STATUTORY CONSTRUCTION COMPLIANCE

AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor:  Rebecca D. Lockhart

Senate Sponsor:  Stephen H. Urquhart

LONG TITLE

General Description:
This bill amends provisions of Titles 3 through 16 of the Utah Code by correcting terms to comply with rules of statutory construction applicable to the Utah Code.

Highlighted Provisions:
This bill:

▶ amends provisions of Titles 3 through 16 of the Utah Code by correcting terms to comply with rules of statutory construction applicable to the Utah Code; and

▶ makes technical changes.

Monies Appropriated in this Bill:
None

Other Special Clauses:
None

Utah Code Sections Affected:

AMENDS:

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Be it enacted by the Legislature of the state of Utah:
Section 1. Section 3-1-1 is amended to read:

3-1-1. Declaration of policy.

It is the declared policy of this state, as one means of improving the economic position of agriculture, to encourage the organization of producers of agricultural products into effective associations under the control of such producers, and to that end this act shall be liberally construed.

Section 2. Section 3-1-9 is amended to read:


(1) An association formed under this act, or an association which might be formed under this act and which existed at the time this act took effect, shall have power and capacity to act possessed by natural persons and may do each and everything necessary, suitable, or proper for the accomplishment of any one or more of the purposes, or the attainment of any one or more of the objects herein enumerated or conducive to or expedient for the interests or benefit of the association, and may exercise all powers, rights, and privileges necessary or incident thereto, including the exercise of any rights, powers, and privileges granted by the laws of this state to corporations generally, excepting such as are inconsistent with the express provisions of this act.

(2) Without limiting or enlarging the grant of authority contained in Subsection (1), it is hereby specifically provided that every such association shall have authority:

(a) to act as agent, broker, or attorney in fact for its members and other producers, and for any subsidiary or affiliated association, and otherwise to assist or join with associations engaged in any one or more of the activities authorized by its articles, and to hold title for its members and other producers, and for subsidiary and affiliated association to property handled or managed by the association on their behalf;

(b) to make contracts and to exercise by its board or duly authorized officers or agents, all such incidental powers as may be necessary, suitable or proper for the accomplishment of the purposes of the association and not inconsistent with law or its articles, and that may be conducive to or expedient for the interest or benefit of the association;
(c) to make loans or advances to members or producer-patrons or to the members of an association which is itself a member or subsidiary thereof; to purchase, or otherwise acquire, endorse, discount, or sell any evidence of debt, obligation or security;
(d) to establish and accumulate reasonable reserves and surplus funds and to abolish the same; also to create, maintain, and terminate revolving funds or other similar funds which may be provided for in the bylaws of the association;
(e) to own and hold membership in or shares of the stock of other associations and corporations and the bonds or other obligations thereof, engaged in any related activity; or, in producing, warehousing or marketing any of the products handled by the association; or, in financing its activities; and while the owner thereof, to exercise all the rights of ownership, including the right to vote thereon;
(f) to acquire, hold, sell, dispose of, pledge, or mortgage, any property which its purposes may require;
(g) to borrow money without limitation as to amount, and to give its notes, bonds, or other obligations therefor and secure the payment thereof by mortgage or pledge;
(h) to deal in products of, and handle machinery, equipment, supplies and perform services for nonmembers to an amount not greater in annual value than such as are dealt in, handled or performed for or on behalf of its members, but the value of the annual purchases made for persons who are neither members nor producers [shall not] may not exceed 15 per centum of the value of all its purchases. Business transacted by an association for or on behalf of the United States or any agency or instrumentality thereof, shall be disregarded in determining the volume or value of member and nonmember business transacted by such association;
(i) if engaged in marketing the products of its members, to hedge its operations;
(j) to have a corporate seal and to alter the same at pleasure;
(k) to continue as a corporation for the time limited in its articles, and if no time limit is specified then perpetually;
(l) to sue and be sued in its corporate name;
(m) to conduct business in this state and elsewhere as may be permitted by law; and
(n) to dissolve and wind up.

Section 3. Section 3-1-11 is amended to read:

3-1-11. **Certificates of and termination of membership -- Dividends and distribution of reserves -- Preferred stock -- Certificates of interest -- Unclaimed credits.**

(1) No certificate for membership or stock shall be issued until fully paid for, but bylaws may provide that a member may vote and hold office prior to payment in full for his membership or stock.

(2) Dividends in excess of eight per centum per annum on the actual cash value of the consideration received by the association may not be paid on common stock or membership capital, but dividends may be cumulative if so provided in the articles or bylaws.

(3) (a) Savings in excess of dividends and additions to reserves and surplus shall be distributed on the basis of patronage.

(b) The bylaws may provide that any distribution to a nonmember, who is eligible for membership, may be credited to that nonmember until the amount of the distribution equals the value of a membership certificate, or a share of the association's common stock.

(c) The distribution credited to the account of the nonmember may be transferred to the membership fund at the option of the board, if, after two years, the amount is less than the value of the membership certificate or a share of common stock.

(4) (a) The bylaws shall provide the time and manner of settlement of membership interests with members who withdraw from the association or whose membership is otherwise terminated.

(b) Provisions for forfeiture of membership interests may be made in the bylaws.

(c) After the termination of the membership, for whatever cause, the withdrawing member shall exercise no further control over the facilities, assets, or activities of the association. The withdrawing member may not claim or receive any assets of the association except as follows:

(i) undistributed patronage allocated to the withdrawing member may be paid to the
withdrawing member pursuant to the association's bylaws;

(ii) the withdrawing member may be reimbursed for the par value of membership or stock in the association pursuant to the association's articles, bylaws, and membership agreement; and

(iii) the withdrawing member shall receive any distributions to which the member is entitled pursuant to Subsection 3-1-20(3)(d).

(5) (a) An association may issue preferred stock to members and nonmembers.
(b) Preferred stock may be redeemed or retired by the association on the terms and conditions as are provided in the articles or bylaws and printed on the stock certificates.

(c) Preferred stockholders [shall not be entitled to] may not vote, but no change in their priority or preference rights shall be effective until the written consent of the holders of a majority of the preferred stock has been obtained.

(d) Payment for preferred stock may be made in cash, services, or property on the basis of the fair value of the stock, services, and property, as determined by the board.

(6) (a) The association may issue to each member a certificate of interest evidencing the member's interest in any fund, capital investment, or other assets of the association.
(b) Those certificates may be transferred only to the association, or to other purchasers, as approved by the board of directors, under the terms and conditions provided for in the bylaws.

(7) (a) As used in this Subsection (7), "reasonable effort" means:

(i) a letter to a member’s or former member’s last-known address, a listing of unclaimed credits in an association publication, and the posting of a list of unclaimed credits at the association’s principal place of business; and

(ii) publishing a list of the unclaimed credits exceeding $25 each, or greater, in a newspaper of general circulation in the area where the association’s principal offices are located.

(b) The association may retain revolving certificates of interest described in this Subsection (7) as an exception to the provisions of Title 67, Chapter 4a, Unclaimed Property
Act, if:

(i) the board of directors of the association determines to revolve the certificates and the certificates remain unclaimed by the association’s members or former members for five years after the credit is declared;

(ii) the association is authorized to retain those credits by its bylaws;

(iii) the board of directors of the association approves the retention; and

(iv) before retaining the credits, the association makes a reasonable effort to locate and communicate the issuance of the credits to the members or former members.

(c) (i) The board of directors may either add the unclaimed credits as a contribution to the capital fund, or use them to establish an agricultural educational program as described in Subsection (7)(c)(ii).

(ii) If the board of directors chooses to use the unclaimed credits to establish an agricultural educational program, it shall establish an agricultural educational program to:

(A) provide scholarships for low income and worthy students to colleges and universities;

(B) provide funding for director training and education;

(C) provide funds for cooperative education programs in secondary or higher education institutions; or

(D) provide other educational opportunities.

(iii) The board of directors may not distribute unclaimed credits to current patrons of the association.

(iv) Upon dissolution of an association, the board of directors shall report and remit unclaimed credits to the Division of Unclaimed Property.

(d) (i) Each association that applies credits under Subsection (7)(c) during a calendar year shall file an annual report with the State Treasurer by April 15 of the following year.

(ii) The report shall specify:

(A) the dollar amount of credits applied during the year;

(B) the dollar amount of credit paid to claimants during the year; and
(C) the aggregate dollar amount of credits applied since January 1, 1996.

(e) At any time after the association retains credits under this Subsection (7), the association shall pay the members, former members, or their successors in interest, the value of the credit, without interest, if the members, former members, or their successors in interest:

(i) file a written claim for payment with the association; and

(ii) surrender the certificate issued by the association that evidences the credit.

Section 4. Section 3-1-13.8 is amended to read:

3-1-13.8. Director committees.

(1) (a) Unless otherwise provided by the articles of incorporation or bylaws, a board of directors may create one or more committees and appoint members of the board of directors to serve on them.

(b) Each committee [must] shall have two or more members who serve at the discretion of the board of directors.

(2) The creation of a committee and appointment of members to it [must] shall be approved by the greater of:

(a) a majority of all the directors in office when the action is taken; or

(b) the number of directors required by the articles of incorporation or bylaws to take action under Section 3-1-13.6.

(3) Sections 3-1-13.2 and 3-1-13.6 shall apply to committees and their members.

(4) The board of directors, the articles of incorporation, or the bylaws may provide the scope of the authority that each committee may exercise.

(5) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in Section 3-1-13.3.

Section 5. Section 3-1-14 is amended to read:

3-1-14. Removal of director.

Any member may ask for the removal of a director by filing charges with the secretary or president of the association, together with a petition signed by 10 per centum of the
members requesting the removal of the director in question. The removal shall be voted upon
at the next meeting of the members, and the association may remove the director by a majority
vote of the members voting thereon. The director whose removal is requested shall be served
with a copy of the charges not less than 10 days prior to the meeting and shall have an
opportunity at the meeting to be heard in person and by counsel and to present evidence; and
the persons requesting the removal shall have the same opportunity. In case the bylaws provide
for election of directors by districts, then the petition for removal of a director [must] shall be
signed by 20 per centum of the members residing in the district from which he was elected.
The board [must] shall call a special meeting of the members residing in that district to
consider the removal of the director; and by a majority vote of the members of that district
voting thereon the director in question shall be removed from office.

Section 6. Section 3-1-15 is amended to read:

3-1-15. Officers.

The board shall elect a president, a secretary and a treasurer, and may elect one or more
vice-presidents, and such other officers as may be authorized in the bylaws. Unless the articles
otherwise specifically provide, the president and at least one of the vice-presidents [must] shall
be directors, but a vice-president who is not a director cannot succeed to or fill the office of
president. Any two of the offices of vice-president, secretary and treasurer may be combined in
one person.

Section 7. Section 3-1-15.1 is amended to read:

3-1-15.1. Duties of officers.

Each officer has the authority and [should] shall perform the duties set forth in the
bylaws, or, to the extent consistent with the bylaws, the duties prescribed by the directors or by
the officer authorized by the board of directors to prescribe the duties of other officers.

Section 8. Section 3-1-17 is amended to read:

3-1-17. Contracts with association.

(1) (a) The bylaws may require members to execute contracts with the association in
which the members agree to patronize the facilities created by the association, and to sell all or
a specified part of their products to or through it, or to buy all or a specified part of their
supplies from or through the association or any facilities created by it.

(b) If the members contract to sell through the association, the fact that for certain
purposes the relation between the association and its members may be one of agency [shall
not] does not prevent the passage from the member to the association of absolute and
exclusive title to the products which are the subject matter of the contract.

(c) Such title shall pass to the association upon delivery of the product, or at any other
time specified in the contract.

(d) If the period of the contract exceeds three years, the bylaws and the contracts
executed thereunder shall specify a reasonable period, not less than 10 days in each year, after
the third year, during which the member, by giving to the association such reasonable notice
as the association may prescribe, may withdraw from the association; provided, that if the
bylaws or contracts executed hereunder so specify, a member may not withdraw from the
association while indebted thereto.

(e) In the absence of such a withdrawal provision, a member may withdraw at any
time after three years.

(2) The contract may fix, as liquidated damages, which [shall not] may not be
regarded as penalties, specific sums to be paid by the members to the association upon the
breach of any provision of the contract regarding the use of any facilities of the association or
the sale, delivery, handling, or withholding of products; and may further provide that the
member who breaks his contract shall pay all costs, including premiums for bonds, and
reasonable attorney's fees, to be fixed by the court, in case the association prevails in any
action upon the contract.

(3) (a) A court of competent jurisdiction may grant an injunction to prevent the breach
or further breach of the contract by a member and may decree specific performance thereof.

(b) Pending the adjudication of such an action and upon filing a verified complaint
showing the breach or threatened breach, and a bond in such form and amount as may be
approved by the court, the court may grant a temporary restraining order or preliminary
enforcement, and a court of equity shall have jurisdiction to render such
injunction against the member.

(4) No remedy, either legal or equitable, herein provided for, shall be exclusive, but
the association may avail itself of any and all such remedies, at the same or different times, in
any action or proceeding.

(5) In any action upon such marketing contracts, it shall be conclusively presumed that
a landowner or landlord or lessor is able to control the delivery of products produced on his
land by tenants or others, whose tenancy or possession or work on such land or the terms of
whose tenancy or possession or labor thereon were created or changed after execution by the
landowner or landlord or lessor of such a marketing contract; and in such actions, the
foregoing remedies for nondelivery or breach shall lie and be enforceable against such
landowner, landlord, or lessor.

(6) (a) The association may file contracts to sell agricultural products to or through the
association in the office of the county recorder of the county in which the products are
produced.

(b) If the association has uniform contracts with more than one member in any county,
it may, in lieu of filing the original contracts, file the affidavit of its president, vice president
or secretary, containing or having attached thereto:

(i) a true copy of the uniform contract entered into with its members producing such
product in that county; and

(ii) the names of the members who have executed such contract and a description of
the land on which the product is produced, if such description is contained in the contract.

(c) The association may file from time to time thereafter affidavits containing revised
or supplementary lists of the members producing such product in that county without setting
forth therein a copy of the uniform contract but referring to the filed or recorded copy thereof.

(d) All affidavits filed under this section shall state in substance that they are filed
pursuant to the provisions of this section.

(e) The county recorder shall file such affidavits and make endorsements thereon and
record and make entries thereof in the same manner as is required by law in the case of chattel
mortgages, and he shall compile and make available for public inspection a convenient index
containing the names of all signers of such contracts, and collect for his services hereunder the
same fees as for chattel mortgages.

(f) The filing of any such contract, or such affidavit, shall constitute constructive
notice of the contents thereof, and of the association's title or right to the product embraced in
such contract, to all subsequent purchasers, encumbrancers, creditors, and to all persons
dealing with the members with reference to such product.

(g) No title, right, or lien of any kind shall be acquired to or on the product thereafter
except through the association or with its consent, or subject to its rights; and the association
may recover the possession of such property from any and all subsequent purchasers,
encumbrancers, and creditors, and those claiming under them, in whose possession the same
may be found, by any appropriate action for the recovery of personal property, and it may have
relief by injunction and for damages.

Section 9. Section 3-1-22 is amended to read:

3-1-22. Accrued rights not affected by chapter.

This act [shall not] does not impair nor affect any act, offense committed, or right
accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to
the time this act takes effect, but the same may be enjoyed, asserted, enforced, prosecuted, or
inflicted as fully and to the same extent as if this act had not been passed.

Section 10. Section 3-1-26 is amended to read:

3-1-26. Separability clause.

If any provision of this act or the application thereof to any person or circumstances is
held invalid, such invalidity [shall not] does not affect other provisions or applications of the
act which can be given effect without the invalid provision or application, and to this end the
provisions of this act are declared to be severable.

Section 11. Section 3-1-35 is amended to read:

3-1-35. Procedure at meeting to vote on plan of merger or consolidation --

Abandonment of merger or consolidation prior to filing articles.
(1) At each meeting, a vote of the current members of each cooperative party to the merger or consolidation having members and a vote of the shareholders of each party to the merger or consolidation having stock or shares shall be taken on the proposed plan of merger or consolidation.

(2) (a) If the articles of incorporation or bylaws of any party to the merger or consolidation provide for the election by members or shareholders at district meetings of delegates to vote at annual or special meetings of the association or noncooperative corporation, these procedures shall be followed, and the vote of the delegates at the meeting where the plan of merger or consolidation is voted on shall be counted in the same way and entitled to the same weight as a vote of the delegates at any other meeting of the association or noncooperative corporation.

(b) Members of cooperative parties may vote in person or by signed ballot, if voting by ballot is allowed in the association's bylaws.

(c) Shareholders or their delegates of noncooperative parties may vote in person or by written proxy.

(3) The plan of merger or consolidation shall be approved by a 2/3 majority of:

(a) the voting members of cooperative parties; and

(b) holders or delegates of holders of the outstanding shares of noncooperative parties.

(4) After approval by a vote of the members and shareholders of each party to the merger or consolidation and prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions set forth in the plan of merger or consolidation.

Section 12. Section 3-1-37 is amended to read:

3-1-37. Effect of merger or consolidation.

(1) After the certificate of merger or consolidation is issued by the Division of Corporations and Commercial Code, the merger or consolidation shall be effected.

(2) When the merger or consolidation has been effected:

(a) The associations or corporations which are parties to the plan of merger or
consolidation shall be a single corporation designated in the plan of merger or consolidation as the surviving or new corporation.

(b) The separate existence of all associations and corporations which are parties to the merger or consolidation, except the surviving or new corporation, shall cease.

(c) The surviving or new corporation shall have all of the rights, privileges, immunities, and powers and be subject to all the duties and liabilities of a corporation organized under this chapter or under the Utah Nonprofit Corporation and Cooperative Association Act, whichever act or chapter is specified in the plan of merger or consolidation.

(d) (i) The surviving or new corporation shall possess all rights, privileges, immunities, and franchises of each of the merging associations and corporations.

(ii) All property, debts due, including subscriptions to shares, all other choses in action, and all interests of each of the associations and corporations merged or consolidated, shall be taken, transferred to, and vested in the single corporation immediately.

(iii) The title to or interest in any real estate vested in any of the associations or corporations may not revert or be in any way impaired by the merger or consolidation.

(e) (i) The surviving or new corporation shall be responsible and liable for all the liabilities and obligations of each of the associations and corporations which merged or consolidated.

(ii) Any claim existing or action or proceeding pending by or against any of the associations and corporations may be prosecuted as if the merger or consolidation had not taken place, or the surviving or new corporation may be substituted in its place.

(iii) The rights of creditors or any liens upon the property of any association or corporation may not be impaired by the merger or consolidation.

(f) The articles of incorporation of the surviving or new corporation may be amended, if changes in the articles of incorporation are stated in the plan of merger or consolidation.

Section 13. Section 4-1-7 is amended to read:

4-1-7. Severability clause.
If any provision of this code or the application of any such provision to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

Section 14. Section 4-2-8.7 is amended to read:

4-2-8.7. Invasive Species Mitigation Fund created.

(1) As used in this section, "project" means an undertaking that prevents catastrophic wildland fire through land restoration in a watershed that:

(a) is impacted by cheatgrass or other invasive species; or

(b) has a fuel load that may contribute to a catastrophic wildland fire.

(2) (a) There is created a general fund restricted account known as the "Invasive Species Mitigation Fund."

(b) The fund shall consist of:

(i) money appropriated by the Legislature;

(ii) grants from the federal government; and

(iii) grants or donations from a person.

(3) Any unallocated balance in the fund at the end of the year is nonlapsing.

(4) (a) After consulting with the Department of Natural Resources and the Conservation Commission, the department may expend fund monies:

(i) on a project implemented by:

(A) the department; or

(B) the Conservation Commission; or

(ii) by giving a grant for a project to:

(A) a state agency;

(B) a federal agency; or

(C) a federal, state, tribal, or private landowner.

(b) A grant to a federal landowner shall be matched with at least an equal amount of money by the federal landowner.
(c) In expending the fund monies authorized by Subsection (4)(a)(i), the department shall use existing infrastructure and employees to plan and implement the project.

(5) In giving a grant, the department shall consider the effectiveness of a project in preventing:

(a) first, the risk to public safety and health from:
   (i) air pollution;
   (ii) flooding; and
   (iii) reduced visibility on a highway;

(b) second, damage to the environment, including:
   (i) soil erosion;
   (ii) degraded water quality; and
   (iii) release of carbon; and

(c) third, damage to:
   (i) a local economy; and
   (ii) habitat for wildlife or livestock.

Section 15. Section 4-2-15 is amended to read:

4-2-15. **Civil and criminal penalties -- Costs -- Civil liability.**

(1) Except as otherwise provided by this title, any person, or the officers or employees of any person, who violates this title or any lawful notice or order issued pursuant to this title shall be assessed a penalty not to exceed $5,000 per violation in a civil proceeding, and in a criminal proceeding is guilty of a class B misdemeanor. A subsequent criminal violation within two years is a class A misdemeanor.

(2) Any person, or the officers or employees of any person, shall be liable for any expenses incurred by the department in abating any violation of this title.

(3) A penalty assessment or criminal conviction under this title [shall not does not relieve the person assessed or convicted from civil liability for claims arising out of any act which was also a violation.

Section 16. Section 4-5-5 is amended to read:
Court proceedings for condemnation -- Perishable food.

(1) (a) When an authorized agent of the department finds or has probable cause to believe that any food is adulterated, or so misbranded as to be dangerous or fraudulent within the meaning of this chapter, he shall affix to the food a tag or other appropriate marking, giving notice that:

(i) the food is, or is suspected of being, adulterated or misbranded;
(ii) the food has been detained or embargoed; and
(iii) removal of the food is prohibited as provided in Subsection (1)(b).

(b) No person may remove or dispose of detained or embargoed food by sale or otherwise until permission for removal or disposal is given by an agent of the department or the court.

(2) When food detained or embargoed under Subsection (1) has been found by an agent to be adulterated or misbranded, the department shall petition the district court in whose jurisdiction the food is detained or embargoed for an order of condemnation of the food.

When the agent has found that food so detained or embargoed is not adulterated or misbranded, the department shall remove the tag or other marking.

(3) (a) If the court finds that detained or embargoed food is adulterated or misbranded, the food [must] shall, after entry of the decree, be destroyed under the supervision of the agent.

(b) If the adulteration or misbranding can be corrected by proper labeling or processing of the food, the court may by order direct that the food be delivered to the claimant for labeling or processing after:

(i) entry of the decree;
(ii) all costs, fees, and expenses have been paid; and
(iii) a sufficient bond, conditioned that the food [must] shall be properly labeled and processed, has been executed.

(c) An agent of the department shall supervise, at the claimant's expense, the labeling or processing of the food.
The bond shall be returned to the claimant of the food upon:

(i) representation to the court by the department that the food is no longer in violation of this chapter; and

(ii) the expenses of supervision have been paid.

(4) If an authorized agent of the department finds in any building or vehicle any perishable food which is unsound, contains any filthy, decomposed, or putrid substance, or may be poisonous, deleterious to health, or otherwise unsafe, the commissioner or his authorized agent shall condemn or destroy the food or render it unsalable as human food.

Section 17. Section 4-5-7 is amended to read:

**4-5-7. Adulterated food specified.**

A food is adulterated:

(1) (a) if it bears or contains any poisonous or deleterious substance that may render it injurious to health; but in case the substance is not an added substance the food may not be considered adulterated under this Subsection (1)(a) if the quantity of the substance in such food does not ordinarily render it injurious to health;

(b) (i) if it bears or contains any added poisonous or added deleterious substance other than one that is:

(A) a pesticide chemical in or on a raw agricultural commodity;

(B) a food additive; or

(C) a color additive that is unsafe within the meaning of Subsection 4-5-11(1); or

(ii) if it is a raw agricultural commodity and it bears or contains a pesticide chemical that is unsafe within the meaning of 21 U.S.C. Sec. 346a; or

(iii) if it is or it bears or contains any food additive that is unsafe within the meaning of 21 U.S.C. Sec. 348; provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under 21 U.S.C. 346a and the raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of Section
4-5-11 and this Subsection (1)(b)(iii), not be considered unsafe if such residue in or on the raw
agricultural commodity has been removed to the extent possible in good manufacturing
practice, and the concentration of such residue in the processed food when ready to eat is not
greater than the tolerance prescribed for the raw agricultural commodity;

(c) if it consists in whole or in part of a diseased, contaminated, filthy, putrid, or
decomposed substance, or if it is otherwise unfit for food;

(d) if it has been produced, prepared, packed, or held under unsanitary conditions
whereby it may have become contaminated with filth, or whereby it may have been rendered
diseased, unwholesome, or injurious to health;

(e) if it is, in whole or in part, the product of a diseased animal or an animal that has
died otherwise than by slaughter, or of an animal that has been fed upon the uncooked offal
from a slaughterhouse;

(f) if its container is composed, in whole or in part, of any poisonous or deleterious
substance that may render the contents injurious to health;

(g) if it has been intentionally subjected to radiation, unless the use of the radiation
was in conformity with a rule or exemption in effect pursuant to Section 4-5-11, or 21 U.S.C.
Sec. 348; or

(h) in meat or meat products are adulterated:

(i) if such products are in casings, packages, or wrappers through which any part of
their contents can be seen and which, or the markings of which, are colored red or any other
color so as to be misleading or deceptive with respect to the color, quality, or kind of such
products to which they are applied; or

(ii) if such products contain or bear any color additive;

(2) (a) if any valuable constituent has been in whole or in part omitted or abstracted
therefrom;

(b) if any substance has been substituted wholly or in part therefor;

(c) if damage or inferiority has been concealed in any manner; or

(d) if any substance has been added or mixed or packed therewith so as to increase its
bulk or weight, or reduce its quality or strength or make it appear better or of greater value
than it is; or
(3) if it is confectionery, and:
(a) has partially or completely imbedded therein any nonnutritive object; provided that
this Subsection (3)(a) does not apply in the case of any nonnutritive objective if, in
the judgment of the department such object is of practical functional value to the
confectionery product and would not render the product injurious or hazardous to health;
(b) bears or contains any alcohol other than alcohol not in excess of .05% by volume
derived solely from the use of flavoring extracts; or
(c) bears or contains any nonnutritive substance; provided, that this Subsection (3)(c)
does not apply to a safe nonnutritive substance that is in or on confectionery by
reason of its use for some practical functional purpose in the manufacture, packaging, or
storing of such confectionery if the use of the substance does not promote deception of the
consumer or otherwise result in adulteration or misbranding in violation of this chapter.
(4) The department may, for the purpose of avoiding or resolving uncertainty as to the
application of Subsection (3)(c), issue rules allowing or prohibiting the use of particular
nonnutritive substances.

Section 18. Section 4-5-8 is amended to read:

4-5-8. Misbranded food specified.

(1) Food is misbranded if:
(a) its label is false or misleading in any way;
(b) its labeling or packaging fails to conform with the requirements of Section 4-5-15;
(c) it is offered for sale under the name of another food;
(d) its container is so made, formed, or filled with packing material or air as to be
misleading; or
(e) it fails to conform with any requirement specified in this section.
(2) A food that is an imitation of another food shall bear a label, in type of
uniform size and prominence, stating the word "imitation," and, immediately thereafter, the
(3) (a) A food in package form [must] shall bear a label containing:

(i) the name and place of business of the manufacturer, packer, or distributor; and

(ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count.

(b) The statement required by Subsection (3)(a)(ii) [must] shall be separately and accurately stated in a uniform location upon the principal display panel of the label unless reasonable variations and exemptions for small packages are established by a rule made by the department.

(c) A manufacturer or distributor of carbonated beverages who utilizes proprietary stock or a proprietary crown is exempt from Subsection (3)(a)(i) if he files with the department:

(i) a sworn affidavit giving a full and complete description of each area within the state in which beverages of his manufacturing or distributing are to be distributed; and

(ii) the name and address of the person responsible for compliance with this chapter within each of those areas.

(4) Any word, statement, or other information required by this chapter to appear on the label or labeling [must] shall be:

(a) prominently placed on the label;

(b) conspicuous in comparison with other words, statements, designs, or devices in the labeling; and

(c) in terms which render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(5) If a food is represented as a food for which a definition and standard of identity has been prescribed by federal regulations or department rules as provided by Section 4-5-6, it [must] shall:

(a) conform to the definition and standard; and

(b) have a label bearing:
(i) the name of the food specified in the definition and standard; and
(ii) insofar as may be required by the rules, the common names of optional
ingredients, other than spices, flavorings, and colorings, present in the food.

(6) If a food is represented as a food for which a standard of quality has been
prescribed by federal regulations or department rules as provided by Section 4-5-6, and its
quality falls below the standard, its label must bear, in the manner and form as the
regulations or rules specify, a statement indicating that it falls below the standards.

(7) If a food is represented as a food for which a standard of fill of container has been
prescribed by federal regulations or department rules as provided by Section 4-5-6, and it falls
below the applicable standard of fill, its label must bear, in the manner and form as the
regulations or rules specify, a statement indicating that it falls below the standard.

(8) (a) Any food for which neither a definition nor standard of identity has been
prescribed by federal regulations or department rules as provided by Section 4-5-6 must bear labeling clearly giving:
(i) the common or usual name of the food, if any; and
(ii) in case it is fabricated from two or more ingredients, the common or usual name of
each ingredient, except that spices, flavorings, and colorings, other than those sold as such,
may be designated as spices, flavorings, and colorings without naming each.

(b) To the extent that compliance with the requirements of Subsection (8)(a)(ii) is
impractical or results in deception or unfair competition, exemptions shall be established by
rules made by the department.

(9) If a food is represented as a food for special dietary uses, its label must bear
the information concerning its vitamin, mineral, and other dietary properties as the department
by rule prescribes.

(10) If a food bears or contains any artificial flavoring, artificial coloring, or chemical
preservatives, its label must state that fact. If compliance with the requirements of this
subsection is impracticable, exemptions shall be established by rules made by the department.

(11) The shipping container of any raw agricultural commodity bearing or containing
954 a pesticide chemical applied after harvest [must] shall bear labeling which declares the
955 presence of the chemical in or on the commodity and the common or usual name and function
956 of the chemical. The declaration is not required while the commodity, having been removed
957 from the shipping container, is being held or displaced for sale at retail out of the container in
958 accordance with the custom of the trade.
959  (12) A product intended as an ingredient of another food, when used according to the
960 directions of the purveyor, may not result in the final food product being adulterated or
961 misbranded.
962  (13) The packaging and labeling of a color additive [must] shall be in conformity with
963 the packaging and labeling requirements applicable to the color additive prescribed under the
964 federal act.
965  (14) Subsections (5), (8), and (10) with respect to artificial coloring do not apply to
966 butter, cheese, or ice cream. Subsection (10) with respect to chemical preservatives does not
967 apply to a pesticide chemical when used in or on a raw agricultural commodity.
968
969 Section 19. Section 4-5-9 is amended to read:
970
971 4-5-9. Registration of food establishments -- Fee -- Suspension and reinstatement
972 of registration -- Inspection for compliance.
973  (1) (a) Pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
974 department shall establish rules providing for the registration of food establishments to protect
975 public health and ensure a safe food supply.
976  (b) The owner or operator of a food establishment shall register with the department
977 before operating a food establishment.
978  (c) Prior to granting a registration to the owner or operator of a food establishment, the
979 department shall inspect and assess the food establishment to determine whether it complies
980 with the rules established under Subsection (1)(a).
981  (d) An applicant shall register with the department, in writing, using forms required by
982 the department.
983  (e) The department shall issue a registration to an applicant, if the department
(f) If the applicant does not meet the qualifications of registration, the department shall notify the applicant, in writing, that the applicant's registration is denied.

(g) (i) If an applicant submits an incomplete application, a written notice of conditional denial of registration shall be provided to an applicant.

(ii) The applicant [must] shall correct the deficiencies within the time period specified in the notice to receive a registration.

(h) (i) The department may, as provided under Subsection 4-2-2(2), charge the food establishment a registration fee.

(ii) The department shall retain the fees as dedicated credits and shall use the fees to administer the registration of food establishments.

(2) (a) A registration, issued under this section, shall be valid from the date the department issues the registration, to December 31 of the year the registration is issued.

(b) A registration may be renewed for the following year by applying for renewal by December 31 of the year the registration expires.

(3) A registration, issued under this section, shall specify:

(a) the name and address of the food establishment;

(b) the name of the owner or operator of the food establishment; and

(c) the registration issuance and expiration date.

(4) (a) The department may immediately suspend a registration, issued under this section, if any of the conditions of registration have been violated.

(b) (i) The holder of a registration suspended under Subsection (4)(a) may apply for the reinstatement of a registration.

(ii) If the department determines that all registration requirements have been met, the department shall reinstate the registration.

(5) (a) A food establishment, registered under this section, shall allow the department to have access to the food establishment to determine if the food establishment is complying
with the registration requirements.

(b) If a food establishment denies access for an inspection required under Subsection (5)(a), the department may suspend the food establishment's registration until the department is allowed access to the food establishment's premises.

Section 20. Section 4-5-15 is amended to read:


(1) All labels of consumer commodities, as defined by this chapter, shall conform with the requirements for the declaration of net quantity of contents of 15 U.S.C. Sec. 1453 and the regulations promulgated pursuant thereto: provided, that consumer commodities exempted from 15 U.S.C. Sec. 1453(4) shall also be exempt from this Subsection (1).

(2) The label of any package of a consumer commodity that bears a representation as to the number of servings of the commodity contained in the package shall bear a statement of the net quantity in terms of weight, measure, or numerical count for each serving.

(3) (a) No person shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by Subsection (1), but nothing in this section shall prohibit supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents.

(b) Supplemental statements of net quantity of contents may not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the commodity contained in the package.

(4) (a) Whenever the department determines that rules other than those prescribed by Subsection(1) are necessary to prevent the deception of consumers or to facilitate value comparisons as to any consumer commodity, the department shall promulgate rules effective to:

(i) establish and define standards for the characterization of the size of a package enclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing the commodity, but this Subsection (4) [shall}
not be construed as authorizing] does not authorize any limitation on the size, shape, weight, dimensions, or number of packages that may be used to enclose any commodity;

(ii) regulate the placement upon any package containing any commodity, or upon any label affixed to a commodity, of any printed matter stating or representing by implication that the commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers by reason of the size of that package or the quantity of its contents;

(iii) require that the label on each package of a consumer commodity bear:

(A) the common or usual name of such consumer commodity, if any; and

(B) if the consumer commodity consists of two or more ingredients, the common or usual name of each such ingredient listed in order of decreasing predominance, but nothing in this Subsection (4) shall be considered to require that any trade secret be divulged; or

(iv) prevent the nonfunctional slack-fill of packages containing consumer commodities.

(b) For the purposes of Subsection (4)(a)(iv), a package is nonfunctionally slack-filled if it is filled to substantially less than its capacity for reasons other than:

(i) protection of the contents of such package; or

(ii) the requirements of machines used for enclosing the contents in such package; provided, that the department may adopt any rules promulgated according to the Fair Packaging and Labeling Act, 15 U.S.C. Sec. 1453.

Section 21. Section 4-5-18 is amended to read:

4-5-18. Inspection of premises and records -- Authority to take samples -- Inspection results reported.

(1) An authorized agent of the department upon presenting appropriate credentials to the owner, operator, or agent in charge, may:

(a) enter at reasonable times any factory, warehouse, or establishment in which food is manufactured, processed, packed, or held for introduction into commerce or after introduction into commerce;
enter any vehicle being used to transport or hold food in commerce;
(c) inspect at reasonable times and within reasonable limits and in a reasonable
manner any factory, warehouse, establishment, or vehicle and all pertinent equipment, finished
and unfinished materials, containers, and labeling located within it;
(d) obtain samples necessary for the enforcement of this chapter so long as the
department pays the posted price for the sample if requested to do so and receives a signed
receipt from the person from whom the sample is taken;
(e) have access to and copy all records of carriers in commerce showing:
(i) the movement in commerce of any food;
(ii) the holding of food during or after movement in commerce; and
(iii) the quantity, shipper, and consignee of food.
(2) Evidence obtained under this section may not be used in a criminal prosecution of
the person from whom the evidence was obtained.
(3) Carriers may not be subject to the other provisions of this chapter by reason of
their receipt, carriage, holding, or delivery of food in the usual course of business as carriers.
(4) Upon completion of the inspection of a factory, warehouse, consulting laboratory,
or other establishment and prior to leaving the premises, the authorized agent making the
inspection shall give to the owner, operator, or agent in charge a report in writing setting forth
any conditions or practices observed by him which in his judgment indicate that any food in
the establishment:
(a) consists in whole or in part of any filthy, putrid, or decomposed substance; or
(b) has been prepared, packed, or held under unsanitary conditions whereby it may
have become contaminated with filth or whereby it may have been rendered injurious to
health.
(5) A copy of the report [must] shall be sent promptly to the department.
(6) If the authorized agent making the inspection of a factory, warehouse, or other
establishment has obtained any sample in the course of the inspection, the agent shall give to
the owner, operator, or agent in charge a receipt describing the samples obtained.
(7) When in the course of the inspection the officer or employee making the inspection obtains a sample of any food and an analysis is made of the sample for the purpose of ascertaining whether the food consists in whole or in part of any filthy, putrid, or decomposed substance or is otherwise unfit for food, a copy of the results of the analysis shall be furnished promptly to the owner, operator, or agent in charge.

Section 22. Section 4-7-8 is amended to read:

4-7-8. Applicant for dealer's license to post security -- Increase in amount of security posted -- Action on security authorized -- Duties of commissioner -- Option to require posting new security if action filed -- Effect of failure to post new security -- Commissioner's authority to call bond if not renewed.

(1) (a) Before a license is issued to a dealer, the applicant shall post a corporate surety bond, irrevocable letter of credit, trust fund agreement, or any other security agreement considered reasonable in an amount not less than $10,000 nor more than $200,000, as determined by the commissioner or as required by the Packers and Stockyards Act, 1921, 7 U.S.C. Section 181 et seq.

(b) Any bond shall be written by a surety licensed under the laws of Utah and name the state, as obligee, for the use and benefit of producers.

(c) The bond or other security posted shall be conditioned upon:

(i) the faithful performance of contracts and the faithful accounting for and handling of any product of agriculture consigned to the dealer;

(ii) the performance of the obligations imposed under this chapter; and

(iii) the payment of court costs and attorney's fees to the prevailing party incident to any suit upon the bond or other security posted.

(2) (a) The commissioner may require a dealer who is issued a license to increase the amount of the bond or other security posted under Subsection (1)(a) if the commissioner determines the bond or other security posted is inadequate to secure performance of the dealer's obligations.

(b) The commissioner shall notify the Packers and Stockyards Administration of an
increase made under Subsection (2)(a).

(c) The commissioner may suspend a dealer's license for failure to comply with Subsection (2)(a) within 10 days after notice is given to the dealer.

(3) A consignor claiming damages, as a result of fraud, deceit, or willful negligence by a dealer or as a result of the dealer's failure to comply with this chapter, may bring an action upon the bond or other security posted for damages against both the principal and surety.

