instrument bears an indorsement described in Subsection 70A-4-201(2), or in  
5567 blank or to a particular bank using the words "for deposit," "for collection," or other words  
5568 indicating a purpose of having the instrument collected by a bank for the indorser or for a  
5569 particular account, the following rules apply:

5570 (a) A person, other than a bank, who purchases the instrument when so indorsed  
5571 converts the instrument unless the amount paid for the instrument is received by the indorser  
5572 or applied consistently with the indorsement.

5573 (b) A depositary bank that purchases the instrument or takes it for collection when so

5574 indorsed converts the instrument unless the amount paid by the bank with respect to the  
5575 instrument is received by the indorser or applied consistently with the indorsement.

5576 (c) A payor bank that is also the depository bank or that takes the instrument for  
5577 immediate payment over the counter from a person other than a collecting bank converts the  
5578 instrument unless the proceeds of the instrument are received by the indorser or applied  
5579 consistently with the indorsement.

5580 (d) Except as otherwise provided in Subsection (3)(c), a payor bank or intermediary  
5581 bank may disregard the indorsement and is not liable if the proceeds of the instrument are not  
5582 received by the indorser or applied consistently with the indorsement.

5583 (4) Except for an indorsement covered by Subsection (3), if an instrument bears an  
5584 indorsement using words to the effect that payment is to be made to the indorsee as agent,  
5585 trustee, or other fiduciary for the benefit of the indorser or another person, the following rules  
5586 apply:

5587 (a) Unless there is notice of breach of fiduciary duty as provided in Section  
5588 70A-3-307, a person who purchases the instrument from the indorsee or takes the instrument  
5589 from the indorsee for collection or payment may pay the proceeds of payment or the value  
5590 given for the instrument to the indorsee without regard to whether the indorsee violates a  
5591 fiduciary duty to the indorser.

5592 (b) A subsequent transferee of the instrument or person who pays the instrument is  
5593 neither given notice nor otherwise affected by the restriction in the indorsement unless the  
5594 transferee or payor knows that the fiduciary dealt with the instrument or its proceeds in breach  
5595 of fiduciary duty.

5596 (5) The presence on an instrument of an indorsement to which this section applies  
5597 does not prevent a purchaser of the instrument from becoming a holder in due course of the  
5598 instrument unless the purchaser is a converter under Subsection (3) or has notice or knowledge  
5599 of breach of fiduciary duty as stated in Subsection (4).

5600 (6) In an action to enforce the obligation of a party to pay the instrument, the obligor  
5601 has a defense if payment would violate an indorsement to which this section applies and the

5602 payment is not permitted by this section.

5603 Section 115. Section **70A-3-307** is amended to read:

5604 **70A-3-307. Notice of breach of fiduciary duty.**

5605 (1) In this section:

5606 (a) "Fiduciary" means an agent, trustee, partner, corporate officer or director, or other  
5607 representative owing a fiduciary duty with respect to an instrument.

5608 (b) "Represented person" means the principal, beneficiary, partnership, corporation, or  
5609 other person to whom the duty stated in Subsection (1)(a) is owed.

5610 (2) If an instrument is taken from a fiduciary for payment or collection or for value,  
5611 the taker has knowledge of the fiduciary status of the fiduciary, and the represented person  
5612 makes a claim to the instrument or its proceeds on the basis that the transaction of the  
5613 fiduciary is a breach of fiduciary duty, the following rules apply:

5614 (a) Notice of breach of fiduciary duty by the fiduciary is notice of the claim of the  
5615 represented person.

5616 (b) In the case of an instrument payable to the represented person or the fiduciary as  
5617 such, the taker has notice of the breach of fiduciary duty if the instrument is:

5618 (i) taken in payment of or as security for a debt known by the taker to be the personal  
5619 debt of the fiduciary;

5620 (ii) taken in a transaction known by the taker to be for the personal benefit of the  
5621 fiduciary; or

5622 (iii) deposited to an account other than an account of the fiduciary, as such, or an  
5623 account of the represented person.

5624 (c) If an instrument is issued by the represented person or the fiduciary as such, and  
5625 made payable to the fiduciary personally, the taker does not have notice of the breach of  
5626 fiduciary duty unless the taker knows of the breach of fiduciary duty.

5627 (d) If an instrument is issued by the represented person or the fiduciary as such, to the  
5628 taker as payee, the taker has notice of the breach of fiduciary duty if the instrument is:

5629 (i) taken in payment of or as security for a debt known by the taker to be the personal

5630 debt of the fiduciary;

5631 (ii) taken in a transaction known by the taker to be for the personal benefit of the  
5632 fiduciary; or

5633 (iii) deposited to an account other than an account of the fiduciary, as such, or an  
5634 account of the represented person.

5635 Section 116. Section **70A-3-310** is amended to read:

5636 **70A-3-310. Effect of instrument on obligation for which taken.**

5637 (1) Unless otherwise agreed, if a certified check, cashier's check, or teller's check is  
5638 taken for an obligation, the obligation is discharged to the same extent discharge would result  
5639 if an amount of money equal to the amount of the instrument were taken in payment of the  
5640 obligation. Discharge of the obligation does not affect any liability that the obligor may have  
5641 as an indorser of the instrument.

5642 (2) Unless otherwise agreed and except as provided in Subsection (1), if a note or an  
5643 uncertified check is taken for an obligation, the obligation is suspended to the same extent the  
5644 obligation would be discharged if an amount of money equal to the amount of the instrument  
5645 were taken, and the following rules apply:

5646 (a) In the case of an uncertified check, suspension of the obligation continues until  
5647 dishonor of the check or until it is paid or certified. Payment or certification of the check  
5648 results in discharge of the obligation to the extent of the amount of the check.

5649 (b) In the case of a note, suspension of the obligation continues until dishonor of the  
5650 note or until it is paid. Payment of the note results in discharge of the obligation to the extent  
5651 of the payment.

5652 (c) Except as provided in Subsection (2)(d), if the check or note is dishonored and the  
5653 obligee of the obligation for which the instrument was taken is the person entitled to enforce  
5654 the instrument, the obligee may enforce either the instrument or the obligation. In the case of  
5655 an instrument of a third person which is negotiated to the obligee by the obligor, discharge of  
5656 the obligor on the instrument also discharges the obligation.

5657 (d) If the person entitled to enforce the instrument taken for an obligation is a person

5658 other than the obligee, the obligee may not enforce the obligation to the extent the obligation is  
5659 suspended. If the obligee is the person entitled to enforce the instrument but no longer has  
5660 possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to  
5661 the extent of the amount payable on the instrument, and to that extent the obligee's rights  
5662 against the obligor are limited to enforcement of the instrument.

5663 (3) If an instrument other than one described in Subsection (1) or (2) is taken for an  
5664 obligation, the effect is that stated in Subsection (1) if the instrument is one on which a bank is  
5665 liable as maker or acceptor, or that stated in Subsection (2) in any other case.

5666 Section 117. Section **70A-3-502** is amended to read:

5667 **70A-3-502. Dishonor.**

5668 (1) Dishonor of a note is governed by the following rules:

5669 (a) If the note is payable on demand, the note is dishonored if presentment is duly  
5670 made to the maker and the note is not paid on the day of presentment.

5671 (b) If the note is not payable on demand and is payable at or through a bank or the  
5672 terms of the note require presentment, the note is dishonored if presentment is duly made and  
5673 the note is not paid on the day it becomes payable or the day of presentment, whichever is  
5674 later.

5675 (c) If the note is not payable on demand and Subsection (1)(b) does not apply, the note  
5676 is dishonored if it is not paid on the day it becomes payable.

5677 (2) Dishonor of an unaccepted draft other than a documentary draft is governed by the  
5678 following rules:

5679 (a) If a check is duly presented for payment to the payor bank otherwise than for  
5680 immediate payment over the counter, the check is dishonored if the payor bank makes timely  
5681 return of the check or sends timely notice of dishonor or nonpayment under Section  
5682 70A-4-301 or 70A-4-302, or becomes accountable for the amount of the check under Section  
5683 70A-4-302.

5684 (b) If a draft is payable on demand and Subsection (2)(a) does not apply, the draft is  
5685 dishonored if presentment for payment is duly made to the drawee and the draft is not paid on

5686 the day of presentment.

5687 (c) If a draft is payable on a date stated in the draft, the draft is dishonored if  
5688 presentment for payment is duly made to the drawee and payment is not made on the day the  
5689 draft becomes payable or the day of presentment, whichever is later, or presentment for  
5690 acceptance is duly made before the day the draft becomes payable and the draft is not accepted  
5691 on the day of presentment.

5692 (d) If a draft is payable on elapse of a period of time after sight or acceptance, the draft  
5693 is dishonored if presentment for acceptance is duly made and the draft is not accepted on the  
5694 day of presentment.