(4) (a) If it is reported to the department by a consignor that a dealer has failed to pay in a timely manner for any product of agriculture received for sale, the commissioner shall:

(i) ascertain the name and address of each consignor who is a creditor of the dealer; and

(ii) request a verified written statement setting forth the amount claimed due from the dealer.

(b) Upon receipt of the verified statements, the commissioner shall bring an action upon the bond or other security posted on behalf of the consignors who claim amounts due from the dealer.

(5) (a) If an action is filed upon the bond or other security posted, the commissioner may require the filing of new security.

(b) Immediately upon recovery in the action, the commissioner shall require the dealer to file a new bond or other security.

(c) Failure, in either case, to file the bond or other security within 10 days after demand is cause for suspension of the license until a new bond or other security is filed.

(d) If the bond or other security posted under this section is not renewed within 10 days of its expiration date, unless the commissioner states in writing that this is unnecessary, the commissioner may obtain, after a hearing, the full amount of the bond or other security before it expires.

Section 23. Section 4-7-11 is amended to read:

4-7-11. Department authority -- Examination and investigation of transactions -- Notice of agency action upon probable cause -- Settlement of disputes -- Cease and desist
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ORDER -- ENFORCEMENT -- REVIEW.

(1) For the purpose of enforcing this chapter the department may, upon its own motion, or shall, upon the verified complaint of an interested consignor, investigate, examine, or inspect any transaction involving:

(a) the solicitation, receipt, sale, or attempted sale of any product of agriculture by a dealer or person assuming to act as a dealer;

(b) the failure to make a correct account of sales;

(c) the intentional making of a false statement about market conditions or the condition or quantity of any product of agriculture consigned;

(d) the failure to remit payment in a timely manner to the consignor as required by contract or by this chapter;

(e) any other consignment transaction alleged to have resulted in damage to the consignor; or

(f) any dealer or agent with an unsatisfied judgment by a civil court related to an activity for which licensing is required by this chapter.

(2) (a) After investigation upon its own motion, if the department determines that probable cause exists to believe that a dealer has engaged or is engaging in acts that violate this chapter, it shall issue a notice of agency action.

(b) (i) Upon the receipt of a verified complaint, the department shall undertake to effect a settlement between the consignor and the dealer.

(ii) If a settlement cannot be effected, the department shall treat the verified complaint as a request for agency action.

(3) (a) In a hearing upon a verified complaint, if the commissioner, or hearing officer designated by the commissioner, determines by a preponderance of the evidence that the person complained of has violated this chapter and that the violation has resulted in damage to the complainant, the officer shall:

(i) prepare written findings of fact detailing the findings and fixing the amount of damage suffered; and
(ii) order the defendant to pay damages.
(b) In a hearing initiated upon the department's own motion, if the commissioner or hearing officer determines by a preponderance of the evidence that the person complained of by the department has engaged in, or is engaging in, acts that violate this chapter, the commissioner or officer shall prepare written findings of fact and an order requiring the person to cease and desist from the activity.

(4) The department may petition any court having jurisdiction in the county where the action complained of occurred to enforce its order.

(5) Any dealer aggrieved by an order issued under this section may obtain judicial review of the order.

(6) (a) The department may not act upon a verified complaint submitted to the department more than six months after the consignor allegedly suffered damage.
(b) A livestock claim must be made in writing within 120 days from the date of the transaction.

Section 24. Section 4-9-15 is amended to read:


(1) (a) Pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall establish rules providing for the registration of weights and measures users and issuance of certification of weights and measures devices to ensure the use of correct weights and measures in commerce or trade.
(b) The division may:
(i) determine whether weights and measures are correct through:
(A) inspection and testing by department employees; or
(B) acceptance of an inspection and testing report prepared by a registered weights and measures service person;
(ii) establish standards and qualifications for registered weights and measures service
persons; and

(iii) determine the form and content of an inspection and testing report.

(c) A weights and measures user shall register with the department.

(d) Prior to granting a registration to a weights and measures user, the department shall determine whether the weights and measures user complies with the rules established under Subsection (1)(a).

(e) An applicant shall register with the department, in writing, using forms required by the department.

(f) The department shall issue a registration to an applicant, if the department determines that the applicant meets the qualifications of registration established under Subsection (1)(a).

(g) If the applicant does not meet the qualifications of registration, the department shall notify the applicant, in writing, that the applicant's registration is denied.

(h) (i) If an applicant submits an incomplete application, a written notice of conditional denial of registration shall be provided to an applicant.

(ii) The applicant [must] shall correct the deficiencies within the time period specified in the notice to receive a registration.

(i) (i) The department may, as provided under Subsection 4-2-2(2), charge the weights and measures user a registration fee.

(ii) The department shall retain the fees as dedicated credits and shall use the fees to administer the registration of weights and measures users.

(2) (a) A registration, issued under this section, shall be valid from the date the department issues the registration, to December 31 of the year the registration is issued.

(b) A registration may be renewed for the following year by applying for renewal by December 31 of the year the registration expires.

(3) A registration, issued under this section, shall specify:

(a) the name and address of the weights and measures user;

(b) the registration issuance and expiration date; and
(c) the number and type of weights and measures devices to be certified.

(4) (a) The department may immediately suspend a registration, issued under this section, if any of the requirements of Section 4-9-12 are violated.

(b) (i) The holder of a registration suspended under Subsection (4)(a) may apply for the reinstatement of a registration.

(ii) If the department determines that all requirements under Section 4-9-12 are being met, the department shall reinstate the registration.

(5) (a) A weights and measures user, registered under this section, shall allow the department access to the weights and measures user's place of business to determine if the weights and measures user is complying with the registration requirements.

(b) If a weights and measures user denies access for an inspection required under Subsection (5)(a), the department may suspend the weights and measures user's registration until the department is allowed access to the weights and measures user's place of business.

Section 25. Section 4-14-3 is amended to read:

4-14-3. Registration required for distribution -- Application -- Fees -- Renewal -- Local needs registration -- Distributor or applicator license -- Fees -- Renewal.

(1) (a) No person may distribute a pesticide in this state that is not registered with the department.

(b) Application for registration shall be made to the department upon forms prescribed and furnished by it accompanied with an annual registration fee determined by the department pursuant to Subsection 4-2-2(2) for each pesticide registered.

(c) Upon receipt by the department of a proper application and payment of the appropriate fee, the commissioner shall issue a registration to the applicant allowing distribution of the registered pesticide in this state through June 30 of each year, subject to suspension or revocation for cause.

(d) (i) Each registration is renewable for a period of one year upon the payment of an annual registration renewal fee in an amount equal to the current applicable original registration fee.
(ii) Each renewal fee shall be paid on or before June 30 of each year.

(2) The application shall include the following information:

(a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's name;

(b) the name of the pesticide;

(c) a complete copy of the label which will appear on the pesticide; and

(d) any information prescribed by rule of the department considered necessary for the safe and effective use of the pesticide.

(3) (a) Forms for the renewal of registration shall be mailed to registrants at least 30 days before their registration expires.

(b) A registration in effect on June 30 for which a renewal application has been filed and the registration fee tendered shall continue in effect until the applicant is notified either that the registration is renewed or that it is suspended or revoked pursuant to Section 4-14-8.

(4) The department may, before approval of any registration, require the applicant to submit the complete formula of any pesticide including active and inert ingredients and may also, for any pesticide not registered according to 7 U.S.C. Sec. 136a or for any pesticide on which restrictions are being considered, require a complete description of all tests and test results that support the claims made by the applicant or the manufacturer of the pesticide.

(5) A registrant who desires to register a pesticide to meet special local needs according to 7 U.S.C. Sec. 136v(c) shall, in addition to complying with Subsections (1) and (2), satisfy the department that:

(a) a special local need exists;

(b) the pesticide warrants the claims made for it;

(c) the pesticide, if used in accordance with commonly accepted practices, will not cause unreasonable adverse effects on the environment; and

(d) the proposed classification for use conforms with 7 U.S.C. Sec. 136a(d).

(6) No registration is required for a pesticide distributed in this state pursuant to an experimental use permit issued by the EPA or under Section 4-14-5.
(7) No pesticide dealer may distribute a restricted use pesticide in this state without a license.

(8) A person [must] shall receive a license before applying:
   (a) a restricted use pesticide; or
   (b) a general use pesticide for hire or in exchange for compensation.

(9) (a) A license to engage in an activity listed in Subsection (7) or (8) may be obtained by:
   (i) submitting an application on a form provided by the department;
   (ii) paying the license fee determined by the department according to Subsection 4-2-2(2); and
   (iii) complying with the rules adopted as authorized by this chapter.

(b) A person may apply for a license that expires on December 31:
   (i) of the calendar year in which the license is issued; or
   (ii) of the second calendar year after the calendar year in which the license is issued.

(c) (i) Notwithstanding Section 63J-1-504, the department shall retain the fees as dedicated credits and may only use the fees to administer and enforce this chapter.
   (ii) The Legislature may annually designate the revenue generated from the fee as nonlapsing in an appropriations act.

Section 26. Section 4-15-2 is amended to read:


As used in this chapter:

(1) "Balled and burlapped stock" means nursery stock which is removed from the growing site with a ball of soil containing its root system intact and encased in burlap or other material to hold the soil in place;

(2) "Bare-root stock" means nursery stock which is removed from the growing site with the root system free of soil;

(3) "Container stock" means nursery stock which is transplanted in soil or in a potting mixture contained within a metal, clay, plastic, or other rigid container for a period sufficient
to allow newly developed fibrous roots to form so that if the plant is removed from the
container its root-media ball will remain intact;

(4) "Etiolated growth" means bleached and unnatural growth resulting from the exclusion of sunlight;

(5) "Minimum indices of vitality" mean standards adopted by the department to determine the health and vigor of nursery stock offered for sale in this state;

(6) "Nonestablished container stock" means deciduous nursery stock which is transplanted in soil or in a potting mixture contained within a metal, clay, plastic, or other rigid container for a period insufficient to allow the formation of fibrous roots sufficient to form a root-media ball;

(7) "Nursery" means any place where nursery stock is propagated and grown for sale or distribution;

(8) "Nursery outlet" means any place or location where nursery stock is offered for wholesale or retail sale;

(9) "Nursery stock" means all plants, whether field grown, container grown, or collected native plants; trees, shrubs, vines, grass sod; seedlings, perennials, biennials; and buds, cuttings, grafts, or scions grown or collected or kept for propagation, sale, or distribution; except that it does not include dormant bulbs, tubers, roots, corms, rhizomes, pips; field, vegetable, or flower seeds; or bedding plants, annual plants, florists' greenhouse or field-grown plants, flowers or cuttings;

(10) "Place of business" means each separate nursery, or nursery outlet, where nursery stock is offered for sale, sold, or distributed;

(11) "Packaged stock" means bare-root stock which is packed either in bundles or in single plants with the roots in some type of moisture-retaining material designed to retard evaporation and hold the moisture-retaining material in place.

Section 27. Section 4-15-10 is amended to read:

4-15-10. Infested or diseased stock not to be offered for sale -- Identification of "nonestablished container stock" -- Requirements for container stock -- Inspected and
(1) Nursery stock which is infested with plant pests, including noxious weeds, or infected with disease or which does not meet minimum indices of vitality shall not be offered for sale.

(2) All nonestablished container stock offered for sale shall be identified by the words "nonestablished container stock" legibly printed on a water resistant tag which states the length of time it has been planted or the date it was planted and may not be offered for sale in any manner which leads a purchaser to believe it is container stock.

(3) All container stock offered for sale shall be established with a root-media mass that will retain its shape and hold together when removed from the container.

(4) No nursery stock other than officially inspected and certified stock shall be offered for wholesale or retail sale in this state.

(5) Colored waxes or other materials which coat the aerial parts of a plant and change the appearance of the plant surface are prohibited.

Section 28. Section 4-17-7 is amended to read:

4-17-7. Notice of noxious weeds to be published annually in county -- Notice to particular property owners to control noxious weeds -- Methods of prevention or control specified -- Failure to control noxious weeds considered public nuisance.

(1) Each county weed control board before May 1 of each year shall post a general notice of the noxious weeds within the county in at least three public places within the county and publish the same notice on:

(a) at least three occasions in a newspaper or other publication of general circulation within the county; and

(b) as required in Section 45-1-101.

(2) If the county weed control board determines that particular property within the county requires prompt and definite attention to prevent or control noxious weeds, it shall serve the owner or the person in possession of the property, personally or by certified mail, a
notice specifying when and what action should be required to be taken on the property.

Methods of prevention or control may include definite systems of tillage, cropping, use of chemicals, and use of livestock.

(3) An owner or person in possession of property who fails to take action to control or prevent the spread of noxious weeds as specified in the notice is maintaining a public nuisance.

Section 29. Section 4-22-3 is amended to read:

4-22-3. Commission -- Organization -- Quorum to transact business -- Vacancies

-- Ineligibility to serve -- Compensation.

(1) The members of the commission shall elect a chair, vice chair, and secretary from among their number.

(2) Attendance of a simple majority of the commission members at a called meeting shall constitute a quorum for the transaction of official business.

(3) The commission shall meet:

(a) at the time and place designated by the chair; and

(b) no less often than once every three months.

(4) Vacancies which occur on the commission for any reason shall be filled for the unexpired term of the vacated member by appointment of a majority of the remaining members.

(5) If a member moves from the district that he represents or ceases to act as a producer during his term of office, he must resign from the commission within 30 days after moving from the district or ceasing production.

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

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

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

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

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

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

Section 30. Section 4-22-6 is amended to read:

4-22-6. Commission to conduct elections -- Nomination of candidates -- Expenses
of election paid by commission.

(1) (a) The commissioner shall administer all commission elections.

(b) The commissioner shall mail a ballot to each producer within the district in which
an election is to be held by May 15 of each election year.

(c) The candidate who receives the highest number of votes cast in the candidate's
district shall be elected.

(d) The commissioner shall determine all questions of eligibility.

(e) A ballot shall be postmarked by May 31 of an election year.

(f) (i) All ballots received by the commissioner shall be counted and tallied by June
15.

(ii) A member of the commission whose name appears on a ballot may not participate
in counting or tallying the ballots.

(2) (a) Candidates for election to the commission shall be nominated, not later than
April 15, by a petition signed by five or more producers who are residents of the district in
which the election is to be held.
(b) If two or more candidates are not nominated by petition, the commission shall select a nominating committee composed of three producers who are residents of the district who shall select the candidates not nominated by petition.

(3) The names of all nominees, whether nominated by petition or by a nominating committee, shall be submitted to the commissioner on or before May 1 of each year in which an election is held.

(4) All election expenses incurred by the commissioner shall be paid by the commission.

Section 31. Section 4-23-5 is amended to read:

4-23-5. Board responsibilities -- Damage prevention policy -- Rules -- Methods to control predators and depredating birds and animals.

(1) The board is responsible for the formulation of the agricultural and wildlife damage prevention policy of the state and in conjunction with its responsibility may, consistent with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, adopt rules to implement its policy which shall be administered by the department.

(2) In its policy deliberations the board shall:

(a) specify programs designed to prevent damage to livestock, poultry, and agricultural crops; and

(b) specify methods for the prevention of damage and for the selective control of predators and depredating birds and animals including, but not limited to, hunting, trapping, chemical toxicants, and the use of aircraft.

(3) The board may also:

(a) specify bounties on designated predatory animals and recommend procedures for the payment of bounty claims, recommend bounty districts, recommend persons not authorized to receive bounty, and recommend to the department other actions it considers advisable for the enforcement of its policies; and

(b) cooperate with federal, state, and local governments, educational institutions, and private persons or organizations, through agreement or otherwise, to effectuate its policies.
Section 32. Section **4-23-6** is amended to read:

**4-23-6. Department to issue licenses and permits -- Department to issue aircraft use permits -- Reports.**

The department is responsible for the issuance of permits and licenses for the purposes of the federal Fish and Wildlife Act of 1956. No state agency or private person shall use any aircraft for the prevention of damage without first obtaining a use permit from the department. A state agency which contemplates the use of aircraft for the protection of agricultural crops, livestock, poultry, or wildlife shall file an application with the department for an aircraft use permit to enable the agency to issue licenses to personnel within the agency charged with the responsibility to protect such resources. Persons who desire to use privately owned aircraft for the protection of land, water, crops, wildlife, or livestock may not engage in any such protective activity without first obtaining an aircraft permit from the department. Agencies and private persons which obtain aircraft use permits shall file such reports with the department as it deems necessary in the administration of its licensing authority.

Section 33. Section **4-23-8** is amended to read:

**4-23-8. Proceeds of sheep fee -- Refund of sheep fees -- Annual audit of books, records, and accounts.**

(1) (a) The commissioner may spend an amount not to exceed the equivalent of 16 cents per head each year from the proceeds collected from the fee imposed on sheep for the promotion, advancement, and protection of the sheep interests of the state.

(b) All costs to promote or advance sheep interests shall be deducted from the total revenue collected before calculating the annual budget request, which shall be made by the Division of Wildlife Resources as specified in Section 4-23-9.

(c) A sheep fee is refundable in an amount equal to that part of the fee used to promote, advance, or protect sheep interests.

(d) A refund claim must be filed with the department on or before January 1 of the year immediately succeeding the year for which the fee was paid.

(e) A refund claim must be certified by the department to the state treasurer for
payment from the Agricultural and Wildlife Damage Prevention Account created in Section 4-23-7.5.

(2) Any expense incurred by the department in administering refunds shall be paid from funds allocated for the promotion, advancement, and protection of the sheep interests of the state.

(3) (a) The books, records, and accounts of the Utah Woolgrowers Association, or any other organization which receives funds from the agricultural and wildlife damage prevention account, for the purpose of promoting, advancing, or protecting the sheep interests of the state, shall be audited at least once annually by a licensed accountant.

(b) The results of this audit shall be submitted to the commissioner.

Section 34. Section 4-24-2 is amended to read:

4-24-2. Definitions.

As used in this chapter:

(1) "Brand" means any identifiable mark applied to livestock which is intended to show ownership.

(2) "Carcass" means any part of the body of an animal, including [but not limited to]
hides, entrails, and edible meats.

(3) "Domesticated elk" shall have the meaning as defined in Section 4-39-102.

(4) "Hide" means any skins or wool removed from livestock.

(5) "Livestock" means cattle, calves, horses, mules, sheep, goats, hogs, or domesticated elk.

(6) (a) "Livestock market" means a public market place consisting of pens or other enclosures where cattle, calves, horses, or mules are received on consignment and kept for subsequent sale, either through public auction or private sale.

(b) "Livestock market" does not mean:

(i) a place used solely for liquidation of livestock by a farmer, dairyman, livestock breeder, or feeder who is going out of business; or

(ii) a place where an association of livestock breeders under its own management,
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1514 offers registered livestock or breeding sires for sale and assumes all responsibility for the sale,
1515 guarantees title to the livestock or sires sold, and arranges with the department for brand
1516 inspection of all animals sold.
1517 (7) "Mark" means any dulap, waddle, or cutting and shaping of the ears or brisket area
1518 of livestock which is intended to show ownership.
1519 (8) "Slaughterhouse" means any building, plant, or establishment where animals are
1520 killed, dressed, or processed and their meat or meat products offered for sale for human
1521 consumption.
1522 Section 35. Section 4-24-12 is amended to read:
1523 4-24-12. Livestock -- Verification of ownership through brand inspection --
1524 Issuance of certificate of brand inspection -- Brand inspector may demand evidence of
1525 ownership-- Brand inspection of livestock seized by the federal government prohibited --
1526 Exception.
1527 (1) A brand inspector, as an agent of the department, shall verify livestock ownership
1528 by conducting a brand inspection during daylight hours.
1529 (2) After conducting the brand inspection, the brand inspector, if satisfied that the
1530 livestock subject to inspection bears registered brands or marks owned by the owner of the
1531 livestock, shall issue a brand inspection certificate to the owner or owner's agent.
1532 (3) The brand inspector shall record the number, sex, breed, and brand or mark on
1533 each animal inspected together with the owner's name.
1534 (4) If any livestock subject to inspection bears a brand or mark other than that of the
1535 owner or, if no brand or mark appears on such livestock, the brand inspector may demand
1536 evidence of ownership such as a bill of sale or other evidence of ownership before issuing a
1537 brand inspection certificate.
1538 (5) A brand inspector [shall not] may not issue a brand inspection certificate for any
1539 privately owned livestock seized by the federal government unless:
1540 (a) the brand inspector receives consent from the livestock's owner;
1541 (b) the owner is unknown; or
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(c) the brand inspector receives a copy of a court order authorizing the seizure.

Section 36. Section 4-24-20 is amended to read:

4-24-20. Livestock sold at market to be brand inspected -- Proceeds of sale may be withheld -- Distribution of withheld proceeds -- Effect of receipt of proceeds by department -- Deposit of proceeds -- Use of proceeds if ownership not established.

(1) Livestock may not be sold at any livestock market until after they have been brand inspected by the department. Title to purchased livestock shall be furnished to the buyer by the livestock market.

(2) Upon notice from the department that a question exists concerning the ownership of consigned livestock, the operator of the livestock market or meat packing plant shall withhold the proceeds from the sale of the livestock for 60 days to allow the consignor of the questioned livestock to establish ownership. If the owner or consignor fails within 60 days to establish ownership to the satisfaction of the department, the proceeds of the sale shall be transmitted to the department. Receipt of the proceeds by the department shall relieve the livestock market or meat packing plant from further responsibility for the proceeds.

(3) Proceeds withheld under Subsection (2) shall be deposited in the Utah Livestock Brand and Anti-Theft Account created in Section 4-24-24. If ownership is not satisfactorily established within one year, the department shall use the proceeds for animal identification.

Section 37. Section 4-26-5 is amended to read:

4-26-5. Adjoining landowners -- Partition fences -- Contribution.

If two or more persons agree to a fence enclosure or to the construction of a partition fence, the cost of construction and maintenance of the fence shall be apportioned between each party to the agreement based upon the amount of land enclosed. A person who is a party to such agreement and who fails to maintain such person's part of the fence is liable in a civil action for any damage sustained by another party to the agreement as a result of the failure to maintain the fence. If a person has enclosed land with a fence and the owner of adjoining land desires to enclose land adjoining the fence so that the existing fence or any part of it will become a partition fence between such tracts of land, the owner of the adjoining land shall
before making the enclosure pay to the owner of the existing fence one-half of the value of all
that part of the fence that will become a partition fence; and when one party ceases to improve
or cultivate his land or opens his enclosure he [must not] may not take away any part of the
partition fence belonging to him, if the owner or occupant of the adjoining enclosure within 30
days after notice, pays for the value of such fence; nor shall the partition fence be removed if
the crops enclosed by it will be exposed to injury.

Section 38. Section 4-29-2 is amended to read:

4-29-2. Restrictions on importation of chickens, turkeys, chicks, turkey poults,
and hatching eggs -- Certificate to accompany shipment -- Disposition of nonconforming
shipments.

(1) No chickens, turkeys, chicks, turkey poults, or hatching eggs to be used for
breeding purposes shall be imported to this state, or sold by hatcheries or others within this
state unless they originate from flocks participating in the pullorum control and eradication
phase of the National Poultry Improvement Plan, or the National Turkey Improvement Plan, or
have passed a negative agglutination blood test for pullorum disease administered under the
supervision of the department within 12 months prior to the date of sale.

(2) Baby chicks, turkey poults, or hatching eggs to be used for purposes other than
breeding [shall not] may not be imported to this state, or sold by hatcheries or others within
this state unless they originate from flocks participating in the pullorum control and
eradication phase of the National Poultry Improvement Plan, or the National Turkey
Improvement Plan, or have passed a negative agglutination blood test for pullorum disease
administered under supervision of the department within 12 months prior to the date of sale.

(3) A certificate issued by the appropriate authority of the "state of origin" shall
accompany each shipment of hatching eggs, baby chicks, poults, started chicks, started poults,
or chicken or turkey breed stock imported to this state. The certificate shall specify that the
contents of the shipment is free of pullorum or other poultry disease, the name and address of
the consignee in this state, the name and address of the person who consigned the poultry for
shipment, the name of the certifying authority in the state of origin, and the date the test or
inspection for pullorum was performed by such authority.

(4) The department may seize and destroy any shipment of chickens, chicks, turkeys, poults, or hatching eggs transported into this state in contravention of this section without notice to the person who consigned the poultry for shipment to this state, or it may return the contents of the shipment to such person at the latter's expense.

Section 39. Section 4-30-7.6 is amended to read:

4-30-7.6. Custodial accounts for trust funds.

(1) (a) Each payment that a livestock buyer makes to a livestock market selling on commission is a trust fund.

(b) Funds deposited in custodial accounts are trust funds.

(2) Each livestock market engaged in selling livestock on a commission or agency basis shall establish and maintain a separate bank account designated as "custodial account for shippers' proceeds" or some similar identifying designation, to disclose that the depositor is acting as a fiduciary and that the funds in the account are trust funds.

(3) (a) The livestock market shall deposit in its custodial account before the close of the next business day after the livestock is sold:

(i) the proceeds from the sale of the livestock that have been collected; and

(ii) an amount equal to the proceeds receivable from the sale of livestock that are due from:

(A) the livestock market;

(B) any owner, officer, or employee of the livestock market; and

(C) any buyer to whom the livestock market has extended credit.

(b) The livestock market shall thereafter deposit in the custodial account all proceeds collected until the account has been reimbursed in full, and shall, before the close of the seventh day following the sale of livestock, deposit an amount equal to all the remaining proceeds receivable whether or not the proceeds have been collected by the livestock market.

(4) The custodial account shall be drawn on only for payment of:

(a) the net proceeds to the consignor or shipper, or to any person that the livestock
market knows is entitled to payment;
(b) to pay lawful charges against the consignment of livestock which the market
agency shall, in its capacity as agent, be required to pay; and
(c) to obtain any sums due the livestock market as compensation for its services.
(5) (a) Each livestock market shall keep accounts and records that will disclose at all
times the handling of funds in the custodial account.
(b) Accounts and records [must] shall at all times disclose the name of the consignors
and the amount due and payable to each from funds in the custodial account.
(6) The custodial account [must] shall be established and maintained in a bank whose
deposits are insured by the Federal Deposit Insurance Corporation.
Section 40. Section 4-31-16 is amended to read:
4-31-16. **Contagious or infectious disease -- Duties of department.**
(1) (a) The department shall investigate and may quarantine any reported case of
contagious or infectious disease, or any epidemic, or poisoning affecting domestic animals or
any animal or animals that it believes may jeopardize the health of animals within the state.
(b) The department shall make a prompt and thorough examination of all
circumstances surrounding the disease, epidemic, or poisoning and may order quarantine,
care, or any necessary remedies.
(c) The department may also order immunization or testing and sanitary measures to
prevent the spread of disease.
(d) Investigations involving fish or wildlife shall be conducted under a cooperative
agreement with the Division of Wildlife Resources.
(2) (a) If the owner or person in possession of such animals, after written notice from
the department, fails to take the action ordered, the commissioner is authorized to seize and
hold the animals and take action necessary to prevent the spread of disease, including [but not
limited to] immunization[*], testing[*], dipping[*], or spraying.
(b) Animals seized for testing or treatment under this section shall be sold by the
commissioner at public sale to reimburse the department for all costs incurred in the seizure,
testing, treatment, maintenance, and sale of such animals unless the owner sooner tenders payment for the costs incurred by the department.

(c) (i) No seized animal shall be sold, however, until the owner or person in possession is served with a notice specifying the itemized costs incurred by the department and the time, place, and purpose of sale and the number of animals to be sold.

(ii) The notice shall be served at least three days in advance of sale in the manner:

(A) prescribed for personal service in Rule 4(d)(1), Utah Rules of Civil Procedure; or

(B) if the owner cannot be found after due diligence, in the manner prescribed for service by publication in Rule 4(d)(4), Utah Rules of Civil Procedure.

(3) Any amount realized from the sale of the animals over the total charges shall be paid to the owner of the animals if the owner is known or can by reasonable diligence be found; otherwise, the excess shall be paid to the tuberculosis and Bangs Disease Control Account.

Section 41. Section 4-31-16.5 is amended to read:

4-31-16.5. Brucellosis -- Vaccination required for certain cattle -- Testing required to import certain cattle.

(1) As used in this section, "test-eligible" has the meaning defined in 9 C.F.R. Sec. 78.1.

(2) (a) Instate origin replacement cattle that are kept for breeding stock must be official calfhood vaccinated for brucellosis.

(b) Female cattle from within the state that are not kept for breeding stock will not be required to be vaccinated.

(c) For purposes of this Subsection (2), the department may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, governing non-legible brucellosis tattoos and may accept brucellosis vaccination record forms as evidence that brucellosis vaccinations were performed.

(3) All female beef-breed cattle imported into the state are required to be official calfhood vaccinated for brucellosis except female cattle:
(a) less than four months of age;
(b) going directly to slaughter;
(c) going to a qualified feedlot; or
(d) going to an approved auction to be vaccinated on arrival or designated for
slaughter only.

(4) (a) Test-eligible cattle imported from states designated as brucellosis-free under 9
C.F.R. Sec. 78.43 that are acquired directly from the farm of origin are not required to be
tested for brucellosis before movement into the state.
(b) Test-eligible cattle imported from states designated as brucellosis-free under 9
C.F.R. Sec. 78.43 that are acquired through trading channels [must] shall test negative for
brucellosis within 30 days before movement into the state.

(5) Test-eligible cattle imported from states that have not been designated as
brucellosis-free under 9 C.F.R. Sec. 78.43 [must] shall test negative for brucellosis within 30
days before movement into the state.

(6) The department may investigate situations where fees for brucellosis vaccinations
are considered to be excessive.

(7) The department may make rules in accordance with Title 63G, Chapter 3, Utah
Administrative Rulemaking Act, for beef-breed cattle that are acquired for specialized
breeding purposes, and may exempt those cattle from brucellosis vaccination requirements.

(8) The department shall make rules in accordance with Title 63G, Chapter 3, Utah
Administrative Rulemaking Act, to implement this section.

Section 42. Section 4-32-3 is amended to read:

4-32-3. Definitions.

As used in this chapter:

(1) "Adulterated" means any livestock product or poultry product that:
(a) bears or contains any poisonous or deleterious substance that may render it
injurious to health, but, if the substance is not an added substance, the livestock product [shall
not be] is not considered adulterated under this subsection if the quantity of the substance in
or on the livestock product does not ordinarily render it injurious to health;

(b) bears or contains, by reason of the administration of any substance to the livestock or poultry or otherwise, any added poisonous or added deleterious substance which in the judgment of the commissioner makes the livestock product unfit for human food;

(c) contains, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical that is unsafe within the meaning of 21 U.S.C. Sec. 346a;

(d) bears or contains any food additive that is unsafe within the meaning of 21 U.S.C. Sec. 348;

(e) bears or contains any color additive that is unsafe within the meaning of 21 U.S.C. Sec. 379e; provided, that a livestock product which is not otherwise considered adulterated under Subsections (1)(c), (d), or (e) of this section shall nevertheless be considered adulterated if use of the pesticide chemical, food additive, or color additive is prohibited in official establishments by rules of the department;

(f) consists, in whole or in part, of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

(g) has been prepared, packaged, or held under unsanitary conditions if it may have become contaminated with filth, or if it may have been rendered injurious to health;

(h) is in whole or in part the product of an animal that has died otherwise than by slaughter;

(i) is contained in a container that is composed, in whole or in part, of any poisonous or deleterious substance that may render the meat product injurious to health;

(j) has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to 21 U.S.C. Sec. 348;

(k) has a valuable constituent in whole or in part omitted, abstracted, or substituted; or if damage or inferiority is concealed in any manner; or if any substance has been added, mixed, or packed with the meat product to increase its bulk or weight, or reduce its quality or strength, or to make it appear better or of greater value; or
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(1) is margarine containing animal fat and any of the raw material used in the
margarine consists in whole or in part of any filthy, putrid, or decomposed substance.

(2) "Animal food manufacturer" means any person engaged in the business of
preparing animal food derived from livestock carcasses or parts or products of such carcasses.

(3) "Broker" means any person engaged in the business of buying or selling livestock
or livestock products on commission, or otherwise negotiating purchases or sales of livestock
or livestock products other than for such person's own account.

(4) "Capable of use as human food" means any livestock carcass, or part or product of
a carcass, unless it is denatured or otherwise identified as required by rules of the department
to deter its use as human food, or unless it is naturally inedible by humans.

(5) "Container" or "package" means any box, can, tin, cloth, plastic, or other
receptacle, wrapper, or cover.

(6) "Director of meat inspection" means a licensed graduate veterinarian whose duties
and responsibilities are specified by the commissioner.

(7) "Domesticated elk" shall have the meaning as defined in Section 4-39-102.

(8) "Farm custom slaughter" means custom slaughtering of livestock or poultry for an
owner without inspection.

(9) "Farm custom slaughter permit" means a permit issued by the department to allow
farm custom slaughter.

(10) "Farm custom slaughter tag" means a tag which specifies the animal's
identification and certifies its ownership which is issued by the department through a brand
inspector to the owner of the animal before it is slaughtered.

(11) "Federal Food, Drug and Cosmetic Act" means the act so entitled, approved June

(12) "Federal Meat Inspection Act" means the act so entitled approved March 4, 1907
(34 Stat. 1260), as amended by the Wholesome Meat Act, 21 U.S.C. 601 et seq.; the term
"federal Poultry Products Inspection Act" means the act so entitled approved August 28, 1957
et seq.; and the term "federal acts" means these two federal acts.

(13) "Immediate container" means any consumer package, or any other container in which livestock products not consumer packaged, are packed.

(14) "Inspector" means a licensed veterinarian or competent lay person working under the supervision of a licensed graduate veterinarian.

(15) "Label" means a display of printed, or graphic matter upon any livestock or poultry product or the immediate container, not including package liners, of any such product.

(16) "Labeling" means all labels and other printed, or graphic matter:

(a) upon any livestock product or any of its containers or wrappers; or

(b) accompanying a livestock product.

(17) "Livestock" means any cattle, domesticated elk, sheep, swine, goats, horses, mules or other equines, whether living or dead.

(18) "Livestock product" means any carcass, part of a carcass, meat, or meat food product of any livestock.

(19) "Meat food product" means any product capable of use as human food that is made wholly or in part from any meat or other part of the carcass of any cattle, sheep, swine, or goats, excepting products that contain meat or other parts of such carcasses in relatively small proportion or that historically have not been considered by consumers as products of the meat food industry, and which are exempted from definition as a meat food product by the commissioner. Meat food product as applied to food products of equines shall have a meaning comparable to that provided in this subsection with respect to cattle, sheep, swine, and goats.

(20) "Misbranded" means any livestock product or poultry product that:

(a) bears a label that is false or misleading in any particular;

(b) is offered for sale under the name of another food;

(c) is an imitation of another food, unless the label bears, in type of uniform size and prominence, the word "imitation" followed by the name of the food imitated;

(d) if its container is so made, formed, or filled as to be misleading;

(e) does not bear a label showing:
(i) the name and place of business of the manufacturer, packer, or distributor; and
(ii) an accurate statement of the quantity of the product in terms of weight, measure, or numerical count; provided, that under this Subsection (20)(e), exemptions as to livestock products not in containers may be established by rules of the department and that under this Subsection (20)(e)(ii), reasonable variations may be permitted, and exemptions for small packages may be established for livestock or poultry products by rule of the department;
(f) does not bear any word, statement, or other information required by or under authority of this chapter to appear on the label or other labeling is not prominently placed with such conspicuousness, as compared with other words, statements, designs, or devices, in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
(g) is a food for which a definition and standard of identity or composition has been prescribed by rules of the department under Section 4-32-7 if the food does not conform to such definition and standard and the label does not bear the name of the food and any other information that is required by the rule;
(h) is a food for which a standard of fill has been prescribed by rule of the department for the container and the actual fill of the container falls below that prescribed unless its label bears, in such manner and form as such rules specify, a statement that it falls below such standard;
(i) is a food for which no standard or definition of identity has been prescribed under Subsection (20)(g) unless its label bears:
(i) the common or usual name of the food, if there be any; and
(ii) if it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings may, when authorized by the department, be designated as spices, flavorings, and colorings without naming each; provided, that to the extent that compliance with the requirements of Subsection (20)(i)(ii) is impracticable, or results in deception or unfair competition, exemptions shall be established by rule;
(j) is a food that purports to be or is represented to be for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the department, after consultation with the Secretary of Agriculture of the United States, prescribes by rules as necessary to inform purchasers as to its value for such uses;

(k) bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; provided, that to the extent that compliance with the requirements of this subsection are impracticable, exemptions shall be prescribed by rules of the department; or

(l) does not bear directly thereon and on its containers, as the department may prescribe by rule, the official inspection legend and establishment number of the official establishment where the product was prepared, and, unrestricted by any of the foregoing, such other information as the department may require by rules to assure that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain it in a wholesome condition.

(21) "Official certificate" means any certificate prescribed by rules of the department for issuance by an inspector or other person performing official functions under this chapter.

(22) "Official device" means any device prescribed or authorized by the commissioner for use in applying any official mark.

(23) "Official establishment" means any establishment at which inspection of the slaughter of livestock or the preparation of livestock products is maintained under the authority of this chapter.

(24) "Official inspection legend" means any symbol prescribed by rules of the department showing that a livestock product was inspected and passed in accordance with this chapter.

(25) "Official mark" means the official legend or any other symbol prescribed by rules of the department to identify the status of any livestock or livestock product under this chapter.

(26) "Permittee" means a person who holds a valid farm custom slaughter permit.
(27) "Pesticide chemical," "food additive," "color additive," and "raw agricultural commodity," have the same meanings for purposes of this chapter as ascribed to them in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq.

(28) "Poultry" means any domesticated bird, whether living or dead.

(29) "Poultry product" means any product capable of use as human food that is made wholly or in part from any poultry carcass, excepting products that contain poultry ingredients in relatively small proportion or that historically have not been considered by consumers as products of the poultry food industry, and that are exempted from definition as a poultry product by the commissioner.

(30) "Prepared" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed.

(31) "Renderer" means any person engaged in the business of rendering livestock carcasses, or parts or products of such carcasses, except rendering conducted under inspection or exemption under this chapter.

(32) "Slaughter" means the killing of livestock or poultry in a humane manner including skinning, dressing, or the process of performing any of the specified acts in preparing livestock or poultry for human consumption.

(33) "Slaughterhouse" or "custom slaughterhouse" means any building, plant, or establishment used for the purpose of killing, dressing, or processing, whether such dressing or processing is in conjunction with a killing operation or is a separate business, livestock or livestock products or poultry or poultry products offered for sale or to be used for human consumption.

(34) "Slaughtering of livestock or poultry as a business" means the slaughtering of livestock or poultry for the owner or caretaker of the livestock or poultry by a person who is not a full-time employee of the owner or caretaker of such livestock or poultry.

Section 43. Section 4-32-7 is amended to read:

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

The department shall make rules pursuant to Title 63G, Chapter 3, Utah Administrative
Rulemaking Act, regarding the following functions, powers, and duties, in addition to those specified in Title 4, Chapter 1, Utah Agricultural Code, for the administration and enforcement of this chapter:

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

2. The department shall require that:
   a. livestock and poultry be identified for inspection purposes;
   b. livestock or poultry products, or their containers be marked or labeled as:
      i. "Utah Inspected and Passed" if, upon inspection, the products are found to be unadulterated; and
      ii. "Utah Inspected and Condemned" if, upon inspection, the products are found to be adulterated; and
   c. condemned products, which otherwise would be used for human consumption, be destroyed under the supervision of an inspector.

3. The department shall prohibit or limit livestock products, poultry products, or other materials not prepared under inspection procedures provided in this chapter, from being brought into official establishments.

4. The department shall require that labels and containers for livestock and poultry products:
   a. bear all information required under Section 4-32-3 if the product leaves the official establishment; and
   b. be approved prior to sale or transportation.

5. For official establishments required to be inspected under Subsection (1), the department shall:
   a. prescribe sanitary standards;
   b. require experts in sanitation or other competent investigators to investigate sanitary
(c) refuse to provide inspection service if the sanitary conditions allow adulteration of any livestock or poultry product.

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

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

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

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

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

(i) slaughters livestock or poultry;

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

(iii) renders livestock or poultry; or

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

(7) (a) The department shall:

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

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

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

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

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

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

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

Section 44. Section 4-32-16 is amended to read:

4-32-16. Detention of animals or livestock or poultry products -- Removal of official marks.

Whenever any livestock or poultry product or any product exempted from the definition of a livestock or poultry product, or any dead, dying, disabled, or diseased livestock or poultry, is found by any authorized representative of the commissioner, and there is reason to believe that it is adulterated or misbranded and is capable of use as human food, or that it has not been inspected and passed, or that it has been or is intended to be distributed in violation of this chapter, it may be detained by such representative pending action under Section 4-32-17, and may not be moved by any person from the place at which it is located when so detained, until released by such representative. All official marks may be required by such representative to be removed from such product or animal before it is released.

Section 45. Section 4-32-22 is amended to read:

4-32-22. Animals slaughtered or the meat and poultry products not intended for human use -- No inspection -- Products to be denatured or otherwise identified.

Inspection may not be provided under this chapter at any establishment for the slaughter of livestock or poultry or the preparation of any livestock products or poultry products.
products that are not intended for use as human food, but such products shall be denatured or
otherwise identified as prescribed by rules of the department prior to their offer for sale or
transportation.

Section 46. Section 4-35-7 is amended to read:

4-35-7. Notice to owner or occupant -- Corrective action required -- Directive
issued by department -- Costs -- Owner or occupant may prohibit spraying.

(1) The department or an authorized agent of the department shall notify the owner or
occupant of the problem and the available alternatives to remedy the problem. The owner or
occupant shall take corrective action within 30 days.

(2) If the owner or occupant fails to take corrective action under Subsection (1), the
department may issue a directive for corrective action which shall be taken within 15
days. If the owner or occupant fails to act within the required time, the department shall take
the necessary action. The department may recover costs incurred for controlling an insect
infestation emergency from the owner or occupant of the property on whose property
corrective action was taken.

(3) Owners or occupants of property may prohibit spraying by presenting an affidavit
from their attending physician to the department which states that the spraying as planned is a
danger to their health. The department shall provide the owner or occupant with alternatives
to spraying which will abate the infestation.

Section 47. Section 4-37-102 is amended to read:

4-37-102. Purpose statement -- Aquaculture considered a branch of agriculture.

(1) The Legislature declares that it is in the interest of the people of the state to
encourage the practice of aquaculture, while protecting the public fishery resource, in order to
augment food production, expand employment, promote economic development, and protect
and better utilize the land and water resources of the state.

(2) The Legislature further declares that aquaculture is considered a
branch of the agricultural industry of the state for purposes of any laws that apply to or provide
for the advancement, benefit, or protection of the agricultural industry within the state.
Section 48. Section 4-37-109 is amended to read:

4-37-109. Department to make rules.

(1) The department shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(a) specifying procedures for the application and renewal of certificates of registration for operating an aquaculture or fee fishing facility; and

(b) governing the disposal or removal of aquatic animals from an aquaculture or fee fishing facility for which the certificate of registration has lapsed or been revoked.

(2) (a) The department may make other rules consistent with its responsibilities set forth in Section 4-37-104.

(b) Except as provided by this chapter, the rules authorized by Subsection (2)(a) shall be consistent with the suggested procedures for the detection and identification of pathogens published by the American Fisheries Society's Fish Health Section.

Section 49. Section 4-37-110 is amended to read:

4-37-110. Inspection of records and facilities.

(1) The following records and information shall be maintained by an aquaculture or fee fishing facility for a period of two years and shall be available for inspection by a department representative during reasonable hours:

(a) records of purchase, acquisition, distribution, and production histories of aquatic animals;

(b) certificate of registration; and

(c) valid identification of stocks, including origin of stocks.

(2) Department representatives may conduct pathological, fish culture, or physical investigations at any aquaculture, public aquaculture, or fee fishing facility during reasonable hours.

Section 50. Section 4-37-202 is amended to read:

4-37-202. Acquisition of aquatic animals for use in aquaculture facilities.

(1) Live aquatic animals intended for use in aquaculture facilities may be purchased or
acquired only from:

(a) aquaculture facilities within the state that have a certificate of registration and health approval number;

(b) public aquaculture facilities within the state that have a health approval number; or

(c) sources outside the state that are health approved as provided in Part 5.

(2) A person holding a certificate of registration for an aquaculture facility [must] shall submit annually to the department a record of each purchase of live aquatic animals and transfer of live aquatic animals into the facility. This record [must] shall include the following information:

(a) name, address, and health approval number of the source;

(b) date of transaction; and

(c) number and weight by species.

(3) The records required by Subsection (2) [must] shall be submitted to the department before a certificate of registration is renewed or a subsequent certificate of registration is issued.

Section 51. Section 4-37-203 is amended to read:

**4-37-203. Transportation of aquatic animals to or from aquaculture facilities.**

(1) Any person holding a certificate of registration for an aquaculture facility may transport the live aquatic animals specified on the certificate of registration to the facility or to any person who has been issued a certificate of registration to possess those aquatic animals.

(2) Each transfer or shipment of live aquatic animals from or to an aquaculture facility within the state [must] shall be accompanied by documentation of the source and destination of the fish, including:

(a) name, address, certificate of registration number and health approval number of the source;

(b) number and weight being shipped, by species; and

(c) name, address, and certificate of registration number of the destination.

Section 52. Section 4-37-204 is amended to read:
4-37-204. Sale of aquatic animals from aquaculture facilities.

(1) (a) Except as provided by Subsection (1)(b), a person holding a certificate of registration for an aquaculture facility may take an aquatic animal as approved on the certificate of registration from the facility at any time and offer the aquatic animal for sale; however, live aquatic animals may be sold within Utah only to a person who has been issued a certificate of registration to possess the aquatic animal.

(b) A person who owns or operates an aquaculture facility may stock a live aquatic animal in a private fish pond if the person:

(i) obtains a health approval number for the aquaculture facility;

(ii) provides the private fish pond's owner with a brochure published by the Division of Wildlife Resources that summarizes the statutes and rules related to a private fish pond and the possession of an aquatic animal;

(iii) inspects the private fish pond to verify that the private fish pond is in compliance with Subsections 23-15-10(2) and (3)(c); and

(iv) stocks the species, strain, and reproductive capability of aquatic animal authorized by the Wildlife Board in accordance with Section 23-15-10 for stocking in the area where the private fish pond is located.

(2) An aquatic animal sold or transferred by the owner or operator of an aquaculture facility shall be accompanied by the seller's receipt that contains the following information:

(a) date of transaction;

(b) name, address, certificate of registration number, health approval number, and signature of seller;

(c) number and weight of aquatic animal by:

(i) species;

(ii) strain; and

(iii) reproductive capability; and

(d) name and address of the receiver.
(3) (a) A person holding a certificate of registration for an aquaculture facility [must] shall submit to the department an annual report of each sale of live aquatic animals or each transfer of live aquatic animals to:
   (i) another aquaculture facility; or
   (ii) a fee fishing facility.
(b) The report [must] shall contain the following information:
   (i) name, address, and certificate of registration number of the seller or supplier;
   (ii) number and weight by species;
   (iii) date of sale or transfer; and
   (iv) name, address, phone number, and certificate of registration number of the receiver.
(4) (a) A person who owns or operates an aquaculture facility shall submit to the Division of Wildlife Resources an annual report of each sale or transfer of a live aquatic animal to a private fish pond.
   (b) The report shall contain:
      (i) the name, address, and health approval number of the person;
      (ii) the name, address, and phone number of the private fish pond's owner or operator;
      (iii) the number and weight of aquatic animal by:
         (A) species;
         (B) strain; and
         (C) reproductive capability;
      (iv) date of sale or transfer;
      (v) the private fish pond's location; and
      (vi) verification that the private fish pond was inspected and is in compliance with Subsections 23-15-10(2) and (3)(c).
(5) The reports required by Subsections (3) and (4) [must] shall be submitted before:
   (a) a certificate of registration is renewed or a subsequent certificate of registration is issued for an aquaculture facility in the state; or
Section 53. Section 4-37-302 is amended to read:

**4-37-302. Acquisition of aquatic animals for use in fee fishing facilities.**

(1) Live aquatic animals intended for use in fee fishing facilities may be purchased or acquired only from:

(a) aquaculture facilities within the state that have a certificate of registration and health approval number;

(b) public aquaculture facilities within the state that have a health approval number; or

(c) sources outside the state that are health approved pursuant to Part 5.

(2) (a) A person holding a certificate of registration for a fee fishing facility **shall** submit to the department an annual report of all live fish purchased or acquired.

(b) The report **shall** contain the following information:

(i) name, address, and certificate of registration number of the seller or supplier;

(ii) number and weight by species;

(iii) date of purchase or transfer; and

(iv) name, address, and certificate of registration number of the receiver.

(c) The report **shall** be submitted to the department before a certificate of registration is renewed or subsequent certificate of registration is issued.

Section 54. Section 4-37-303 is amended to read:

**4-37-303. Transportation of live aquatic animals to fee fishing facilities.**

(1) Any person holding a certificate of registration for a fee fishing facility may transport the live aquatic animals specified on the certificate of registration to the facility.

(2) Each transfer or shipment of live aquatic animals to a fee fishing facility within the state **shall** be accompanied by documentation of the source and destination of the fish, including:

(a) name, address, certificate of registration number and health approval number of the source;

(b) number and weight being shipped by species; and
Section 55. Section 4-37-305 is amended to read:

4-37-305. Fishing license not required to fish at fee fishing facilities -- Transportation of dead fish.

(1) A fishing license is not required to take fish from fee fishing facilities.  
(2) To transport dead fish from fee fishing facilities the fish [must] shall be accompanied by the seller's receipt containing the following information:

(a) species and number of fish;  
(b) date caught;  
(c) certificate of registration number of the fee fishing facility; and  
(d) name, address, and telephone number of the seller.

Section 56. Section 4-37-402 is amended to read:

4-37-402. Documentation required to import aquatic animals.  
Any aquatic animals classified as controlled species by rules of the Wildlife Board that are imported into the state for use in aquaculture or fee fishing facilities [must] shall be accompanied by documentation indicating the following:

(1) the health approval number assigned by the department to the source facility;  
(2) common or scientific names of the imported animals;  
(3) name and address of the consignor and consignee;  
(4) origin of shipment;  
(5) final destination;  
(6) number or pounds shipped;  
(7) purpose for which shipped;  
(8) method of transportation; and  
(9) any other information required by the department.

Section 57. Section 4-37-502 is amended to read:

(1) (a) Except as provided by Subsection (1)(b), approval shall be based upon inspections carried out in accordance with standards and rules of the Fish Health Policy Board made pursuant to Section 4-37-503.

(b) An owner or operator of an aquaculture facility that is under quarantine or whose health approval has been canceled or denied prior to July 1, 2007 may seek health approval without submitting or complying with a biosecurity plan required by rule by submitting a new health inspection report to the department.

(2) (a) The inspections must be done by an individual who has received certification from the American Fisheries Society as a fish health inspector.

(b) An inspection of an aquaculture facility may not be done by an inspector who is employed by, or has pecuniary interest in, the facility being inspected.

(c) The department shall post on its website a current list of:

(i) certified fish health inspectors; and

(ii) approved laboratories to which a fish health inspector may send the samples collected during the inspections required by this section.

(d) (i) If the fish health inspector conducting the inspection is not an employee of the department, the owner or operator of the aquaculture facility shall notify the department of the date and time of the inspection at least five business days before the date on which the inspection will occur.

(ii) The department may be present for the inspection.

(3) To receive a health approval number, inspection reports and other evidence of the disease status of a source facility must be submitted to the agency responsible for certifying the source as health approved pursuant to Section 4-37-501.

Section 58. Section 4-37-503 is amended to read:

4-37-503. Fish Health Policy Board.

(1) There is created within the department the Fish Health Policy Board which shall establish policies designed to prevent the outbreak of, control the spread of, and eradicate pathogens that cause disease in aquatic animals.
(2) The Fish Health Policy Board shall:
(a) in accordance with Subsection (6)(b), determine procedures and requirements for certifying a source of aquatic animals as health approved, including:
(i) the pathogens for which inspection is required to receive health approval;
(ii) the pathogens that may not be present to receive health approval; and
(iii) standards and procedures required for the inspection of aquatic animals;
(b) establish procedures for the timely reporting of the presence of a pathogen and disease threat;
(c) create policies and procedures for, and appoint, an emergency response team to:
(i) investigate a serious disease threat;
(ii) develop and monitor a plan of action; and
(iii) report to:
(A) the commissioner of agriculture and food;
(B) the director of the Division of Wildlife Resources; and
(C) the chair of the Fish Health Policy Board; and
(d) develop a unified statewide aquaculture disease control plan.
(3) The Fish Health Policy Board shall advise the commissioner of agriculture and food and the executive director of the Department of Natural Resources regarding:
(a) educational programs and information systems to educate and inform the public about practices that the public may employ to prevent the spread of disease; and
(b) communication and interaction between the department and the Division of Wildlife Resources regarding fish health policies and procedures.
(4) (a) (i) The governor shall appoint the following seven members to the Fish Health Policy Board:
(A) one member from names submitted by the Department of Natural Resources;
(B) one member from names submitted by the Department of Agriculture and Food;
(C) one member from names submitted by a nonprofit corporation that promotes sport fishing;
(D) one member from names submitted by a nonprofit corporation that promotes the aquaculture industry;
(E) one member from names submitted by the Department of Natural Resources and the Department of Agriculture and Food;
(F) one member from names submitted by a nonprofit corporation that promotes sport fishing; and
(G) one member from names submitted by a nonprofit corporation that promotes the aquaculture industry.

(ii) The members appointed under Subsections (4)(a)(i)(E) through (G) shall be:
(A) (I) faculty members of an institution of higher education; or
(II) qualified professionals; and
(B) have education and knowledge in:
(I) fish pathology;
(II) business;
(III) ecology; or
(IV) parasitology.

(iii) At least one member appointed under Subsections (4)(a)(i)(E) through (G) shall have education and knowledge about fish pathology.

(iv) (A) A nominating person shall submit at least three names to the governor.
(B) If the governor rejects all the names submitted for a member, the recommending person shall submit additional names.

(b) Except as required by Subsection (4)(c), the term of office of board members shall be four years.

(c) Notwithstanding the requirements of Subsection (4)(b), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

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

(e) The board members shall elect a chair of the board from the board's membership.

(f) The board shall meet upon the call of the chair or a majority of the board members.

(g) An action of the board shall be adopted upon approval of the majority of voting members.

(5) (a) (i) A member who is not a government employee may not receive compensation or benefits for the member's service, but may receive per diem and expenses incurred in the performance of the member’s official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) A member may decline to receive per diem and expenses for the member's service.

(b) (i) A state government officer and employee member who does not receive salary, per diem, or expenses from the agency the member represents for the member's service may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) A state government officer and employee member may decline to receive per diem and expenses for the member's service.

(c) (i) A higher education member who does not receive salary, per diem, or expenses from the entity that the member represents for the member's service may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(ii) A higher education member may decline to receive per diem and expenses for the member's service.

(6) (a) The board shall make rules consistent with its responsibilities and duties specified in this section.

(b) Except as provided by this chapter, all rules adopted by the Fish Health Policy Board [must] shall be consistent with the suggested procedures for the detection and identification of pathogens published by the American Fisheries Society's Fish Health Section.

(c) (i) Rules of the department and Fish Health Policy Board pertaining to the control
of disease shall remain in effect until the Fish Health Policy Board enacts rules to replace
those provisions.

(ii) The Fish Health Policy Board shall promptly amend rules that are inconsistent
with the current suggested procedures published by the American Fisheries Society.

(d) The Fish Health Policy Board may waive a requirement established by the Fish
Health Policy Board's rules if:

(i) the rule specifies the waiver criteria and procedures; and
(ii) the waiver will not threaten other aquaculture facilities or wild aquatic animal
populations.

Section 59. Section 4-39-201 is amended to read:

4-39-201. Fencing, posts, and gates.

(1) Each domesticated elk facility shall, at a minimum, meet the requirements of this
section and shall be constructed to prevent the movement of domesticated elk into or out of the
facility.

(2) (a) All perimeter fences and gates shall be:

(i) a minimum of eight feet above ground level; and
(ii) constructed of hi-tensile steel.

(b) At least the bottom four feet [must] shall be mesh with a maximum mesh size of 6" x 6".

(c) The remaining four feet shall be mesh with a maximum mesh size of 12" x 6".

(3) The minimum wire gauge shall be 14-1/2 gauge for a 2 woven hi-tensile fence.

(4) All perimeter gates at the entrances of domesticated elk handling facilities shall be
locked, with consecutive or self-closing gates when animals are present.

(5) Posts shall be:

(a) (i) constructed of treated wood which is at least four inches in diameter; or
(ii) constructed of a material with the strength equivalent of Subsection (5)(a)(i);

(b) spaced no more than 30 feet apart if one stay is used, or 20 feet apart if no stays are
used; and
(c) at least eight feet above ground level and two feet below ground level.

(6) Stays, between the posts, shall be:

(a) constructed of treated wood or steel;

(b) spaced no more than 15 feet from any post; and

(c) at least eight feet above ground level, and two feet below ground level.

(7) Corner posts and gate posts shall be braced wood or its strength equivalent.

Section 60. Section 4-39-205 is amended to read:

4-39-205. License renewal.

(1) To renew a license, the licensee [must] shall submit to the department:

(a) an inspection certificate showing that:

(i) the domesticated elk, on the domesticated elk facility, have been inspected and certified by the department for health, proof of ownership, and genetic purity; and

(ii) the facility has been properly maintained as provided in this chapter during the immediately preceding 60-day period; and

(b) a record of each purchase of domesticated elk and transfer of domesticated elk into the facility, which [must] shall include the following information:

(i) name, address, and health approval number of the source;

(ii) date of transaction; and

(iii) number and sex.

(2) (a) If the application for renewal is not received on or before April 30, a late fee will be charged.

(b) A license may not be renewed until the fee is paid.

(3) If the application and fee for renewal are not received on or before July 1, the license may not be renewed, and a new license shall be required.

Section 61. Section 4-39-206 is amended to read:

4-39-206. Records to be maintained.

(1) The following records and information [must] shall be maintained by a domesticated elk facility for a period of five years:
(a) records of purchase, acquisition, distribution, and production histories of
domesticated elk;
(b) records documenting antler harvesting, production, and distribution; and
(c) health certificates and genetic purity records.
(2) For purposes of carrying out the provisions of this chapter and rules promulgated
under this chapter and, at any reasonable time during regular business hours, the department
shall have free and unimpeded access to inspect all records required to be kept.
(3) The department may make copies of the records referred to in this section.
Section 62. Section 4-39-302 is amended to read:
4-39-302. Acquisition of domesticated elk for use in domesticated elk facilities.
Domesticated elk intended for use in domesticated elk facilities [must] shall meet all
health and genetic requirements of this chapter.
Section 63. Section 4-39-304 is amended to read:
(1) Each domesticated elk, not previously tattooed, [must] shall be marked by either a
tattoo, as provided in Subsection (2), or by a microchip, as provided in Subsection (3):
(a) within 30 days of a change of ownership; or
(b) in the case of newborn calves, within 15 days after being weaned, but in any case,
no later than September 15.
(2) If a domesticated elk is identified with a tattoo, the tattoo shall:
(a) be placed peri-anally or inside the right ear; and
(b) consist of a four-digit herd number assigned by the department over a three-digit
individual animal number assigned by the owner.
(3) If a domesticated elk is identified with a microchip, it [must] shall be placed in the
right ear.
Section 64. Section 4-39-305 is amended to read:
4-39-305. Transportation of domesticated elk to or from domesticated elk
facilities.
Any domesticated elk transferred to or from a domesticated elk facility within the state [must] shall be:

(1) accompanied by a brand inspection certificate specifying the following:
   (a) the name, address, and facility license number of the source;
   (b) number, sex, and individual identification number; and
   (c) name, address, and facility license number of the destination;
(2) accompanied by proof of genetic purity as provided in Section 4-39-301; and
(3) inspected by the department as provided in Section 4-39-306.

Section 65. Section 4-39-306 is amended to read:

4-39-306. Inspection prior to movement, sale, removal of antlers, or slaughter.

(1) Each domesticated elk facility licensee shall have the domesticated elk inspected by the department prior to any transportation, sale, removal of antlers, or slaughter.
(2) Any person transporting or possessing domesticated elk or domesticated elk products [must] shall have the appropriate brand inspection certificate in his or her possession.

Section 66. Section 6-1-3 is amended to read:

6-1-3. Assignment to be written -- Contents -- Recording.

Every such assignment shall be by an instrument in writing, setting forth the name of the assignor, his residence and business, the name of the assignee and his residence and business, and in a general way describing the property assigned with its location, and stating the purpose of the assignment. It shall be executed and acknowledged in the manner prescribed for the execution and acknowledgment of deeds, and recorded in the office of the recorder of the county where the property assigned is located. The assignor shall annex to such instrument an inventory, under oath, of his estate, real and personal, according to the best of his knowledge, and a list of his creditors and the amount of their respective demands; but such inventory [shall not be] is not conclusive as to the amount of the debtor's estate, and such assignment shall vest in the assignee the title to any other property belonging to the debtor at the time of making the assignment, except property exempt from execution and insurance upon the life of the assignor, unless the instrument mentions such exempt property and
insurance and declares an intention of the assignor that they shall pass thereby. As soon as
such instrument is recorded it shall be filed, with the inventory and list of creditors, in the
office of the clerk of the district court of the county in which the property so assigned is
located; as shall all subsequent papers connected with such proceedings.

Section 67. Section 6-1-9 is amended to read:

6-1-9. Taxes to be paid.

In all assignments of property for the benefit of creditors, assessments and taxes levied
thereon either under the laws of the state or ordinances of municipal corporations shall be
entitled to priority, and paid in full by the assignee, and claims therefor need not be filed with
him.

Section 68. Section 6-1-15 is amended to read:

6-1-15. Debts not matured -- Delay in filing claims.

Any creditor may claim debts to become due as well as debts due, but on debts not due
a reasonable rebate shall be made when the same are not drawing interest. Creditors who [shall not]
do not file their claims within three months from the publication of notice as aforesaid [shall not]
may not participate in dividends until after payment in full of all claims presented within said time and allowed by the court, unless the court has extended the time for filing such claims.

Section 69. Section 7-1-303 is amended to read:

7-1-303. Joint operations and information exchange by institutions.

The commissioner may authorize institutions subject to the jurisdiction of the department to engage in such joint and cooperative actions as the commissioner finds will be in the public interest, [such as, but not limited to] including:

(1) mutual exchange of financial information as to depositors, borrowers, and other customers;

(2) joint use of facilities;

(3) joint operation of clearing houses and other facilities for payment of checks, drafts,
or other instruments drawn on or issued by various classes of depository institutions;
(4) joint participation in lending programs to promote the public welfare;
(5) joint risk management services; and
(6) joint ownership, operation, or furnishing of electronic funds transfer services.

Section 70. Section 7-1-309 is amended to read:

7-1-309. Hearings by commissioner -- Discretion of commissioner -- Procedure --

Judicial review.

The commissioner may conduct or cause to be conducted hearings relating to matters within his supervisory jurisdiction and shall establish rules for discovery and other procedures applicable to the hearings consistent with the provisions of the Utah Rules of Civil Procedure. The decision whether or not to hold a formal hearing on any matter coming before the commissioner under this title shall be solely within the discretion of the commissioner. His failure or refusal to hold a formal hearing is not a ground for reversal of any decision or order of the commissioner unless the reviewing court finds that such failure or refusal has deprived an interested party of due process of law, or that a formal hearing is required by the provisions of this title.

Section 71. Section 7-1-607 is amended to read:

7-1-607. Lost or destroyed account book or certificate.

If the holder of record of an account as shown by the books of a depository institution, or his legal representative, files with the institution an affidavit to the effect that the account book or certificate has been lost or destroyed and has not been pledged or assigned in whole or in part, the institution shall issue a new account book or certificate in the name of the holder of record. The new account book or certificate shall state that it is issued in lieu of the one lost or destroyed. The institution is not liable thereafter on the original account book or certificate. However, the board of directors of the institution shall, if in its judgment it is necessary, require a bond in an amount it considers sufficient to indemnify the institution against any loss which might result from the issuance of the new account book or certificate.

Section 72. Section 7-1-612 is amended to read:

7-1-612. Pledge or hypothecation of joint savings accounts.
The pledge or hypothecation to any depository institution of all or part of a savings account in joint tenancy signed by any tenant or tenants whether minor or adult, upon whose signature or signatures withdrawals may be made from the account shall, unless the terms of the savings account provide specifically to the contrary, be a valid pledge and transfer to the institution of that part of the account pledged or hypothecated, and [shall not] does not operate to sever or terminate the joint and survivorship ownership of all or any part of the account.

Section 73. Section 7-1-806 is amended to read:

7-1-806. **Money market funds arranging with bank to honor two-party instruments -- Discouraging payment of interest to two persons on funds in transit -- Pyramiding and similar schemes as misdemeanors.**

Nothing in this act shall be construed to prevent money market funds from making arrangements with banks to honor two party checks, drafts, or other instruments.

The commissioner shall exert his influence to discourage banks, money market funds and other programs in Utah and throughout the United States from paying interest to two persons at the same time on funds in the process of transfer.

The process or the practice referred to as pyramiding or any similar process or practice as defined by the commissioner, and such definition is approved by the governor, shall be prohibited within this state and persons found guilty of these schemes shall be found guilty of a class C misdemeanor. This [shall not] does not preclude more serious punishment under federal law.

Money market funds, similar funds and bank regulated institutions shall cooperate with the commissioner to stop these practices.

Section 74. Section 7-2-9 is amended to read:

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

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

(2) (a) If the deposits of the institution are to any extent insured by a federal deposit
insurance agency, the commissioner may appoint that agency as receiver. After receiving
notice in writing of the acceptance of the appointment, the commissioner shall file a certificate
of appointment in the commissioner's office and with the clerk of the district court. After the
filing of the certificate, the possession of all assets, business, and property of the institution is
considered transferred from the institution and the commissioner to the agency, and title to all
assets, business, and property of the institution is vested in the agency without the execution of
any instruments of conveyance, assignment, transfer, or endorsement.

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

(c) The commissioner or any receiver appointed by him shall possess all the rights and
claims of the institution against any person whose breach of fiduciary duty or violations of the
laws of this state or the United States applicable to depository institutions may have caused or
contributed to a condition which resulted in any loss incurred by the institution or to its assets in the possession of the commissioner or receiver. As used in this Subsection (2)(c), fiduciary duty includes those duties and standards applicable under statutes and laws of this state and the United States to a director, officer, or other party employed by or rendering professional services to a depository institution whose deposits are insured by a federal deposit insurance agency. Upon taking possession of an institution, no person other than the commissioner or receiver shall have standing to assert any such right or claim of the institution, including its depositors, creditors, or shareholders unless the right or claim has been abandoned by the commissioner or receiver with approval of the court. Any judgment based on the rights and claims of the commissioner or receiver shall have priority in payment from the assets of the judgment debtors.

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

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

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

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

(c) Any act or omission of the commissioner or of any federal deposit insurance agency as a receiver appointed by him while acting pursuant to this chapter shall be deemed to be the exercise of a discretionary function within the meaning of Section 63G-7-301 of the laws of this state or Section 28 U.S.C. 2680(a) of the laws of the United States.

(5) Actions, decisions, or agreements of a receiver under this chapter, other than allowance or disallowance of claims under Section 7-2-6, shall be subject to judicial review only as follows:

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

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

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

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

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

Section 75. Section 7-2-10 is amended to read:

7-2-10. Inventory of assets -- Listings of claims -- Report of proceedings -- Filing -- Inspection.

As soon as is practical after taking possession of an institution the commissioner, or any receiver or liquidator appointed by him, shall make or cause to be made in duplicate an inventory of its assets, one copy to be filed in his office and one with the clerk of the district court. Upon the expiration of the time fixed for presentation of claims the commissioner, or any receiver or liquidator appointed by him, shall make in duplicate a full and complete list of the claims presented, including and specifying claims disallowed by him, of which one copy shall be filed in his office and one copy in the office of the clerk of the district court. The commissioner, or any receiver or liquidator appointed by him, shall in like manner make and file supplemental lists showing all claims presented after the filing of the first list. The supplemental lists shall be filed every six months and at least 15 days before the declaration of any dividend. At the time of the order for final distribution the commissioner, or any receiver or liquidator appointed by him, shall make a report in duplicate of the proceeding, showing the disposition of the assets and liabilities of the institution, one copy to be filed in his office and one with the clerk of the district court. The accounting, inventory, and lists of claims shall be open at all reasonable times for inspection. Any objection to any report or accounting shall be filed with the clerk of the district court within 30 days after the report of accounting has been filed by the commissioner, or any receiver or liquidator appointed by him, and shall be subject to judicial review only as provided in Section 7-2-9.

Section 76. Section 7-2-12 is amended to read:

(1) Upon taking possession of the institution, the commissioner may do all things necessary to preserve its assets and business, and shall rehabilitate, reorganize, or liquidate the affairs of the institution in a manner he determines to be in the best interests of the institution's depositors and creditors. Any such determination by the commissioner may not be overruled by a reviewing court unless it is found to be arbitrary, capricious, fraudulent, or contrary to law. In the event of a liquidation, he shall collect all debts due and claims belonging to it, and may compromise all bad or doubtful debts. He may sell, upon terms he may determine, any or all of the property of the institution for cash or other consideration. The commissioner shall give such notice as the court may direct to the institution of the time and place of hearing upon an application to the court for approval of the sale. The commissioner shall execute and deliver to the purchaser of any property of the institution sold by him those deeds or instruments necessary to evidence the passing of title.

(2) With approval of the court and upon terms and with priority determined by the court, the commissioner may borrow money and issue evidence of indebtedness. To secure repayment of the indebtedness, he may mortgage, pledge, transfer in trust, or hypothecate any or all of the property of the institution superior to any charge on the property for expenses of the proceeding as provided in Section 7-2-14. These loans may be obtained for the purpose of facilitating liquidation, protecting or preserving the assets in the charge of the commissioner, expediting the making of distributions to depositors and other claimants, aiding in the reopening or reorganization of the institution or its merger or consolidation with another institution, or the sale of all of its assets. Neither the commissioner nor any special deputy or other person lawfully in charge of the affairs of the institution is under any personal obligation to repay those loans. The commissioner may take any action necessary or proper to consummate the loan and to provide for its repayment and to give bond when required for the faithful performance of all undertakings in connection with it. The commissioner or special deputy shall make application to the court for approval of any loan proposed under this section. Notice of hearing upon the application shall be given as the court directs. At the hearing upon the application any stockholder or shareholder of the institution or any depositor
or other creditor of the institution may appear and be heard on the application. Prior to the
obtaining of a court order, the commissioner or special deputy in charge of the affairs of the
institution may make application or negotiate for the loan or loans subject to the obtaining of
the court order.

(3) With the approval of the court pursuant to a plan of reorganization or liquidation
under Section 7-2-18, the commissioner may provide for depositors to receive new deposit
instruments from a depository institution that purchases or receives some or all of the assets of
the institution in the possession of the commissioner. All new deposit instruments issued by
the acquiring depository institution may, in accordance with the terms of the plan of
reorganization or liquidation, be subject to different amounts, terms, and interest rates than the
original deposit instruments of the institution in the possession of the commissioner. All
deposit instruments issued by the acquiring institution shall be considered new deposit
obligations of the acquiring institution. The original deposit instruments issued by the
institution in the possession of the commissioner are not liabilities of the acquiring institution,
unless assumed by the acquiring institution. Unpaid claims of depositors against the
institution in the possession of the commissioner continue, and may be provided for in the
plan of reorganization or liquidation.

(4) The commissioner, after taking possession of any institution or other person
subject to the jurisdiction of the department, may terminate any executory contract, including
standby letters of credit, unexpired leases and unexpired employment contracts, to which the
institution or other person is a party. If the termination of an executory contract or unexpired
lease constitutes a breach of the contract or lease, the date of the breach is the date on which
the commissioner took possession of the institution. Claims for damages for breach of an
executory contract [must] shall be filed within 30 days of receipt of notice of the termination,
and if allowed, shall be paid in the same manner as all other allowable claims of the same
priority out of the assets of the institution available to pay claims.

(5) With approval of the court and upon a showing by the commissioner that it is in
the best interests of the depositors and creditors, the commissioner may transfer property on
account of an indebtedness incurred by the institution prior to the date of the taking.

(6) (a) The commissioner may avoid any transfer of any interest of the institution in property or any obligation incurred by the institution that is void or voidable by a creditor under Title 25, Chapter 6.

(b) The commissioner may avoid any transfer of any interest in real property of the institution that is void as against or voidable by a subsequent purchaser in good faith and for a valuable consideration of the same real property or any portion thereof who has duly recorded his conveyance at the time possession of the institution is taken, whether or not such a purchaser exists.

(c) The commissioner may avoid any transfer of any interest in property of the institution or any obligation incurred by the institution that is invalid or void as against, or is voidable by a creditor that extends credit to the institution at the time possession of the institution is taken by the commissioner, and that obtains, at such time and with respect to such credit, a judgment lien or a lien by attachment, levy, execution, garnishment, or other judicial lien on the property involved, whether or not such a creditor exists.

(d) The right of the commissioner under Subsections (6)(b) and (c) to avoid any transfer of any interest in property of the institution shall be unaffected by and without regard to any knowledge of the commissioner or of any creditor of the institution.

(e) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, or disposing of or parting with property or with an interest in property, including retention of title as a security interest.

(f) The commissioner may avoid and recover any payment or other transfer of any interest in property of the institution to or for the benefit of a creditor, for or on account of an antecedent debt owed by the institution before the transfer was made if the creditor at the time of such transfer had reasonable cause to believe that the institution was insolvent, and if the payment or other transfer will allow the creditor to obtain a greater percentage of his debt than he would be entitled to under the provisions of Section 7-2-15. For the purposes of this subsection:
(i) antecedent debt does not include earned wages and salaries and other operating expenses incurred and paid in the normal course of business;

(ii) a transfer of any interest in real property is deemed to have been made or suffered when it became so far perfected that a subsequent good faith purchaser of the property from the institution for a valuable consideration could not acquire an interest superior to the transferee; and

(iii) a transfer of property other than real property is deemed to have been made or suffered when it became so far perfected that a creditor on a simple contract could not acquire a lien by attachment, levy, execution, garnishment, or other judicial lien superior to the interest of the transferee.

(g) For purposes of this section, "date of possession" means the earlier of the date the commissioner takes possession of a financial institution under Title 7, Chapter 2, or the date when the commissioner enters an order suspending payments to depositors and other creditors under Section 7-2-19.

(7) (a) With or without the prior approval of the court, the commissioner or any federal deposit insurance agency appointed by him as receiver or liquidator of a depository institution closed by the commissioner under the provisions of this chapter may setoff against the deposits or other liabilities of the institution any debts or other obligations of the depositor or claimant due and owing to the institution. The amount of any setoff against the liabilities of the institution shall be no greater than the amount the depositor or claimant would receive pursuant to Section 7-2-15 after final liquidation of the institution. When the liquidation value of a depositor's or claimant's claim against the institution will or may be less than the full amount of the claim, setoff may be made prior to final liquidation if the commissioner or any receiver or liquidator appointed by him can reasonably estimate the liquidation value of the claim, and the court, after notice and opportunity for hearing, approves the estimate for purposes of making the setoff. If the right of setoff is exercised, the commissioner or any receiver or liquidator appointed by him shall give written notice to the depositor or claimant of the amount setoff.
(b) The existence and amount of a debtor or creditor relationship or both, between the institution and its depositor or claimant and the right to the proceeds in a deposit account shall be determined solely by the books and records of the institution.

(c) Any contract purporting to affect the right of setoff [must shall] be in writing and signed by the depositor-debtor and an authorized officer of the institution and be maintained as a part of the records of the institution.

(d) Any claim that a deposit account is a special account not subject to setoff because it was maintained for a specific purpose or to satisfy a particular obligation other than satisfaction of or as security for an indebtedness to the institution or that the right to the deposit actually belongs to a third party [shall not does not] affect the right to setoff of the commissioner or any receiver or liquidator appointed by him unless the special nature of the account is clearly shown in the books and records of the institution.

(e) In the absence of any other instrument in writing, the terms and provisions of the signature card applicable to a particular account in effect at the time the commissioner takes possession of the institution shall be determinative of the right of setoff by the commissioner or any receiver or liquidator appointed by him.

(f) Knowledge of the institution or of any director, officer, or employee of the institution that the nature of the account is other than as shown in the books and records of the institution [shall not does not] affect the right of setoff by the commissioner or any receiver or liquidator appointed by him.

(g) The liability of the commissioner or any receiver or liquidator appointed by him for exercising a right of setoff other than as authorized by this section shall be only to a person who establishes by the procedure set forth in Section 7-2-6 that his interest in the account is superior to that of the person whose debt to the institution was setoff against the account. The amount of any such liability shall be no greater than the amount of the setoff and neither the commissioner or any receiver or liquidator appointed by him shall be liable for any action taken under this section unless the action taken is determined by the court to be arbitrary or capricious.
Section 77. Section 7-5-2 is amended to read:

7-5-2. Permit required to engage in trust business -- Exceptions.

(1) No trust company shall accept any appointment to act in any agency or fiduciary
capacity, [such as but not limited to] including that of personal representative, executor,
administrator, conservator, guardian, assignee, receiver, depositary, or trustee under order or
judgment of any court or by authority of any law of this state or as trustee for any purpose
permitted by law or otherwise engage in the trust business in this state, unless and until it has
obtained from the commissioner a permit to act under this chapter. This provision [shall not]
does not apply to any bank or other corporation authorized to engage and lawfully engaged in
the trust business in this state before July 1, 1981.