5695 (3) Dishonor of an unaccepted documentary draft occurs according to the rules stated  
5696 in Subsections (2)(b), (c), and (d), except that payment or acceptance may be delayed without  
5697 dishonor until no later than the close of the third business day of the drawee following the day  
5698 on which payment or acceptance is required by those subsections.

5699 (4) Dishonor of an accepted draft is governed by the following rules:

5700 (a) If the draft is payable on demand, the draft is dishonored if presentment for  
5701 payment is duly made to the acceptor and the draft is not paid on the day of presentment.

5702 (b) If the draft is not payable on demand, the draft is dishonored if presentment for  
5703 payment is duly made to the acceptor and payment is not made on the day it becomes payable  
5704 or the day of presentment, whichever is later.

5705 (5) In any case in which presentment is otherwise required for dishonor under this  
5706 section and presentment is excused under Section 70A-3-504, dishonor occurs without  
5707 presentment if the instrument is not duly accepted or paid.

5708 (6) If a draft is dishonored because timely acceptance of the draft was not made and  
5709 the person entitled to demand acceptance consents to a late acceptance, from the time of  
5710 acceptance the draft is treated as never having been dishonored.

5711 Section 118. Section **70A-4a-507** is amended to read:

5712 **70A-4a-507. Choice of law.**

5713 (1) The following rules apply unless the affected parties otherwise agree or Subsection

5714 (3) applies:

5715 (a) The rights and obligations between the sender of a payment order and the receiving  
5716 bank are governed by the law of the jurisdiction in which the receiving bank is located.

5717 (b) The rights and obligations between the beneficiary's bank and the beneficiary are  
5718 governed by the law of the jurisdiction in which the beneficiary's bank is located.

5719 (c) The issue of when payment is made pursuant to a funds transfer by the originator  
5720 to the beneficiary is governed by the law of the jurisdiction in which the beneficiary's bank is  
5721 located.

5722 (2) If the parties described in Subsections (1)(a), (b), and (c) have made an agreement  
5723 selecting the law of a particular jurisdiction to govern rights and obligations between each  
5724 other, the law of that jurisdiction governs those rights and obligations, whether or not the  
5725 payment order or the funds transfer bears a reasonable relation to that jurisdiction.

5726 (3) (a) A funds transfer system rule may select the law of a particular jurisdiction to  
5727 govern:

5728 (i) rights and obligations between participating banks with respect to payment orders  
5729 transmitted or processed through the system; or

5730 (ii) the rights and obligations of some or all parties to a funds transfer, any part of  
5731 which is carried out by means of the system.

5732 (b) A choice of law made pursuant to Subsection (3)(a)(i) is binding on participating  
5733 banks. A choice of law made pursuant to Subsection (3)(a)(ii) is binding on the originator,  
5734 other sender, or a receiving bank having notice that the funds transfer system might be used in  
5735 the funds transfer and of the choice of law by the system when the originator, other sender, or  
5736 receiving bank issued or accepted a payment order. The beneficiary of a funds transfer is  
5737 bound by the choice of law if, at the time the funds transfer is initiated, the beneficiary has  
5738 notice that the funds transfer system might be used in the funds transfer and of the choice of  
5739 law by the system. The law of a jurisdiction selected pursuant to this Subsection (3) may  
5740 govern whether or not that law bears a reasonable relation to the matter in issue.

5741 (4) In the event of inconsistency between an agreement under Subsection (2) and a

5742 choice of law rule under Subsection (3), the agreement under Subsection (2) prevails.

5743 (5) If a funds transfer is made by use of more than one funds transfer system and there  
5744 is inconsistency between choice of law rules of the systems, the matter in issue is governed by  
5745 the law of the selected jurisdiction that has the most significant relationship to the matter in  
5746 issue.

5747 Section 119. Section **70A-8-106** is amended to read:

5748 **70A-8-106. Whether indorsement, instruction, or entitlement order is effective.**

5749 (1) "Appropriate person" means:

5750 (a) with respect to an indorsement, the person specified by a security certificate or by  
5751 an effective special indorsement to be entitled to the security;

5752 (b) with respect to an instruction, the registered owner of an uncertificated security;

5753 (c) with respect to an entitlement order, the entitlement holder;

5754 (d) if the person designated in Subsection (1)(a), (b), or (c) is deceased, the designated  
5755 person's successor taking under other law or the designated person's personal representative  
5756 acting for the estate of the decedent; or

5757 (e) if the person designated in Subsection (1)(a), (b), or (c) lacks capacity, the  
5758 designated person's guardian, conservator, or other similar representative who has power under  
5759 other law to transfer the security or financial asset.

5760 (2) An indorsement, instruction, or entitlement order is effective if:

5761 (a) it is made by the appropriate person;

5762 (b) it is made by a person who has power under the law of agency to transfer the  
5763 security or financial asset on behalf of the appropriate person, including, in the case of an  
5764 instruction or entitlement order, a person who has control under Subsection 70A-8-105(3)(b)  
5765 or (4)(b); or

5766 (c) the appropriate person has ratified it or is otherwise precluded from asserting its  
5767 ineffectiveness.

5768 (3) An indorsement, instruction, or entitlement order made by a representative is  
5769 effective even if:

5770 (a) the representative has failed to comply with a controlling instrument or with the  
5771 law of the state having jurisdiction of the representative relationship, including any law  
5772 requiring the representative to obtain court approval of the transaction; or

5773 (b) the representative's action in making the indorsement, instruction, or entitlement  
5774 order or using the proceeds of the transaction is otherwise a breach of duty.

5775 (4) If a security is registered in the name of or specially indorsed to a person described  
5776 as a representative, or if a securities account is maintained in the name of a person described  
5777 as a representative, an indorsement, instruction, or entitlement order made by the person is  
5778 effective even though the person is no longer serving in the described capacity.

5779 (5) Effectiveness of an indorsement, instruction, or entitlement order is determined as  
5780 of the date the indorsement, instruction, or entitlement order is made, and an indorsement,  
5781 instruction, or entitlement order does not become ineffective by reason of any later change of  
5782 circumstances.

5783 Section 120. Section **70A-8-202** is amended to read:

5784 **70A-8-202. Issuer's responsibility and defenses -- Notice of defect or defense.**

5785 (1) Even against a purchaser for value and without notice, the terms of a certificated  
5786 security include terms stated on the certificate and terms made part of the security by reference  
5787 on the certificate to another instrument, indenture, or document or to a constitution, statute,  
5788 ordinance, rule, regulation, order, or the like, to the extent the terms referred to do not conflict  
5789 with terms stated on the certificate. A reference under this subsection does not of itself charge  
5790 a purchaser for value with notice of a defect going to the validity of the security, even if the  
5791 certificate expressly states that a person accepting it admits notice. The terms of an  
5792 uncertificated security include those stated in any instrument, indenture, or document or in a  
5793 constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the  
5794 security is issued.

5795 (2) The following rules apply if an issuer asserts that a security is not valid:

5796 (a) A security other than one issued by a government or governmental subdivision,  
5797 agency, or instrumentality, even though issued with a defect going to its validity, is valid in

5798 the hands of a purchaser for value and without notice of the particular defect unless the defect  
5799 involves a violation of a constitutional provision. In that case, the security is valid in the  
5800 hands of a purchaser for value and without notice of the defect, other than one who takes by  
5801 original issue.

5802 (b) Subsection (2)(a) applies to an issuer that is a government or governmental  
5803 subdivision, agency, or instrumentality only if there has been substantial compliance with the  
5804 legal requirements governing the issue or the issuer has received a substantial consideration  
5805 for the issue as a whole or for the particular security and a stated purpose of the issue is one  
5806 for which the issuer has power to borrow money or issue the security.

5807 (3) Except as otherwise provided in Section 70A-8-205, lack of genuineness of a  
5808 certificated security is a complete defense, even against a purchaser for value and without  
5809 notice.

5810 (4) All other defenses of the issuer of a security, including nondelivery and conditional  
5811 delivery of a certificated security, are ineffective against a purchaser for value who has taken  
5812 the certificated security without notice of the particular defense.

5813 (5) This section does not affect the right of a party to cancel a contract for a security  
5814 "when, as and if issued" or "when distributed" in the event of a material change in the  
5815 character of the security that is the subject of the contract or in the plan or arrangement  
5816 pursuant to which the security is to be issued or distributed.

5817 (6) If a security is held by a securities intermediary against whom an entitlement  
5818 holder has a security entitlement with respect to the security, the issuer may not assert any  
5819 defense that the issuer could not assert if the entitlement holder held the security directly.