(2) Nothing in this chapter prohibits:

(a) any corporation organized under Title 16, Chapter 6a or 10a, from acting as trustee
of any employee benefit trust established for the employees of the corporation or the
employees of one or more other corporations affiliated with the corporation;

(b) any corporation organized under Title 16, Chapter 6a, Utah Revised Nonprofit
Corporation Act, and owned or controlled by a charitable, benevolent, eleemosynary, or
religious organization from acting as a trustee for that organization or members of that
organization but not offering trust services to the general public;

(c) any corporation organized under Title 16, Chapter 6a or 10a, from holding in a
fiduciary capacity the controlling shares of another corporation but not offering trust services
to the general public; or

(d) any depository institution from holding in an agency or fiduciary capacity
individual retirement accounts or Keogh plan accounts established under Section 401(a) or
408(a) of Title 26 of the United States Code.

Section 78. Section 7-5-4 is amended to read:

7-5-4. Withdrawal from trust business.

Any trust company which desires to withdraw from and discontinue doing a trust
business shall furnish to the commissioner satisfactory evidence of its release and discharge
from all the obligations and trusts undertaken by it, and after the company has furnished that
evidence the commissioner shall revoke his certificate of authority to do a trust business
previously issued to that trust company, and thereafter that trust company [shall not] may not
be permitted to use and [shall not] may not use the word "trust" in its corporate name or in
connection with its business, nor undertake the administration of any trust business.

Section 79. Section 7-5-7 is amended to read:

7-5-7. Management and investment of trust funds.

(1) Funds received or held by any trust company as agent or fiduciary, whether for
investment or distribution, shall be invested or distributed as soon as practicable as authorized
under the instrument creating the account and [shall not] may not be held uninvested any
longer than is reasonably necessary.

(2) If the instrument creating an agency or fiduciary account contains provisions
authorizing the trust company, its officers, or its directors to exercise their discretion in the
matter of investments, funds held in the trust account under that instrument may be invested
only in those classes of securities which are approved by the directors of the trust company or
a committee of directors appointed for that purpose. If a trust company acts in any agency or
fiduciary capacity under appointment by a court of competent jurisdiction, it shall make and
account for all investments according to the provisions of Title 75, Utah Uniform Probate
Code, unless the underlying instrument provides otherwise.

(3) (a) Funds received or held as agent or fiduciary by any trust company which is also
a depository institution, whether for investment or distribution, may be deposited in the
commercial department or savings department of that trust company to the credit of its trust
department. Whenever the funds so deposited in a fiduciary or managing agency account
exceed the amount of federal deposit insurance applicable to that account, the trust company
shall deliver to the trust department or put under its control collateral security as outlined in

Regulation 9.10 of the Comptroller of the Currency or in Regulation 550.8 of the Office of
Thrift Supervision, as amended. However, if the instrument creating such a fiduciary or
managing agency account expressly provides that funds may be deposited to the commercial
or savings department of the trust company, then the funds may be so deposited without
setting aside collateral securities as required under this section and the deposits in the event of
insolvency of any such trust company shall be treated as other general deposits are treated. A
trust company which deposits trust funds in its commercial or savings department shall be
liable for interest on the deposits only at the rates, if any, paid by the trust company on
deposits of like kind not made to the credit of its trust department.

(b) Funds received or held as agent or fiduciary by a trust company, whether for
investment or distribution, may be deposited in an affiliated depository institution. Whenever
the funds so deposited in a fiduciary or managing agency account exceed the amount of
federal deposit insurance applicable to that account, the depository institution shall deliver to
the trust company or put under its control collateral security as outlined in Regulation 9.10 of
the Comptroller of the Currency or in Regulation 550.8 of the Office of Thrift Supervision as
amended. However, if the instrument creating the fiduciary or managing agency account
expressly permits funds to be deposited in the affiliated depository institution, the funds may
be so deposited without setting aside collateral securities as required under this section and
deposits in the event of insolvency of the depository institution shall be treated as other
general deposits are treated. A trust company which deposits trust funds in an affiliated
depository institution is liable for interest on the deposits only at the rates, if any, paid by the
depository institution on deposits of like kind.

(4) In carrying out all aspects of its trust business, a trust company shall have all the
powers, privileges, and duties as set forth in Sections 75-7-813 and 75-7-814 with respect to
trustees, whether or not the trust company is acting as a trustee as defined in Title 75.

(5) Nothing in this section may alter, amend, or limit the powers of a trust company
acting in a fiduciary capacity as specified in the particular instrument or order creating the
fiduciary relationship.

Section 80. Section 7-5-8 is amended to read:

7-5-8. Segregation of trust assets -- Books and records required -- Examination

-- Trust property not subject to claims or debts against trust company.
A trust company exercising the powers to act as an agent or fiduciary under this chapter shall segregate all assets held in any agency or fiduciary capacity from the general assets of the company and shall keep a separate set of books and records showing in proper detail all transactions engaged in under authority of this chapter. These books and records shall be open to inspection by the commissioner and shall be examined by him or by examiners appointed by him as provided in Chapter 1 or examined by other appropriate regulating agencies or both. Property held in an agency or fiduciary capacity by a trust company is not subject to claims or debts against the trust company.

Section 81. Section 7-5-11 is amended to read:


(1) Except as provided in Section 7-5-7, in Title 75, or as authorized under the instrument creating the relationship, a trust company may not invest funds held as an agent or fiduciary in stock or obligations of, or with such funds acquire property from, the trust company or any of its directors, officers or employees, nor shall a trust company sell property held as an agent or fiduciary to the company or to any of its directors, officers, or employees.

(2) A trust company may retain and vote stock of the trust company or of any of its affiliates received by it as assets of any trust account or in any other fiduciary relationship of which it is appointed agent or fiduciary, unless the instrument creating the relationship otherwise provides.

(3) Every trust company shall adopt written policies and procedures regarding decisions or recommendations to purchase or sell any security to facilitate compliance with federal and state securities laws. These policies and procedures, in particular, shall prohibit the trust company from using material inside information in connection with any decision or recommendation to purchase or sell any security.

Section 82. Section 7-7-2 is amended to read:

7-7-2. Definitions.
As used in this chapter:

(1) "Association" means a mutual or capital stock savings association, a savings and loan association, a mutual or capital stock savings bank, or a building and loan association subject to the provisions of this chapter, including all out-of-state associations qualified to do business in this state.

(2) "Federal association" means a savings association, a savings and loan association, or a savings bank, chartered by the Office of Thrift Supervision or successor federal agency.

(3) "Impaired condition" means a condition in which the assets of an association in the aggregate do not have a fair value equal to the aggregate amount of liabilities of the association to its creditors, including the holders of its savings accounts and all other persons.

(4) "Insured association" means an association the deposit accounts of which are insured by the Federal Deposit Insurance Corporation or any successor agency of the federal government.

(5) "Liquid assets" means cash on hand and cash on deposit in federal home loan banks, federal reserve banks, state banks performing similar reserve functions, or in commercial banks, which cash is withdrawable upon not more than 30 days notice and which is not pledged as security for indebtedness. Any deposits in a financial institution under the control or in the possession of any supervisory authority may not be considered as liquid assets. Liquid assets also means obligations of, or obligations that are fully guaranteed as to principal and interest by, the United States, the Federal National Mortgage Association, the Government National Mortgage Association, any federal home loan bank, or this state, which obligations will mature in five years or less, and any other assets readily convertible into cash.

(6) "Out-of-state association" means an association whose home state is not Utah.

(7) "Real estate loan" means any loan or other obligation secured by a lien on real estate in any state held in fee or in a leasehold, and any transaction out of which a lien or its equivalent is created against real estate, including the purchase of real estate in fee by an association and the concurrent or immediate sale of the real estate on installment contract.
(8) "Savings liability" means the aggregate amount of savings accounts of depositors, including earnings credited to those accounts, less redemptions and withdrawals.

(9) "Service organization" means an organization substantially all the activities of which consist of originating, purchasing, selling, or servicing loans and participating interests therein, or clerical, bookkeeping, accounting, statistical, or other similar functions or any combination thereof performed primarily for financial institutions, plus such other activities as the commissioner may approve.

(10) "Supervisor" means the supervisor of savings and loan associations.

(11) "Surplus" means the aggregate amount of the undistributed net income of an association held as undivided profits or unallocated reserves for general corporate purposes, and any paid-in surplus held by an association.

(12) "Withdrawal value" means the amount credited to a savings account less lawful deductions, as shown by the records of the association.

Section 83. Section 7-7-4 is amended to read:

7-7-4. Mutual association -- Chair of incorporators -- Surety bond or escrow -- Capital requirements -- Expense fund -- Organization meeting.

(1) The incorporators of a mutual association shall appoint one of their number as chair of the incorporators. This chair shall procure from a surety company or other surety acceptable to the commissioner, a surety bond in an amount at least equal to the amount subscribed by the incorporators plus the expense fund described in Subsection (2). This bond shall name the commissioner as obligee and shall be delivered to him. It shall assure the safekeeping of the funds described, their delivery to the association after the issuance of the certificate of authority and after the bonding of the officers, and, in the event of the failure to complete organization, the return of the amounts collected to the respective subscribers or their assigns, less reasonable expense which shall be deducted from the expense fund. The required surety may be waived by the commissioner if the funds are held in escrow so as to provide similar assurance with regard to the funds. Before a certificate of authority is issued, the incorporators shall pay in cash, to the chairman, as subscriptions to the savings accounts of the
proposed association, including that part of the original subscription paid by the chairman.

The minimum required capital shall be prescribed by the commissioner by rule. These capital
requirements may not be greater than those required by the Office of Thrift Supervision or
successor agency for the formation of a federally chartered mutual association.

(2) The incorporators, in addition to their subscriptions to savings accounts, shall
create an expense fund in an amount not less than 25% of the minimum amount of savings
account subscriptions required to be paid under this chapter. From this expense fund the
expense of organizing the association and its operating expenses may be paid until such time
as its net income is sufficient to pay such earnings as may be declared and paid or credited to
its savings account holders from sources available for payment of earnings. The incorporators
and others, before a certificate of authority is issued, shall deposit to the credit of the chairman
of the incorporators in cash the amount of the expense fund. The amounts contributed to the
expense fund by the incorporators and others do not constitute a liability of the
association except as provided by this chapter.

(3) Contributions made by the incorporators and others to the expense fund may be
repaid pro rata to the contributors from the net income of the association after provision for
statutory reserves and declaration of earnings of not less than 2% on savings accounts. If an
association is liquidated before contributions to the expense fund have been repaid, any
contributions to the expense fund remaining unexpended, after the payment of expenses of
liquidation, all creditors, and the withdrawal value of all savings accounts, shall be repaid to
the contributors pro rata. The books of the association shall reflect the expense fund.
Contributors to the expense fund shall at the times earnings regularly are distributed to savings
account holders be paid earnings on the amounts paid in by them and for that purpose the
contributions shall in all respects be considered as savings accounts of the association.

(4) Within 90 days after the corporate existence of an association begins, the directors
of the association shall hold an organization meeting and shall adopt bylaws and elect officers
under this chapter. At the organization meeting the directors shall take such other action as is
appropriate in connection with beginning the transaction of business by the association. The
commissioner may extend by order the time within which the organization meeting shall be held.

Section 84. Section 7-7-7 is amended to read:

7-7-7. Conversion of associations.

(1) Any state or federal mutual association and any federal capital stock association may convert to a state capital stock association, and any state or federal capital stock association and any federal mutual association may convert to a state mutual association upon an equitable basis subject to the laws and rules governing the converting association, the approval of the commissioner, the approval of the members or stockholders of the converting association, and any rules adopted by the commissioner under this subsection.

(a) Upon receipt of the approval of a proposed conversion from the commissioner, a converting association may, under the supervision of the supervisor, carry out the plan of conversion. A record of all acts and proceedings taken by the board of directors of the converting association in carrying out the proposed conversion shall be filed with the supervisor.

(b) Upon the issuance to an applicant of a certificate of conversion, the corporate existence of the converting applicant does not terminate, but the applicant shall be a continuation of the entity so converted. All property of the converting applicant, including its rights, titles, and interests in and to all property of whatever kind, whether real, personal, or mixed, things in action, and every right, privilege, interest and asset of any conceivable value or benefit then existing, or pertaining to it, or which would inure to it, immediately, by operation of law and without any conveyance or transfer and without any further act or deed, shall vest in and remain the property of the converted applicant, and the same shall have, hold, and enjoy that property in its own right as fully and to the same extent as that property was possessed, held, and enjoyed by the converting applicant before the conversion, and the converted applicant, upon issuance of the certificate of the conversion, shall continue to have and succeed to all the rights, obligations, and relations of the converting applicant. Pending actions and other judicial proceedings to which the converting applicant is a party [shall not}
are not abated or discontinued by reason of the conversion, but may be prosecuted to final judgment, order, or decree in the same manner as if conversion had not occurred, and the converted applicant may continue the actions in its new corporate name. Any judgment, order, or decree may be rendered for or against it which might have been rendered for or against the converting applicant involved before the conversion in the proceedings.

(c) A conversion carried out under this Subsection (1) is effective on the date that all provisions of this chapter and the rules adopted under it have been complied with and a certificate of conversion has been issued by the commissioner.

(d) In adopting rules or issuing orders in connection with the conversion of an association, the commissioner shall ensure that:

(i) accurate and adequate disclosure of the terms and effects of plans of conversion are provided to purchasers of capital stock in resulting associations, including account holders of converting mutual associations;

(ii) adjustments are made in plans of conversion to be effected by way of merger or holding company acquisition necessary or appropriate to accomplish the purposes of this section;

(iii) plans of conversion and proxy statements, offering circulars and related instruments and actions implementing those plans are subject to review and approval by the appropriate supervisory authorities;

(iv) the capital stock issued as a part of conversion is fairly and independently valued and priced;

(v) the capital stock is allocated and distributed fairly and without employment of manipulative or deceptive devices;

(vi) appropriate provision is made regarding fractional share interest and minimum capital stock purchase requirements; and

(vii) plans of conversion are adopted and implemented in such form and manner that stability and continuity of management are encouraged and that the stability, safety, and soundness of associations and other financial institutions are not impaired. In no event shall
any rule or order issued by the commissioner regarding the conversion of an association make it more difficult for an association subject to those rules or orders to implement conversion than for an association subject only to federal laws and regulations.

(e) A conversion proposed by a domestic association shall, after approval by the commissioner, be submitted to the members or stockholders at an annual meeting or at a special meeting called to consider that action. The conversion shall have the approval of a majority of the total votes eligible to be cast by members or stockholders at the meeting. Notice shall be given of any meeting at which a conversion is to be considered. The notice shall expressly state that a proposed conversion will be submitted for approval or disapproval, include a full and accurate description of the plan of conversion and all other matters to be brought before the meeting, state that a proxy for the meeting given previously is revocable, and state the time, date, and place of the meeting. The notice shall be mailed at least 20 days prior to the date of the meeting to each voting member or stockholder of the converting association addressed to his address shown on the records of the association and to the supervisor or commissioner.

(f) If the commissioner finds that a conversion proceeding has been completed in accordance with the requirements of this section and any other applicable law and rules, he shall issue to the applicant a certificate of conversion, attaching as a part of the certificate a copy of the charter, articles of incorporation, articles of association, or similar instrument. The commissioner shall also cause the same to be filed with the Division of Corporations and Commercial Code.

(2) Any state mutual or state capital stock association eligible under federal law or regulations to become a federal association may convert to a federal association by following the procedure outlined in this Subsection (2).

(a) At any regular meeting or at any special meeting of the members or stockholders of the association called to consider the action and held in accordance with the laws governing the association, the members or stockholders by majority vote of those present or voting by proxy may declare by resolution the determination to convert the association into a federal
(b) A copy of the minutes of the meeting of the members or shareholders verified by
the affidavit of the president or vice president and the secretary of the meeting shall be, within
10 days after the meeting, filed with the commissioner. This verified copy of the minutes of
the meeting, when so filed, shall be presumptive evidence of the holding of the meeting and of
the action there taken by the members or stockholders.
(c) Within a reasonable time and without any unnecessary delay after the adjournment
of the meeting of shareholders, the association shall take such action as may be necessary
under requirements of the Office of Thrift Supervision or other federal agency to make it a
federal association, and within 10 days after receipt of the federal charter there shall be filed
with the commissioner a copy of the charter or a certificate showing the organization of the
association as a federal association, certified by or on behalf of the Office of Thrift
Supervision or other federal agency. Upon the filing of these instruments the association shall
cease to be a state association and shall thereafter be a federal association.
(d) Upon completion of a conversion to a federal association, the corporate existence
of the converting association [shall not] does not terminate, but the association shall be a
continuation of the entity so converted. All property of the converting association, including
its rights, titles, and interests in and to all property of whatever kind, whether real, personal, or
mixed, things in action, and every right, privilege, interest, and asset of any conceivable value
or benefit then existing, or pertaining to it, or which would inure to it, immediately, by
operation of law and without any conveyance or transfer and without any further act or deed,
shall vest in and remain the property of the converted association, and the same shall have,
hold, and enjoy that property in its own right as fully and to the same extent as that property
was possessed, held, and enjoyed by the converting association, and the converted association
shall continue to have and succeed to all the rights, obligations, and relations of the converting
association. All pending actions and other judicial proceedings to which the converting
association is a party [shall not be] are not abated or discontinued by reason of the conversion,
but may be prosecuted to final judgment, order, or decree in the same manner as if the
conversion had not been made, and the converted association may continue the actions in its
new corporate name. Any judgment, order, or decree may be rendered for or against it which
might have been rendered for or against the converting association before the conversion
involved in the proceedings.

(e) Upon the completion of a conversion to a federal association, the converted
association shall cease to be supervised by the commissioner or by this state except as a
federal association.

Section 85. Section 7-7-14 is amended to read:

7-7-14. Bonding of directors, officers, employees, and collection agents.

Each director, officer, and employee of an association shall, before entering upon the
performance of any duty, execute an individual bond with adequate corporate surety payable
to the association as an indemnity for any loss the association may sustain of money or other
property by or through any fraud, dishonesty, forgery or alteration, larceny, theft,
embezzlement, robbery, burglary, hold-up, wrongful or unlawful abstraction, misapplication,
misplacement, destruction or misappropriation, or any other dishonest or criminal act or
omission by the director, officer, employee, or agent. An association which employs
collection agents, who for any reason are not covered by a bond as hereinabove required, shall
provide for the bonding of each such agent in an amount equal to at least twice the average
monthly collection of the agent. No bond coverage will be required of any agent which is a
financial institution insured by the Federal Deposit Insurance Corporation or other federal
deposit insurance agency. In lieu of individual bonds, a blanket bond, protecting the
association from loss through any such act or acts on the part of any such director, officer, or
employee, may be obtained. A true copy of every such indemnity bond shall be on file at all
times with the supervisor. Each bond shall provide that a cancellation of the bond either by
the surety or by the insured [shall not] does not become effective unless and until 10 days
notice in writing first has been given to the supervisor, unless he has approved the cancellation
earlier.

Section 86. Section 7-7-15 is amended to read:
7-7-15. Fiduciary relationship of directors and officers to association --

Disclosure requirements -- Prohibitions -- Violations as misdemeanors.

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

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

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

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

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

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

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

(a) No officer or director of an association may, without the prior written approval of
the commissioner, serve as a director or officer of another savings institution, the principal
office of which is located in the same community as an office of the association, unless he
served as director or officer of both institutions before the effective date of this act.
...
(h) Any person violating any of the specific prohibitions set forth in Subsections (a) through (g) is guilty of a class C misdemeanor.

Section 87. Section 7-7-17 is amended to read:

7-7-17. Indemnification of directors, officers, and employees.

A person who is made a party in or threatened by any action, suit or proceeding, judicial or administrative, civil or criminal, by reason of his or her being or having been a director, officer or employee of an association shall be indemnified or reimbursed by the association for reasonable expenses, including attorney fees, actually incurred by him or her in connection with that action, suit or proceeding, instituted or threatened, except that no person need be so indemnified or reimbursed, and a person may be required to return any advancement or allowance for indemnification which may have been made by the association in advance of final disposition, in relation to such an action, suit or proceeding in which and to the extent that he finally is adjudicated to have been guilty of a breach of good faith, to have been negligent in the performance of his duties or to have committed an action or failed to perform a duty for which there is a common law or a statutory liability; though a person may be indemnified or reimbursed for: (1) amounts paid in compromise or settlement of any action, suit or proceeding, including reasonable expenses incurred in connection therewith, or (2) reasonable expenses including fines and penalties, incurred in connection with a criminal or civil action, suit or proceeding in which the person has been adjudicated guilty, negligent or liable, if it is determined by the board of directors that the person was acting in good faith and in what he believed to be the best interests of the association and without knowledge that the action was illegal, and if the indemnification or reimbursement is approved at an annual or special meeting of the members or stockholders by a majority of the votes eligible to be cast. Amounts paid to the association, whether pursuant to judgment or settlement, by any person within the meaning of this section may not be indemnified or reimbursed in any case.

Section 88. Section 7-7-19 is amended to read:

7-7-19. Record and accounting requirements -- Valuation of assets.
(1) Every association shall keep at the home office correct and complete books of accounts, membership or stockholder records, and minutes of the proceedings of members, stockholders, and directors. Complete records of all business transacted at the home office shall be maintained at the home office. Control records of all business transacted at each branch office or agency shall be maintained at the home office.

(2) Each branch office shall keep detailed records of all transactions at that branch office and shall furnish full control records to the home office.

(3) Each agent of an association shall prepare an original record of each business transaction of the association conducted by the agent and shall report promptly to the home office. Complete detailed permanent records of the transactions are not required to be maintained at the agency, but may be maintained at a branch or home office of the association.

(4) Every association shall close its books at the close of business at least annually or more often if required for all associations by the commissioner.

(5) No association by any system of accounting or any device of bookkeeping shall, either directly or indirectly, enter any of its assets upon its books in the name of any other person, partnership, association, or corporation or under any title or designation that is not fairly descriptive of the assets.

(6) The commissioner, after a determination of value made in accordance with this chapter, may order that assets, individually or in the aggregate, to the extent that the assets are overvalued on an association's books, be charged off, or that a special reserve or reserves equal to the overvaluation be set up by transfers from undivided profits or reserves.

(7) An association [shall not] may not carry any real estate on its books at a sum in excess of the total amount invested by the association on account of that real estate, including advances, costs, and improvements but excluding accrued but uncollected interest.

(8) Every association shall have appraised each parcel of real estate acquired at the time of acquisition. The report of each such appraisal shall be submitted in writing to the board of directors and shall be kept in the records of the association.

(9) Every association shall maintain complete loan and investment records in a
manner satisfactory to the commissioner. Each record of a real estate loan or other secured
loan or investment shall contain documentation to the satisfaction of the commissioner of the
type, adequacy and complexion of the security.

(10) Every mutual association shall maintain membership records, which shall show
the name and address of the members, the status of each member as a savings account holder,
or an obligor, or a savings account holder and obligor, and the date membership began. In the
case of a member holding a savings account, the association shall obtain a savings account
contract, which may be a signature card, containing the signature of each holder of the account
or his duly authorized representative, and shall preserve the contract in the records of the
association.

(11) Every capital stock association shall maintain a register of investors and stock
transfers which shows the name and address of the stockholder, the type of stock and voting
status of the stockholder, and the date each share of stock was acquired.

(12) Every association shall use such forms and keep such records, including without
limitation, those of its members or stockholders, as the commissioner may from time to time
require.

Section 89. Section 7-7-21 is amended to read:

7-7-21. Powers of associations.

(1) Every association incorporated or operating under the provisions of this chapter
shall have all the powers enumerated, authorized, and permitted by this chapter and such other
rights, privileges, and powers as may be incidental to or reasonably necessary or appropriate
for the accomplishment of the objects and purposes of the association.

(2) Among others, and except as otherwise limited by the provisions of this chapter,
every association shall have the following powers:

(a) to have perpetual existence, to adopt and use a corporate seal, which may be
affixed by imprint, facsimile, or otherwise; and to adopt and amend bylaws as provided in this
chapter;

(b) to sue, be sued, complain, and defend in any court;
(c) (i) to acquire, hold, sell, dispose of, and convey real and personal estate consistent with the association's objects and powers;
(ii) to mortgage, pledge, or lease any real or personal estate; and
(iii) to take property by gift, devise, or bequest;
(d) if and when an association is not a member of a federal home loan bank, to borrow from sources, individual or corporate, in addition to its savings liability and other accounts, not more than an aggregate amount equal to 25% of its assets on the date of borrowing. If and when an association is a member of a federal home loan bank, to borrow from sources, individual or corporate, in addition to its savings liability and other accounts, not more than an aggregate amount equal to 60% of its assets on the date of borrowing or a greater amount approved by the commissioner to insure parity between state chartered savings and loan associations and federal associations. It is not a violation of this section if the borrowing limits are exceeded because of a subsequent reduction in assets of an association. Any association may borrow such additional sums as the commissioner may approve in writing. All such loans and advances may be secured by property of the association, may be made with convertible features, and may be evidenced by such notes, bonds, debentures, commercial paper, bankers' acceptances, or other obligations or securities (except capital stock and capital certificates) as may be generally authorized by the commissioner, except that no authorization shall be required for securities guaranteed under Section 306(g) of the National Housing Act of 1934;
(e) to issue and sell, directly or through underwriters, capital certificates containing a stated maturity date which represent nonwithdrawable capital contributions, and constitute part of the reserves and net worth of the association. These certificates shall have no voting rights, shall be subordinate to all savings accounts, debt obligations, and claims of creditors of the association and shall constitute a claim in liquidation against any reserves, surplus, and other net worth accounts remaining after the payment in full of all savings accounts, debt obligations, and claims of creditors. The capital certificates shall be entitled to the payment of earnings prior to the allocation of any income to surplus or other net worth accounts of the
association and may be issued with a fixed rate of earnings or with a prior claim to distribution
of a specified percentage of any net income remaining after required allocations to reserves, or
a combination thereof. Losses shall be charged against capital certificates only after reserves,
surplus, and other net worth accounts have been exhausted;
(f) (i) to appoint and remove such officers, agents, and employees as its business shall
require and to provide them suitable compensation;
(ii) to enter into employment contracts not to exceed 10 years without the consent of
the supervisor;
(iii) to provide for life, health, and casualty insurance for officers and employees;
(iv) to adopt and operate reasonable bonus and incentive plans and retirement benefits
for those officers and employees; and
(v) to provide for indemnification of its officers, employees, and directors as required
or permitted in this chapter, whether by insurance or otherwise;
(g) to obtain and maintain insurance of its deposits by the Federal Deposit Insurance
Corporation or other federal deposit insurance agency;
(h) to qualify as and become a member of any federal home loan bank;
(i) (i) to act as fiscal agent of the United States, and, when so designated by the
Secretary of the Treasury, to perform, under such regulations as the Secretary of the Treasury
may prescribe, all such reasonable duties as fiscal agent of the United States as the Secretary
of the Treasury may require; and
(ii) to act as agent for any instrumentality of the United States; and when so
designated by the state treasurer or other appropriate state officer, to act as agent of that state
or any instrumentality of that state;
(j) to become a member of, deal with, maintain reserves or deposits with, or make
reasonable payments or contributions to any organization or instrumentality, government or
private, to the extent that the organization or instrumentality assists in furthering or facilitating
the association's purposes, powers, services, or community responsibilities, and to comply
with any reasonable requirements or conditions of eligibility;
(k) to act as depository for receipt of payments of federal or state taxes and loan funds, and satisfy any federal or state statutory or regulatory requirements in connection therewith, including:

(i) pledging of assets as collateral;

(ii) payment of earnings at prescribed rates; and

(iii) notwithstanding any other provision of this chapter, issuing the account subject to rights of immediate withdrawal;

(l) to sell or assign any loan, including any participating interest therein, at any time;

(m) to service loans and investments for others;

(n) to act and receive compensation as trustee of any trust created or organized in the United States and forming a part of a stock bonus, pension, or profit-sharing plan which qualifies or qualified for specific tax treatment under Section 401 of the Internal Revenue Code of 1986, and to act as trustee or custodian of an individual retirement account within the meaning of Section 408 of that code. All funds held in fiduciary capacity by any such association under the authority of this subsection may be commingled and consolidated for appropriate purposes of investment, so long as records reflecting each separate beneficial interest are maintained by the fiduciary, unless that responsibility is lawfully assumed by another appropriate party;

(o) to act as assignee, agent, receiver, trustee, executor, administrator, conservator, guardian, custodian, personal representative, or in any other fiduciary capacity, and to execute trusts of every description not inconsistent with law, and to receive reasonable compensation therefor. An association exercising trust or other fiduciary powers under this subsection shall have all powers, privileges, and immunities granted in Chapter 5. Funds held by an association as fiduciary under this subsection may be commingled and consolidated for appropriate purposes of investment, provided that records reflecting the separate interest of each beneficiary shall be maintained by the fiduciary, unless that responsibility is lawfully assumed by another appropriate party. Trust funds available for investment shall be invested at the time and in the manner specified by the agreement, instrument, or order creating or...
defining the fiduciary estate, but may be invested in savings accounts of the associations, unless the instrument, agreement, or order prohibits such investment;

(p) subject to Chapter 16a, Automated Teller Machine Act, to engage in financial transactions effected by electronic means;

(q) to maintain and let safes, boxes, or other receptacles or premises for the safekeeping of personal property upon such terms and conditions as may be agreed upon;

(r) to offer money orders, travel checks, and similar instruments for its own account or as agent for any organization empowered to sell such instruments through agents within this state;

(s) to act as agent or escrowee for others;

(t) to declare and pay dividends on capital stock in cash or property out of the unreserved and unrestricted earned surplus of the association, or in its own shares, from time to time, except when there is a deficiency in the reserves or net worth of the association under rules issued by the commissioner under Section 7-7-20, and except when the association is in an impaired condition or when the payment thereof would cause the association to be in an impaired condition. A split-up or division of the issued shares of capital stock into a greater number of shares without increasing the stated capital of the association is authorized, and [shall not may not be construed to be a dividend within the meaning of this section;

(u) to acquire deposits from any individual or entity and pay earnings thereon, to offer interest bearing or noninterest bearing accounts from which withdrawals may be made by negotiable or transferable instruments for the purpose of making transfers to third parties, and to lend, and commit to lend, extend credit, and invest its funds as provided for in this chapter; and

(v) to engage in other activities, exercise other powers and to enjoy other rights, privileges, benefits, and immunities authorized by rules of the commissioner and, particularly, under the authority given to the commissioner in Subsection 7-1-301(3), which authority shall be exercised to prevent competitive disparities between associations chartered in this state and federal associations.
Section 90. Section 7-7-26 is amended to read:

**7-7-26. Redemption of savings accounts.**

At any time funds are on hand for the purpose, the association may redeem by lot or otherwise, as the board of directors may determine, all or any part of any of its savings accounts on an earnings date by giving 30 days' notice by registered or certified mail addressed to each affected account holder at his last address as recorded on the books of the association. No association shall redeem any of its savings accounts when the association is in an impaired condition or when it has applications for withdrawal which have been on file more than 14 days and have not been paid. The redemption price of savings accounts redeemed shall be the full value of the account redeemed, as determined by the board of directors, but in no event shall the redemption price be less than the withdrawal value. If the notice of redemption has been duly given and if on or before the redemption date the funds necessary for redemption have been set aside so as to be and continue to be available for redemption, earnings upon the accounts called for redemption shall cease to accrue from and after the earnings date specified as the redemption date, and all rights with respect to these accounts shall forthwith, after the redemption date, terminate, excepting only any right of the account holder of record to receive the redemption price without interest. All savings account books or certificates evidencing former savings accounts which have been validly called for redemption shall be tendered for payment within seven years from the date of redemption designated in the redemption notice, otherwise they shall be cancelled and the funds set aside for those accounts presumed abandoned, and they shall be disposed of in accordance with the provisions of Title 67, Chapter 4a, Unclaimed Property Act.

Section 91. Section 7-7-29 is amended to read:

**7-7-29. Investment in service organizations, business development credit corporations, and service corporations.**

(1) An association may invest:

(a) in capital stock, obligations, or other securities of service organizations, and of business development credit corporations incorporated in this state, provided that the
aggregate of those investments [shall not] may not exceed 10% of its assets; or

(b) in capital stock, obligations, or other securities of any service corporation, provided that the aggregate of those investments [shall not] may not exceed 10% of its assets.

(2) The commissioner may, by regulation, allow investments in excess of those permitted by this section, if he finds that such investments promote the viability and stability of the associations of this state.

Section 92. Section 7-7-30 is amended to read:

7-7-30. Investment in property used in conduct of business -- Investment in manner not prohibited by law.

(1) An association may invest in such real property or interest therein as the directors may deem necessary or convenient for the conduct of the business of the association, which for the purposes of this chapter may include the stock of a wholly owned subsidiary corporation having as its exclusive activity the ownership and management of such property or interests, but the amount so invested [shall not] may not exceed 10% of the assets of the association, except that the commissioner may authorize a greater amount to be so invested if he finds that the investments promote the viability and stability of the associations of this state. An association may invest a reasonable amount in property such as furniture, fixtures, and equipment for use in carrying on its own business.

(2) Every association may invest its assets in a manner not expressly prohibited by law if the investments are made in the exercise of the judgment and care under the circumstances then prevailing which men of prudence, discretion, and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. The aggregate of investments held under this subsection and not permitted by any other section of this chapter may not exceed 5% of the assets of the association.

Section 93. Section 7-7-32 is amended to read:

7-7-32. Agreements committing assets to lines of credit -- Stock ownership or affiliation with credit card companies.
An association may, subject to Section 7-7-33, commit its assets to lines of credit under credit agreements and credit card agreements with its credit card holders and with other credit card issuers, and pay and agree to pay obligations incurred in connection with those agreements, and become a member or stockholder of, or become otherwise affiliated with, any credit card corporation, association, or other issuer. The commissioner may, by rule, limit the percentage of assets that may be invested in such lines of credit, but the limitation [shall not] may not be more restrictive than that of the Office of Thrift Supervision or successor federal agency for federally chartered associations.

Section 94. Section 7-7-33 is amended to read:

7-7-33. Investments in loans -- Payments to protect real estate loans -- Requiring borrower to pay taxes, insurance, and other charges on real estate in advance.

(1) An association may invest in or otherwise acquire loans and interests in loans, secured or unsecured, of any type, amount, and for any purpose, including[, but not limited to]:

(a) loans evidenced by a participation certificate, mortgage-backed bond or note, or mortgage pass-through certificate;
(b) personal loans evidenced by promissory notes;
(c) loans containing variable, renegotiable, graduated payment, shared appreciation, or other alternative payment features or any combinations of those features;
(d) loans secured by the pledge of policies of life insurance;
(e) loans which are callable upon transfer of the security therefor;
(f) loans to financial institutions, brokers and dealers, secured by loans, obligations or investments in which the association could invest directly or unsecured loans to subsidiary corporations whether or not those corporations are controlled by the association;
(g) loans for the payment of expenses of college or applied technology education;
(h) loans on the security of its savings accounts and loans specifically related to negotiable order-of-withdrawal accounts;
(i) loans secured by deeds of trust, mortgages or real estate contracts on interests in
real property whether for the acquisition or improvement of homes or of real property or for
other purposes, subject only to the conditions specified in Subsections (2) and (3); and

(j) commercial loans to partnerships, corporations, or trusts which are operated for
profit.

(2) No association shall make a loan to one person if the sum of (a) the amount of the
loan and (b) the total balance of all outstanding loans owed to the association and its service
corporation subsidiaries by that person exceeds an amount equal to 15% of the association's
equity capital.

(3) No association shall make any loan authorized by this section unless it first has
determined that the type, amount, purpose, and repayment provisions of the loan in relation to
the borrower's resources and credit standing support the reasonable belief that the loan will be
financially sound and will be repaid according to its terms, and that the loan is not otherwise
unlawful.

(4) (a) An association may pay taxes, assessments, ground rents, insurance premiums,
and other similar charges for the protection of its real estate loans.

(b) All such payments shall be added to the unpaid balance of the loan and shall be
equally secured by the first lien on the property as the original amounts advanced.

(c) An association may require life insurance to be assigned as additional collateral
upon any real estate loan, and if it does so require, the association shall obtain a first lien upon
the policy and may advance premiums thereon, and the premium advances shall be added to
the unpaid balance of the loan and shall be equally secured by the first lien on the property as
the original amount advanced.

(5) (a) An association may require, subject to the provisions of the Interest on
Mortgage Loan Reserve Accounts Act, Sections 7-17-1 through 7-17-10, that a borrower pay
monthly in advance, in addition to interest or interest and principal payments, the equivalent
of 1/12 of the estimated annual taxes, assessments, insurance premiums, ground rents, and
other charges upon the real estate securing a loan, or any of those charges, so as to enable the
association to pay the charges as they become due from the funds so received.
(b) The amount of the monthly payments may be increased or decreased to provide reasonably for the payment of the estimated annual taxes, assessments, insurance premiums, and other charges.

(c) If the association advances its own funds for the purposes stated, that amount shall be secured by the association's mortgage or trust deed, if any, with the same priority as the original amount advanced under the mortgage or trust deed.

Section 95. Section 7-7-43 is amended to read:

7-7-43. Previously incorporated associations.

(1) The name, rights, powers, privileges, and immunities of every association incorporated in this state before the effective date of this act shall be governed, controlled, construed, extended, limited, and determined by the provisions of this chapter to the same extent and effect as if the association had been incorporated under this chapter. The articles of incorporation, certificate of incorporation, or charter, however entitled, bylaws and constitution, or other rules of every such association made or existing before the effective date of this act are hereby modified, altered, and amended to conform to the provisions of this chapter, with or without the issuance or approval by the commissioner of conformed copies of such documents, and are declared void to the extent that they are inconsistent with the provisions of this chapter; except, that the obligations of any such pre-existing association, whether between the association and its members or stockholders, or any of them, or any other person or persons, and any valid contracts between the members or stockholders of any such association, or between the association and any other person or persons, existing at the time this act takes effect, may not in any way be impaired by the provisions of this chapter. With these exceptions, every association incorporated before the effective date of this act shall possess the rights, powers, privileges, and immunities and shall be subject to the duties, liabilities, disabilities, and restrictions conferred and imposed by this chapter notwithstanding anything to the contrary in its certificate of authority, certificate of incorporation, bylaws, constitution, or rules.

(2) All obligations to any association incorporated before the effective date of this act
contracted before the effective date of this act shall be enforceable by it and in its name, and

demands, claims, and rights of action against the association may be enforced against it as

fully and completely as they could have been enforced in the absence of this chapter.

Section 96. Section 7-9-5 is amended to read:

7-9-5. Powers of credit unions.

In addition to the powers specified elsewhere in this chapter and subject to any

limitations specified elsewhere in this chapter, a credit union may:

(1) make contracts;

(2) sue and be sued;

(3) acquire, lease, or hold fixed assets, including real property, furniture, fixtures, and equipment as the directors consider necessary or incidental to the operation and business of the credit union, but the value of the real property may not exceed 7% of credit union assets, unless approved by the commissioner;

(4) pledge, hypothecate, sell, or otherwise dispose of real or personal property, either in whole or in part, necessary or incidental to its operation;

(5) incur and pay necessary and incidental operating expenses;

(6) require an entrance or membership fee;

(7) receive the funds of its members in payment for:

(a) shares;

(b) share certificates;

(c) deposits;

(d) deposit certificates;

(e) share drafts;

(f) NOW accounts; and

(g) other instruments;

(8) allow withdrawal of shares and deposits, as requested by a member orally to a third party with prior authorization in writing, including[, but not limited to,] drafts drawn on the credit union for payment to the member or any third party, in accordance with the procedures
established by the board of directors, including drafts, third-party instruments, and other transaction instruments, as provided in the bylaws;

(9) charge fees for its services;

(10) extend credit to its members, at rates established in accordance with the bylaws or by the board of directors;

(11) extend credit secured by real estate;

(12) (a) subject to Subsection (12)(b), make co-lending arrangements, including loan participation arrangements, in accordance with written policies of the board of directors with one or more:

(i) other credit unions;

(ii) credit union service organizations; or

(iii) other financial organizations; and

(b) make co-lending arrangements, including loan participation arrangements, in accordance with Subsection (12)(a) subject to the following:

(i) the credit union or credit union service organization that originates a loan for which co-lending arrangements are made shall retain an interest of at least 10% of the loan;

(ii) on or after May 5, 2003, the originating credit union or credit union service organization may sell to a credit union an interest in a co-lending arrangement that involves a member-business loan only if the person receiving the member-business loan is a member of the credit union to which the interest is sold;

(iii) on or after May 5, 2003, the originating credit union or credit union service organization may sell to a credit union service organization an interest in a co-lending arrangement that involves a member-business loan only if the person receiving the member-business loan is a member of a credit union that holds an interest in the credit union service organization to which the interest is sold; and

(iv) a nonexempt credit union may not originate, participate in, or obtain any interest in a co-lending arrangement, including a loan participation arrangement, in violation of Section 7-9-58;
(13) sell and pledge eligible obligations in accordance with written policies of the board of directors;

(14) engage in activities and programs of the federal government or this state or any agency or political subdivision of the state, when approved by the board of directors and not inconsistent with this chapter;

(15) act as fiscal agent for and receive payments on shares and deposits from the federal government, this state, or its agencies or political subdivisions not inconsistent with the laws of this state;

(16) borrow money and issue evidence of indebtedness for a loan or loans for temporary purposes in the usual course of its operations;

(17) discount and sell notes and obligations;

(18) sell all or any portion of its assets to another credit union or purchase all or any portion of the assets of another credit union;

(19) invest funds as provided in this title and in its bylaws;

(20) maintain deposits in insured depository institutions as provided in this title and in its bylaws;

(21) (a) hold membership in corporate credit unions organized under this chapter or under other state or federal statutes; and

(b) hold membership or equity interest in associations and organizations of credit unions, including credit union service organizations;

(22) declare and pay dividends on shares, contract for and pay interest on deposits, and pay refunds of interest on loans as provided in this title and in its bylaws;

(23) collect, receive, and disburse funds in connection with the sale of negotiable or nonnegotiable instruments and for other purposes that provide benefits or convenience to its members, as provided in this title and in its bylaws;

(24) make donations for the members' welfare or for civic, charitable, scientific, or educational purposes as authorized by the board of directors or provided in its bylaws;

(25) act as trustee of funds permitted by federal law to be deposited in a credit union
as a deferred compensation or tax deferred device, including individual retirement accounts as defined by Section 408, Internal Revenue Code;

(26) purchase reasonable accident and health insurance, including accidental death benefits, for directors and committee members through insurance companies licensed in this state as provided in its bylaws;

(27) provide reasonable protection through insurance or other means to protect board members, committee members, and employees from liability arising out of consumer legislation [such as, but not limited to,] including truth-in-lending and equal credit laws and as provided in its bylaws;

(28) reimburse directors and committee members for reasonable and necessary expenses incurred in the performance of their duties;

(29) participate in systems which allow the transfer, withdrawal, or deposit of funds of credit unions or credit union members by automated or electronic means and hold membership in entities established to promote and effectuate these systems, if:

(a) the participation is not inconsistent with the law and rules of the department; and

(b) any credit union participating in any system notifies the department as provided by law;

(30) issue credit cards and debit cards to allow members to obtain access to their shares, deposits, and extensions of credit;

(31) provide any act necessary to obtain and maintain membership in the credit union;

(32) exercise incidental powers necessary to carry out the purpose for which a credit union is organized;

(33) undertake other activities relating to its purpose as its bylaws may provide;

(34) engage in other activities, exercise other powers, and enjoy other rights, privileges, benefits, and immunities authorized by rules of the commissioner;

(35) act as trustee, custodian, or administrator for Keogh plans, individual retirement accounts, credit union employee pension plans, and other employee benefit programs; and

(36) advertise to the general public the products and services offered by the credit union.
union if the advertisement prominently discloses that to use the products or services of the
credit union a person is required to:

(a) be eligible for membership in the credit union; and
(b) become a member of the credit union.

Section 97. Section 7-9-19 is amended to read:

7-9-19. Payments to expelled members -- Liability of member not relieved by
expulsion.

(1) Except in the case of liquidation or dissolution, the amount paid in on shares or
deposited by members who have been expelled shall be paid to them with all accrued interest,
in the order of expulsion.

(2) Payment shall be made only as funds become available.

(3) All amounts due the credit union by the expelled member shall be deducted by the
credit union before any amounts are paid to the expelled member.

(4) Expulsion does not relieve a member from any liability to the credit
union.

Section 98. Section 7-9-32 is amended to read:

7-9-32. Joint accounts -- Accounts providing for payment to designated person
on death of owner or owners.

(1) If a deposit or share account is opened in any credit union in the name of two or
more persons, whether minor or adult, in such form that the money in the account is payable to
the survivor or survivors, the account and all additions to it are considered held by these
persons as joint tenants or owners.

(2) The money in a joint account may be paid to or on the receipt or withdrawal order
of any one of the joint owners during their lifetimes or to or on receipt of withdrawal order of
any one of the survivors of them after the death of any one or more of them upon presentation
of the pass or account book or other evidence of ownership as required by the bylaws of the
credit union. The opening of the account in such form shall, in the absence of fraud, undue
influence, or legal proof of other intent, be conclusive evidence in any action or proceedings
(3) By written instructions given to the credit union by all parties to the account, the
signature of more than one of such persons during their lifetime or of more than one of the
survivors after the death of any one of them may be required on a receipt or withdrawal order,
in which case the credit union shall pay the moneys in the account only in accordance with
such instructions, but no such instructions shall limit the right of the survivor or survivors to
receive the money in the account.

(4) Payment of all or part of the money in a joint account as provided in Subsections
(2) and (3) shall discharge the credit union from liability with respect to the money paid prior
to receipt by the credit union of a written notice from any one of the joint owners directing the
credit union not to permit withdrawals in accordance with the terms of the account or the
instructions. After receipt of such notice a credit union may refuse, without incurring liability,
to honor any receipt or withdrawal on the account pending determination of the rights of the
parties. No credit union paying any survivor shall be liable for any estate, inheritance, or
succession taxes.

(5) The pledge to a credit union of all or part of a share account in joint tenancy or
ownership signed by that person or those persons who are authorized in writing to make
withdrawals from the account shall, unless the terms of the share account provide specifically
to the contrary, be a valid pledge and transfer to the credit union of that part of the account
pledged, and [shall not] does not operate to sever or terminate the joint and surviving
ownership quality of all or any part of the account.

(6) Any credit union may issue share or deposit accounts in the name of one or more
persons with the provision that upon the death of the owner or owners thereof the proceeds
shall be the property of the person or persons designated by the owner or owners and shown by
the records of such credit union, but such proceeds shall be subject to the debts of the
decedent and the payment of Utah inheritance tax, if any. However, upon the receipt of
acquittance of the person so designated or six months having elapsed from the date of death
and no claim on the account having been made for taxes, the credit union may make payment
to the persons designated by the deceased owner or owners and having done so is discharged
from further obligation and relieved from all further liability for payment made under this
subsection.

Section 99. Section 7-14-5 is amended to read:

7-14-5. Reciprocal exchange of information authorized.

One or more financial institutions may jointly agree with one or more other financial
institutions for the reciprocal exchange of any information authorized to be reported by the
provisions of this chapter. Such reciprocal exchange of information or the acts or refusals to
act of one or more recipients because of such information [shall not] does not constitute a
boycott or blacklist, [or] and is not otherwise [be] a basis for liability to any person on the part
of any participant in the reciprocal exchange of information authorized by this chapter.

Section 100. Section 7-17-4 is amended to read:

7-17-4. Options in lieu of reserve account -- Notice by lender -- Selection by
borrower -- Noninterest-bearing reserve account -- Exemption.

(1) A lender not requiring the establishment and maintenance of a reserve account shall
offer the borrower the following options:

(a) the borrower may elect to maintain a noninterest-bearing reserve account to be
serviced by the lender at no charge to the borrower; or

(b) the borrower may manage the payment of insurance premiums, taxes and other
charges for the borrower's own account.

(2) (a) The lender shall give written notice of the options to the borrower:

(i) with respect to real estate loans existing on July 1, 1979, by notice mailed not more
than 30 days after July 1, 1979; or

(ii) with respect to real estate loans made on or after July 1, 1979, by notice given at or
prior to the closing of the loan.

(b) The notice required by this Subsection (2) shall:

(i) clearly describe the options; and
(ii) state that:

(A) a reserve account is not required by the lender;

(B) the borrower is legally responsible for the payment of taxes, insurance premiums, and other charges; and

(C) the notice is being given pursuant to this chapter.

(c) For real estate loans in existence on July 1, 1979, the borrower [must] shall select one of the options prior to 60 days after July 1, 1979.

(d) If no option is selected prior to 60 days after July 1, 1979, the borrower will be considered to have selected the option described in Subsection (1)(a), provided, however, that the borrower at a later time may select the option described in Subsection (1)(b).

(e) For loans made on or after July 1, 1979, the borrower shall select one of the options at the closing.

(f) If the borrower selects the option described in Subsection (1)(a), the lender may not be required to account for earnings, if any, on the account.

(3) (a) Subject to Subsection (3)(b), if the borrower who selects the option described in Subsection (1)(b), or the borrower's successors or assigns, fails to pay the taxes, insurance premiums, or other charges pertaining to the property securing the loan prior to the delinquency date for such payments, the lender may require a reserve account without interest or other compensation for the use of the funds.

(b) Notwithstanding Subsection (3)(a), the lender may not require a reserve account without interest or other compensation if:

(i) the borrower pays any delinquency within 30 days; and

(ii) the borrower has not previously been delinquent in payment of taxes, insurance premiums, or other charges.

(4) This section does not apply to a loan made, renewed, or modified on or after May 6, 2002.

Section 101. Section 7-17-6 is amended to read:

7-17-6. Liability of lender for failure to pay taxes, insurance premiums, or other
A lender administering a reserve account shall make timely payments of taxes, insurance premiums and other charges for which the account is established, if funds paid into the account by the borrower, his successors or assigns, are sufficient for the payments. Negligent failure to make the payments required for taxes, insurance premiums and other charges as they become due, from available funds in the reserve account, shall subject the lender to liability for all damages directly resulting from the failure; provided that this sentence does not deprive the lender of the right to present any defense it may have in any action brought to enforce the liability. Failure of the borrower or his successors or assigns to deliver promptly to the lender all notices of tax assessments and insurance premiums or other charges, received by the borrower, his successors or assigns, shall relieve the lender from liability under this section.

Section 102. Section 7-17-8 is amended to read:

7-17-8. Damages for lender's violation of act -- Limitations on recovery.

(1) Except as otherwise provided in this act, a lender who violates this act is liable to the borrower, his successors or assigns, for the actual damages suffered by the borrower, his assigns or successors, or $100, whichever is greater. If an action is commenced, the prevailing party may be awarded reasonable attorney's fees as determined by the court.

(2) A lender has no liability under this section if the court finds that written demand for payment of the claim of the borrower, his successors or assigns, was made on the lender not less than 30 days before commencement of the action and that the lender tendered to the borrower, his successors or assigns, prior to the commencement of the action, an amount not less than the damages awarded.

(3) A lender may not be held liable under this section for a violation of this act if the lender shows that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures to avoid such errors.

(4) A reserve account established or maintained in violation of this act is voidable, at the option of the borrower, his successors or assigns, at any time, but does not
otherwise affect the validity of the loan, the security interest in the real property or any other obligation of the borrower.

(5) No action under this section may be brought more than one year after the date of the violation.

Section 103. Section 7-17-9 is amended to read:

7-17-9. Actions on accounts established prior to 1979 -- Limitations on recovery.

(1) With respect to any reserve account established prior to July 1, 1979 and for which no legal action is pending as of January 1, 1979, no recovery shall be had in any action brought to require payment of interest on, or other compensation for, the use prior to July 1, 1979, of the funds in such account unless:

(a) An agreement in writing expressly so providing was executed by the borrower and the lender; or

(b) The borrower, or his successors or assigns, establishes by clear and convincing evidence an agreement between the parties that the lender would pay interest on or to otherwise compensate the borrower for the use of the funds in such account. Use in the loan documents of such words as "trust" or "pledge" alone does not establish the intent of the parties; and

(c) There is no federal law or regulation prohibiting the payment of interest on or otherwise compensating the borrower for the use of the funds in such an account.

(2) No action seeking payment of interest on or other compensation for the use of the funds in any reserve account for any period prior to July 1, 1979, shall be brought after June 30, 1981. Any recovery in any such action shall be limited to the four-year period immediately preceding the commencement of the action. No recovery shall be had in respect of any reserve account established prior to July 1, 1979 greater than if the provisions of Section 7-17-3 of this act were applicable to such accounts.

(3) With respect to any reserve account established prior to July 1, 1979, an agreement in writing between the lender and the borrower, or his successors or assigns, that (a) the provisions of Section 7-17-3 of this act shall apply to all payments made subsequent to July 1,
1979, or (b) the borrower may exercise, for the period subsequent to July 1, 1979, either of the
options provided in Section 7-17-4 of this act, shall bar any recovery by the borrower, his
successors or assigns, for interest on or other compensation for the use of the funds in such
account for any period prior to July 1, 1979.

Section 104. Section 7-18a-301 is amended to read:

7-18a-301. Powers of an agency, branch, or representative office of a foreign
depository institution.

(1) Subject to the limitations set forth in Subsections (2) and (3), and notwithstanding
any other law of this state, a foreign depository institution authorized by this state to transact
business through an agency or branch shall transact business with the same rights, privileges,
and powers as a Utah depository institution and shall be subject to all the same duties,
restrictions, penalties, liabilities, conditions, and limitations that would apply under the laws
of this state to a Utah depository institution.

(2) The general rights, powers, and privileges of a foreign depository institution
authorized by this state to transact business through an agency or branch set forth in
Subsection (1) are limited to the following:

(a) An agency may not accept any deposits from citizens or residents of the United
States, other than credit balances that are incidental to or arise out of its exercise of other
lawful powers, but it may accept deposits from persons who are neither citizens nor residents
of the United States.

(b) An agency may pay checks or loan money.

(c) A branch operating in this state may not accept from citizens or residents of the
United States deposits, other than credit balances that are incidental to or arise out of its
exercise of other lawful powers, of less than $100,000.

(d) An agency or branch [shall not be] is not required to maintain federal deposit
insurance.

(e) After considering the applicable limitations on the retail deposit-taking powers and
privileges of an agency or branch of a foreign depository institution, the commissioner may,
by rule or order, modify the applicability to an agency or branch, of any law of this state that is
generally applicable to insured depository institutions doing business in this state.

(f) The commissioner may adopt such additional standards, conditions, or
requirements, or modify the applicability of any existing standards, conditions, or
requirements, by rule or order, as the commissioner may consider necessary to ensure the
safety and soundness and the protection of creditors of the operations of an agency or branch
of a foreign depository institution in this state.

(3) A foreign depository institution authorized by this state to transact business
through a representative office may only:

(a) engage in loan production office activities authorized by Section 7-1-715;
(b) solicit new business;
(c) conduct research; or
(d) perform administrative functions expressly permitted by rule or order.

Section 105. Section 8-3-1 is amended to read:

8-3-1. Plats of cemeteries shall be recorded.

The executive officers of organizations and all individual owners in control of
cemeteries, offering burial lots for sale in any county, shall file and cause to be recorded in the
office of the county recorder of the county within which such cemeteries are situated an
accurate plat thereof, which shall clearly show the sections of burial lots which have been
disposed of and the names of the persons owning or holding the same, and the sections of
burial lots held for disposal; and thereafter such executive officers or owners shall file
additional plats of any additions to such cemeteries before offering for sale any burial lots
therein. County recorders [shall not] may not collect any fees for filing and recording such
original plats.

Section 106. Section 9-3-407 is amended to read:

9-3-407. Authority -- Powers.

(1) (a) The authority shall create, operate, and maintain a center that shall promote the
purposes described in Section 9-3-402.
(b) The center shall:

(i) have an extensive outreach program that serves all regions of the state; and

(ii) collaborate and coordinate with education, arts, technology, and engineering entities, including schools and industries.

(2) The authority has perpetual succession as a body politic and corporate and may:

(a) adopt, amend, and repeal rules, policies, and procedures for the regulation of its affairs and the conduct of its business;

(b) sue and be sued in its own name;

(c) maintain an office at any place or places within this state it may designate;

(d) adopt, amend, and repeal bylaws and rules, not inconsistent with this part, to carry into effect the powers and purposes of the authority and the conduct of its business;

(e) purchase, lease, sell, and otherwise dispose of property and rights-of-way;

(f) employ experts, advisory groups, and other professionals it considers necessary;

(g) employ and retain independent legal counsel;

(h) make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its duties under this part to create, operate, and maintain a Science Center in Utah;

(i) procure insurance for liability and against any loss in connection with its property and other assets in amounts and from insurers it considers desirable;

(j) borrow money, receive appropriation from the Legislature, and receive other public moneys and accept aid or contributions from any source of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of this part subject to the conditions upon which the grants and contributions are made, including[...but not limited to...]

(gifts or grants from any department, agency, or instrumentality of the United States or of this state for any purpose consistent with this part;

(k) enter into agreements with any department, agency, or instrumentality or political subdivision of the United States or this state for the purpose of providing for the creation, operation, and maintenance of a Science Center in Utah; and
(1) to do any act necessary or convenient to the exercise of the powers granted by this part.

(3) All monies received by the authority under Subsection (2)(j) and from any other source shall be for the exclusive use of the authority to create, operate, maintain, improve, and provide for a Science Center in Utah. The monies received by the authority may not be used for any other purpose or by any other entity.

Section 107. Section 9-4-301 is amended to read:

**9-4-301. Legislative intent -- Purpose and policy.**

(1) It is the intent of the Legislature to make available funds received by the state from federal mineral lease revenues under Section 59-21-2, bonus payments on federal oil shale lease tracts U-A and U-B, and all other bonus payments on federal mineral leases to be used for the alleviation of social, economic, and public finance impacts resulting from the development of natural resources in this state, subject to the limitations provided for in Section 35 of the Mineral Leasing Act of 1920 (41 Stat. 450, 30 U.S.C. Sec. 191).

(2) The purpose of this part is to maximize the long term benefit of funds derived from these lease revenues and bonus payments by fostering funding mechanisms which will, consistent with sound financial practices, result in the greatest use of financial resources for the greatest number of citizens of this state, with priority given to those communities designated as impacted by the development of natural resources covered by the Mineral Leasing Act.

(3) The policy of this state is to promote cooperation and coordination between the state and its agencies and political subdivisions with individuals, firms, and business organizations engaged in the development of the natural resources of this state. The purpose of such efforts [should] include private sector participation, financial and otherwise, in the alleviation of impacts associated with resources development activities.

Section 108. Section 9-4-602 is amended to read:

**9-4-602. Definitions.**

As used in this part:
(1) "Area of operation" means:
   (a) in the case of an authority of a city, the city, except that the area of operation of an
       authority of any city does not include any area that lies within the territorial boundaries of
       some other city; or
   (b) in the case of an authority of a county, all of the county for which it is created
       except, that a county authority may not undertake any project within the boundaries of any
       city unless a resolution has been adopted by the governing body of the city (and by any
       authority which shall have been theretofore established and authorized to exercise its powers
       in the city) declaring that there is need for the county authority to exercise its powers within
       that city.

(2) "Blighted area" means any area where dwellings predominate that, by reason of
    dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light, or sanitary
    facilities or any combination of these factors, are detrimental to safety, health, and morals.

(3) "Bonds" means any bonds, notes, interim certificates, debentures, or other
    obligations issued by an authority pursuant to this part.

(4) "City" means any city or town in the state.

(5) "Clerk" means the city clerk or the county clerk, or the officer charged with the
    duties customarily imposed on the clerk.

(6) "County" means any county in the state.

(7) "Elderly" means a person who meets the age, disability, or other conditions
    established by regulation of the authority.

(8) "Federal government" includes the United States of America, the Department of
    Housing and Urban Development, or any other agency or instrumentality, corporate or
    otherwise, of the United States.

(9) "Governing body" means, in the case of a city, the council or other body of the city
    in which is vested legislative authority customarily imposed on the city council, and in the
    case of a county, the board of county commissioners.

(10) "Housing authority" or "authority" means any public body corporate and politic
(11) (a) "Housing project" or "project" means any work or undertaking, on contiguous or noncontiguous sites to:

(i) demolish, clear, or remove buildings from any blighted area;
(ii) provide or assist in providing decent, safe, and sanitary urban or rural dwellings, apartments, or other living accommodations for persons of medium and low income by any suitable methods, including [but not limited to] rental, sale of individual units in single or multifamily structures under conventional condominium, cooperative sales contract, lease-purchase agreement, loans, or subsidizing of rentals or charges; or
(iii) accomplish a combination of the foregoing.

(b) "Housing project" includes:

(i) buildings, land, equipment, facilities, and other real or personal property for necessary, convenient, or desirable appurtenances;
(ii) streets, sewers, water service, utilities, parks, site preparation and landscaping;
(iii) facilities for administrative, community, health, recreational, welfare, or other purposes;
(iv) the planning of the buildings and other improvements;
(v) the acquisition of property or any interest therein;
(vi) the demolition of existing structures;
(vii) the construction, reconstruction, rehabilitation, alteration, or repair of the improvements and all other work in connection with them; and
(viii) all other real and personal property and all tangible or intangible assets held or used in connection with the housing project.

(12) "Major disaster" means any flood, drought, fire, hurricane, earthquake, storm, or other catastrophe which in the determination of the governing body is of sufficient severity and magnitude to warrant the use of available resources of the federal, state, and local governments to alleviate the damage, hardship, or suffering caused.

(13) "Mayor" means the mayor of the city or the officer charged with the duties
3894 customarily imposed on the mayor or executive head of a city.
3895 (14) "Obligee of an authority" or "obligee" includes any bondholder, agent or trustee
3896 for any bondholder, any lessor demising to the authority used in connection with a project, any
3897 assignee or assignees of the lessor's interest in whole or in part, and the federal government
3898 when it is a party to any contract with the authority.
3899 (15) "Persons of medium and low income" mean persons or families who, as
determined by the authority undertaking a project, cannot afford to pay the amounts at which
private enterprise, unaided by appropriate assistance, is providing a substantial supply of
decent, safe and sanitary housing.
3900 (16) "Person with a disability" means a person with any disability as defined by and
3901 (17) "Public body" means any city, county or municipal corporation, commission,
district, authority, agency, subdivision, or other body of any of the foregoing.
3902 (18) "Real property" includes all lands, improvements, and fixtures on them, property
of any nature appurtenant to them or used in connection with them, and every estate, interest,
and right, legal or equitable, including terms for years.
3903 Section 109. Section 9-4-703 is amended to read:
3911 9-4-703. Housing loan fund board -- Duties -- Expenses.
3912 (1) There is created the Olene Walker Housing Loan Fund Board.
3913 (2) The board shall be composed of 11 voting members.
3914 (a) The governor shall appoint the following members to four-year terms:
3915 (i) two members from local governments;
3916 (ii) two members from the mortgage lending community;
3917 (iii) one member from real estate sales interests;
3918 (iv) one member from home builders interests;
3919 (v) one member from rental housing interests;
3920 (vi) one member from housing advocacy interests;
3921 (vii) one member of the manufactured housing interest; and
(viii) two members of the general public.

(b) The director or his designee shall serve as the secretary of the committee.

(c) The members of the board shall annually elect a chair from among the voting membership of the board.

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

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

(4) (a) The board shall:

(i) meet regularly, at least quarterly, on dates fixed by the board;

(ii) keep minutes of its meetings; and

(iii) comply with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings Act.

(b) Seven members of the board constitute a quorum, and the governor, the chair, or a majority of the board may call a meeting of the board.

(5) The board shall:

(a) review the housing needs in the state;

(b) determine the relevant operational aspects of any grant, loan, or revenue collection program established under the authority of this chapter;

(c) determine the means to implement the policies and goals of this chapter;

(d) [determine] select specific projects [that the board considers should] to receive grant or loan moneys; and

(e) determine how fund moneys shall be allocated and distributed.

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

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

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

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

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

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

Section 110. Section 9-4-914 is amended to read:

9-4-914. Capital reserve funds -- Capital reserve fund requirement --

Establishment of other funds.

(1) (a) (i) The corporation may create and establish one or more reserve funds, herein referred to as "capital reserve funds", from:

(A) any proceeds of sale of notes or bonds, to the extent provided in the resolution or resolutions of the corporation authorizing the issuance thereof;

(B) any monies appropriated and made available by the state for the purpose of the funds;

(C) any monies directed by the corporation to be transferred to the funds; and

(D) any other monies which may be made available to the corporation for the purpose of the funds from any other source or sources.

(ii) All monies held in any capital reserve fund shall be used, as required, solely for the payment of the principal of bonds or of the sinking fund payments with respect to the bonds,
the purchase or redemption of bonds, the payment of interest on bonds, or the payment of any redemption premium required to be paid when the bonds are redeemed prior to maturity.

(b) (i) Monies in any capital reserve fund may not be withdrawn from the fund at any time in an amount as would reduce the level of monies in the fund to less than the capital reserve fund requirement, except for the purpose of paying principal and redemption price of and interest on bonds and the sinking fund payments, as the payments become due and for the payment of which other monies of the corporation are not available.

(ii) Any income or interest earned by the investment of monies held in any fund may be transferred by the corporation to other funds or accounts of the corporation to the extent that the transfer does not reduce the amount of the fund to below the capital reserve fund requirement.

(c) The corporation may provide by resolution or resolutions that it may not issue bonds under a resolution or resolutions at any time if upon issuance the amount in the capital reserve fund which will secure the bonds shall be less than the capital reserve fund requirement, unless the corporation at the time of issuance of the bonds shall deposit in the fund from the proceeds of the bonds to be so issued, or other sources, an amount which, together with the amount then in the fund, may not be less than the capital reserve fund requirement.

(d) In computing the amount of the capital reserve funds for the purpose of this part, securities in which all or a portion of the funds shall be invested shall be valued at par, cost, or by other method of valuation as the corporation may provide by resolution.

(e) (i) "Capital reserve fund requirement" means, as of any particular date of computation, and with respect to any particular issue of bonds, an amount as the corporation may provide, or may have previously provided, by resolution, which amount may be in the form of a sum certain or a formula.

(ii) In establishing reserves and setting capital reserve fund requirements, the corporation shall consider the following:

(A) the qualifications for obtaining an investment grade rating from one or more
nationally recognized bond rating agencies;

(B) the economic feasibility and marketability of the bonds being issued, taking into account all security for the bonds, including the capital reserve fund; and

(C) applicable requirements pertaining to reserve funds under federal and state income tax laws and regulations.

4011 (f) (i) To assure the continued operation and solvency of the corporation for carrying out its corporate purposes, provision is made in Subsection (1)(b) for the accumulation in the capital reserve funds of an amount equal to the maximum capital reserve fund requirement.

4014 (ii) The president of the corporation shall annually, on or before December first, certify to the governor and to the director of finance the amount, if any, required to restore the capital reserve funds to the capital reserve fund requirement.

4017 (iii) The governor may request from the Legislature an appropriation of the certified amount to restore the capital reserve funds to the capital reserve fund requirement.

4019 (g) Amounts appropriated, if any, shall be repaid to the General Fund of the state, from any monies in excess of the amounts which the corporation determines will keep it self-supporting.

4022 (2) The corporation may create and establish any other funds as may be necessary or desirable for its corporate purposes.

Section 111. Section 9-4-924 is amended to read:

9-4-924. Allocation of qualified mortgage bonds to counties, cities, and towns.

(1) (a) The corporation is authorized to allocate all or part of the amount to one or more counties, cities, and towns within the state or to any authority or agency of any such entities that is authorized to issue qualified mortgage bonds.

(b) An allocation may not be made under this section unless the entity applies to the corporation for an allocation and the corporation finds that the proposed allocation would be in the best interest of the state.

(c) The corporation shall take the following factors into consideration before making its finding:
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(i) the number of "low and moderate income persons," within the meaning of the Utah Housing Corporation Act, within a given area;
(ii) the likelihood that the proposed issuing entity would use the allocation to issue qualified mortgage bonds in a timely manner;
(iii) the cost to the proposed issuing entity to issue the bonds relative to the cost to the corporation to issue the bonds;
(iv) any special costs or benefits which would result from the issuance of such bonds by the proposed issuing entity;
(v) the capability of the proposed issuing entity to administer an issuance of qualified mortgage bonds;
(vi) the needs of the proposed issuing entity relative to the needs of other counties, cities, and towns;
(vii) the effects of the proposed allocation on counties, cities, and towns which are not served by the proposed issuing entity; and
(viii) any other factors the corporation considers relevant to a determination of what is in the best interest of Utah with regard to single family housing.

(2) (a) The corporation shall specify the time within which an issuing entity shall use the allocation.
(b) Any part of the allocation which is not used within the time prescribed automatically terminates.
(c) The corporation may extend the time initially prescribed for use of the allocation.

Section 112. Section 9-6-203 is amended to read:

9-6-203. Division powers relating to property.

(1) The division may:
(a) take by purchase, grant, gift, devise, or bequest, any property, real or personal, for any purpose appropriate to its objects; and
(b) convert property received by gift, grant, devise, or bequest and not suitable for its uses, into other property so available or into money.
(2) The property received or converted under Subsection (1) shall be held, invested, and managed and its proceeds used by the division for the purposes and under the conditions prescribed in the grant or donation.

(3) If by the terms of any grant, gift, devise, or bequest, conditions are imposed that are impracticable under the law, the grant or donation [shall not] does not fail but the conditions shall be rejected and the intent of the grantor or donor carried out as nearly as may be.

(4) A grant, gift, devise, or bequest for the benefit of the division may not be defeated or prejudiced by any misnomer, misdescription, or informality if the intention of the grantor or donor can be shown or ascertained with reasonable certainty.

Section 113. Section 9-6-405 is amended to read:

9-6-405. Procedures, guidelines, and rules.

(1) The division shall follow these guidelines in administering the program:

(a) Works of art shall be acquired under the program for use only with respect to those buildings or facilities that the division determines have significant public use or access, especially where the design and technical construction of the building or facility lend themselves to works of art. All funds set aside and administered by the program from appropriations for any state building or facility of which any part is obtained from the issuance of bonds shall be used only to acquire works of art that will be placed in or at, and remain a part of, that building or facility, to the extent necessary to preserve the federal income tax exemption otherwise allowed for interest paid on the bonds.

(b) The goal of the division in administering the program is to fairly distribute works of art throughout the various social, economic, and geographic communities of the state.

(c) The division shall give first preference to Utah artists, and to artists from other states which have similar percent-for-art programs and demonstrate a reciprocal preference for Utah artists.

(d) The division shall involve the director of the Division of Facilities Construction and Management, or the director's designee, and the project architect in the process of
screening or selecting works of art or artists to create works of art for each project and shall involve in that process representatives from the project's principal user or contracting agency, the community in which the project is located, and the art profession. The project's principal user or contracting agency shall have representation at least equal to any other entity on the selection committee, as designated by the project's president or director. Any selection and placement of art shall be by a majority decision of the user agency representatives on the committee and a majority decision of the entire committee. The selection and placement must be approved by the president or director of the principal user. 

(e) Any relocation of art placed under this program shall be done with the participation from the division and the Division of Facilities Construction and Management and with approval from the president or director of the principal user. 

(f) The costs of administering the program and conserving and maintaining all works of art placed under the program are limited to 15% of the funds deposited in the Utah Percent-for-Art Account. 

(2) The division shall adopt procedures, guidelines, and rules as necessary to implement this chapter and administer the program.

Section 114. Section 9-6-504 is amended to read:

9-6-504. Duties of board.

The board shall:

(1) allocate moneys from the state fund to the endowment fund created by a qualifying organization under Section 9-6-503;

(2) determine the eligibility of each qualifying organization to receive moneys from the state fund into the endowment fund of the qualifying organization and be the final arbiter of eligibility;

(3) determine the matching amount each qualifying organization must raise in order to qualify to receive moneys from the state fund;

(4) establish a date by which each qualifying organization must provide its matching funds;
(5) verify that matching funds have been provided by each qualifying organization by
the date determined in Subsection (4); and
(6) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
establish criteria by rule not otherwise prescribed in this chapter for determining the eligibility
of qualifying organizations to receive moneys from the state fund.

Section 115. Section 9-7-213 is amended to read:

9-7-213. Rulemaking.
The division may make rules in accordance with Title 63G, Chapter 3, Utah
Administrative Rulemaking Act, necessary to implement and administer the provisions of this
chapter including:
(1) standards which [must] shall be met by libraries to obtain and retain a designation
as a depository library;
(2) the method by which grants are made to individual libraries, but not including
appropriations made directly to any other agency or institution;
(3) standards for the certification of public librarians; and
(4) standards for the public library online access policy required in Section 9-7-215.

Section 116. Section 9-7-504 is amended to read:

9-7-504. Library board duties -- Library fund deposits.
(1) The library board of directors shall, with the approval of the county executive and
in accordance with county ordinances, policies, and procedures:
(a) be responsible for:
(i) the expenditure of the library fund;
(ii) the construction, lease, or sale of library buildings and land; and
(iii) the operation and care of the library; and
(b) purchase, lease, or sell land, and purchase, lease, construct, or sell buildings, for
the benefit of the library.
(2) The board has those powers and duties as prescribed by county ordinance,
including[], but not limited to,] establishing policies for collections and information resources
(3) (a) All tax moneys received for the library shall be deposited in the county treasury to the credit of the library fund, and may not be used for any purpose except that of the county library.

(b) All moneys collected by the library shall be deposited to the credit of the library fund.

Section 117. Section 9-12-103 is amended to read:

9-12-103. Eligibility criteria.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules establishing eligibility criteria for recipients of assistance under this chapter. A recipient of assistance under this chapter [must] shall demonstrate:

(1) that the recipient's family, household, or individual income is 150% of the federal poverty level or less;

(2) that the recipient is responsible for paying the recipient's home energy costs; and

(3) compliance with any rules established by the department under this section.

Section 118. Section 9-12-201 is amended to read:

9-12-201. Moratorium on involuntary termination for nonpayment of utility bills -- Eligibility criteria -- Department to establish and certify.

(1) The department shall establish a program for a seasonal moratorium for involuntary termination for nonpayment by residential customers of essential utility bills. An essential utility is a utility regulated by the Public Service Commission under Title 54, which is in the business of the retail distribution of electricity or natural gas. A residential customer is a customer defined as in a residential class by the Public Service Commission.

(2) A residential customer [must] shall meet the following criteria to qualify for the program:

(a) gross household income is less than 125% of the federal poverty level or the household has suffered a medical or other emergency, loss of employment, or is experiencing other circumstances which have resulted in a substantial loss of income;
(b) the customer has made application to public and private energy assistance programs;

(c) the customer is willing to make a good faith effort to pay these utility bills on a consistent basis; and

(d) any additional information required by the department.

(3) A residential customer may file with a local department office an affidavit attesting eligibility under the criteria in Subsection (2). The department shall certify that the customer has met the eligibility requirements and forward a copy of the affidavit to the effected utility.

Section 119. Section 10-1-105 is amended to read:

10-1-105. No changes intended.

Unless otherwise specifically provided in this act, the provisions of this act shall not operate in any way to affect the property or contract rights or other actions which may exist in favor of or against any municipality. Nor shall this act operate in any way to change or affect any ordinance, order or resolution in force in any municipality and such ordinances, orders and resolutions which are not repugnant to law, shall continue in full force and effect until repealed or amended.

Section 120. Section 10-1-108 is amended to read:


The provisions of this act or any other act not expressly repealed by Section 10-1-114 shall be considered as an alternative or additional power and not as a limitation on any other power granted to or possessed by municipalities. The provisions of this act may not be considered as impairing, altering, modifying or repealing any of the jurisdiction or powers possessed by any department, division, commission, board, or office of state government.

Section 121. Section 10-1-109 is amended to read:

10-1-109. Saving clause.

The repeal of the titles, chapters and sections specified in Section 10-1-114 shall not do not:

(1) affect suits pending or rights existing immediately prior to the effective date of this
act;

(2) impair, avoid, or affect any grant or conveyance made or right acquired or cause of action now existing under any repealed act or amendment thereto; or

(3) affect or impair the validity of any bonds or other obligation issued or sold prior to the effective date of this act.

The repeal of any validating act or part thereof shall not avoid the effect of the validation. No act repealed by Section 10-1-114 shall repeal any act or part thereof which embraces the same or similar subject matter as the act repealed.

Section 122. Section 10-1-112 is amended to read:

10-1-112. Headings do not limit sections.

Title, chapter, part, or section headings contained herein may not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any title, chapter, part or section of this act.

Section 123. Section 10-1-113 is amended to read:

10-1-113. Severability clause.

If any chapter, part, section, paragraph or subsection of this act, or the application thereof is held to be invalid, the remainder of this act is not affected thereby.

Section 124. Section 10-2-109 is amended to read:

10-2-109. Incorporation petition -- Requirements and form.

(1) At any time within 18 months of the completion of the public hearings required under Subsection 10-2-108(1), a petition for incorporation of the area proposed to be incorporated as a city may be filed in the office of the clerk of the county in which the area is located.

(2) Each petition under Subsection (1) shall:

(a) be signed by the owners of private real property that:

(i) is located within the area proposed to be incorporated;

(ii) covers at least 1/3 of the total private land area within the area; and

(iii) is equal in value to at least 1/3 of the value of all private real property within the
area;
(b) indicate the typed or printed name and current residence address of each owner signing the petition;
(c) describe the area proposed to be incorporated as a city, as described in the feasibility study request or modified request that meets the requirements of Subsection (3);
(d) state the proposed name for the proposed city;
(e) designate five signers of the petition as petition sponsors, one of whom shall be designated as the contact sponsor, with the mailing address and telephone number of each;
(f) state that the signers of the petition appoint the sponsors, if the incorporation measure passes, to represent the signers in the process of:
(i) selecting the number of commission or council members the new city [should] will have; and
(ii) drawing district boundaries for the election of commission or council members, if the voters decide to elect commission or council members by district;
(g) be accompanied by and circulated with an accurate plat or map, prepared by a licensed surveyor, showing the boundaries of the proposed city; and
(h) substantially comply with and be circulated in the following form:

PETITION FOR INCORPORATION OF (insert the proposed name of the proposed city)

To the Honorable County Legislative Body of (insert the name of the county in which the proposed city is located) County, Utah:

We, the undersigned owners of real property within the area described in this petition, respectfully petition the county legislative body to submit to the registered voters residing within the area described in this petition, at a special election held for that purpose, the question of whether the area should incorporate as a city. Each of the undersigned affirms that each has personally signed this petition and is an owner of real property within the described area, and that the current residence address of each is correctly written after the signer's name.