5820 Section 121. Section **75-2-103** is amended to read:

5821 **75-2-103. Share of heirs other than surviving spouse.**

5822 (1) Any part of the intestate estate not passing to the decedent's surviving spouse  
5823 under Section 75-2-102, or the entire intestate estate if there is no surviving spouse, passes in  
5824 the following order to the individuals designated below who survive the decedent:

5825 (a) to the decedent's descendants per capita at each generation as defined in

5826 Subsection 75-2-106(2);

5827 (b) if there is no surviving descendant, to the decedent's parents equally if both  
5828 survive, or to the surviving parent;

5829 (c) if there is no surviving descendant or parent, to the descendants of the decedent's  
5830 parents or either of them per capita at each generation as defined in Subsection 75-2-106(3);

5831 (d) if there is no surviving descendant, parent, or descendant of a parent, but the  
5832 decedent is survived by one or more grandparents or descendants of grandparents, half of the  
5833 estate passes to the decedent's paternal grandparents equally if both survive, or to the surviving  
5834 paternal grandparent, or to the descendants of the decedent's paternal grandparents or either of  
5835 them if both are deceased, the descendants taking per capita at each generation as defined in  
5836 Subsection 75-2-106(3); and the other half passes to the decedent's maternal relatives in the  
5837 same manner; but if there is no surviving grandparent or descendant of a grandparent on either  
5838 the paternal or the maternal side, the entire estate passes to the decedent's relatives on the other  
5839 side in the same manner as the half.

5840 (2) For purposes of Subsections (1)(a), (b), (c), and (d), any nonprobate transfer, as  
5841 defined in Section 75-2-205, received by an heir is chargeable against the intestate share of  
5842 such heir.

5843 Section 122. Section **75-2-302** is amended to read:

5844 **75-2-302. Omitted children.**

5845 (1) Except as provided in Subsection (2), if a testator fails to provide in his will for  
5846 any of his children born or adopted after the execution of the will, the omitted after-born or  
5847 after-adopted child receives a share in the estate as follows:

5848 (a) If the testator had no child living when he executed the will, an omitted after-born  
5849 or after-adopted child receives a share in the estate equal in value to that which the child  
5850 would have received had the testator died intestate, unless the will devised all or substantially  
5851 all of the estate to the other parent of the omitted child and that other parent survives the  
5852 testator and is entitled to take under the will.

5853 (b) If the testator had one or more children living when he executed the will, and the

5854 will devised property or an interest in property to one or more of the then-living children, an  
5855 omitted after-born or after-adopted child is entitled to share in the testator's estate as follows:

5856 (i) The portion of the testator's estate in which the omitted after-born or after-adopted  
5857 child is entitled to share is limited to devises made to the testator's then-living children under  
5858 the will.

5859 (ii) The omitted after-born or after-adopted child is entitled to receive the share of the  
5860 testator's estate, as limited in Subsection (1)(b)(i), that the child would have received had the  
5861 testator included all omitted after-born and after-adopted children with the children to whom  
5862 devises were made under the will and had given an equal share of the estate to each child.

5863 (iii) To the extent feasible, the interest granted an omitted after-born or after-adopted  
5864 child under this section shall be of the same character, whether equitable or legal, present or  
5865 future, as that devised to the testator's then-living children under the will.

5866 (iv) In satisfying a share provided by this section, devises to the testator's children who  
5867 were living when the will was executed abate ratably. In abating the devises of the then-living  
5868 children, the court shall preserve to the maximum extent possible the character of the  
5869 testamentary plan adopted by the testator.

5870 (2) Neither Subsection (1)(a) nor Subsection (1)(b) applies if:

5871 (a) it appears from the will that the omission was intentional; or

5872 (b) the testator provided for the omitted after-born or after-adopted child by transfer  
5873 outside the will and the intent that the transfer be in lieu of a testamentary provision is shown  
5874 by the testator's statements or is reasonably inferred from the amount of the transfer or other  
5875 evidence.

5876 (3) If at the time of execution of the will the testator fails to provide in his will for a  
5877 living child solely because he believes the child to be dead, the child is entitled to share in the  
5878 estate as if the child were an omitted after-born or after-adopted child.

5879 (4) In satisfying a share provided by Subsection (1)(a), devises made by the will abate  
5880 under Section 75-3-902.

5881 Section 123. Section **75-2-603** is amended to read:

5882           **75-2-603. Definitions -- Antilapse -- Deceased devisee -- Class gifts -- Substitute**  
5883 **gifts.**

5884           (1) As used in this section:

5885           (a) "Alternative devise" means a devise that is expressly created by the will and, under  
5886 the terms of the will, can take effect instead of another devise on the happening of one or more  
5887 events, including survival of the testator or failure to survive the testator, whether an event is  
5888 expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause  
5889 constitutes an alternative devise with respect to a nonresiduary devise only if the will  
5890 specifically provides that, upon lapse or failure, the nonresiduary devise, or nonresiduary  
5891 devises in general, pass under the residuary clause.

5892           (b) "Class member" includes an individual who fails to survive the testator but who  
5893 would have taken under a devise in the form of a class gift had he survived the testator.

5894           (c) "Devise" includes an alternative devise, a devise in the form of a class gift, and an  
5895 exercise of a power of appointment.

5896           (d) "Devisee" includes:

5897           (i) a class member if the devise is in the form of a class gift;

5898           (ii) an individual or class member who was deceased at the time the testator executed  
5899 his will as well as an individual or class member who was then living but who failed to survive  
5900 the testator; and

5901           (iii) an appointee under a power of appointment exercised by the testator's will.

5902           (e) "Stepchild" means a child of the surviving, deceased, or former spouse of the  
5903 testator or of the donor of a power of appointment, and not of the testator or donor.

5904           (f) "Surviving devisee" or "surviving descendant" means a devisee or a descendant  
5905 who neither predeceased the testator nor is considered to have predeceased the testator under  
5906 Section 75-2-702.

5907           (g) "Testator" includes the donee of a power of appointment if the power is exercised  
5908 in the testator's will.

5909           (2) If a devisee fails to survive the testator and is a grandparent, a descendant of a

5910 grandparent, or a stepchild of either the testator or the donor of a power of appointment  
5911 exercised by the testator's will, the following apply:

5912 (a) Except as provided in Subsection (2)(d), if the devise is not in the form of a class  
5913 gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the  
5914 devisee's surviving descendants. They take per capita at each generation the property to which  
5915 the devisee would have been entitled had the devisee survived the testator.

5916 (b) Except as provided in Subsection (2)(d), if the devise is in the form of a class gift,  
5917 other than a devise to "issue," "descendants," "heirs of the body," "heirs," "next-of-kin,"  
5918 "relatives," or "family," or a class described by language of similar import, a substitute gift is  
5919 created in the surviving descendant's of any deceased devisee. The property to which the  
5920 devisees would have been entitled had all of them survived the testator passes to the surviving  
5921 devisees and the surviving descendants of the deceased devisees. Each surviving devisee  
5922 takes the share to which he would have been entitled had the deceased devisees survived the  
5923 testator. Each deceased devisee's surviving descendants who are substituted for the deceased  
5924 devisee take per capita at each generation the share to which the deceased devisee would have  
5925 been entitled had the deceased devisee survived the testator. For the purposes of this  
5926 Subsection (2)(b), "deceased devisee" means a class member who failed to survive the testator  
5927 and left one or more surviving descendants.

5928 (c) For the purposes of Section 75-2-601, words of survivorship, such as in a devise to  
5929 an individual "if he survives me," or in a devise to "my surviving children," are, in the absence  
5930 of clear and convincing evidence, a sufficient indication of an intent contrary to the  
5931 application of this section.

5932 (d) If the will creates an alternative devise with respect to a devise for which a  
5933 substitute gift is created by Subsection (2)(a) or (b), the substitute gift is superseded by the  
5934 alternative devise only if an expressly designated devisee of the alternative devise is entitled to  
5935 take under the will.

5936 (e) Unless the language creating a power of appointment expressly excludes the  
5937 substitution of the descendants of an appointee for the appointee, a surviving descendant of a

5938 deceased appointee of a power of appointment can be substituted for the appointee under this  
5939 section, whether or not the descendant is an object of the power.

5940 Section 124. Section **75-2-606** is amended to read:

5941 **75-2-606. Nonademption of specific devises -- Unpaid proceeds of sale,**  
5942 **condemnation, or insurance -- Sale by conservatory or agent.**

5943 (1) A specific devisee has a right to the specifically devised property in the testator's  
5944 estate at death and:

5945 (a) any balance of the purchase price, together with any security agreement, owing  
5946 from a purchaser to the testator at death by reason of sale of the property;

5947 (b) any amount of a condemnation award for the taking of the property unpaid at  
5948 death;

5949 (c) any proceeds unpaid at death on fire or casualty insurance on or other recovery for  
5950 injury to the property;

5951 (d) property owned by the testator at death and acquired as a result of foreclosure, or  
5952 obtained in lieu of foreclosure, of the security interest for a specifically devised obligation;

5953 (e) real or tangible personal property owned by the testator at death which the testator  
5954 acquired as a replacement for specifically devised real or tangible personal property; and

5955 (f) unless the facts and circumstances indicate that ademption of the devise was  
5956 intended by the testator or ademption of the devise is consistent with the testator's manifested  
5957 plan of distribution, the value of the specifically devised property to the extent the specifically  
5958 devised property is not in the testator's estate at death and its value or its replacement is not  
5959 covered by Subsections (1)(a) through (e).