The area proposed to be incorporated as a city is described as follows: (insert an accurate
description of the area proposed to be incorporated).

(3) A petition for incorporation of a city under Subsection (1) may not be filed unless the results of the feasibility study or supplemental feasibility study show that the average annual amount of revenue under Subsection 10-2-106(4)(a)(ix) does not exceed the average annual amount of cost under Subsection 10-2-106(4)(a)(viii) by more than 5%.

(4) A signature on a request under Section 10-2-103 or a modified request under Section 10-2-107 may be used toward fulfilling the signature requirement of Subsection (2)(a):

(a) if the request under Section 10-2-103 or modified request under Section 10-2-107 notified the signer in conspicuous language that the signature, unless withdrawn, would also be used for purposes of a petition for incorporation under this section; and

(b) unless the signer files with the county clerk a written withdrawal of the signature before the petition under this section is filed with the clerk.

Section 125. Section 10-2-303 is amended to read:

10-2-303. Effect of change in class.

(1) If a municipality changes from one class to another:

(a) all property, property rights, and other rights that belonged to or were vested in the municipality at the time of the change shall belong to and be vested in it after the change;

(b) no contract, claim, or right of the municipality or demand or liability against it shall be altered or affected in any way by the change;

(c) each ordinance, order, and resolution in force in the municipality when it changes classes shall, to the extent that it is not inconsistent with law, not be affected by the change and shall remain in effect until repealed or amended;

(d) the change may not affect the identity of the municipality;

(e) each municipal officer in office at the time of the change shall continue as an officer until that officer's term expires and a successor is duly elected and qualified; and

(f) the municipality maintains after the change in class the same form of government that it had immediately before the change.

(2) (a) A change in class does not affect an action at law, prosecution, business, or
work of the municipality changing classes, and proceedings shall continue and may be
conducted and proceed as if no change in class had occurred.

(b) Notwithstanding Subsection (2)(a), if the law applicable to a municipality under
the new class provides the municipality a different remedy with respect to a right that it
possessed at the time of the change, the remedy shall be cumulative to the remedy applicable
before the change in class.

Section 126. Section 10-2-403 is amended to read:

10-2-403. Annexation petition -- Requirements -- Notice required before filing.
(1) Except as provided in Section 10-2-418, the process to annex an unincorporated
area to a municipality is initiated by a petition as provided in this section.

(2) (a) (i) Before filing a petition under Subsection (1) with respect to the proposed
annexation of an area located in a county of the first class, the person or persons intending to
file a petition shall:

(A) file with the city recorder or town clerk of the proposed annexing municipality a
notice of intent to file a petition; and

(B) send a copy of the notice of intent to each affected entity.

(ii) Each notice of intent under Subsection (2)(a)(i) shall include an accurate map of
the area that is proposed to be annexed.

(b) (i) Subject to Subsection (2)(b)(ii), the county in which the area proposed to be
annexed is located shall:

(A) mail the notice described in Subsection (2)(b)(iii) to:

(I) each owner of real property located within the area proposed to be annexed; and

(II) each owner of real property located within 300 feet of the area proposed to be
annexed; and

(B) send to the proposed annexing municipality a copy of the notice and a certificate
indicating that the notice has been mailed as required under Subsection (2)(b)(i)(A).

(ii) The county shall mail the notice required under Subsection (2)(b)(i)(A) within 20
days after receiving from the person or persons who filed the notice of intent:
(A) a written request to mail the required notice; and

(B) payment of an amount equal to the county's expected actual cost of mailing the notice.

(iii) Each notice required under Subsection (2)(b)(i)(A) shall:

(A) be in writing;

(B) state, in bold and conspicuous terms, substantially the following:

"Attention: Your property may be affected by a proposed annexation. Records show that you own property within an area that is intended to be included in a proposed annexation to (state the name of the proposed annexing municipality) or that is within 300 feet of that area. If your property is within the area proposed for annexation, you may be asked to sign a petition supporting the annexation. You may choose whether or not to sign the petition. By signing the petition, you indicate your support of the proposed annexation. If you sign the petition but later change your mind about supporting the annexation, you may withdraw your signature by submitting a signed, written withdrawal with the recorder or clerk of (state the name of the proposed annexing municipality) within 30 days after (state the name of the proposed annexing municipality) receives notice that the petition has been certified.

There will be no public election on the proposed annexation because Utah law does not provide for an annexation to be approved by voters at a public election. Signing or not signing the annexation petition is the method under Utah law for the owners of property within the area proposed for annexation to demonstrate their support of or opposition to the proposed annexation.

You may obtain more information on the proposed annexation by contacting (state the name, mailing address, telephone number, and email address of the official or employee of the proposed annexing municipality designated to respond to questions about the proposed annexation), (state the name, mailing address, telephone number, and email address of the county official or employee designated to respond to questions about the proposed annexation), or (state the name, mailing address, telephone number, and email address of the
person who filed the notice of intent under Subsection (2)(a)(i)(A), or, if more than one person 
filed the notice of intent, one of those persons). Once filed, the annexation petition will be 
available for inspection and copying at the office of (state the name of the proposed annexing 
municipality) located at (state the address of the municipal offices of the proposed annexing 
municipality).”; and 
(C) be accompanied by an accurate map identifying the area proposed for annexation. 
(iv) A county may not mail with the notice required under Subsection (2)(b)(i)(A) any 
other information or materials related or unrelated to the proposed annexation. 
(c) (i) After receiving the certificate from the county as provided in Subsection 
(2)(b)(i)(B), the proposed annexing municipality shall, upon request from the person or 
persons who filed the notice of intent under Subsection (2)(a)(i)(A), provide an annexation 
petition for the annexation proposed in the notice of intent.
(ii) An annexation petition provided by the proposed annexing municipality may be 
duplicated for circulation for signatures.
(3) Each petition under Subsection (1) shall:
(a) be filed with the city recorder or town clerk, as the case may be, of the proposed 
annexing municipality;
(b) contain the signatures of:
(i) the owners of private real property that:
(A) is located within the area proposed for annexation;
(B) (I) subject to Subsection (3)(b)(i)(B)(II), covers a majority of the private land area 
within the area proposed for annexation; and
(II) covers 100% of the private land area within the area proposed for annexation, if 
the area is within:
(Aa) an agriculture protection area created under Title 17, Chapter 41, Agriculture and 
Industrial Protection Areas; or
(Bb) a migratory bird production area created under Title 23, Chapter 28, Migratory 
Bird Production Area; and

(C) is equal in value to at least 1/3 of the value of all private real property within the
area proposed for annexation; or
(ii) if all the real property within the area proposed for annexation is owned by a
public entity other than the federal government, the owner of all the publicly owned real
property;
(c) if the petition proposes the annexation of an area located within a township,
explain that if the annexation petition is granted, the area will also be withdrawn from the
township;
(d) be accompanied by:
(i) an accurate and recordable map, prepared by a licensed surveyor, of the area
proposed for annexation; and
(ii) a copy of the notice sent to affected entities as required under Subsection
(2)(a)(i)(B) and a list of the affected entities to which notice was sent;
(e) if the area proposed to be annexed is located in a county of the first class, contain
on each signature page a notice in bold and conspicuous terms that states substantially the
following:
"Notice:
• There will be no public election on the annexation proposed by this petition because
Utah law does not provide for an annexation to be approved by voters at a public election.
• If you sign this petition and later decide that you do not support the petition, you may
withdraw your signature by submitting a signed, written withdrawal with the recorder or clerk
of (state the name of the proposed annexing municipality). If you choose to withdraw your
signature, you [must] shall do so no later than 30 days after (state the name of the proposed
annexing municipality) receives notice that the petition has been certified."
(f) if the petition proposes the annexation of an area located in a county that is not the
county in which the proposed annexing municipality is located, be accompanied by a copy of
the resolution, required under Subsection 10-2-402(6), of the legislative body of the county in
which the area is located; and
(g) designate up to five of the signers of the petition as sponsors, one of whom shall be designated as the contact sponsor, and indicate the mailing address of each sponsor.

(4) A petition under Subsection (1) may not propose the annexation of all or part of an area proposed for annexation to a municipality in a previously filed petition that has not been denied, rejected, or granted.

(5) A petition under Subsection (1) proposing the annexation of an area located in a county of the first class may not propose the annexation of an area that includes some or all of an area proposed to be incorporated in a request for a feasibility study under Section 10-2-103 or a petition under Section 10-2-125 if:

(a) the request or petition was filed before the filing of the annexation petition; and

(b) the request, a petition under Section 10-2-109 based on that request, or a petition under Section 10-2-125 is still pending on the date the annexation petition is filed.

(6) If practicable and feasible, the boundaries of an area proposed for annexation shall be drawn:

(a) along the boundaries of existing local districts and special service districts for sewer, water, and other services, along the boundaries of school districts whose boundaries follow city boundaries or school districts adjacent to school districts whose boundaries follow city boundaries, and along the boundaries of other taxing entities;

(b) to eliminate islands and peninsulas of territory that is not receiving municipal-type services;

(c) to facilitate the consolidation of overlapping functions of local government;

(d) to promote the efficient delivery of services; and

(e) to encourage the equitable distribution of community resources and obligations.

(7) On the date of filing, the petition sponsors shall deliver or mail a copy of the petition to:

(a) the clerk of the county in which the area proposed for annexation is located; and

(b) if any of the area proposed for annexation is within a township:

(i) the legislative body of the county in which the township is located; and
(ii) the chair of the township planning commission.

(8) A property owner who signs an annexation petition proposing to annex an area located in a county of the first class may withdraw the owner's signature by filing a written withdrawal, signed by the property owner, with the city recorder or town clerk no later than 30 days after the municipal legislative body's receipt of the notice of certification under Subsection 10-2-405(2)(c)(i).

Section 127. Section 10-2-510 is amended to read:

10-2-510. Boundary adjustment procedure not affected.

This part may not be construed to abrogate, modify, or replace the boundary adjustment procedure provided in Section 10-2-419.

Section 128. Section 10-2-614 is amended to read:

10-2-614. Ordinances, resolutions, and orders.

All ordinances, resolutions and orders, in force in any of the municipalities when it is consolidated, shall remain in full force and effect within the respective areas of the municipalities which existed prior to consolidation insofar as the ordinances, resolutions and orders are not repugnant to law, until repealed or amended, but may not in any case exceed three years. The governing body of the new municipality shall as soon as possible adopt new ordinances, resolutions and orders for the uniform governance of the new municipality.

Section 129. Section 10-3-508 is amended to read:

10-3-508. Reconsideration.

Any action taken by the governing body may not be reconsidered or rescinded at any special meeting unless the number of members of the governing body present at the special meeting is equal to or greater than the number of members present at the meeting when the action was approved.

Section 130. Section 10-3-608 is amended to read:

10-3-608. Rules of conduct for the public.

The governing body on a two-thirds vote may expel any person who is disorderly
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during the meeting of the governing body. This section or any action taken by the governing
body pursuant hereto [shall not] does not preclude prosecution under any other provision of
law.

Section 131. Section 10-3-702 is amended to read:

10-3-702. Extent of power exercised by ordinance.

The governing body may pass any ordinance to regulate, require, prohibit, govern,
control or supervise any activity, business, conduct or condition authorized by this act or any
other provision of law. An officer of the municipality [shall not] may not be convicted of a
criminal offense where he relied on or enforced an ordinance he reasonably believed to be a
valid ordinance. It shall be a defense to any action for punitive damages that the official acted
in good faith in enforcing an ordinance or that he enforced an ordinance on advice of legal
counsel.

Section 132. Section 10-3-704 is amended to read:

10-3-704. Form of ordinance.

Any ordinance passed by the governing body, after the effective date of this act, shall
contain and be in substantially the following order and form:

(1) a number;
(2) a title which indicates the nature of the subject matter of the ordinance;
(3) a preamble which states the need or reason for the ordinance;
(4) an ordaining clause which states "Be it ordained by the ____ (name of the
governing body and municipality):";
(5) the body or subject of the ordinance;
(6) when applicable, a statement indicating the penalty for violation of the ordinance
or a reference that the punishment is covered by an ordinance which prescribes the fines and
terms of imprisonment for the violation of a municipal ordinance; or, the penalty may
establish a classification of penalties and refer to such ordinance in which the penalty for such
violation is established;
(7) a statement indicating the effective date of the ordinance or the date when the
ordinance shall become effective after publication or posting as required by this chapter;

(8) a line for the signature of the mayor or acting mayor to sign the ordinance;

(9) a place for the municipal recorder to attest the ordinance and fix the seal of the municipality; and

(10) in municipalities where the mayor may disapprove an ordinance passed by the legislative body, the ordinance [must] shall show, that it was passed with the mayor's approval or that if the mayor disapproved the ordinance, that it was passed over his disapproval. If the mayor neither approves, or disapproves an ordinance, the ordinance [should] shall show that it became effective without the approval or disapproval of the mayor.

Section 133. Section 10-3-717 is amended to read:

10-3-717. Purpose of resolutions.

Unless otherwise required by law, the governing body may exercise all administrative powers by resolution including[, but not limited to]: (1) establishing water and sewer rates; (2) charges for garbage collection and fees charged for municipal services; (3) establishing personnel policies and guidelines; and (4) regulating the use and operation of municipal property. Punishment, fines or forfeitures may not be imposed by resolution.

Section 134. Section 10-3-905 is amended to read:

10-3-905. Fees to be paid in advance.

The city engineer [shall not] may not record any drawings or instruments, or file any papers or notices, or furnish any copies, or render any service connected with his office, until the fees for the same are paid or tendered as prescribed by law or ordinance.

Section 135. Section 10-3-907 is amended to read:

10-3-907. Recordation not to interfere with other recordation.

The recording or filing of any drawing or instrument in the city engineer's office [shall not] may not interfere or conflict in any way with the recording or filing of the same in other offices of record.

Section 136. Section 10-3-912 is amended to read:

10-3-912. Chief of department may suspend subordinates.
(1) The chief of each department may at any time suspend any subordinate officers, members, employees, or agents employed therein when in his judgment the good of the service demands it, and during the time of suspension, the person suspended is not entitled to any salary or compensation whatsoever.

(2) Any suspension of employees in the classified civil service which exceeds three days or 24 working hours is subject to an appeal to the civil service commission as provided in Section 10-3-1012.

Section 137. Section 10-3-1004 is amended to read:

10-3-1004. Qualifications of commissioners -- Salary -- Removal.

Not more than two members of the civil service commission shall at any one time be of the same political party. No member of the civil service commission shall during his tenure of office hold any other public office, or be a candidate for any other public office. Each member shall receive $25 for each meeting of the commission which he shall attend, but may not receive more than $100 in any one month. In case of misconduct, inability or willful neglect in the performance of the duties of the office by any member, the member may be removed from office by the board of city commissioners by a majority vote of the entire membership, but the member shall, if he so desires, have opportunity to be heard in defense.

Section 138. Section 10-3-1011 is amended to read:

10-3-1011. Temporary employees.

The head of each department, with the advice and consent of the board of city commissioners, may employ any person for temporary work only, without making the appointment from the certified list, but the appointment may not be longer than one month in the same calendar year, and under no circumstances shall the temporary employee be appointed to a permanent position unless he shall have been duly certified by the civil service commission as in other cases.

Section 139. Section 10-3-1012.5 is amended to read:

10-3-1012.5. Appeal to Court of Appeals -- Scope of review.

Any final action or order of the commission may be appealed to the Court of Appeals
for review. The notice of appeal [must] shall be filed within 30 days of the issuance of the final action or order of the commission. The review by Court of Appeals shall be on the record of the commission and shall be for the purpose of determining if the commission has abused its discretion or exceeded its authority.

Section 140. Section 10-3-1306 is amended to read:

10-3-1306. Interest in business entity regulated by municipality -- Disclosure statement required.

(1) Every appointed or elected officer or municipal employee who is an officer, director, agent, or employee or the owner of a substantial interest in any business entity which is subject to the regulation of the municipality in which he is an elected or appointed officer or municipal employee shall disclose the position held and the nature and value of his interest upon first becoming appointed, elected, or employed by the municipality, and again at any time thereafter if the elected or appointed officer's or municipal employee's position in the business entity has changed significantly or if the value of his interest in the entity has increased significantly since the last disclosure.

(2) The disclosure shall be made in a sworn statement filed with the mayor. The mayor shall report the substance of all such disclosure statements to the members of the governing body, or may provide to the members of the governing body copies of the disclosure statement within 30 days after the statement is received by him.

(3) This section does not apply to instances where the value of the interest does not exceed $2,000. Life insurance policies and annuities [shall not] may not be considered in determining the value of any such interest.

Section 141. Section 10-5-103 is amended to read:

10-5-103. Withholding state money of town failing to file budget.

The state auditor is authorized to withhold state money allocated to a town if that town fails to file a copy of a formally adopted budget or fails to comply with the annual financial reporting and independent auditing requirements of this chapter. Such money [shall not] may not be withheld if the town substantially complies with the requirements of this chapter.
Section 142. Section 10-5-107 is amended to read:

10-5-107. Tentative budgets required for public inspection -- Contents --

Adoption of tentative budget.

(1) (a) On or before the first regularly scheduled town council meeting of May, the mayor shall:

(i) prepare for the ensuing year, on forms provided by the state auditor, a tentative budget for each fund for which a budget is required;

(ii) make the tentative budget available for public inspection; and

(iii) submit the tentative budget to the town council.

(b) The tentative budget of each fund shall set forth in tabular form:

(i) actual revenues and expenditures in the last completed fiscal year;

(ii) estimated total revenues and expenditures for the current fiscal year; and

(iii) the mayor's estimates of revenues and expenditures for the budget year.

(2) (a) The mayor shall:

(i) estimate the amount of revenue available to serve the needs of each fund;

(ii) estimate the portion to be derived from all sources other than general property taxes; and

(iii) estimate the portion that [must] shall be derived from general property taxes.

(b) From the estimates required by Subsection (2)(a), the mayor shall compute and disclose in the budget the lowest rate of property tax levy that will raise the required amount of revenue, calculating the levy on the latest taxable value.

(3) (a) Before the public hearing required under Section 10-5-108, the town council:

(i) shall review, consider, and tentatively adopt the tentative budget in any regular meeting or special meeting called for that purpose; and

(ii) may amend or revise the tentative budget.

(b) At the meeting at which the town council adopts the tentative budget, the council shall establish the time and place of the public hearing required under Section 10-5-108.

(4) (a) If within any enterprise utility fund, allocations or transfers that are not
reasonable allocations of costs between funds are included in a tentative budget, a written
notice of the date, time, place, and purpose of the hearing shall be mailed to utility fund
customers at least seven days before the hearing.

(b) The purpose portion of the notice shall identify:

(i) the enterprise utility fund from which money is being transferred;
(ii) the amount being transferred; and
(iii) the fund to which the money is being transferred.

Section 143. Section 10-5-114 is amended to read:

10-5-114. Appropriations limited to estimated revenue.
The council may not make any appropriation in the final budget of any fund in excess of the estimated expendable revenue for the budget year of such fund.

Section 144. Section 10-5-115 is amended to read:

10-5-115. Expenditures limited to appropriations -- Obligations in excess invalid -- Processing claims required.

Town officers may not make or incur expenditures or encumbrances in excess of total appropriations for any department in the budget as adopted or as subsequently amended. Any obligation contracted by any such officer may not be or become valid or enforceable against the town. No check or warrant to cover any claim against any appropriation shall be drawn until the claim has been processed as provided by this chapter.

Section 145. Section 10-6-111 is amended to read:

10-6-111. Tentative budget to be prepared -- Contents -- Estimate of expenditures -- Budget message -- Review by governing body.

(1) (a) On or before the first regularly scheduled meeting of the governing body in the last May of the current period, the budget officer shall prepare for the ensuing fiscal period, on forms provided by the state auditor, and file with the governing body, a tentative budget for each fund for which a budget is required.

(b) The tentative budget of each fund shall set forth in tabular form:

(i) the actual revenues and expenditures in the last completed fiscal period;
(ii) the budget estimates for the current fiscal period;
(iii) the actual revenues and expenditures for a period of 6 to 21 months, as appropriate, of the current fiscal period;
(iv) the estimated total revenues and expenditures for the current fiscal period;
(v) the budget officer's estimates of revenues and expenditures for the budget period, computed as provided in Subsection (1)(c); and
(vi) if the governing body elects, the actual performance experience to the extent established by Section 10-6-154 and available in work units, unit costs, man hours, or man years for each budgeted fund on an actual basis for the last completed fiscal period, and estimated for the current fiscal period and for the ensuing budget period.

(c) (i) In making estimates of revenues and expenditures under Subsection (1)(b)(v), the budget officer shall estimate:
(A) on the basis of demonstrated need, the expenditures for the budget period, after:
(I) hearing each department head; and
(II) reviewing the budget requests and estimates of the department heads; and
(B) (I) the amount of revenue available to serve the needs of each fund;
(II) the portion of revenue to be derived from all sources other than general property taxes; and
(III) the portion of revenue that shall be derived from general property taxes.
(ii) The budget officer may revise any department's estimate under Subsection (1)(c)(i)(A)(II) that the officer considers advisable for the purpose of presenting the budget to the governing body.
(iii) From the estimate made under Subsection (1)(c)(i)(B)(III), the budget officer shall compute and disclose in the budget the lowest rate of property tax levy that will raise the required amount of revenue, calculating the levy upon the latest taxable value.

(2) (a) Each tentative budget, when filed by the budget officer with the governing body, shall contain the estimates of expenditures submitted by department heads, together with specific work programs and such other supporting data as this chapter requires or the
governing body may request. Each city of the first or second class shall, and a city of the
third, fourth, or fifth class may, submit a supplementary estimate of all capital projects which
each department head believes should be undertaken within the next three succeeding years.

(b) Each tentative budget submitted by the budget officer to the governing body shall
be accompanied by a budget message, which shall explain the budget, contain an outline of
the proposed financial policies of the city for the budget period, and shall describe the
important features of the budgetary plan. It shall set forth the reasons for salient changes from
the previous fiscal period in appropriation and revenue items and shall explain any major
changes in financial policy.

(3) Each tentative budget shall be reviewed, considered, and tentatively adopted by the
governing body in any regular meeting or special meeting called for the purpose and may be
amended or revised in such manner as is considered advisable prior to public hearings, except
that no appropriation required for debt retirement and interest or reduction of any existing
deficits pursuant to Section 10-6-117, or otherwise required by law or ordinance, may be
reduced below the minimums so required.

(4) (a) If the municipality is acting pursuant to Section 10-2-120, the tentative budget
shall:

(i) be submitted to the governing body-elect as soon as practicable; and
(ii) cover each fund for which a budget is required from the date of incorporation to
the end of the fiscal year.

(b) The governing body shall substantially comply with all other provisions of this
chapter, and the budget shall be passed upon incorporation.

Section 146. Section 10-6-116 is amended to read:

10-6-116. Accumulated fund balances -- Limitations -- Excess balances --

Unanticipated excess of revenues -- Reserves for capital improvements.

(1) Cities are permitted to accumulate retained earnings or fund balances, as
appropriate, in any fund. With respect to the General Fund only, any accumulated fund
balance is restricted to the following purposes:
(a) to provide working capital to finance expenditures from the beginning of the budget period until general property taxes, sales taxes, or other applicable revenues are collected, thereby reducing the amount which the city must borrow during the period, but this Subsection (1)(a) does not permit the appropriation of any fund balance for budgeting purposes except as provided in Subsection (4);

(b) to provide a resource to meet emergency expenditures under Section 10-6-129; and

(c) to cover a pending year-end excess of expenditures over revenues from an unavoidable shortfall in revenues. This provision does not permit the appropriation of any fund balance to avoid an operating deficit during any budget period except as provided under Subsection (4), or for emergency purposes under Section 10-6-129.

(2) The accumulation of a fund balance in the General Fund may not exceed 18% of the total estimated revenue of the General Fund.

(3) If the fund balance at the close of any fiscal period exceeds the amount permitted under Subsection (2), the excess shall be appropriated in the manner provided in Section 10-6-117.

(4) Any fund balance in excess of 5% of the total revenues of the General Fund may be utilized for budget purposes.

(5) (a) Within a capital improvements fund the governing body may, in any budget period, appropriate from estimated revenue or fund balance to a reserve for capital improvements for the purpose of financing future specific capital improvements, under a formal long-range capital plan adopted by the governing body.

(b) The reserves may accumulate from fiscal period to fiscal period until the accumulated total is sufficient to permit economical expenditure for the specified purposes.

(c) Disbursements from these reserves shall be made only by transfer to a revenue or transfer account within the capital improvements fund, under a budget appropriation in a budget for the fund adopted in the manner provided by this chapter.

(d) Expenditures from the above appropriation budget accounts shall conform to all requirements of this chapter relating to execution and control of budgets.
Section 147. Section 10-6-123 is amended to read:

**10-6-123. Expenditures or encumbrances in excess of appropriations prohibited**

--- Processing claims.

City officers [shall not] may not make or incur expenditures or encumbrances in excess of total appropriations for any department in the budget as adopted or as subsequently amended. Any obligation contracted by any such officer [shall not] may not be or become valid or enforceable against the city. No check or warrant to cover any claim against any appropriation shall be drawn until the claim has been processed as provided by this chapter.

Section 148. Section 10-6-159 is amended to read:

**10-6-159. Financial administration ordinance -- Provisions.**

The financial administration ordinances adopted pursuant to Section 10-6-158 shall provide for the following:

1. a maximum sum over which all purchases may not be made without the approval of the mayor in the council-mayor optional form of government or the governing body in other cities; however, this section [shall not] does not prevent the mayor in the council-mayor optional form of government or the governing body in other cities from approving all or part of a list of verified claims, including a specific claim in an amount in excess of the stated maximum, where certified by the appropriate financial officer or officers of the city;
2. that the financial officer be bonded for a reasonable amount; and
3. such other provisions as the governing body may deem advisable.

Section 149. Section 10-7-4 is amended to read:

**10-7-4. Water supply -- Acquisition -- Condemnation -- Protest -- Special election -- Determination of just compensation.**

1. The board of commissioners, city council or board of trustees of any city or town may acquire, purchase or lease all or any part of any water, waterworks system, water supply or property connected therewith, and whenever the governing body of a city or town shall deem it necessary for the public good such city or town may bring condemnation proceedings to acquire the same; provided, that if within 30 days after the passage and publication of a
resolution or ordinance for the purchase or lease or condemnation herein provided for one-third of the resident taxpayers of the city or town, as shown by the assessment roll, shall protest against the purchase, lease or condemnation proceedings contemplated, such proposed purchase, lease or condemnation shall be referred to a special election, and if confirmed by a majority vote thereat, shall take effect; otherwise it shall be void.

(2) In all condemnation proceedings the value of land affected by the taking shall be considered in connection with the water or water rights taken for the purpose of supplying the city or town or the inhabitants thereof with water.

(3) In determining just compensation in a condemnation proceeding under this section in a municipality located in a county of the first class where a determination of market value of what is proposed to be taken is impractical because there is no meaningful market for what is proposed to be taken, the value shall be:

(a) presumed to be the amount the owner paid to acquire ownership of what is proposed to be taken, as adjusted by a change in value due to post-acquisition deterioration and any other factor reasonably and equitably bearing on the value of what is proposed to be taken; and

(b) determined by applying equitable considerations including:

(i) whether the owner will be unjustly enriched;

(ii) whether the owner acquired the property by exaction or similar method; and

(iii) the extent to which the consideration the owner provided in acquiring the property consists of an obligation to maintain the property and whether that obligation will be assumed by the municipality because of the condemnation.

(4) This section may not be construed to provide the basis for a municipality's condemnation of a political subdivision of the state or of the political subdivision's property or holdings.

Section 150. Section 10-7-5 is amended to read:

10-7-5. Limitations on lease or purchase.

It is not lawful for any city or town to lease or purchase any part of such
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special tax shall be shown to be invalid, unjust or inequitable, judgment shall be rendered for
such amount as is just and equitable.

Section 153. Section 10-7-71 is amended to read:

10-7-71. Corporate violation -- Summons -- Time and manner of service.
The summons and copy of complaint [must] shall be served at least 24 hours before the
hour of appearance fixed therein by delivering to and leaving a copy thereof with the president
or other head of the corporation, or the secretary, the cashier, or the managing or process agent
thereof, and by showing to him the original summons.

Section 154. Section 10-7-72 is amended to read:

10-7-72. Appearance by agent of corporation -- Bench warrant for default.
At the time appointed in the summons, the corporation [must] shall appear by agent or
attorney and plead thereto the same as a natural person. In case no appearance is made on or
before the hour appointed, the court may issue a bench warrant for the person served as the
officer or agent of the corporation, requiring him to be brought forthwith before the court to
plead on its behalf.

Section 155. Section 10-7-73 is amended to read:

10-7-73. Corporate violation -- Hearing -- Penalty imposed to be a fine.
After the plea of the corporation is entered the court [must] shall fix a time for the
hearing of the cause, and thereafter the proceedings therein shall be the same as in the cases of
natural persons charged with violating a city or town ordinance, except that in cases of
conviction the penalty imposed in all instances shall be by way of fine.

Section 156. Section 10-7-85 is amended to read:

10-7-85. Support of the arts.
The governing body of any municipality may provide for and appropriate funds for the
support of the arts, including [but not limited to] music, dance, theatre, crafts and visual, folk
and literary art, for the purpose of enriching the lives of its residents and may establish
guidelines for the support of the arts.

Section 157. Section 10-8-15 is amended to read:
They may construct or authorize the construction of waterworks within or without the city limits, and for the purpose of maintaining and protecting the same from injury and the water from pollution their jurisdiction shall extend over the territory occupied by such works, and over all reservoirs, streams, canals, ditches, pipes and drains used in and necessary for the construction, maintenance and operation of the same, and over the stream or source from which the water is taken, for 15 miles above the point from which it is taken and for a distance of 300 feet on each side of such stream and over highways along such stream or watercourse within said 15 miles and said 300 feet; provided, that the jurisdiction of cities of the first class shall be over the entire watershed, except that livestock shall be permitted to graze beyond one thousand feet from any such stream or source; and provided further, that each city of the first class shall provide a highway in and through its corporate limits, and so far as its jurisdiction extends, which [shall not] may not be closed to cattle, horses, sheep or hogs driven through any such city, or through any territory adjacent thereto over which such city has jurisdiction, but the board of commissioners of such city may enact ordinances placing under police regulations the manner of driving such cattle, sheep, horses and hogs through such city, or any territory adjacent thereto over which it has jurisdiction. They may enact all ordinances and regulations necessary to carry the power herein conferred into effect, and are authorized and empowered to enact ordinances preventing pollution or contamination of the streams or watercourses from which the inhabitants of cities derive their water supply, in whole or in part, for domestic and culinary purposes, and may enact ordinances prohibiting or regulating the construction or maintenance of any closet, privy, outhouse or urinal within the area over which the city has jurisdiction, and provide for permits for the construction and maintenance of the same. In granting such permits they may annex thereto such reasonable conditions and requirements for the protection of the public health as they deem proper, and may, if deemed advisable, require that all closets, privies and urinals along such streams shall be provided with effective septic tanks or other germ-destroying instrumentalities.

Section 158. Section 10-8-16 is amended to read:
10-8-16. Watercourses leading to and within city -- Mill privileges.

They may control the water and watercourses leading to the city and regulate and control the watercourses and mill privileges within the city; provided, that the control [shall not] may not be exercised to the injury of any right already acquired by actual owners.

Section 159. Section 10-8-17 is amended to read:

10-8-17. City may act as distributing agent -- Collection of operating costs from users.

When the governing body of a city is acting as distributing agent of water, not the property of the corporation, outside of or within its corporate limits, the governing body may annually prior to the commencement of the irrigation season determine and fix the sum deemed necessary to meet the expense of the current year for the purpose of controlling, regulating and distributing such water and constructing and keeping in repair the necessary means for diverting, conveying and distributing the same, and they may collect such sum from the persons entitled to the use of such water, pro rata according to acreage, whether the acreage is situate within or without the corporate boundary of the city; provided, that the funds so derived [shall not] may not be appropriated or used for any other purpose, and in the event that a greater sum is collected in any one year than is necessary for said purpose, the excess thereof shall be carried to the account of the year next following and applied to the purpose for which it was collected. Such sum shall be fixed and collected as provided by ordinance, and until collected the same shall be a lien on such water rights and the land irrigated thereby.

Section 160. Section 10-8-33 is amended to read:

10-8-33. Railroads -- Tracks and franchises.

They may permit, regulate or prohibit the locating, constructing or laying of the tracks of any railroad, or tramway in any street, alley or public place; and may by ordinance grant franchises to railroad and street railroad companies, and to union railroad depot companies, to lay, maintain and operate in any street or part or parts of streets or other public places tracks therefor, but such permission [shall not] may not be exclusive or for a longer time than one hundred years.
Section 161. Section 10-8-36 is amended to read:

10-8-36. Flagmen -- Grade crossings -- Drains along tracks.

They may require railroad companies to keep flagmen at railroad crossings of streets, or otherwise provide protection against injury to persons or property; may compel railroad and street railroad companies to raise or lower their tracks to conform to any grade which at any time may be established by the city, so that such tracks may be crossed at any place on any street, alley or highway; may compel railway companies to make and keep open, and keep in repair, ditches, drains, sewers and culverts along and under their tracks, so that the natural or artificial drainage of adjacent property shall not be impaired.

Section 162. Section 10-8-58.5 is amended to read:

10-8-58.5. Contracting for management, maintenance, operation, or construction of jails.

(1) (a) The governing body of a city or town may contract with private contractors for management, maintenance, operation, and construction of city jails.

(b) The governing body may include a provision in the contract that requires that any jail facility meet any federal, state, or local standards for the construction of jails.

(2) If the governing body contracts only for the management, maintenance, or operation of a jail, the governing body shall include provisions in the contract that:

(a) require the private contractor to post a performance bond in the amount set by the governing body;

(b) establish training standards that must be met by jail personnel;

(c) require the private contractor to provide and fund training for jail personnel so that the personnel meet the standards established in the contract and any other federal, state, or local standards for the operation of jails and the treatment of jail prisoners;

(d) require the private contractor to indemnify the city or town for errors, omissions, defalcations, and other activities committed by the private contractor that result in liability to the city or town;

(e) require the private contractor to show evidence of liability insurance protecting the
city or town and its officers, employees, and agents from liability arising from the
construction, operation, or maintenance of the jail, in an amount not less than those specified
in Title 63G, Chapter 7, Governmental Immunity Act of Utah;
(f) require the private contractor to:
(i) receive all prisoners committed to the jail by competent authority; and
(ii) provide them with necessary food, clothing, and bedding in the manner prescribed
by the governing body; and
(g) prohibit the use of inmates by the private contractor for private business purposes
of any kind.
(3) A contractual provision requiring the private contractor to maintain liability
insurance in an amount not less than the liability limits established by Title 63G, Chapter 7,
Governmental Immunity Act of Utah, may not be construed as waiving the limitation on
damages recoverable from a governmental entity or its employees established by that chapter.
Section 163. Section 10-9a-403 is amended to read:
(1) (a) The planning commission shall provide notice, as provided in Section
10-9a-203, of its intent to make a recommendation to the municipal legislative body for a
general plan or a comprehensive general plan amendment when the planning commission
initiates the process of preparing its recommendation.
(b) The planning commission shall make and recommend to the legislative body a
proposed general plan for the area within the municipality.
(c) The plan may include areas outside the boundaries of the municipality if, in the
planning commission's judgment, those areas are related to the planning of the municipality's
territory.
(d) Except as otherwise provided by law or with respect to a municipality's power of
eminence domain, when the plan of a municipality involves territory outside the boundaries of
the municipality, the municipality may not take action affecting that territory without the
concurrence of the county or other municipalities affected.
At a minimum, the proposed general plan, with the accompanying maps, charts, and descriptive and explanatory matter, shall include the planning commission's recommendations for the following plan elements:

(i) a land use element that:

(A) designates the long-term goals and the proposed extent, general distribution, and location of land for housing, business, industry, agriculture, recreation, education, public buildings and grounds, open space, and other categories of public and private uses of land as appropriate; and

(B) may include a statement of the projections for and standards of population density and building intensity recommended for the various land use categories covered by the plan;

(ii) a transportation and traffic circulation element consisting of the general location and extent of existing and proposed freeways, arterial and collector streets, mass transit, and any other modes of transportation that the planning commission considers appropriate, all correlated with the population projections and the proposed land use element of the general plan; and

(iii) for cities, an estimate of the need for the development of additional moderate income housing within the city, and a plan to provide a realistic opportunity to meet estimated needs for additional moderate income housing if long-term projections for land use and development occur.

(b) In drafting the moderate income housing element, the planning commission:

(i) shall consider the Legislature's determination that cities [should] shall facilitate a reasonable opportunity for a variety of housing, including moderate income housing:

(A) to meet the needs of people desiring to live there; and

(B) to allow persons with moderate incomes to benefit from and fully participate in all aspects of neighborhood and community life; and

(ii) may include an analysis of why the recommended means, techniques, or combination of means and techniques provide a realistic opportunity for the development of moderate income housing within the planning horizon, which means or techniques may
include a recommendation to:

(A) rezone for densities necessary to assure the production of moderate income housing;

(B) facilitate the rehabilitation or expansion of infrastructure that will encourage the construction of moderate income housing;

(C) encourage the rehabilitation of existing uninhabitable housing stock into moderate income housing;

(D) consider general fund subsidies to waive construction related fees that are otherwise generally imposed by the city;

(E) consider utilization of state or federal funds or tax incentives to promote the construction of moderate income housing;

(F) consider utilization of programs offered by the Utah Housing Corporation within that agency's funding capacity; and

(G) consider utilization of affordable housing programs administered by the Department of Community and Culture.

(c) In drafting the land use element, the planning commission shall:

(i) identify and consider each agriculture protection area within the municipality; and

(ii) avoid proposing a use of land within an agriculture protection area that is inconsistent with or detrimental to the use of the land for agriculture.

(3) The proposed general plan may include:

(a) an environmental element that addresses:

(i) the protection, conservation, development, and use of natural resources, including the quality of air, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals, and other natural resources; and

(ii) the reclamation of land, flood control, prevention and control of the pollution of streams and other waters, regulation of the use of land on hillsides, stream channels and other environmentally sensitive areas, the prevention, control, and correction of the erosion of soils, protection of watersheds and wetlands, and the mapping of known geologic hazards;
(b) a public services and facilities element showing general plans for sewage, water, waste disposal, drainage, public utilities, rights-of-way, easements, and facilities for them; police and fire protection, and other public services;

(c) a rehabilitation, redevelopment, and conservation element consisting of plans and programs for:

(i) historic preservation;
(ii) the diminution or elimination of blight; and
(iii) redevelopment of land, including housing sites, business and industrial sites, and public building sites;

(d) an economic element composed of appropriate studies and forecasts, as well as an economic development plan, which may include review of existing and projected municipal revenue and expenditures, revenue sources, identification of basic and secondary industry, primary and secondary market areas, employment, and retail sales activity;

(e) recommendations for implementing all or any portion of the general plan, including the use of land use ordinances, capital improvement plans, community development and promotion, and any other appropriate action;

(f) provisions addressing any of the matters listed in Subsection 10-9a-401(2); and

(g) any other element the municipality considers appropriate.

Section 164. Section 10-9a-509.5 is amended to read:

10-9a-509.5. Review for application completeness -- Substantive application review -- Reasonable diligence required for determination of whether improvements or warranty work meets standards -- Money damages claim prohibited.

(1) (a) Each municipality shall, in a timely manner, determine whether an application is complete for the purposes of subsequent, substantive land use authority review.

(b) After a reasonable period of time to allow the municipality diligently to evaluate whether all objective ordinance-based application criteria have been met, if application fees have been paid, the applicant may in writing request that the municipality provide a written determination either that the application is:
(i) complete for the purposes of allowing subsequent, substantive land use authority
review; or
(ii) deficient with respect to a specific, objective, ordinance-based application
requirement.
(c) Within 30 days of receipt of an applicant's request under this section, the
municipality shall either:
   (i) mail a written notice to the applicant advising that the application is deficient with
   respect to a specified, objective, ordinance-based criterion, and stating that the application
   [must] shall be supplemented by specific additional information identified in the notice; or
   (ii) accept the application as complete for the purposes of further substantive
   processing by the land use authority.
(d) If the notice required by Subsection (1)(c)(i) is not timely mailed, the application
shall be considered complete, for purposes of further substantive land use authority review.
(e) (i) The applicant may raise and resolve in a single appeal any determination made
under this Subsection (1) to the appeal authority, including an allegation that a reasonable
period of time has elapsed under Subsection (1)(a).
   (ii) The appeal authority shall issue a written decision for any appeal requested under
   this Subsection (1)(e).
(f) (i) The applicant may appeal to district court the decision of the appeal authority
made under Subsection (1)(e).
   (ii) Each appeal under Subsection (1)(f)(i) shall be made within 30 days of the date of
   the written decision.
(2) (a) Each land use authority shall substantively review a complete application and
an application considered complete under Subsection (1)(d), and shall approve or deny each
application with reasonable diligence.
(b) After a reasonable period of time to allow the land use authority to consider an
application, the applicant may in writing request that the land use authority take final action
within 45 days from date of service of the written request.
(c) The land use authority shall take final action, approving or denying the application
within 45 days of the written request.

(d) If the land use authority denies an application processed under the mandates of
Subsection (2)(b), or if the applicant has requested a written decision in the application, the
land use authority shall include its reasons for denial in writing, on the record, which may
include the official minutes of the meeting in which the decision was rendered.

(e) If the land use authority fails to comply with Subsection (2)(c), the applicant may
appeal this failure to district court within 30 days of the date on which the land use authority
[should have taken] is required to take final action under Subsection (2)(c).

(3) (a) With reasonable diligence, each land use authority shall determine whether the
installation of required subdivision improvements or the performance of warranty work meets
the municipality's adopted standards.

(b) (i) An applicant may in writing request the land use authority to accept or reject
the applicant's installation of required subdivision improvements or performance of warranty
work.

(ii) The land use authority shall accept or reject subdivision improvements within 15
days after receiving an applicant's written request under Subsection (3)(b)(i), or as soon as
practicable after that 15-day period if inspection of the subdivision improvements is impeded
by winter weather conditions.

(iii) The land use authority shall accept or reject the performance of warranty work
within 45 days after receiving an applicant's written request under Subsection (3)(b)(i), or as
soon as practicable after that 45-day period if inspection of the warranty work is impeded by
winter weather conditions.

(c) If a land use authority determines that the installation of required subdivision
improvements or the performance of warranty work does not meet the municipality's adopted
standards, the land use authority shall comprehensively and with specificity list the reasons for
its determination.

(4) Subject to Section 10-9a-509, nothing in this section and no action or inaction of
the land use authority relieves an applicant's duty to comply with all applicable substantive ordinances and regulations.

(5) There shall be no money damages remedy arising from a claim under this section.

Section 165. Section 10-9a-514 is amended to read:

10-9a-514. Manufactured homes.

(1) For purposes of this section, a manufactured home is the same as defined in Section 58-56-3, except that the manufactured home shall be attached to a permanent foundation in accordance with plans providing for vertical loads, uplift, and lateral forces and frost protection in compliance with the applicable building code. All appendages, including carports, garages, storage buildings, additions, or alterations shall be built in compliance with the applicable building code.

(2) A manufactured home may not be excluded from any land use zone or area in which a single-family residence would be permitted, provided the manufactured home complies with all local land use ordinances, building codes, and any restrictive covenants, applicable to a single family residence within that zone or area.

(3) A municipality may not:

(a) adopt or enforce an ordinance or regulation that treats a proposed development that includes manufactured homes differently than one that does not include manufactured homes; or

(b) reject a development plan based on the fact that the development is expected to contain manufactured homes.

Section 166. Section 10-9a-519 is amended to read:

10-9a-519. Elderly residential facilities in areas zoned exclusively for single-family dwellings.

(1) For purposes of this section:

(a) no person who is being treated for alcoholism or drug abuse may be placed in a residential facility for elderly persons; and

(b) placement in a residential facility for elderly persons shall be on a strictly voluntary
basis and may not be a part of, or in lieu of, confinement, rehabilitation, or treatment in a correctional institution.

(2) Subject to the granting of a conditional use permit, a residential facility for elderly persons shall be allowed in any zone that is regulated to permit exclusively single-family dwelling use, if that facility:

(a) conforms to all applicable health, safety, land use, and building codes;

(b) is capable of use as a residential facility for elderly persons without structural or landscaping alterations that would change the structure's residential character; and

(c) conforms to the municipality's criteria, adopted by ordinance, governing the location of residential facilities for elderly persons in areas zoned to permit exclusively single-family dwellings.

(3) A municipality may, by ordinance, provide that no residential facility for elderly persons be established within three-quarters mile of another existing residential facility for elderly persons or residential facility for persons with a disability.

(4) The use granted and permitted by this section is nontransferable and terminates if the structure is devoted to a use other than as a residential facility for elderly persons or if the structure fails to comply with applicable health, safety, and building codes.

(5) (a) Municipal ordinances shall prohibit discrimination against elderly persons and against residential facilities for elderly persons.

(b) The decision of a municipality regarding the application for a permit by a residential facility for elderly persons [must] shall be based on legitimate land use criteria and may not be based on the age of the facility's residents.

(6) The requirements of this section that a residential facility for elderly persons obtain a conditional use permit or other permit do not apply if the facility meets the requirements of existing land use ordinances that allow a specified number of unrelated persons to live together.

Section 167. Section 10-11-2 is amended to read:

It shall be the duty of such city inspector to make careful examination and investigation, as may be provided by ordinance, of the growth and spread of such injurious and noxious weeds, and of garbage, refuse or unsightly or deleterious objects or structures; and it shall be his duty to ascertain the names of the owners and descriptions of the premises where such weeds, garbage, refuse, objects or structures exist, and to serve notice in writing upon the owner or occupant of such land, either personally or by mailing notice, postage prepaid, addressed to the owner or occupant at the last known post-office address as disclosed by the records of the county assessor, requiring such owner or occupant, as the case may be, to eradicate, or destroy and remove, the same within such time as the inspector may designate, which [shall not] may not be less than 10 days from the date of service of such notice. One notice shall be deemed sufficient on any lot or parcel of property for the entire season of weed growth during that year. The inspector shall make proof of service of such notice under oath, and file the same in the office of the county treasurer.

Section 168. Section 10-15-4 is amended to read:


The legislative body of the municipalities of this state shall have the power:

(1) to establish pedestrian malls;

(2) to prohibit, in whole or in part, vehicular traffic on a pedestrian mall;

(3) to pay from the general funds of the municipality, or from other available money, or from the proceeds of assessments levied on land benefited by the establishment of a pedestrian mall, the damages, if any, allowed or awarded to any property owner by reason of the establishment of the pedestrian mall;

(4) to acquire, construct, and maintain on the municipality's streets which are established as a pedestrian mall, improvements of any kind or nature necessary or convenient to the operation of such streets as a pedestrian mall, [included but not limited to] including paving, sidewalks, curbs, gutters, sewers, drainage works, lighting facilities, fire protection facilities, flood protection facilities, water distribution facilities, vehicular parking areas, retaining walls, landscaping, tree planting, statuaries, fountains, decorative structures,
bemuh, rest rooms, child care facilities, display facilities, information booths, public
assembly facilities, and other structures, works or improvements necessary or convenient to
serve members of the public using such pedestrian malls, including the reconstruction or
relocation of existing municipally owned works, improvements, or facilities on such municipal
streets; which foregoing changes or any portions thereof, are referred to in this act as
"improvements";

(5) to pay from the general funds of the municipality or other available moneys, or
from the proceeds of assessments levied on property benefited by any such improvements, or
from the proceeds of special improvement warrants or bonds, the whole or any portion of the
costs of acquisition, construction, and maintenance of such improvements in accordance with
the provisions of Title 11, Chapter 42, Assessment Area Act, relating to special improvement
assessments; and

(6) to do any and all other acts or things necessary or convenient for the
accomplishment of the purposes of this chapter.

Section 169. Section 11-8-1 is amended to read:

11-8-1. Contracts for joint use, operation, and ownership of sewage lines and
sewage treatment and disposal systems.

Any county, incorporated municipality, improvement district, taxing district or other
political subdivision of the state of Utah which now or hereafter owns and operates sanitary
sewer facilities (each of which is hereinafter referred to as a "public owner") is hereby granted
authority:

(1) To enter into long-term contracts with any other public owner or public
owners pursuant to which sewage lines, sewage treatment and sewage disposal facilities, or
any part thereof, of one or more public owners shall be available for collection, treatment and
disposal, or any part thereof, of the sewage collected by one or more other public owners, or of
sewage collected jointly, pursuant to such terms and conditions and for such consideration as
may be provided in such contracts. Annual payments due by any such public owner for
services received under any such contract shall not be construed to be an
indebtedness of such public owner within the meaning of any constitutional or statutory
restriction, and no election shall be necessary for the authorization of such contract. Any
public owner or owners so contracting to make available sewage collection, sewage treatment
and disposal facilities, or any part thereof, may in any such contract agree to make available to
such other public owner or owners a specified part of its facilities, without regard to its future
need of such specified part for its own use, and may in such contract agree to increase the
capacity of its facilities from time to time in the future if necessary in order to take care of its
own needs and to perform its obligations to the other parties to such contract.

[(b)] (2) To construct or otherwise acquire joint interests in, and to own jointly, sewer
lines, sewage treatment and disposal facilities, or any part thereof for their common use. To
such end, any public owner may sell to any other public owner or owners a partial interest or
interests in any of its sewer lines, sewage treatment and disposal facilities. Any public owner
may issue its bonds for the purpose of acquiring such joint interest in sewer lines, sewage
treatment and disposal facilities, or any part thereof, whether such joint interest is to be
acquired through the construction of new facilities or the purchase of such interest in existing
facilities, which bonds may be issued under the provisions and in the manner provided in any
available law authorizing the issuance of bonds for the acquisition of sanitary sewer facilities
by such public owner.

[(c)] (3) To operate jointly with any other public owner or owners, sewer lines, sewage
treatment and disposal facilities, or any part thereof, which they may own jointly.

Section 170. Section 11-13-309 is amended to read:

11-13-309. Venue for civil action -- No trial de novo.

(1) Any civil action seeking to challenge, enforce, or otherwise have reviewed, any
order of the board, or any alleviation contract, shall be brought only in the district court for the
county within which is located the candidate to which the order or contract pertains. If the
candidate is the state of Utah, the action shall be brought in the district court for Salt Lake
County. Any action brought in any judicial district shall be ordered transferred to the court
where venue is proper under this section.
(2) In any civil action seeking to challenge, enforce, or otherwise review, any order of the board, a trial de novo [shall not] may not be held. The matter shall be considered on the record compiled before the board, and the findings of fact made by the board [shall not] may not be set aside by the district court unless the board clearly abused its discretion.

Section 171. Section 11-13-311 is amended to read:

11-13-311. Credit for impact alleviation payments against in lieu of ad valorem property taxes — Federal or state assistance.

(1) In consideration of the impact alleviation payments and means provided by the project entity or other public agency pursuant to the contracts and determination orders, the project entity or other public agency, as the case may be, shall be entitled to a credit against the fees paid in lieu of ad valorem property taxes as provided by Section 11-13-302, ad valorem property or other taxation by, or other payments in lieu of ad valorem property taxation or other form of tax equivalent payments required by any candidate which is a party to an impact alleviation contract or board order.

(2) Each candidate may make application to any federal or state governmental authority for any assistance that may be available from that authority to alleviate the impacts to the candidate. To the extent that the impact was attributable to the project or to the facilities providing additional project capacity, any assistance received from that authority shall be credited to the alleviation obligation with respect to the project or the facilities providing additional project capacity, as the case may be, in proportion to the percentage of impact attributable to the project or facilities providing additional project capacity, but in no event shall the candidate realize less revenues than would have been realized without receipt of any assistance.

(3) With respect to school districts the fee in lieu of ad valorem property tax for the state minimum school program required to be paid by the project entity or other public agency under Subsection 11-13-302(2)(b)(i) shall be treated as a separate fee and [shall not] does not affect any credits for alleviation payments received by the school districts under Subsection 11-13-302(2)(b)(i), or Sections 11-13-305 and 11-13-306.
Section 172. Section 11-14-302 is amended to read:

11-14-302. Resolution -- Negotiability -- Registration -- Maturity -- Interest --
Payment -- Redemption -- Combining issues -- Sale -- Financing plan.

(1) Bonds issued under this chapter shall be authorized by resolution of the governing
body, shall be fully negotiable for all purposes, may be made registrable as to principal alone
or as to principal and interest, shall mature at such time or times not more than 40 years from
their date, shall bear interest at such rate or rates, if any, shall be payable at such place or
places, shall be in such form, shall be executed in such manner, may be made redeemable prior
to maturity at such times and on such terms, shall be sold in such manner and at such prices,
either at, in excess of, or below face value, and generally shall be issued in such manner and
with such details as may be provided by resolution; it being the express intention of the
legislature that interest rate limitations elsewhere appearing in the laws of Utah [shall not] do
not apply to nor limit the rate of interest on bonds issued under this chapter. The resolution
shall specify either the rate or rates of interest, if any, on the bonds or specify the method by
which the interest rate or rates on the bonds may be determined while the bonds are
outstanding. If the resolution specifies a method by which interest on the bonds may be
determined, the resolution shall also specify the maximum rate of interest the bonds may bear.

Bonds voted for different purposes by separate propositions at the same or different bond
elections may in the discretion of the governing body be combined and offered for sale as one
issue of bonds. The resolution providing for this combination and the printed bonds for the
combined issue shall separately set forth the amount being issued for each of the purposes
provided for in each proposition submitted to the electors. If the local political subdivision
has retained a fiscal agent to assist and advise it with respect to the bonds and the fiscal agent
has received or is to receive a fee for such services, the bonds may be sold to the fiscal agent
but only if the sale is made pursuant to a sealed bid submitted by the fiscal agent at an
advertised public sale.

(2) (a) All bonds shall be paid by the treasurer of the local political subdivision or the
treasurer's duly authorized agent on their respective maturity dates or on the dates fixed for the
bonds redemption. All bond coupons, other than coupons cancelled because of the redemption
of the bonds to which they apply, shall similarly be paid on their respective dates or as soon
thereafter as the bonds or coupons are surrendered.

(b) Upon payment of a bond or coupon, the treasurer of the local political subdivision
or the treasurer's duly authorized agent, shall perforate the bond or coupon with a device
suitable to indicate payment.

(c) Any bonds or coupons which have been paid or cancelled may be destroyed by the
treasurer of the local political subdivision or by the treasurer's duly authorized agent.

(3) Bonds, bond anticipation notes, or tax anticipation notes with maturity dates of
one year or less may be authorized by a local political subdivision from time to time pursuant
to a plan of financing adopted by the governing body. The plan of financing shall specify the
terms and conditions under which the bonds or notes may be issued, sold, and delivered, the
officers of the local political subdivision authorized to issue the bonds or notes, the maximum
amount of bonds or notes which may be outstanding at any one time, the source or sources of
payment of the bonds or notes, and all other details necessary for issuance of the bonds or
notes. Subject to the Constitution, the governing body of the local political subdivision may
include in the plan of financing the terms and conditions of agreements which may be entered
into by the local political subdivision with banking institutions for letters of credit or for
standby letters of credit to secure the bonds or notes, including payment from any legally
available source of fees, charges, or other amounts coming due under the agreements entered
into by the local political subdivision.

Section 173. Section 11-14-308 is amended to read:

11-14-308. Special service district bonds secured by federal mineral lease
payments -- Use of bond proceeds -- Bond resolution -- Nonimpairment of appropriation
formula -- Issuance of bonds.

(1) Special service districts may:

(a) issue bonds payable, in whole or in part, from federal mineral lease payments
which are to be deposited into the Mineral Lease Account under Section 59-21-1 and

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distributed to special service districts under Subsection 59-21-2(2)(h); or
(b) pledge all or any part of the mineral lease payments referred to in Subsection (1)(a)
as an additional source of payment for their general obligation bonds.

(2) The proceeds of these bonds may be used:
(a) to construct, repair, and maintain streets and roads;
(b) to fund any reserves and costs incidental to the issuance of the bonds and pay any
associated administrative costs; and
(c) for capital projects of the special service district.

(3) (a) The special service district board shall enact a resolution authorizing the
issuance of bonds which, until the bonds have been paid in full:
(i) shall be irrevocable; and
(ii) may not be amended in any manner that would:
(A) impair the rights of the bond holders; or
(B) jeopardize the timely payment of principal or interest when due.
(b) Notwithstanding any other provision of this chapter, the resolution may contain
covenants with the bond holder regarding:
(i) mineral lease payments, or their disposition;
(ii) the issuance of future bonds; or
(iii) other pertinent matters considered necessary by the governing body to:
(A) assure the marketability of the bonds; or
(B) insure the enforcement, collection, and proper application of mineral lease
payments.

(4) (a) Except as provided in Subsection (4)(b), the state may not alter, impair, or limit
the statutory appropriation formula provided in Subsection 59-21-2(2)(h), in a manner that
reduces the amounts to be distributed to the special service district until the bonds and the
interest on the bonds are fully met and discharged. Each special service district may include
this pledge and undertaking of the state in these bonds.
(b) Nothing in this section:
(i) may preclude the alteration, impairment, or limitation of these bonds if adequate
provision is made by law for the protection of the bond holders; or
(ii) shall be construed:
(A) as a pledge guaranteeing the actual dollar amount ultimately received by
individual special service districts;
(B) to require the Department of Transportation to allocate the mineral lease payments
in a manner contrary to the general allocation method described in Subsection 59-21-2(2)(h);
or
(C) to limit the Department of Transportation in making rules or procedures allocating
mineral lease payments pursuant to Subsection 59-21-2(2)(h).

(5) (a) The average annual installments of principal and interest on bonds to which
mineral lease payments have been pledged as the sole source of payment may not at any one
time exceed:
(i) 80% of the total mineral lease payments received by the issuing entity during the
fiscal year of the issuing entity immediately preceding the fiscal year in which the resolution
authorizing the issuance of bonds is adopted; or
(ii) if the bonds are issued during the first fiscal year the issuing entity is eligible to
receive funds, 60% of the amount estimated by the Department of Transportation to be
appropriated to the issuing entity in that fiscal year.
(b) The Department of Transportation is not liable for any loss or
damage resulting from reliance on the estimates.

(6) The final maturity date of the bonds may not exceed 15 years from the date of their
issuance.

(7) Bonds may not be issued under this section after December 31, 2010.
(8) Bonds which are payable solely from a special fund into which mineral lease
payments are deposited constitute a borrowing based solely upon the credit of the mineral
lease payments received or to be received by the special service district and do not constitute
an indebtedness or pledge of the general credit of the special service district or the state.
Section 174. Section 11-14-313 is amended to read:

11-14-313. Issuance of negotiable notes or bonds authorized -- Limitation on amount of tax anticipation notes or bonds -- Procedure.

(1) (a) For the purpose of meeting the current expenses of the local political subdivision and for any other purpose for which funds of the local political subdivision may be expended, a local political subdivision may, if authorized by a resolution of its governing body, borrow money by issuing its negotiable notes or bonds in an initial principal amount:

(i) not in excess of 90% of the taxes and other revenues of the local political subdivision for the current fiscal year, if the notes or bonds are issued after the annual tax levy for taxes falling due during the fiscal year in which the notes or bonds are issued;

(ii) not in excess of 75% of the taxes and other revenues of the local political subdivision for the preceding fiscal year, if the notes or bonds are issued prior to the annual tax levy for taxes falling due during the fiscal year in which the bonds or notes are issued; or

(iii) not in excess of 75% of the taxes and other revenues that the governing body of the local political subdivision estimates that the local political subdivision will receive for the current fiscal year, if the notes or bonds are issued within 24 months following the creation of the local political subdivision.

(b) The proceeds of the notes or bonds shall be applied only in payment of current and necessary expenses and other purposes for which funds of the local political subdivision may be expended.

(c) There shall be included in the annual levy a tax and there shall be provision made for the imposition and collection of sufficient revenues other than taxes sufficient to pay the notes or bonds at maturity.

(d) If the taxes and other revenues in any one year are insufficient through delinquency or uncollectibility of taxes or other cause to pay when due all the lawful debts of the local political subdivision which have been or may hereafter be contracted, the governing body of the local political subdivision is authorized and directed to levy and collect in the next succeeding year a sufficient tax and to provide for the imposition and collection of sufficient revenues other than taxes sufficient to pay the notes or bonds at maturity.
revenues other than taxes to pay all of such lawfully contracted indebtedness, and may borrow
as provided in this section in anticipation of such tax and other revenues to pay any such
lawfully contracted indebtedness.

(e) Each resolution authorizing the issuance of tax anticipation notes or bonds shall:

(i) describe the taxes or revenues in anticipation of which the notes or bonds are to be
issued; and

(ii) specify the principal amount of the notes or bonds, any interest rates, including a
variable interest rate, the notes or bonds shall bear, and the maturity dates of the notes or
bonds, which dates may not extend beyond the last day of the issuing local political
subdivision's fiscal year.

(2) Tax anticipation notes or bonds shall be issued and sold in such manner and at
such prices, whether at, below, or above face value, as the governing body shall by resolution
determine. Tax anticipation notes or bonds shall be in bearer form, except that the governing
body may provide for the registration of the notes or bonds in the name of the owner, either as
to principal alone, or as to principal and interest. Tax anticipation notes or bonds may be
made redeemable prior to maturity at the option of the governing body in the manner and upon
the terms fixed by the resolution authorizing their issuance. Tax anticipation notes or bonds
shall be executed and shall be in such form and have such details and terms as shall be
provided in the authorizing resolution.

(3) The provisions of Sections 11-14-303, 11-14-304, 11-14-305, 11-14-313,
11-14-315, 11-14-316, 11-14-401, 11-14-403, and 11-14-404 shall apply to all tax
anticipation notes or bonds issued under this section. In applying these sections to tax
anticipation notes, "bond" or "bonds" as used in these sections shall be deemed to include tax
anticipation notes.

Section 175. Section 11-14-315 is amended to read:

**11-14-315. Nature and validity of bonds issued -- Applicability of other statutory provisions -- Budget provision required -- Applicable procedures for issuance.**

Bonds issued under this chapter shall have all the qualities of negotiable paper, shall be
incontestable in the hands of bona fide purchasers or holders for value and are not invalid for any irregularity or defect in the proceedings for their issuance and sale. This chapter is intended to afford an alternative method for the issuance of bonds by local political subdivisions and may not be so construed as to deprive any local political subdivision of the right to issue its bonds under authority of any other statute, but nevertheless this chapter shall constitute full authority for the issue and sale of bonds by local political subdivisions. The provisions of Section 11-1-1, Utah Code Annotated 1953, are not applicable to bonds issued under this chapter. Any local political subdivision subject to the provisions of any budget law shall in its annual budget make proper provision for the payment of principal and interest currently falling due on bonds issued hereunder, but no provision need be made in any such budget prior to the issuance of the bonds for the issuance thereof or for the expenditure of the proceeds thereof. No ordinance, resolution or proceeding in respect to the issuance of bonds hereunder shall be necessary except as herein specifically required, nor shall the publication of any resolution, proceeding or notice relating to the issuance of the bonds be necessary except as herein required. Any publication made hereunder may be made in any newspaper conforming to the terms hereof in which legal notices may be published under the laws of Utah, without regard to the designation thereof as the official journal or newspaper of the local political subdivision, and as required in Section 45-1-101. No resolution adopted or proceeding taken hereunder shall be subject to referendum petition or to an election other than as herein required. All proceedings adopted hereunder may be adopted on a single reading at any legally convened meeting of the governing body.

Section 176. Section 11-17-1.5 is amended to read:

11-17-1.5. Purpose of chapter.

(1) (a) The purposes of this chapter are to stimulate the economic growth of the state, to promote employment and achieve greater industrial development in the state, to maintain or enlarge domestic or foreign markets for Utah industrial products, to authorize municipalities and counties in the state to facilitate capital formation, finance, acquire, own, lease, or sell
projects for the purpose of reducing, abating, or preventing pollution and to protect and
promote the health, welfare, and safety of the citizens of the state and to improve local health
and the general welfare by inducing corporations, persons, or entities engaged in health care
services, including hospitals, nursing homes, extended care facilities, facilities for the care of
persons with a physical or mental disability, and administrative and support facilities, to
locate, relocate, modernize, or expand in this state and to assist in the formation of investment
capital with respect thereto.

(b) The Legislature declares that the acquisition or financing, or both, of projects
under the Utah Industrial Facilities and Development Act and the issuance of bonds under it
constitutes a proper public purpose.

(2) (a) It is declared that the policy of the state is to encourage the development of free
enterprise and entrepreneurship for the purpose of the expansion of employment opportunities
and economic development.

(b) It is declared that there exists in the state an inadequate amount of locally
managed, pooled venture capital in the private sector available to invest in early stage
businesses having high growth potential and that can provide jobs for Utah citizens.

(c) It is found that venture capital is required for healthy economic development of
sectors of the economy having high growth and employment potential.

(d) It is further found that the public economic development purposes of the state and
its counties and municipalities can be fostered by the sale of industrial revenue bonds for the
purpose of providing funding for locally managed, pooled new venture and economic
development funds in accordance with the provisions of this chapter.

(e) It is declared that in order to assure adequate investment of private capital for these
uses, cooperation between private enterprise and state and local government is necessary and
in the public interest and that the facilitation of capital accumulation is the appropriate activity
of the counties and municipalities of this state and also of the Governor's Office of Economic
Development.

(f) It is found that venture capital funds historically, because of the more intensive
nature of their relationship with companies in which they invest, tend to concentrate their
investments within a relatively close geographical area to their headquarters location.

(g) It is found and declared that investors in economic development or new venture
investment funds require for the overall security of their investments reasonable diversification
of investment portfolios and that, in the course of this diversification, investments are often
syndicated or jointly made among several financial institutions or funds. It is expressly found
and declared that an economic development or new venture investment fund \[\text{must}\] shall from
time to time for its optimal profitability and efficiency (which are important for the security
and profit of bond purchasers providing funds therefor) cooperate with others who may be
located outside of Utah or the county or municipality where the fund is headquartered in the
making of investments and that the fund \[\text{must}\] shall be free in the interests of reciprocal
relationships with other financial institutions and diversification of risks to invest from time to
time in enterprises that are located outside of Utah or the counties or municipalities. It is
specifically found that such activity by a locally managed fund, funded in whole or in part
with the proceeds of bonds sold under this chapter, is within the public purposes of the state
and any county or municipality offering the bonds, provided that the fund locates within Utah
or the county or municipality its headquarters where its actual investment decisions and
management functions occur and limits the aggregate amount of its investments in companies
located outside of Utah to an amount that in the aggregate does not exceed the aggregate
amount of investments made by institutions and funds located outside of Utah in Utah
companies, that the locally managed fund has sponsored or in which it has invested and that it
has brought to the attention of investors outside of Utah.

Section 177. Section 11-17-2 is amended to read:

11-17-2. Definitions.

As used in this chapter:

(1) "Bonds" means bonds, notes, or other evidences of indebtedness.

(2) "Finance" or "financing" includes the issuing of bonds by a municipality, county,
or state university for the purpose of using a portion, or all or substantially all of the proceeds
to pay for or to reimburse the user or its designee for the costs of the acquisition of facilities of a project, or to create funds for the project itself where appropriate, whether these costs are incurred by the municipality, the county, the state university, the user, or a designee of the user. If title to or in these facilities at all times remains in the user, the bonds of the municipality or county shall be secured by a pledge of one or more notes, debentures, bonds, other secured or unsecured debt obligations of the user, or such sinking fund or other arrangement as in the judgment of the governing body is appropriate for the purpose of assuring repayment of the bond obligations to investors in accordance with their terms.

(3) "Governing body" means:

(a) for a county, city, or town, the legislative body of the county, city, or town;
(b) for the military installation development authority created in Section 63H-1-201, the authority board, as defined in Section 63H-1-102;
(c) for the University of Utah and Utah State University, the board or body having the control and supervision of the University of Utah and Utah State University; and
(d) for a nonprofit corporation or foundation created by and operating under the auspices of a state university, the board of directors or board of trustees of that corporation or foundation.

(4) "Industrial park" means land, including all necessary rights, appurtenances, easements, and franchises relating to it, acquired and developed by any municipality, county, or state university for the establishment and location of a series of sites for plants and other buildings for industrial, distribution, and wholesale use. There may be included as part of the development of the land for any industrial park under this chapter the acquisition and provision of water, sewerage, drainage, street, road, sidewalk, curb, gutter, street lighting, electrical distribution, railroad, or docking facilities, or any combination of them, but only to the extent that these facilities are incidental to the use of the land as an industrial park.

(5) "Mortgage" means a mortgage, trust deed, or other security device.

(6) "Municipality" means any incorporated city or town in the state, including cities or towns operating under home rule charters.
(7) "Pollution" means any form of environmental pollution including, but not limited to, water pollution, air pollution, pollution caused by solid waste disposal, thermal pollution, radiation contamination, or noise pollution.

(8) "Project" means:

(a) any industrial park, land, interest in land, building, structure, facility, system, fixture, improvement, appurtenance, machinery, equipment, or any combination of them, whether or not in existence or under construction:

(i) that is suitable for industrial, manufacturing, warehousing, research, business, and professional office building facilities, commercial, shopping services, food, lodging, low income rental housing, recreational, or any other business purposes;

(ii) that is suitable to provide services to the general public;

(iii) that is suitable for use by any corporation, person, or entity engaged in health care services, including hospitals, nursing homes, extended care facilities, facilities for the care of persons with a physical or mental disability, and administrative and support facilities; or

(iv) that is suitable for use by a state university for the purpose of aiding in the accomplishment of its authorized academic, scientific, engineering, technical, and economic development functions, but "project" does not include any property, real, personal, or mixed, for the purpose of the construction, reconstruction, improvement, or maintenance of a public utility as defined in Section 54-2-1, and except as provided in Subsection (8)(b);

(b) any land, interest in land, building, structure, facility, system, fixture, improvement, appurtenance, machinery, equipment, or any combination of them, used by any individual, partnership, firm, company, corporation, public utility, association, trust, estate, political subdivision, state agency, or any other legal entity, or its legal representative, agent, or assigns, for the reduction, abatement, or prevention of pollution, including, but not limited to, the removal or treatment of any substance in process material, if that material would cause pollution if used without the removal or treatment;

(c) facilities, machinery, or equipment, the manufacturing and financing of which will maintain or enlarge domestic or foreign markets for Utah industrial products; or
(d) any economic development or new venture investment fund to be raised other than
from:

(i) municipal or county general fund moneys;

(ii) moneys raised under the taxing power of any county or municipality; or

(iii) moneys raised against the general credit of any county or municipality.

(9) "State university" means the University of Utah and Utah State University and
includes any nonprofit corporation or foundation created by and operating under their
authority.

(10) "User" means the person, whether natural or corporate, who will occupy, operate,
maintain, and employ the facilities of, or manage and administer a project after the financing,
acquisition, or construction of it, whether as owner, manager, purchaser, lessee, or otherwise.

Section 178. Section 11-17-4 is amended to read:


(1) All bonds issued by a municipality or county under this chapter shall be limited
obligations of the municipality or county. Bonds and interest coupons issued under this
chapter may not constitute nor give rise to a general obligation or liability of the
municipality or county or a charge against its general credit or taxing powers. Such limitation
shall be plainly stated upon the face of such bonds.

(2) The bonds referred to in Subsection (1) may be authorized by resolution of the
governing body, and may:

(a) be executed and delivered at any time and from time to time;

(b) be in such form and denominations;

(c) be of such tenor;

(d) be in registered or bearer form either as to principal or interest or both;

(e) be payable in such installments and at such time or times as the governing body
may deem advisable;

(f) be payable at such place or places either within or without the state of Utah;

(g) bear interest at such rate or rates, payable at such place or places, and evidenced in
such manner;

(h) be redeemable prior to maturity, with or without premium;

(i) be convertible into equity positions in any asset or assets acquired or developed

with the proceeds of the sale of the bonds; and

(j) contain such other provisions not inconsistent with this chapter as shall be deemed

for the best interests of the municipality or county and provided for in the proceedings of the

governing body under which the bonds shall be authorized to be issued.

(3) Any bonds issued under this chapter may be sold at public or private sale in such

manner and at such time or times as may be determined by the governing body to be most

advantageous. The municipality or county may pay all expenses, premiums, and commissions

which the governing body may deem necessary or advantageous in connection with the

authorization, sale, and issuance of such bonds from the proceeds of the sale of such bonds or

from the revenues of the project or projects.

(4) All bonds issued under this chapter and all interest coupons applicable thereto

shall be construed to be negotiable instruments, despite the fact that they are payable solely

from a specified source.

Section 179. Section 11-17-5 is amended to read:


Liens.

(1) The principal of and interest on any bonds issued under this chapter:

(a) shall be secured by a pledge and assignment of the revenues out of which the

bonds are made payable or by such other sinking fund or security provision as shall in the

judgment of the governing body be reasonably designed to assure payment of the obligations

to the purchasers thereof; however, the bond purchasers may not in any event have

recourse against the general funds or general credit of the governmental offeror;

(b) may be secured by a mortgage covering all or any part of the project; and

(c) may be secured by any other security device deemed most advantageous by the

governing body issuing the bonds.
(2) The proceedings under which the bonds are authorized to be issued under this chapter and any mortgage given to secure them may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting:

(a) the fixing and collection of revenues for any project covered by the proceedings or mortgage;

(b) the terms to be incorporated in the lease, installment purchase agreement, rental agreement, mortgage, trust indenture, loan agreement, financing agreement, or other agreement for the project;

(c) the maintenance and insurance of the project;

(d) the creation and maintenance of special funds from the revenues of projects; and

(e) the rights and remedies available in the event of a default to the bondholders or to the trustee under a mortgage, all as the governing body deems advisable and which is not in conflict with this chapter, except that in making any agreements or provisions a municipality or county may not obligate itself except with respect to the project and the application of the revenues from it and may not incur a general obligation or liability or a charge upon its general credit or against its taxing powers.

(3) The proceedings authorizing any bonds under this chapter and any mortgage securing bonds may provide that, in the event of a default in the payment of the principal of or the interest on the bonds or in the performance of any agreement contained in the proceedings or mortgage, payment and performance may be enforced by the appointment of a receiver with power to charge and collect the revenues from the project and to apply the revenues from the project in accordance with the proceedings or the provisions of the mortgage.

(4) Any mortgage made under this chapter to secure bonds issued under it may also provide that, in the event of a default in payment or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed or otherwise realized on in any manner permitted by law. The mortgage may also provide that any trustee under the mortgage or the holder of any of the bonds secured by the mortgage may become the purchaser at any
foreclosure sale if the highest bidder. No breach of any agreement imposes any general obligation or liability upon a municipality or county or any charge upon their general credit or against their taxing powers.

(5) The revenues pledged and received are immediately subject to the lien of the pledge without any physical delivery of any lease, purchase agreement, financing agreement, loan agreement, note, debenture, bond, or other obligation under which the revenues are payable, or any other act, except that the proceedings or agreement by which the pledge is created shall be recorded in the records of the municipality, county, or state university. The proceedings or agreement by which the pledge is created, or a financing statement, need not be filed or recorded under the Uniform Commercial Code, or otherwise, except in the records of the municipality, county, or state university as provided in this Subsection (5). The lien of any pledge is valid and binding and has priority as against all parties having claims of any kind in tort, contract, or otherwise against the municipality, county, or state university, irrespective of whether the parties have notice of the lien. Each pledge and agreement made for the benefit or security of any of the revenue bonds issued under this chapter shall continue effective until the principal, interest, and premium, if any, on the revenue bonds have been fully paid or provision for payment has been made.

Section 180. Section 11-17-7 is amended to read:

11-17-7. Disposition of proceeds of bonds.

The proceeds from the sale of any bonds issued under this act shall be applied only for the purposes for which the bonds were issued; but any accrued interest and premium received upon any such sale shall be applied to the payment of the principal of or the interest on the bonds sold, and if for any reason any portion of such proceeds are not needed for the purposes for which the bonds were issued, then such unneeded portion of such proceeds shall be applied to the payment of the principal of or the interest on such bonds or in accordance with such other plan or device for the furtherance of the project and the protection of the bondholder as the governing body shall deem appropriate under the circumstances.

Section 181. Section 11-17-10 is amended to read:
All property acquired or held by the county or municipality under this chapter is declared to be public property used for essential public and governmental purposes; and all such property and bonds issued under this chapter and the income from them are exempt from all taxes imposed by the state, any county, any municipality, or any other political subdivision of the state, except for the corporate franchise tax. This exemption does not extend to the interests of any private person, firm, association, partnership, corporation, or other private business entity in such property or in any other property such business entity may place upon or use in connection with any project, all of which shall be subject to the provisions of Section 59-4-101 and all other applicable laws nor to any income of such private business entity, which, except as provided in this section for such bonds and the income from them, shall be subject to all applicable laws, regarding the taxing of such income.

Section 182. Section 11-25-9 is amended to read:


Revenues shall be the sole source of funds pledged by the agency for repayment of its bonds. Bonds issued under the provisions of this part may not be deemed to constitute a debt or liability of the agency or a pledge of the faith and credit of the agency but shall be payable solely from revenues. The issuance of bonds may not directly, indirectly, or contingently obligate a city, town or county, or a city or town and county which has designated its governing body as an agency to levy or pledge any form of taxation or to make any appropriation for payment of bonds issued by an agency.