5960 (2) If specifically devised property is sold or mortgaged by a conservator or by an  
5961 agent acting within the authority of a durable power of attorney for an incapacitated principal,  
5962 or if a condemnation award, insurance proceeds, or recovery for injury to the property are paid  
5963 to a conservator or to an agent acting within the authority of a durable power of attorney for an  
5964 incapacitated principal, the specific devisee has the right to a general pecuniary devise equal  
5965 to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance

5966 proceeds, or the recovery.

5967 (3) The right of a specific devisee under Subsection (2) is reduced by any right the  
5968 devisee has under Subsection (1).

5969 (4) For the purposes of the references in Subsection (2) to a conservator, Subsection  
5970 (2) does not apply if after the sale, mortgage, condemnation, casualty, or recovery, it was  
5971 adjudicated that the testator's incapacity ceased and the testator survived the adjudication by  
5972 one year.

5973 (5) For the purposes of the references in Subsection (2) to an agent acting within the  
5974 authority of a durable power of attorney for an incapacitated principal:

5975 (a) "incapacitated principal" means a principal who is an incapacitated person;

5976 (b) no adjudication of incapacity before death is necessary; and

5977 (c) the acts of an agent within the authority of a durable power of attorney are  
5978 presumed to be for an incapacitated principal.

5979 Section 125. Section **75-5-410** is amended to read:

5980 **75-5-410. Who may be appointed conservator -- Priorities.**

5981 (1) The court may appoint an individual, or a corporation with general power to serve  
5982 as trustee, as conservator of the estate of a protected person. The following are entitled to  
5983 consideration for appointment in the order listed:

5984 (a) a conservator, guardian of property, or other like fiduciary appointed or recognized  
5985 by the appropriate court of any other jurisdiction in which the protected person resides;

5986 (b) an individual or corporation nominated by the protected person if he is 14 or more  
5987 years of age and has, in the opinion of the court, sufficient mental capacity to make an  
5988 intelligent choice;

5989 (c) the court shall appoint a conservator in accordance with the protected person's  
5990 most recent nomination, unless the potential conservator is disqualified or the court finds other  
5991 good cause why that person should not serve as conservator. The nomination shall be in  
5992 writing and shall be signed by the person making the nomination. The nomination shall be in  
5993 substantially the following form:

5994 Nomination of Conservator

5995 I, (Name), being of sound mind and not acting under duress, fraud, or other undue  
5996 influence, do hereby nominate (Name, current residence, and relationship, if any, of the  
5997 nominee) to serve as the conservator of my property in the event that after the date of this  
5998 instrument I become incapacitated or have other need for protection.

5999 Executed at \_\_\_\_\_ (city, state)

6000 on this \_\_\_\_\_ day of \_\_\_\_\_

6001 \_\_\_\_\_

6002 (Signature)

6003 (d) a person who has been nominated by the protected person, by any means other  
6004 than that described in Subsection (1)(c), if the protected person was 14 years of age or older  
6005 when the nomination was executed and, in the opinion of the court, that person acted with  
6006 sufficient mental capacity to make the nomination;

6007 (e) the spouse of the protected person;

6008 (f) an adult child of the protected person;

6009 (g) a parent of the protected person, or a person nominated by the will of a deceased  
6010 parent;

6011 (h) any relative of the protected person with whom he has resided for more than six  
6012 months prior to the filing of the petition;

6013 (i) a person nominated by the person who is caring for him or paying benefits to him.

6014 (2) A person in the priorities described in Subsection (1)(a), (e), (f), (g), or (h) [above]  
6015 may nominate in writing a person to serve in his stead. With respect to persons having equal  
6016 priority, the court is to select the one who is best qualified of those willing to serve. The court,  
6017 for good cause, may pass over a person having priority and appoint a person having less  
6018 priority or no priority.

6019 Section 126. Section 76-2-402 is amended to read:

6020 **76-2-402. Force in defense of person -- Forcible felony defined.**

6021 (1) A person is justified in threatening or using force against another when and to the

6022 extent that he or she reasonably believes that force is necessary to defend himself or a third  
6023 person against such other's imminent use of unlawful force. However, that person is justified  
6024 in using force intended or likely to cause death or serious bodily injury only if he or she  
6025 reasonably believes that force is necessary to prevent death or serious bodily injury to himself  
6026 or a third person as a result of the other's imminent use of unlawful force, or to prevent the  
6027 commission of a forcible felony.

6028 (2) A person is not justified in using force under the circumstances specified in  
6029 Subsection (1) if he or she:

6030 (a) initially provokes the use of force against himself with the intent to use force as an  
6031 excuse to inflict bodily harm upon the assailant;

6032 (b) is attempting to commit, committing, or fleeing after the commission or attempted  
6033 commission of a felony; or

6034 (c) (i) was the aggressor or was engaged in a combat by agreement, unless he  
6035 withdraws from the encounter and effectively communicates to the other person his intent to  
6036 do so and, notwithstanding, the other person continues or threatens to continue the use of  
6037 unlawful force; and

6038 (ii) for purposes of Subsection (2)(c)(i) the following do not, by themselves, constitute  
6039 "combat by agreement":

6040 (A) voluntarily entering into or remaining in an ongoing relationship; or

6041 (B) entering or remaining in a place where one has a legal right to be.

6042 (3) A person does not have a duty to retreat from the force or threatened force  
6043 described in Subsection (1) in a place where that person has lawfully entered or remained,  
6044 except as provided in Subsection (2)(c).

6045 (4) For purposes of this section, a forcible felony includes aggravated assault,  
6046 mayhem, aggravated murder, murder, manslaughter, kidnapping, and aggravated kidnapping,  
6047 rape, forcible sodomy, rape of a child, object rape, object rape of a child, sexual abuse of a  
6048 child, aggravated sexual abuse of a child, and aggravated sexual assault as defined in Title 76,  
6049 Chapter 5, Offenses Against the Person, and arson, robbery, and burglary as defined in Title

6050 76, Chapter 6, Offenses Against Property. Any other felony offense which involves the use of  
6051 force or violence against a person so as to create a substantial danger of death or serious bodily  
6052 injury also constitutes a forcible felony. Burglary of a vehicle, defined in Section 76-6-204,  
6053 does not constitute a forcible felony except when the vehicle is occupied at the time unlawful  
6054 entry is made or attempted.

6055 (5) In determining imminence or reasonableness under Subsection (1), the trier of fact  
6056 may consider, but is not limited to, any of the following factors:

- 6057 (a) the nature of the danger;
- 6058 (b) the immediacy of the danger;
- 6059 (c) the probability that the unlawful force would result in death or serious bodily  
6060 injury;
- 6061 (d) the other's prior violent acts or violent propensities; and
- 6062 (e) any patterns of abuse or violence in the parties' relationship.

6063 Section 127. Section **76-9-301.1** is amended to read:

6064 **76-9-301.1. Dog fighting -- Training dogs for fighting -- Dog fighting exhibitions.**

6065 (1) It is unlawful for any person to:

- 6066 (a) own, possess, keep, or train a dog with the intent to engage it in an exhibition of  
6067 fighting with another dog;
- 6068 (b) cause a dog to fight with another dog or cause a dog to injure another dog for  
6069 amusement or gain;
- 6070 (c) tie, attach, or fasten any live animal to a machine or device propelled by any  
6071 power, for the purpose of causing the animal to be pursued by a dog; or
- 6072 (d) permit or allow any act which violates Subsection (1)(a), (b), or (c) on any  
6073 premises under his charge; or to control, aid, or abet any such act.

6074 (2) Possession of any breaking stick, treadmill, wheel, hot walker, cat mill, cat walker,  
6075 jenni, or other paraphernalia together with evidence that the paraphernalia is being used or is  
6076 intended for use in the unlawful training of a dog to fight with another dog, together with the  
6077 possession of any such dog, is prima facie evidence of violation of Subsections (1)(b) and

6078 [~~(H)~~] (c).

6079 (3) A person who violates Subsection (1) is guilty of a third degree felony, and any  
6080 fine imposed may not exceed \$25,000.

6081 (4) It is unlawful for a person to knowingly and intentionally be present as a spectator  
6082 at any place, building, or tenement where preparations are being made for an exhibition of dog  
6083 fighting, or to knowingly and intentionally be present at a dog fighting exhibition or any other  
6084 occurrence of fighting or injury described in this section. A person who violates this  
6085 subsection is guilty of a class B misdemeanor.

6086 (5) Nothing in this section prohibits any of the following:

6087 (a) the use of dogs for management of livestock by the owner, his employees or agents,  
6088 or any other person in the lawful custody of livestock;

6089 (b) the use of dogs for hunting; or

6090 (c) the training of dogs or the possession or use of equipment in the training of dogs  
6091 for any purpose not prohibited by law.

6092 Section 128. Section **76-10-920** is amended to read:

6093 **76-10-920. Fine and imprisonment for violation -- Certain vertical agreements**  
6094 **excluded -- Nolo contendere.**

6095 (1) (a) Any person who violates Section 76-10-914 by price fixing, bid rigging,  
6096 agreeing among competitors to divide customers or territories, or by engaging in a group  
6097 boycott with specific intent of eliminating competition shall be punished, notwithstanding  
6098 Sections 76-3-301 and 76-3-302:

6099 (i) if an individual, by a fine not to exceed \$100,000 or by imprisonment for an  
6100 indeterminate time not to exceed three years, or both; or

6101 (ii) if by a person other than an individual, a fine not to exceed \$500,000.

6102 (b) Subsection (1)(a) may not be construed to include vertical agreements between a  
6103 manufacturer, its distributors, or their subdistributors dividing customers and territories solely  
6104 involving the manufacturer's commodity or service where the manufacturer distributes its  
6105 commodity or service both directly and through distributors or subdistributors in competition

6106 with itself.

6107 (2) A defendant may plead nolo contendere to a charge brought under this title but  
6108 only with the consent of the court. Such a plea shall be accepted by the court only after due  
6109 consideration of the views of the parties and the interest of the public in the effective  
6110 administration of justice.

6111 Section 129. Section **76-10-1219** is amended to read:

6112 **76-10-1219. Qualification for distribution of films -- Corporations and others to**  
6113 **file statements.**

6114 (1) A distributor which is a corporation shall be qualified to distribute films within  
6115 this state if:

6116 (a) it is a domestic corporation in good standing or a foreign corporation authorized to  
6117 transact business in this state;

6118 (b) it has filed with the Division of Corporations and Commercial Code a statement  
6119 upon forms prescribed and furnished by that office, signed and verified on behalf of the  
6120 corporation by an officer qualified and authorized to bind the corporation for such purpose, a  
6121 statement indicating that it desires to be qualified to distribute films in this state and that it  
6122 submits itself to the jurisdiction and laws of this state relating thereto and, further, indicating  
6123 the following:

6124 (i) the address of its principal office;

6125 (ii) the name under which it wishes to distribute films in this state;

6126 (iii) the names and addresses of all directors and officers;

6127 (iv) the address of the registered office in this state; and

6128 (v) the name of its registered agent in this state;

6129 (c) it files a current statement on or before March 1 of each year thereafter indicating  
6130 that information specified in Subsection (1)(b) [~~of this Subsection (1)~~] in the manner provided  
6131 therein.

6132 (2) A distributor which is not a corporation shall be qualified to distribute films within  
6133 this state if:

- 6134 (a) it has and continuously maintains a registered office in this state;
- 6135 (b) it has a registered agent whose business address is at that registered office and  
6136 which is either an individual residing and domiciled in this state, a domestic corporation in  
6137 good standing, or a foreign corporation authorized to transact business in this state;
- 6138 (c) it has filed with the Division of Corporations and Commercial Code a statement,  
6139 upon forms prescribed and furnished by that office, signed and verified, indicating that it  
6140 desires to be qualified to distribute films in this state and that it submits itself to the  
6141 jurisdiction and laws of this state relating thereto and, further, indicating the following:
- 6142 (i) the address of its principal office;
- 6143 (ii) the name under which it wishes to distribute films in this state;
- 6144 (iii) the names and address of each partner or the sole proprietor, owning the  
6145 distributorship;
- 6146 (iv) the address of its registered office in this state; and
- 6147 (v) the name of its registered agent in this state;
- 6148 (d) it files a current statement on or before March 1 of each year thereafter indicating  
6149 that information specified in Subsection (2)(b) [~~of this Subsection (2)~~] in the manner provided  
6150 therein.
- 6151 (3) The Division of Corporations and Commercial Code shall keep a record of all  
6152 processes, notices and demands served upon it pursuant to this section, together with the time  
6153 of such service and its action relating thereto.
- 6154 (4) This section shall not affect the right to serve any process, notice, or demand,  
6155 required or permitted by law to be served upon a distributor, in any other manner provided by  
6156 law.

6157 Section 130. Section **76-10-2101** is amended to read:

6158 **76-10-2101. Use of recycling bins -- Prohibited items -- Penalties.**

6159 (1) As used in this section:

6160 (a) "Recycling" means the process of collecting materials diverted from the waste  
6161 stream for reuse.

6162 (b) "Recycling bin" means any receptacle made available to the public by a  
6163 governmental entity or private business for the collection of any source-separated item for  
6164 recycling purposes.

6165 (2) It is an infraction to place any prohibited item or substance in a recycling bin if the  
6166 bin is posted with the following information printed legibly in basic English:

6167 (a) a descriptive list of the items that may be deposited in the recycling bin, entitled in  
6168 boldface capital letters: "ITEMS YOU MAY DEPOSIT IN THIS RECYCLING BIN:";

6169 (b) at the end of the list in Subsection (2)(a), the following statement in boldface  
6170 capital letters: "REMOVING FROM THIS BIN ANY ITEM THAT IS LISTED ABOVE AND  
6171 THAT YOU DID NOT PLACE IN THE CONTAINER IS THE CRIMINAL OFFENSE OF  
6172 THEFT, PUNISHABLE BY LAW.";

6173 (c) the following statement in boldface capital letters: "DEPOSIT OF ANY OTHER  
6174 ITEM IN THIS RECYCLING BIN IS AGAINST THE LAW.";

6175 (d) the following statement in boldface capital letters, posted on the recycling  
6176 collection container in close proximity to the notices required under Subsections (2)(a), (b),  
6177 and (c): "PLACING ANY ITEM OR SUBSTANCE IN THIS RECYCLING BIN OTHER  
6178 THAN THOSE ALLOWED IN THE LIST POSTED ON THIS BIN IS AN INFRACTION,  
6179 PUNISHABLE BY A MAXIMUM FINE OF \$750."; and

6180 (e) the name and telephone number of the entity that owns the recycling bin or is  
6181 responsible for its placement and maintenance.

6182 Section 131. Section **77-7-5** is amended to read:

6183 **77-7-5. Issuance of warrant -- Time and place arrests may be made -- Contents**  
6184 **of warrant -- Responsibility for transporting prisoners -- Court clerk to dispense**  
6185 **restitution for transportation.**

6186 (1) A magistrate may issue a warrant for arrest upon finding probable cause to believe  
6187 that the person to be arrested has committed a public offense. If the offense charged is:

6188 (a) a felony, the arrest upon a warrant may be made at any time of the day or night; or  
6189 (b) a misdemeanor, the arrest upon a warrant can be made at night only if:

- 6190 (i) the magistrate has endorsed authorization to do so on the warrant;
- 6191 (ii) the person to be arrested is upon a public highway, in a public place, or in a place
- 6192 open to or accessible to the public; or
- 6193 (iii) the person to be arrested is encountered by a peace officer in the regular course of
- 6194 that peace officer's investigation of a criminal offense unrelated to the misdemeanor warrant
- 6195 for arrest.
- 6196 (2) For the purpose of Subsection (1):
- 6197 (a) daytime hours are the hours of 6 a.m. to 10 p.m.; and
- 6198 (b) nighttime hours are the hours after 10 p.m. and before 6 a.m.
- 6199 (3) (a) If the magistrate determines that the accused must appear in court, the
- 6200 magistrate shall include in the arrest warrant the name of the law enforcement agency in the
- 6201 county or municipality with jurisdiction over the offense charged.
- 6202 (b) (i) The law enforcement agency identified by the magistrate under Subsection
- 6203 (3)(a) is responsible for providing inter-county transportation of the defendant, if necessary,
- 6204 from the arresting law enforcement agency to the court site.
- 6205 (ii) The law enforcement agency named on the warrant may contract with another law
- 6206 enforcement agency to have a defendant transported.
- 6207 (c) (i) The law enforcement agency identified by the magistrate under Subsection
- 6208 (3)(a) as responsible for transporting the defendant shall provide to the court clerk of the court
- 6209 in which the defendant is tried, an affidavit stating that the defendant was transported,
- 6210 indicating the law enforcement agency responsible for the transportation, and stating the
- 6211 number of miles the defendant was transported.
- 6212 (ii) The court clerk shall account for restitution paid under Subsection 76-3-201(5) for
- 6213 governmental transportation expenses and dispense restitution monies collected by the court to
- 6214 the law enforcement agency responsible for the transportation of a convicted defendant.
- 6215 Section 132. Section **77-23a-4** is amended to read:
- 6216 **77-23a-4. Offenses -- Criminal and civil -- Lawful interception.**
- 6217 (1) (a) Except as otherwise specifically provided in this chapter, any person who

6218 violates Subsection (1)(b) is guilty of an offense and is subject to punishment under  
6219 Subsection (10), or when applicable, the person is subject to civil action under Subsection  
6220 (11).

6221 (b) A person commits a violation of this subsection who:

6222 (i) intentionally or knowingly intercepts, endeavors to intercept, or procures any other  
6223 person to intercept or endeavor to intercept any wire, electronic, or oral communication;

6224 (ii) intentionally or knowingly uses, endeavors to use, or procures any other person to  
6225 use or endeavor to use any electronic, mechanical, or other device to intercept any oral  
6226 communication, when the device is affixed to, or otherwise transmits a signal through a wire,  
6227 cable, or other like connection used in wire communication or when the device transmits  
6228 communications by radio, or interferes with the transmission of the communication;

6229 (iii) intentionally or knowingly discloses or endeavors to disclose to any other person  
6230 the contents of any wire, electronic, or oral communication, knowing or having reason to  
6231 know that the information was obtained through the interception of a wire, electronic, or oral  
6232 communication in violation of this section; or

6233 (iv) intentionally or knowingly uses or endeavors to use the contents of any wire,  
6234 electronic, or oral communication, knowing or having reason to know that the information was  
6235 obtained through the interception of a wire, electronic, or oral communication in violation of  
6236 this section.

6237 (2) The operator of a switchboard, or an officer, employee, or agent of a provider of  
6238 wire or electronic communication service whose facilities are used in the transmission of a  
6239 wire communication may intercept, disclose, or use that communication in the normal course  
6240 of his employment while engaged in any activity which is a necessary incident to the rendition  
6241 of his service or to the protection of the rights or property of the provider of that service.  
6242 However, a provider of wire communications service to the public may not utilize service  
6243 observing or random monitoring except for mechanical or service quality control checks.

6244 (3) (a) Providers of wire or electronic communications service, their officers,  
6245 employees, or agents, and any landlords, custodians, or other persons may provide

6246 information, facilities, or technical assistance to persons authorized by law to intercept wire,  
6247 oral, or electronic communications or to conduct electronic surveillance if the provider and its  
6248 officers, employees, or agents, and any landlords, custodians, or other specified persons have  
6249 been provided with:

6250 (i) a court order directing the assistance signed by the authorizing judge; or  
6251 (ii) a certification in writing by a person specified in Subsection 77-23a-10(7), or by  
6252 the attorney general or an assistant attorney general, or by a county attorney or district attorney  
6253 or his deputy that no warrant or court order is required by law, that all statutory requirements  
6254 have been met, and that the specified assistance is required.

6255 (b) The order or certification under this subsection shall set the period of time during  
6256 which the provision of the information, facilities, or technical assistance is authorized and  
6257 shall specify the information, facilities, or technical assistance required.

6258 (4) (a) The providers of wire or electronic communications service, their officers,  
6259 employees, or agents, and any landlords, custodians, or other specified persons may not  
6260 disclose the existence of any interception or surveillance or the device used to accomplish the  
6261 interception or surveillance regarding which the person has been furnished an order or  
6262 certification under this section except as is otherwise required by legal process, and then only  
6263 after prior notification to the attorney general or to the county attorney or district attorney of  
6264 the county in which the interception was conducted, as is appropriate.

6265 (b) Any disclosure in violation of this subsection renders the person liable for civil  
6266 damages under Section 77-23a-11.

6267 (5) A cause of action does not lie in any court against any provider of wire or  
6268 electronic communications service, its officers, employees, or agents, or any landlords,  
6269 custodians, or other specified persons for providing information, facilities, or assistance in  
6270 accordance with the terms of a court order or certification under this chapter.

6271 (6) Subsections (3), (4), and (5) supersede any law to the contrary.

6272 (7) (a) A person acting under color of law may intercept a wire, electronic, or oral  
6273 communication if that person is a party to the communication or one of the parties to the

6274 communication has given prior consent to the interception.

6275 (b) A person not acting under color of law may intercept a wire, electronic, or oral  
6276 communication if that person is a party to the communication or one of the parties to the  
6277 communication has given prior consent to the interception, unless the communication is  
6278 intercepted for the purpose of committing any criminal or tortious act in violation of state or  
6279 federal laws.

6280 (c) An employee of a telephone company may intercept a wire communication for the  
6281 sole purpose of tracing the origin of the communication when the interception is requested by  
6282 the recipient of the communication and the recipient alleges that the communication is  
6283 obscene, harassing, or threatening in nature. The telephone company and its officers,  
6284 employees, and agents shall release the results of the interception, made under this subsection,  
6285 upon request of the local law enforcement authorities.

6286 (8) A person may:

6287 (a) intercept or access an electronic communication made through an electronic  
6288 communications system that is configured so that the electronic communication is readily  
6289 accessible to the general public;

6290 (b) intercept any radio communication transmitted by:

6291 (i) any station for the use of the general public, or that relates to ships, aircraft,  
6292 vehicles, or persons in distress;

6293 (ii) any government, law enforcement, civil defense, private land mobile, or public  
6294 safety communications system, including police and fire, readily accessible to the general  
6295 public;

6296 (iii) a station operating on an authorized frequency within the bands allocated to the  
6297 amateur, citizens' band, or general mobile radio services; or

6298 (iv) by a marine or aeronautics communications system;

6299 (c) intercept any wire or electronic communication, the transmission of which is  
6300 causing harmful interference to any lawfully operating station or consumer electronic  
6301 equipment, to the extent necessary to identify the source of the interference; or

6302 (d) as one of a group of users of the same frequency, intercept any radio  
6303 communication made through a system that utilizes frequencies monitored by individuals  
6304 engaged in the provision or the use of the system, if the communication is not scrambled or  
6305 encrypted.

6306 (9) (a) Except under Subsection (9)(b), a person or entity providing an electronic  
6307 communications service to the public may not intentionally divulge the contents of any  
6308 communication, while in transmission of that service, to any person or entity other than an  
6309 addressee or intended recipient of the communication or his agent.

6310 (b) A person or entity providing electronic communications service to the public may  
6311 divulge the contents of any communication:

6312 (i) as otherwise authorized under this section or Section 77-23a-9;

6313 (ii) with lawful consent of the originator or any addressee or intended recipient of the  
6314 communication;

6315 (iii) to a person employed or authorized or whose facilities are used to forward the  
6316 communication to its destination; or

6317 (iv) that is inadvertently obtained by the service provider and appears to pertain to the  
6318 commission of a crime, if the divulgence is made to a law enforcement agency.

6319 (10) (a) Except under Subsection (10)(b) or [~~Subsection~~] (11), a violation of  
6320 Subsection (1) is a third degree felony.

6321 (b) If the offense is a first offense under this section and is not for a tortious or illegal  
6322 purpose or for purposes of direct or indirect commercial advantage or private commercial gain,  
6323 and the wire or electronic communication regarding which the offense was committed is a  
6324 radio communication that is not scrambled or encrypted:

6325 (i) if the communication is not the radio portion of a cellular telephone  
6326 communication, a public land mobile radio service communication, or paging service  
6327 communication, and the conduct is not under Subsection (11), the offense is a class A  
6328 misdemeanor; and

6329 (ii) if the communication is the radio portion of a cellular telephone communication, a

6330 public land mobile radio service communication, or a paging service communication, the  
6331 offense is a class B misdemeanor.

6332 (c) Conduct otherwise an offense under this section is not an offense if the conduct  
6333 was not done for the purpose of direct or indirect commercial advantage or private financial  
6334 gain, and consists of or relates to the interception of a satellite transmission that is not  
6335 encrypted or scrambled, and is either transmitted:

6336 (i) to a broadcasting station for purposes of retransmission to the general public; or

6337 (ii) as an audio subcarrier intended for redistribution to facilities open to the public,  
6338 but in any event not including data transmissions or telephone calls.

6339 (11) (a) A person is subject to civil suit initiated by the state in a court of competent  
6340 jurisdiction when his conduct is prohibited under Subsection (1) and the conduct involves a:

6341 (i) private satellite video communication that is not scrambled or encrypted, and the  
6342 conduct in violation of this chapter is the private viewing of that communication and is not for  
6343 a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or  
6344 private commercial gain; or

6345 (ii) radio communication that is transmitted on frequencies allocated under Subpart D,  
6346 Part 74, Rules of the Federal Communication Commission, that is not scrambled or encrypted  
6347 and the conduct in violation of this chapter is not for a tortious or illegal purpose or for  
6348 purposes of direct or indirect commercial advantage or private commercial gain.

6349 (b) In an action under Subsection (11)(a):

6350 (i) if the violation of this chapter is a first offense under this section and the person is  
6351 not found liable in a civil action under Section 77-23a-11, the state may seek appropriate  
6352 injunctive relief;

6353 (ii) if the violation of this chapter is a second or subsequent offense under this section,  
6354 or the person has been found liable in any prior civil action under Section 77-23a-11, the  
6355 person is subject to a mandatory \$500 civil penalty.

6356 (c) The court may use any means within its authority to enforce an injunction issued  
6357 under Subsection (11)(b)(i), and shall impose a civil fine of not less than \$500 for each

6358 violation of the injunction.

6359 Section 133. Section **77-23a-10** is amended to read:

6360 **77-23a-10. Application for order -- Authority of order -- Emergency action --**  
6361 **Application -- Entry -- Conditions -- Extensions -- Recordings -- Admissibility or**  
6362 **suppression -- Appeal by state.**

6363 (1) Each application for an order authorizing or approving the interception of a wire,  
6364 electronic, or oral communication shall be made in writing, upon oath or affirmation to a judge  
6365 of competent jurisdiction, and shall state the applicant's authority to make the application.

6366 Each application shall include:

6367 (a) the identity of the investigative or law enforcement officer making the application,  
6368 and the officer authorizing the application;

6369 (b) a full and complete statement of the facts and circumstances relied upon by the  
6370 applicant to justify his belief that an order should be issued, including:

6371 (i) details regarding the particular offense that has been, is being, or is about to be  
6372 committed;

6373 (ii) except as provided in Subsection (12), a particular description of the nature and  
6374 location of the facilities from which or the place where the communication is to be  
6375 intercepted;

6376 (iii) a particular description of the type of communication sought to be intercepted;  
6377 and

6378 (iv) the identity of the person, if known, committing the offense and whose  
6379 communication is to be intercepted;

6380 (c) a full and complete statement as to whether other investigative procedures have  
6381 been tried and failed or why they reasonably appear to be either unlikely to succeed if tried or  
6382 too dangerous;

6383 (d) a statement of the period of time for which the interception is required to be  
6384 maintained, and if the investigation is of a nature that the authorization for interception should  
6385 not automatically terminate when the described type of communication has been first

6386 obtained, a particular description of facts establishing probable cause to believe that additional  
6387 communications of the same type will occur thereafter;

6388 (e) a full and complete statement of the facts concerning all previous applications  
6389 known to the individual authorizing and the individual making the application, made to any  
6390 judge for authorization to intercept, or for approval of interceptions of wire, electronic, or oral  
6391 communications involving any of the same persons, facilities, or places specified in the  
6392 application, and the action taken by the judge on each application;

6393 (f) when the application is for the extension of an order, a statement setting forth the  
6394 results so far obtained from the interception, or a reasonable explanation of the failure to  
6395 obtain results; and

6396 (g) additional testimony or documentary evidence in support of the application as the  
6397 judge may require.

6398 (2) Upon application the judge may enter an ex parte order, as requested or as  
6399 modified, authorizing or approving interception of wire, electronic, or oral communications  
6400 within the territorial jurisdiction of the state if the judge determines on the basis of the facts  
6401 submitted by the applicant that:

6402 (a) there is probable cause for belief that an individual is committing, has committed,  
6403 or is about to commit a particular offense under Section 77-23a-8;

6404 (b) there is probable cause for belief that particular communications concerning that  
6405 offense will be obtained through the interception;

6406 (c) normal investigative procedures have been tried and have failed or reasonably  
6407 appear to be either unlikely to succeed if tried or too dangerous; and

6408 (d) except as provided in Subsection (12), there is probable cause for belief that the  
6409 facilities from which or the place where the wire, electronic, or oral communications are to be  
6410 intercepted are being used, or are about to be used, in connection with the commission of the  
6411 offense, or are leased to, listed in the name of, or commonly used by that person.

6412 (3) Each order authorizing or approving the interception of any wire, electronic, or  
6413 oral communication shall specify:

6414 (a) the identity of the person, if known, whose communications are to be intercepted;

6415 (b) except as provided in Subsection (12), the nature and location of the  
6416 communications facilities as to which, or the place where, authority to intercept is granted;

6417 (c) a particular description of the type of communication sought to be intercepted, and  
6418 a statement of the particular offense to which it relates;

6419 (d) the identity of the agency authorized to intercept the communications, and of the  
6420 persons authorizing the application; and

6421 (e) the period of time during which the interception is authorized, including a  
6422 statement as to whether the interception shall automatically terminate when the described  
6423 communication has been first obtained.

6424 (4) An order authorizing the interception of a wire, electronic, or oral communication  
6425 shall, upon request of the applicant, direct that a provider of wire or electronic  
6426 communications service, landlord, custodian, or other person shall furnish the applicant  
6427 forthwith all information, facilities, and technical assistance necessary to accomplish the  
6428 interception unobtrusively and with a minimum of interference with the services that the  
6429 provider, landlord, custodian, or person is according the person whose communications are to  
6430 be intercepted. Any provider of wire or electronic communications service, landlord,  
6431 custodian, or other person furnishing the facilities or technical assistance shall be compensated  
6432 by the applicant for reasonable expenses involved in providing the facilities or systems.

6433 (5) (a) An order entered under this chapter may not authorize or approve the  
6434 interception of any wire, electronic, or oral communication for any period longer than is  
6435 necessary to achieve the objective of the authorization, but in any event for no longer than 30  
6436 days. The 30-day period begins on the day the investigative or law enforcement officer first  
6437 begins to conduct an interception under the order, or 10 days after the order is entered,  
6438 whichever is earlier.

6439 (b) Extensions of an order may be granted, but only upon application for an extension  
6440 made under Subsection (1), and if the court makes the findings required by Subsection (2).  
6441 The period of extension may be no longer than the authorizing judge considers necessary to

6442 achieve the purposes for which it was granted, but in no event for longer than 30 days.

6443 (c) Every order and extension shall contain a provision that the authorization to  
6444 intercept shall be executed as soon as practicable, shall be conducted so as to minimize the  
6445 interception of communications not otherwise subject to interception under this chapter, and  
6446 must terminate upon attainment of the authorized objective, or in any event within 30 days.

6447 (d) If the intercepted communication is in a code or foreign language, and an expert in  
6448 that foreign language or code is not reasonably available during the interception period, the  
6449 minimizing of the interception may be accomplished as soon as practicable after the  
6450 interception.

6451 (e) An interception under this chapter may be conducted in whole or in part by  
6452 government personnel or by an individual under contract with the government and acting  
6453 under supervision of an investigative or law enforcement officer authorized to conduct the  
6454 interception.

6455 (6) When an order authorizing interception is entered under this chapter, the order  
6456 may require reports to be made to the judge who issued the order, showing what progress has  
6457 been made toward achievement of the authorized objective and the need for continued  
6458 interception. These reports shall be made at intervals the judge may require.

6459 (7) Notwithstanding any other provision of this chapter, any investigative or law  
6460 enforcement officer who is specially designated by either the attorney general, a county  
6461 attorney or district attorney as provided under Sections 17-18-1 and 17-18-1.7 may intercept  
6462 wire, electronic, or oral communication if an application for an order approving the  
6463 interception is made in accordance with this section and within 48 hours after the interception  
6464 has occurred or begins to occur, when the investigative or law enforcement officer reasonably  
6465 determines that:

- 6466 (a) an emergency situation exists that involves:
  - 6467 (i) immediate danger of death or serious physical injury to any person;
  - 6468 (ii) conspiratorial activities threatening the national security interest; or
  - 6469 (iii) conspiratorial activities characteristic of organized crime, that require a wire,

6470 electronic, or oral communication to be intercepted before an order authorizing interception  
6471 can, with diligence, be obtained; and

6472 (b) there are grounds upon which an order could be entered under this chapter to  
6473 authorize the interception.

6474 (8) (a) In the absence of an order under Subsection (7), the interception immediately  
6475 terminates when the communication sought is obtained or when the application for the order is  
6476 denied, whichever is earlier.

6477 (b) If the application for approval is denied, or in any other case where the interception  
6478 is terminated without an order having been issued, the contents of any wire, electronic, or oral  
6479 communication intercepted shall be treated as having been obtained in violation of this  
6480 chapter, and an inventory shall be served as provided for in Subsection (9)(d) on the person  
6481 named in the application.

6482 (9) (a) The contents of any wire, electronic, or oral communication intercepted by any  
6483 means authorized by this chapter shall, if possible, be recorded on tape or wire or other  
6484 comparable device. The recording of the contents of any wire, electronic, or oral  
6485 communication under this Subsection (9)(a) shall be done so as to protect the recording from  
6486 editing or other alterations. Immediately upon the expiration of the period of an order, or  
6487 extension, the recordings shall be made available to the judge issuing the order and sealed  
6488 under his directions. Custody of the recordings shall be where the judge orders. The  
6489 recordings may not be destroyed, except upon an order of the issuing or denying judge. In any  
6490 event, it shall be kept for 10 years. Duplicate recordings may be made for use or disclosure  
6491 under Subsections 77-23a-9(1) and (2) for investigations. The presence of the seal provided  
6492 by this Subsection (9)(a), or a satisfactory explanation for the absence of one, is a prerequisite  
6493 for the use or disclosure of the contents of any wire, electronic, or oral communication or  
6494 evidence derived from it under Subsection 77-23a-9(3).

6495 (b) Applications made and orders granted under this chapter shall be sealed by the  
6496 judge. Custody of the applications and orders shall be where the judge directs. The  
6497 applications and orders shall be disclosed only upon a showing of good cause before a judge of

6498 competent jurisdiction and may not be destroyed, except on order of the issuing or denying  
6499 judge. But in any event they shall be kept for 10 years.

6500 (c) Any violation of any provision of this subsection may be punished as contempt of  
6501 the issuing or denying judge.

6502 (d) Within a reasonable time, but not later than 90 days after the filing of an  
6503 application for an order of approval under Subsection 77-23a-10(7) that is denied or the  
6504 termination of the period of an order or extensions, the issuing or denying judge shall cause to  
6505 be served on the persons named in the order or the application, and other parties to the  
6506 intercepted communications as the judge determines in his discretion is in the interest of  
6507 justice, an inventory, which shall include notice of:

6508 (i) the entry of the order or application;

6509 (ii) the date of the entry and the period of authorization, approved or disapproved  
6510 interception, or the denial of the application; and

6511 (iii) that during the period wire, electronic, or oral communications were or were not  
6512 intercepted.

6513 (e) The judge, upon filing of a motion, may in his discretion make available to the  
6514 person or his counsel for inspection the portions of the intercepted communications,  
6515 applications, and orders the judge determines to be in the interest of justice. On an ex parte  
6516 showing of good cause to a judge of competent jurisdiction the serving of the inventory  
6517 required by this Subsection (9)(e) may be postponed.

6518 (10) The contents of any intercepted wire, electronic, or oral communication, or  
6519 evidence derived from any of them, may not be received in evidence or otherwise disclosed in  
6520 any trial, hearing, or other proceeding in a federal or state court unless each party, not less than  
6521 10 days before the trial, hearing, or proceeding, has been furnished with a copy of the court  
6522 order, and accompanying application, under which the interception was authorized or  
6523 approved. This ten-day period may be waived by the judge if he finds that it was not possible  
6524 to furnish the party with the above information 10 days before the trial, hearing, or proceeding  
6525 and that the party will not be prejudiced by the delay in receiving the information.

6526 (11) (a) Any aggrieved person in any trial, hearing, or proceeding in or before any  
6527 court, department, officer, agency, regulatory body, or other authority of the United States, the  
6528 state, or a political subdivision may move to suppress the contents of any intercepted wire,  
6529 electronic, or oral communication, or evidence derived from any of them, on the grounds that:

6530 (i) the communication was unlawfully intercepted;

6531 (ii) the order of authorization or approval under which it was intercepted is  
6532 insufficient on its face; or

6533 (iii) the interception was not made in conformity with the order of authorization or  
6534 approval.

6535 (b) The motion shall be made before the trial, hearing, or proceeding unless there was  
6536 no opportunity to make the motion or the person was not aware of the grounds of the motion.  
6537 If the motion is granted, the contents of the intercepted wire, electronic, or oral  
6538 communication, or evidence derived from any of them, shall be treated as having been  
6539 obtained in violation of this chapter. The judge, upon the filing of the motion by the aggrieved  
6540 person, may in his discretion make available to the aggrieved person or his counsel for  
6541 inspection portions of the intercepted communication or evidence derived from them as the  
6542 judge determines to be in the interests of justice.

6543 (c) In addition to any other right to appeal, the state or its political subdivision may  
6544 appeal from an order granting a motion to suppress made under Subsection (11)(a), or the  
6545 denial of an application for an order of approval, if the attorney bringing the appeal certifies to  
6546 the judge or other official granting the motion or denying the application that the appeal is not  
6547 taken for the purposes of delay. The appeal shall be taken within 30 days after the date the  
6548 order was entered and shall be diligently prosecuted.

6549 (12) The requirements of Subsections (1)(b)(ii), [~~and~~] (2)(d), and (3)(b) [~~of this~~  
6550 ~~section~~] relating to the specification of the facilities from which, or the place where, the  
6551 communication is to be intercepted do not apply if:

6552 (a) in the case of an applicant regarding the interception of an oral communication[?];

6553 (i) the application is by a law enforcement officer and is approved by the state attorney

6554 general, a deputy attorney general, a county attorney or district attorney, or a deputy county  
6555 attorney or deputy district attorney;

6556 (ii) the application contains a full and complete statement of why the specification is  
6557 not practical, and identifies the person committing the offense and whose communications are  
6558 to be intercepted; or

6559 (iii) the judge finds that the specification is not practical; and

6560 (b) in the case of an application regarding wire or electronic communication:

6561 (i) the application is by a law enforcement officer and is approved by the state attorney  
6562 general, a deputy attorney general, a county attorney or district attorney, or a deputy county  
6563 attorney or deputy district attorney;

6564 (ii) the application identifies the person believed to be committing the offense and  
6565 whose communications are to be intercepted, and the applicant makes a showing of a purpose,  
6566 on the part of that person, to thwart interception by changing facilities; and

6567 (iii) the judge finds that the purpose has been adequately shown.

6568 (13) (a) An interception of a communication under an order regarding which the  
6569 requirements of Subsections (1)(b)(ii), (2)(d), and (3)(b) do not apply by reason of Subsection  
6570 (12), does not begin until the facilities from which, or the place where, the communication is  
6571 to be intercepted is ascertained by the person implementing the interception order.

6572 (b) A provider of wire or electronic communications service that has received an order  
6573 under Subsection (12)(b) may move the court to modify or quash the order on the ground that  
6574 its assistance with respect to the interception cannot be performed in a timely or reasonable  
6575 fashion. The court, upon notice to the government, shall decide the motion expeditiously.

6576 Section 134. Section **78B-7-113** is amended to read:

6577 **78B-7-113. Statewide domestic violence network -- Peace officers' duties --**  
6578 **Prevention of abuse in absence of order -- Limitation of liability.**

6579 (1) (a) Law enforcement units, the Department of Public Safety, and the Administrative  
6580 Office of the Courts shall utilize statewide procedures to ensure that peace officers at the scene  
6581 of an alleged violation of a protective order have immediate access to information necessary to

6582 verify the existence and terms of that order, and other orders of the court required to be made  
6583 available on the network by the provisions of this chapter or Title 77, Chapter 36, Cohabitant  
6584 Abuse Procedures Act. Those officers shall use every reasonable means to enforce the court's  
6585 order, in accordance with the requirements and procedures of this chapter and Title 77,  
6586 Chapter 36, Cohabitant Abuse Procedures Act.

6587 (b) The Administrative Office of the Courts, in cooperation with the Department of  
6588 Public Safety and the Criminal Investigations and Technical Services Division, established in  
6589 Section 53-10-103, shall provide for a single, statewide network containing:

6590 (i) all orders for protection issued by a court of this state; and

6591 (ii) all other court orders or reports of court action that are required to be available on  
6592 the network under this chapter and Title 77, Chapter 36, Cohabitant Abuse Procedures Act.

6593 (c) The entities described in Subsection (1)(b) may utilize the same mechanism as the  
6594 statewide warrant system, described in Section 53-10-208.

6595 (d) All orders and reports required to be available on the network shall be available  
6596 within 24 hours after court action. If the court that issued the order is not part of the state  
6597 court computer system, the orders and reports shall be available on the network within 72  
6598 hours.

6599 (e) The information contained in the network shall be available to a court, law  
6600 enforcement officer, or agency upon request.

6601 (2) When any peace officer has reason to believe a cohabitant or child of a cohabitant  
6602 is being abused, or that there is a substantial likelihood of immediate danger of abuse,  
6603 although no protective order has been issued, that officer shall use all reasonable means to  
6604 prevent the abuse, including:

6605 (a) remaining on the scene as long as it reasonably appears there would otherwise be  
6606 danger of abuse;

6607 (b) making arrangements for the victim to obtain emergency medical treatment;

6608 (c) making arrangements for the victim to obtain emergency housing or shelter care;

6609 (d) explaining to the victim his or her rights in these matters;

6610 (e) asking the victim to sign a written statement describing the incident of abuse; or

6611 (f) arresting and taking into physical custody the abuser in accordance with the

6612 provisions of Title 77, Chapter 36, Cohabitant Abuse Procedures Act.

6613 (3) No person or institution may be held criminally or civilly liable for the

6614 performance of, or failure to perform, any duty established by this chapter, so long as that

6615 person acted in good faith and without malice.