Section 183. Section 11-25-11 is amended to read:


Prior to the issuance of any bonds or bond anticipation notes of the agency for residential rehabilitation, the agency shall by ordinance adopt a comprehensive residential rehabilitation financing program, including:

(1) Criteria for selection of residential rehabilitation areas by the agency including
findings by the agency that:

(a) There are a substantial number of deteriorating structures in the area which do not conform to community standards for decent, safe, sanitary housing.

(b) Financial assistance from the agency for residential rehabilitation is necessary to arrest the deterioration of the area.

(c) Financing of residential rehabilitation in the area is economically feasible. These findings are not required, however, when the residential rehabilitation area is located within the boundaries of a project area covered by an urban renewal project area plan adopted in accordance with Section 17C-2-107.

(2) Procedures for selection of residential rehabilitation areas by the agency including:

(a) Provisions for citizen participation in selection of residential rehabilitation areas.

(b) Provisions for a public hearing by the agency prior to selection of any particular residential rehabilitation area.

(3) A commitment that rehabilitation standards will be enforced on each residence for which financing is provided.

(4) Guidelines for financing residential rehabilitation which shall be subject to the following limitations:

(a) Outstanding loans on the property to be rehabilitated including the amount of the loans for rehabilitation, [shall not] may not exceed 80% of the anticipated after-rehabilitation value of the property to be rehabilitated, except that the agency may authorize loans of up to 95% of the anticipated after-rehabilitation value of the property if loans are made for the purpose of rehabilitating the property for residential purposes, there is demonstrated need for such higher limit, and there is a high probability that the value of the property will not be impaired during the term of the loan.

(b) The maximum repayment period for residential rehabilitation loans shall be 20 years or 3/4 of the economic life of the property, whichever is less.

(c) The maximum amount loan for rehabilitation for each dwelling unit and for each commercial unit which is, or is part of a "residence" as defined in this chapter, shall be
established by resolution of the agency.

Section 184. Section 11-27-5 is amended to read:

11-27-5. Negotiability of bonds -- Intent and construction of chapter -- Budget for payment of bonds -- Proceedings limited to those required by chapter -- No election required -- Application of chapter.

(1) Refunding bonds shall have all the qualities of negotiable paper, shall be incontestable in the hands of bona fide purchasers or holders for value, and [shall not be] are not invalid for any irregularity or defect in the proceedings for their issuance and sale. This chapter is intended to afford an alternative method for the issuance of refunding bonds by public bodies and [shall not] may not [so] construed [as] to deprive any public body of the right to issue bonds for refunding purposes under authority of any other statute, but this chapter, nevertheless, shall constitute full authority for the issue and sale of refunding bonds by public bodies. Section 11-1-1, however, [shall not be] is not applicable to refunding bonds.

(2) Any public body subject to any budget law shall in its annual budget make proper provision for the payment of principal and interest currently falling due on refunding bonds, but no provision need be made in the budget prior to the issuance of the refunding bonds for their issuance or for the expenditure of the proceeds from them.

(3) (a) No ordinance, resolution, or proceeding concerning the issuance of refunding bonds nor the publication of any resolution, proceeding, or notice relating to the issuance of the refunding bonds shall be necessary except as specifically required by this chapter.

(b) A publication made under this chapter may be made:

(i) in any newspaper in which legal notices may be published under the laws of Utah, without regard to its designation as the official journal or newspaper of the public body; and

(ii) as required in Section 45-1-101.

(4) No resolution adopted or proceeding taken under this chapter shall be subject to any referendum petition or to an election other than as required by this chapter. All proceedings adopted under this chapter may be adopted on a single reading at any legally-convened meeting of the governing body. This chapter shall apply to all bonds issued
Section 185. Section 11-30-2 is amended to read:

### 11-30-2. Definitions.

As used in this chapter:

1. "Attorney general" means the attorney general of the state or one of his assistants.
2. "Bonds" means any evidence or contract of indebtedness that is issued or authorized by a public body, including, without limitation, bonds, refunding bonds, advance refunding bonds, bond anticipation notes, tax anticipation notes, notes, certificates of indebtedness, warrants, commercial paper, contracts, and leases, whether they are general obligations of the issuing public body or are payable solely from a specified source, including, but not limited to, annual appropriations by the public body.
3. "County attorney" means the county attorney of a county or one of his assistants.
4. "Lease" means any lease agreement, lease purchase agreement, and installment purchase agreement, and any certificate of interest or participation in any of the foregoing. Reference in this chapter to issuance of bonds includes execution and delivery of leases.
5. "Person" means any person, association, corporation, or other entity.
6. "Public body" means the state or any agency, authority, instrumentality, or institution of the state, or any county, municipality, quasi-municipal corporation, school district, local district, special service district, political subdivision, or other governmental entity existing under the laws of the state, whether or not possessed of any taxing power. With respect to leases, public body, as used in this chapter, refers to the public body which is the lessee, or is otherwise the obligor with respect to payment under any such leases.
7. "Refunding bonds" means any bonds that are issued to refund outstanding bonds, including both refunding bonds and advance refunding bonds.
8. "State" means the state of Utah.
9. "Validity" means any matter relating to the legality and validity of the bonds and the security therefor, including, without limitation, the legality and validity of:
a public body's authority to issue and deliver the bonds;
(b) any ordinance, resolution, or statute granting the public body authority to issue and deliver the bonds;
(c) all proceedings, elections, if any, and any other actions taken or to be taken in connection with the issuance, sale, or delivery of the bonds;
(d) the purpose, location, or manner of the expenditure of funds;
(e) the organization or boundaries of the public body;
(f) any assessments, taxes, rates, rentals, fees, charges, or tolls levied or that may be levied in connection with the bonds;
(g) any lien, proceeding, or other remedy for the collection of those assessments, taxes, rates, rentals, fees, charges, or tolls;
(h) any contract or lease executed or to be executed in connection with the bonds;
(i) the pledge of any taxes, revenues, receipts, rentals, or property, or encumbrance thereon or security interest therein to secure the bonds; and
(j) any covenants or provisions contained in or to be contained in the bonds. If any deed, will, statute, resolution, ordinance, lease, indenture, contract, franchise, or other instrument may have an effect on any of the aforementioned, validity also means a declaration of the validity and legality thereof and of rights, status, or other legal relations arising therefrom.

Section 186. Section 11-31-2 is amended to read:

11-31-2. Definitions.

As used in this chapter:

(1) "Bonds" means any evidence or contract of indebtedness that is issued or authorized by a public body, including, without limitation, bonds, refunding bonds, advance refunding bonds, bond anticipation notes, tax anticipation notes, notes, certificates of indebtedness, warrants, commercial paper, contracts, and leases, whether they are general obligations of the issuing public body or are payable solely from a specified source, including[, but not limited to,] annual appropriations by the public body.
"Legislative body" means, with respect to any action to be taken by a public body with respect to bonds, the board, commission, council, agency, or other similar body authorized by law to take legislative action on behalf of the public body, and in the case of the state, the Legislature, the state treasurer, the commission created under Section 63B-1-201, and any other entities the Legislature designates.

(3) "Public body" means the state and any public department, public agency, or other public entity existing under the laws of the state, including, without limitation, any agency, authority, instrumentality, or institution of the state, and any county, city, town, municipal corporation, quasi-municipal corporation, state university or college, school district, special service district, local district, separate legal or administrative entity created under the Interlocal Cooperation Act or other joint agreement entity, community development and renewal agency, and any other political subdivision, public authority, public agency, or public trust existing under the laws of the state.

Section 187. Section 11-32-7 is amended to read:


(1) The principal of and interest on any bonds issued under this chapter:

(a) shall be secured by a pledge and assignment of the revenues received by the financing authority under the assignment agreement with respect to the delinquent tax receivables purchased with the proceeds of the sale of these bonds;

(b) may be secured by a pledge and security interest in the assignment agreement; and

(c) may be secured by amounts held in reserve funds, letters of credit, bond insurance, surety bonds, or by such other security devices with respect to the delinquent tax receivables deemed most advantageous by the authority.

(2) The proceedings under which the bonds are authorized to be issued under this chapter and any security agreement given to secure the bonds may contain any agreements and provisions customarily contained in instruments securing bonds, including[-but not limited to-] provisions respecting:

(a) the collection of the delinquent taxes covered by these proceedings or any security
agreement;
(b) the terms to be incorporated in the assignment agreement with respect to the
delinquent tax receivables;
(c) the creation and maintenance of reserve funds from the proceeds of sale of bonds
or from the collection of the delinquent taxes;
(d) the rights and remedies available to the holders of bonds or to the trustee in the
event of a default, as the board of trustees of the authority may determine in accordance with
this chapter.
(3) The security agreements, trust indentures, or other security devices shall provide
that following the exhaustion of all legal means of collection of the delinquent tax receivables
no judgment may be entered against the authority or the county or any participant members or
the state of Utah or any of its political subdivisions.
(4) The proceedings authorizing bonds under this chapter, and any security agreement
securing these bonds, may provide that upon default in the payment of the principal of or
interest on the bonds or in the performance of any covenant or agreement contained in the
proceedings or security agreement, the payment or performance may be enforced by the
appointment of a receiver for the delinquent tax receivables with power to compel the county
to use the statutory means it has to collect the delinquent tax receivables and apply the
revenues in accordance with these proceedings or the security agreement.
(5) No breach of a security agreement, covenant, or other agreement may impose any
general obligation or liability upon, nor a charge against, the county or any participant
member, nor the general credit or taxing power of this state or any of its political subdivisions.
(6) The proceedings authorizing the issuance of bonds may provide for the
appointment of a trustee, which may be a trust company or bank having trust powers located
in or outside of this state.
Section 11-34-1 is amended to read:

11-34-1. Definitions.
As used in this chapter:
(1) "Bonds" means any evidence or contract of indebtedness that is issued or authorized by a public body, including, without limitation, bonds, refunding bonds, advance refunding bonds, bond anticipation notes, tax anticipation notes, notes, certificates of indebtedness, warrants, commercial paper, contracts, and leases, whether they are general obligations of the issuing public body or are payable solely from a specified source, including[, but not limited to,] annual appropriations by the public body.

(2) "Public body" means the state and any public department, public agency, or other public entity existing under the laws of the state, including, without limitation, any agency, authority, instrumentality, or institution of the state, and any county, city, town, municipal corporation, quasi-municipal corporation, state university or college, school district, special service district, local district, separate legal or administrative entity created under the Interlocal Cooperation Act or other joint agreement entity, community development and renewal agency, and any other political subdivision, public authority, public agency, or public trust existing under the laws of this state.

Section 189. Section 11-34-2 is amended to read:

11-34-2. Bonds issued in foreign denominations -- Required conditions and agreements.

Any bonds issued by a public body may be denominated in a foreign currency, but only if, at the time of the issuance of the bonds, the public body which issues them enters into one or more foreign exchange agreements, forward exchange agreements, foreign currency exchange agreements, or other similar agreements with a bank or other financial institution, foreign or domestic, the senior unsecured long-term debt obligations of which are rated in one of the highest two rating categories by Moody's Investors Service, Inc. or Standard & Poor's Corporation or another similar nationally recognized securities rating agency, to protect the public body against the risk of a decline in the value of the United States dollar in relation to the foreign currency in which the bonds are denominated. Such agreements [must protect] shall contain a provision that protects against [such] the risk of a decline in the value of the United States dollar with respect to the interest on the bonds and the principal of the bonds to
the maturity or redemption thereof. The costs of such agreements, including without
limitation periodic fees and other amounts due to the other party or parties to such agreements,
may be paid by the public body from the proceeds of the bonds and other revenues of the
public body.

Section 190. Section 11-36-401 is amended to read:

**11-36-401. Impact fees -- Challenges -- Appeals.**

(1) Any person or entity residing in or owning property within a service area, and any
organization, association, or corporation representing the interests of persons or entities
owning property within a service area, may file a declaratory judgment action challenging the
validity of the fee.

(2) (a) Any person or entity required to pay an impact fee who believes the fee does
not meet the requirements of law may file a written request for information with the local
political subdivision who established the fee.

(b) Within two weeks after the receipt of the request for information, the local political
subdivision shall provide the person or entity with the written analysis required by Section
11-36-201, the capital facilities plan, and with any other relevant information relating to the
impact fee.

(3) (a) Any local political subdivision may establish, by ordinance or resolution, an
administrative appeals procedure to consider and decide challenges to impact fees.

(b) If the local political subdivision establishes an administrative appeals procedure,
the local political subdivision shall ensure that the procedure includes a requirement that the
local political subdivision make its decision no later than 30 days after the date the challenge
to the impact fee is filed.

(4) (a) In addition to the method of challenging an impact fee under Subsection (1), a
person or entity that has paid an impact fee that was imposed by a local political subdivision
may challenge:

(i) if the impact fee enactment was adopted on or after July 1, 2000:

(A) whether the local political subdivision complied with the notice requirements of
this chapter with respect to the imposition of the impact fee; and
(B) whether the local political subdivision complied with other procedural
requirements of this chapter for imposing the impact fee; and
(ii) except as limited by Subsection (4)(a)(i), the impact fee.
(b) A challenge under Subsection (4)(a) may not be initiated unless it is initiated
within:
    (i) for a challenge under Subsection (4)(a)(i)(A), 30 days after the person or entity
        pays the impact fee;
    (ii) for a challenge under Subsection (4)(a)(i)(B), 180 days after the person or entity
        pays the impact fee; or
    (iii) for a challenge under Subsection (4)(a)(ii), one year after the person or entity pays
        the impact fee.
(c) A challenge under Subsection (4)(a) is initiated by filing:
    (i) if the local political subdivision has established an administrative appeals
        procedure under Subsection (3), the necessary document, under the administrative appeals
        procedure, for initiating the administrative appeal;
    (ii) a request for arbitration as provided in Subsection 11-36-402(1); or
    (iii) an action in district court.
(d) (i) The sole remedy for a challenge under Subsection (4)(a)(i)(A) is the equitable
    remedy of requiring the local political subdivision to correct the defective notice and repeat
    the process.
    (ii) The sole remedy for a challenge under Subsection (4)(a)(i)(B) is the equitable
    remedy of requiring the local political subdivision to correct the defective process.
    (iii) The sole remedy for a challenge under Subsection (4)(a)(ii) is a refund of the
difference between what the person or entity paid as an impact fee and the [amount the impact
fee should have been if it had been correctly calculated] correct impact fee amount.
(e) Nothing in this Subsection (4) may be construed as requiring a person or entity to
exhaust administrative remedies with the local political subdivision before filing an action in
district court under this Subsection (4).

(f) The protections given to a municipality under Section 10-9a-801 and to a county
under Section 17-27a-801 do not apply in a challenge under Subsection (4)(a)(i)(A).

(5) The judge may award reasonable attorneys’ fees and costs to the prevailing party in
any action brought under this section.

(6) Nothing in this chapter may be construed as restricting or limiting any rights to
challenge impact fees that were paid before the effective date of this chapter.

Section 191. Section 13-1-1 is amended to read:

13-1-1. Legislative findings and declarations.

The Legislature finds that many businesses and occupations in the state have a
pronounced physical and economic impact on the health, safety, and welfare of the citizens of
the state. The Legislature further finds that while the overall impact is generally beneficial to
the public, the potential for harm and injury frequently warrants intervention by state
government.

The Legislature declares that it is appropriate and necessary for state government to
protect its citizens from harmful and injurious acts by persons offering or providing essential
or necessary goods and services to the general public. The Legislature further declares that
business regulation should not be unfairly discriminatory. However, the general public interest
[must] shall be recognized and regarded as the primary purpose of all regulation by state
government.

Section 192. Section 13-1a-6 is amended to read:

retention.

(1) The Division of Corporations and Commercial Code shall have the power and
authority reasonably necessary to enable it to efficiently administer the laws and rules for
which it is responsible and to perform the duties imposed upon it by law.

(2) The division has authority under Title 63G, Chapter 3, Utah Administrative
Rulemaking Act, to make rules and procedures for the processing, retention, and disposal of
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filed documents to efficiently utilize electronic and computerized document image storage and retrieval.

(3) Notwithstanding the provisions of Section 63A-12-105, original documents filed in the division offices [shall not] may not be considered property of the state if electronic image reproductions thereof which comply with the provisions of Title 63G, Chapter 2, Government Records Access and Management Act, are retained by the division.

Section 193. Section 13-2-6 is amended to read:


(1) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the division shall have authority to convene administrative hearings, issue cease and desist orders, and impose fines under all the chapters identified in Section 13-2-1.

(2) Any person who intentionally violates a final cease and desist order entered by the division of which the person has notice is guilty of a third degree felony.

(3) If the division has reasonable cause to believe that any person is engaged in violating any chapter listed in Section 13-2-1, the division may promptly issue the alleged violator a citation signed by the division's director or the director's designee.

(a) Each citation shall be in writing and shall:

(i) set forth with particularity the nature of the violation, including a reference to the statutory or administrative rule provision being violated;

(ii) state that any request for review of the citation [must] shall be made in writing and be received by the division no more than 10 days following issuance;

(iii) state the consequences of failing to make a timely request for review; and

(iv) state all other information required by Subsection 63G-4-201(2).

(b) In computing any time period prescribed by this section, the following days may not be included:

(i) the day a citation is issued by the division;

(ii) the day the division received a request for review of a citation;

(iii) Saturdays and Sundays; and
(iv) a legal holiday set forth in Subsection 63G-1-301(1)(a).

(c) If the recipient of a citation makes a timely request for review, within 10 days of receiving the request, the division shall convene an adjudicative proceeding in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(d) (i) If the presiding officer finds that there is not substantial evidence that the recipient violated a chapter listed in Section 13-2-1 at the time the citation was issued, the citation may not become final, and the division shall immediately vacate the citation and promptly notify the recipient in writing.

(ii) If the presiding officer finds there is substantial evidence that the recipient violated a chapter listed in Section 13-2-1 at the time the citation was issued, the citation shall become final and the division may enter a cease and desist order against the recipient.

(e) A citation issued under this chapter may be personally served upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure. A citation also may be served by first-class mail, postage prepaid.

(f) If the recipient fails to make a timely request for review, the citation shall become the final order of the division. The period to contest the citation may be extended by the director for good cause shown.

(g) If the chapter violated allows for an administrative fine, after a citation becomes final, the director may impose the administrative fine.

(4) (a) A person violating a chapter identified in Section 13-2-1 is subject to the division's jurisdiction if:

(i) the violation or attempted violation is committed either wholly or partly within the state;

(ii) conduct committed outside the state constitutes an attempt to commit a violation within the state; or

(iii) transactional resources located within the state are used by the offender to directly or indirectly facilitate a violation or attempted violation.

(b) As used in this section, "transactional resources" means:
(i) any mail drop or mail box, whether or not located on the premises of a United States Post Office;
(ii) any telephone or facsimile transmission device;
(iii) any internet connection by a resident or inhabitant of this state with either a resident or nonresident maintained internet site;
(iv) any business office or private residence used for a business-related purpose;
(v) any account with or services of a financial institution;
(vi) the services of a common or private carrier, or
(vii) the use of any city, county, or state asset or facility, including any road or highway.

(5) The director or the director's designee, for the purposes outlined in any chapter administered by the division, may administer oaths, issue subpoenas, compel the attendance of witnesses, and compel the production of papers, books, accounts, documents, and evidence.

Section 194. Section 13-5-3 is amended to read:


(1) (a) It is unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchasers involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the state and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them.

(b) Nothing in this chapter [shall prevent] prevents:

(i) differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the different methods or quantities in which such
commodities are to such purchasers sold or delivered;

(ii) persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade; and

(iii) price changes from time to time in response to changing conditions affecting the market for or the marketability of the goods concerned, [such as, but not limited to,] including actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(2) Upon proof being made, at any suit on a complaint under this section, that there has been discrimination in price or services or facilities furnished or in payment for services or facilities to be rendered, the burden of rebutting the prima-facie case thus made by showing justification shall be upon the person charged with a violation of this section. However nothing in this chapter shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

(3) It is unlawful for any person engaged in commerce in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for and not exceeding the actual cost of such services rendered in connection with the sale or purchase of goods, wares, or merchandise.

(4) It is unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products, or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.
(5) It is unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(6) It is unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.

Section 195. Section 13-5-12 is amended to read:

13-5-12. Sales exempt from chapter.

(1) The provisions of this chapter do not apply to any sale made:
(a) in closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing his trade in any such stock or commodity, and in the case of the sale of seasonal goods, or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation; provided, prior notice is given to the public thereof;
(b) when the goods are damaged or deteriorated in quality, and prior notice is given to the public thereof;
(c) by an officer acting under the orders of any court;
(d) in an endeavor made in good faith to meet the legal prices of a competitor as herein defined selling the same article, product or commodity in the same locality or trade area;
(e) by manufacturers, producers, brokers or wholesale distributors meeting in good faith prices established by interstate competition regardless of cost; provided, such prices are available to all persons buying on like terms and conditions in the same locality and vicinity.

(2) Any person, who performs work upon, renovates, alters or improves any personal property belonging to another person, except necessary repairs due to damage in transit, shall be construed to be a vendor within the meaning of this chapter.

Section 196. Section 13-5-16 is amended to read:

If any section, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of the act. The Legislature hereby declares that it would have passed this act, and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more other sections, sentences, clauses or phrases be declared unconstitutional.

Section 197. Section 13-7-1 is amended to read:

13-7-1. Policy and purposes of act.

It is hereby declared that the practice of discrimination on the basis of race, color, sex, religion, ancestry, or national origin in business establishments or places of public accommodation or in enterprises regulated by the state endangers the health, safety, and general welfare of this state and its inhabitants; and that such discrimination in business establishments or places of public accommodation or in enterprises regulated by the state, violates the public policy of this state. It is the purpose of this act to assure all citizens full and equal availability of all goods, services and facilities offered by business establishments and places of public accommodation and enterprises regulated by the state without discrimination because of race, color, sex, religion, ancestry, or national origin. The rules of common law that statutes in derogation thereof shall be strictly construed has no application to this act. This act shall be liberally construed with a view to promote the policy and purposes of the act and to promote justice. The remedies provided herein are not exclusive but are in addition to any other remedies available at law or equity.

Section 198. Section 13-7-2 is amended to read:

13-7-2. Definitions.

(1) The term "place of public accommodation" includes every place, establishment, or facility of whatever kind, nature, or class that caters or offers its services, facilities, or goods to the general public for a fee or charge, except, any establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence; provided that any place, establishment, or
facility that caters or offers its services, facilities, or goods to the general public gratuitously shall be within the definition of this term if it receives any substantial governmental subsidy or support; but the term [shall not] does not apply to any institution, church, any apartment house, club, or place of accommodation which is in its nature distinctly private except to the extent that it is open to the public.

(2) The term "person" includes one or more individuals, partnerships, associations, organizations, corporations, labor unions, legal representatives, trustees, trustees in bankruptcy, receivers, and other organized groups of persons.

(3) "Enterprises regulated by the state" means:

(a) all institutions subject to regulation under Title 70C, Utah Consumer Credit Code;
(b) all places of business which sell beer to consumers or house a state liquor store, as permitted by Title 32A, Alcoholic Beverage Control Act;
(c) all insurers regulated by Title 31A, Insurance Code; and
(d) all public utilities subject to regulation under Title 54, Public Utilities Act.

Section 199. Section 13-11-6 is amended to read:


In addition to any other method provided by rule or statute, personal jurisdiction over a supplier may be acquired in a civil action or proceeding instituted in the district court by the service of process in the following manner. If a supplier engages in any act or practice in this state governed by this act, or engages in a consumer transaction subject to this act, he may designate an agent upon whom service of process may be made in this state. The agent [must] shall be a resident of or a corporation authorized to do business in this state. The designation [must] shall be in writing and filed with the Division of Corporations and Commercial Code. If no designation is made and filed, or if process cannot be served in this state upon the designated agent, whether or not the supplier is a resident of this state or is authorized to do business in this state, process may be served upon the director of the Division of Corporations and Commercial Code, but service upon him is not effective unless the plaintiff promptly mails a copy of the process and pleadings by registered or certified mail to the defendant at his
last reasonably ascertainable address. An affidavit of compliance with this section [must]
shall be filed with the clerk of the court on or before the return day of the process, if any, or
within any future time the court allows.

Section 200. Section 13-11-19 is amended to read:


(1) Whether he seeks or is entitled to damages or otherwise has an adequate remedy at
law, a consumer may bring an action to:

(a) obtain a declaratory judgment that an act or practice violates this chapter; and
(b) enjoin, in accordance with the principles of equity, a supplier who has violated, is
violating, or is likely to violate this chapter.

(2) A consumer who suffers loss as a result of a violation of this chapter may recover,
but not in a class action, actual damages or $2,000, whichever is greater, plus court costs.

(3) Whether a consumer seeks or is entitled to recover damages or has an adequate
remedy at law, he may bring a class action for declaratory judgment, an injunction, and
appropriate ancillary relief against an act or practice that violates this chapter.

(4) (a) A consumer who suffers loss as a result of a violation of this chapter may bring
a class action for the actual damages caused by an act or practice specified as violating this
chapter by a rule adopted by the enforcing authority under Subsection 13-11-8(2) before the
consumer transactions on which the action is based, or declared to violate Section 13-11-4 or
13-11-5 by a final judgment of the appropriate court or courts of general jurisdiction and
appellate courts of this state that was either officially reported or made available for public
dissemination under Subsection 13-11-7(1)(c) by the enforcing authority 10 days before the
consumer transactions on which the action is based, or with respect to a supplier who agreed
to it, was prohibited specifically by the terms of a consent judgment which became final
before the consumer transactions on which the action is based.

(b) If an act or practice that violates this chapter unjustly enriches a supplier and the
damages can be computed with reasonable certainty, damages recoverable on behalf of
consumers who cannot be located with due diligence shall be transferred to the state treasurer
pursuant to Title 67, Chapter 4a, Unclaimed Property Act.

(c) If a supplier shows by a preponderance of the evidence that a violation of this chapter resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error, recovery under this section is limited to the amount, if any, in which the supplier was unjustly enriched by the violation.

(5) Except for services performed by the enforcing authority, the court may award to the prevailing party a reasonable attorney's fee limited to the work reasonably performed if:

(a) the consumer complaining of the act or practice that violates this chapter has brought or maintained an action he knew to be groundless; or a supplier has committed an act or practice that violates this chapter; and

(b) an action under this section has been terminated by a judgment or required by the court to be settled under Subsection 13-11-21(1)(a).

(6) Except for consent judgment entered before testimony is taken, a final judgment in favor of the enforcing authority under Section 13-11-17 is admissible as prima facie evidence of the facts on which it is based in later proceedings under this section against the same person or a person in privity with him.

(7) When a judgment under this section becomes final, the prevailing party shall mail a copy to the enforcing authority for inclusion in the public file maintained under Subsection 13-11-7(1)(e).

(8) An action under this section [must] shall be brought within two years after occurrence of a violation of this chapter, or within one year after the termination of proceedings by the enforcing authority with respect to a violation of this chapter, whichever is later. When a supplier sues a consumer, he may assert as a counterclaim any claim under this chapter arising out of the transaction on which suit is brought.

Section 201. Section 13-11-20 is amended to read:


(1) An action may be maintained as a class action under this act only if:

(a) the class is so numerous that joinder of all members is impracticable;
(b) there are questions of law or fact common to the class;
(c) the claims or defenses of the representative parties are typical of the claims or defenses of the class;
(d) the representative parties will fairly and adequately protect the interests of the class; and
(e) either:
   (i) the prosecution of separate actions by or against individual members of the class would create a risk of:
      (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or
      (B) adjudications with respect to individual members of the class that would as a practical matter dispose of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or
   (ii) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or
   (iii) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

(2) The matters pertinent to the findings under Subsection (1)(e)(iii) include:
(a) the interest of members of the class in individually controlling the prosecution or defense of separate actions;
(b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
(c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
(d) the difficulties likely to be encountered in the management of a class action.

(3) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subsection may be conditional, and it may be amended before decision on the merits.

(4) In a class action maintained under Subsection (1)(e) the court may direct to the members of the class the best notice practicable under the circumstances, including individual notice to each member who can be identified through reasonable effort. The notice shall advise each member that:

(a) the court will exclude him from the class, unless he requests inclusion, by a specified date;

(b) the judgment, whether favorable or not, will include all members who request inclusion; and

(c) a member who requests inclusion may, if he desires, enter an appearance through his counsel.

(5) When appropriate, an action may be brought or maintained as a class action with respect to particular issues, or a class may be divided into subclasses and each subclass treated as a class.

(6) In the conduct of a class action the court may make appropriate orders:

(a) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(b) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in the manner the court directs to some or all of the members or to the enforcing authority of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

(c) imposing conditions on the representative parties or on intervenors;

(d) requiring that the pleadings be amended to eliminate allegations as to
representation of absent persons, and that the action proceed accordingly; or
(e) dealing with similar procedural matters.
(7) A class action [shall not] may not be dismissed or compromised without approval of the court. Notice of the proposed dismissal or compromise shall be given to all members of the class as the court directs.
(8) The judgment in an action maintained as a class action under Subsection (1)(e)(i) or (ii), whether or not favorable to the class, shall describe those whom the court finds to be members of the class. The judgment in a class action under Subsection (1)(e)(iii), whether or not favorable to the class, shall specify or describe those to whom the notice provided in Subsection (4) was directed, and who have requested inclusion, and whom the court finds to be members of the class.
Section 202. Section 13-11a-3 is amended to read:
13-11a-3. Deceptive trade practices enumerated -- Records to be kept --
Defenses.
(1) Deceptive trade practices occur when, in the course of a person's business, vocation, or occupation that person:
(a) passes off goods or services as those of another;
(b) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
(c) causes likelihood of confusion or of misunderstanding as to affiliation, connection, association with, or certification by another;
(d) uses deceptive representations or designations of geographic origin in connection with goods or services;
(e) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;
(f) represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or second-hand;
(g) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
(h) disparages the goods, services, or business of another by false or misleading representation of fact;
(i) advertises goods or services or the price of goods and services with intent not to sell them as advertised;
(j) advertises goods or services with intent not to supply a reasonable expectable public demand, unless:
   (i) the advertisement clearly and conspicuously discloses a limitation of quantity; or
   (ii) the person issues rainchecks for the advertised goods or services;
(k) makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;
(l) makes a comparison between the person's own sale or discount price and a competitor's nondiscounted price without clearly and conspicuously disclosing that fact;
(m) without clearly and conspicuously disclosing the date of the price assessment makes a price comparison with the goods of another based upon a price assessment performed more than seven days prior to the date of the advertisement or uses in an advertisement the results of a price assessment performed more than seven days prior to the date of the advertisement without disclosing, in a print ad, the date of the price assessment, or in a radio or television ad, the time frame of the price assessment;
(n) advertises or uses in a price assessment or comparison a price that is not that person's own unless this fact is:
   (i) clearly and conspicuously disclosed; and
   (ii) the representation of the price is accurate;
(o) represents as independent an audit, accounting, price assessment, or comparison of prices of goods or services, when the audit, accounting, price assessment, or comparison is not independent;
(p) represents, in an advertisement of a reduction from the supplier's own prices, that
the reduction is from a regular price, when the former price is not a regular price as defined in
Subsection 13-11a-2(14);
(q) advertises a price comparison or the result of a price assessment or comparison that
uses, in any way, an identified competitor's price without clearly and conspicuously disclosing
the identity of the price assessor and any relationship between the price assessor and the
supplier;
(r) makes a price comparison between a category of the supplier's goods and the same
category of the goods of another, without randomly selecting the individual goods or services
upon whose prices the comparison is based;
(s) makes a comparison between similar but nonidentical goods or services unless the
nonidentical goods or services are of essentially similar quality to the advertised goods or
services or the dissimilar aspects are clearly and conspicuously disclosed in the
advertisements; or
(t) engages in any other conduct which similarly creates a likelihood of confusion or of
misunderstanding.
(2) (a) For purposes of Subsection (1)(i), if a specific advertised price will be in effect
for less than one week from the advertisement date, the advertisement [must] shall clearly and
conspicuously disclose the specific time period during which the price will be in effect.
(b) For purposes of Subsection (1)(n), with respect to the price of a competitor, the
price [must] shall be one at which the competitor offered the goods or services for sale in the
product area at the time of the price assessment, and [must not] may not be an isolated price.
(c) For purposes of Subsection (1)(o), an audit, accounting, price assessment, or
comparison shall be independent if the price assessor randomly selects the goods to be
compared, and the time and place of the comparison, and no agreement or understanding
exists between the supplier and the price assessor that could cause the results of the assessment
to be fraudulent or deceptive. The independence of an audit, accounting, or price comparison
is not invalidated merely because the advertiser pays a fee for the audit, accounting, or price
comparison, but is invalidated if the audit, accounting, or price comparison is done by a full or
part-time employee of the advertiser.

(d) Examples of a disclosure that complies with Subsection (1)(q) are:
   (i) "Price assessment performed by Store Z";
   (ii) "Price assessment performed by a certified public accounting firm"; or
   (iii) "Price assessment performed by employee of Store Y".

(e) For the purposes of Subsection (1)(r), goods or services are randomly selected when the supplier has no advance knowledge of what goods and services will be surveyed by the price assessor, and when the supplier certifies its lack of advance knowledge by an affidavit to be retained in the supplier's records for one year.

(f) (i) It is prima facie evidence of compliance with Subsection (1)(s) if:
   (A) the goods compared are substantially the same size; and
   (B) the goods compared are of substantially the same quality, which may include similar models of competing brands of goods, or goods made of substantially the same materials and made with substantially the same workmanship.

(ii) It is prima facie evidence of a deceptive comparison under this section when the prices of brand name goods and generic goods are compared.

(3) Any supplier who makes a comparison with a competitor's price in advertising shall maintain for a period of one year records that disclose the factual basis for such price comparisons and from which the validity of such claim can be established.

(4) It is a defense to any claim of false or deceptive price representations under this chapter that a person:
   (a) has no knowledge that the represented price is not genuine; and
   (b) has made reasonable efforts to determine whether the represented price is genuine.

(5) Subsections (1)(m) and (q) do not apply to price comparisons made in catalogs in which a supplier compares the price of a single item of its goods or services with those of another.

(6) To prevail in an action under this chapter, a complainant need not prove competition between the parties or actual confusion or misunderstanding.
(7) This chapter does not affect unfair trade practices otherwise actionable at common
law or under other statutes of this state.

Section 203. Section 13-12-3 is amended to read:

13-12-3. Refiners or distributors -- Unlawful practices -- Marketing agreements
with dealers.

No refiner or distributor, directly or indirectly or through any office, agent, or
employee, shall engage in any of the following practices:

(1) requiring a dealer, at the time of entering into a marketing agreement, to agree to a
release, assignment, novation, waiver or estoppel which would relieve any person from any
provision of this act;

(2) prohibiting, directly or indirectly, the right of free association among dealers for
any lawful purpose;

(3) requiring a dealer to keep his retail outlet open for business for any specified
number of hours per day, or days per week, unless those requirements are set forth in writing
at the time of entering into the marketing agreement;

(4) fixing or maintaining the price at which the dealer must sell products, or
attempting to fix or maintain those prices, through any form of coercion whatsoever; provided,
that nothing herein shall be construed to prohibit a distributor or refiner from suggesting prices
or counseling with dealers concerning those prices;

(5) requiring a dealer to use or utilize any promotion, premium, coupon, give-away,
sales promotion or rebate in the operation of the business; provided that nothing herein shall
be construed to prohibit a dealer from participating financially in a promotion, premium,
coupon, give-away, sales promotion or rebate sponsored by the distributor or refiner if agreed
to voluntarily by the parties;

(6) terminating, canceling or failing to renew any marketing agreement without having
first given written notice setting forth all the reasons for such termination, cancellation, or
intent not to renew the dealer at least 90 days in advance of such termination, cancellation, or
failure to renew, except:
(a) where the alleged grounds are voluntary abandonment by the dealer of the marketing agreement relationship in which event the aforementioned written notice must be given five business days in advance of such termination, cancellation, or failure to renew; and

(b) where the alleged grounds are caused by the conviction of the dealer or distributor in a court of competent jurisdiction of a criminal offense directly related to the business conducted pursuant to the marketing agreement, or the bankruptcy of the dealer or distributor, in which event the aforementioned termination, cancellation, or failure to renew may be effective immediately following such conviction or bankruptcy;

(c) where the alleged grounds are:

(i) failure of the dealer to substantially comply with the requirements of the marketing agreement;

(ii) action of the dealer fraudulently advising members of the motoring public of the necessity for unneeded automotive repairs, parts or accessories;

(iii) action of the dealer fraudulently representing either expressly or impliedly the trade mark or brand of product being sold by the dealer;

(iv) failure of the dealer to maintain the premises in a sufficiently clean and healthful manner to avoid constituting a nuisance to members of the motoring public or adjoining property owners as determined by the local board of health authority;

in which event the distributor shall provide the dealer with written notice of his intent to terminate, cancel or fail to renew, following which the dealer shall be allowed 10 days in which to comply, correct or respond to said allegations before further action can be taken by the distributor.

Section 204. Section 13-12-4 is amended to read:

13-12-4. Cancellation provisions -- Dealer or distributor -- Time limit to exercise.

(1) Every dealer or distributor shall have the right, which may not be waived, to cancel his marketing agreement until midnight of the seventh business day after the day on which the buyer signs the marketing agreement or, if that agreement is oral, after the day on which the
buyer agrees thereto.

(2) Notice of cancellation shall be deemed to have been given when it is addressed to the distributor's or refiner's last known address, postage prepaid, and certified with a return receipt requested.

(3) Unless within 10 days after delivery of that notice of cancellation the dealer returns to the distributor or refiner any money, equipment or merchandise loaned, sold or delivered to the dealer and delivers up full possession of the business location to the distributor or refiner, that notice of cancellation shall be null and void ab initio.

(4) (a) Except as provided in this subsection, within 10 days after notice of cancellation is delivered to him, the distributor or refiner [must] shall tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.

(b) If the down payment includes goods traded in, the goods [must] shall be tendered in substantially as good condition as when received by the distributor or refiner. If the distributor or refiner fails to tender the goods as provided by this subsection, the dealer may elect to recover an amount equal to the allowance established by their agreement.

(c) Notwithstanding the provisions of Subsection (3) until the distributor or refiner has complied with the obligations imposed by this subsection, the dealer may retain possession of goods delivered to him by the distributor or refiner and has a lien on the goods in his possession or control for any recovery to which he is entitled.

Section 205. Section 13-12-7 is amended to read:

13-12-7. District court's jurisdiction over violations -- Equitable relief -- Attorney's fees and costs -- Action for failure to renew -- Damages limited.

The district courts for the district wherein the dealer resides or wherein the dealership was to be established shall have jurisdiction over any action involving a violation of this act. In addition to such relief as may be available at common law, the courts may grant such equitable relief, both interim and final, as may be necessary to remedy those violations including[, but not limited to,] declaratory judgments, injunctive relief, and punitive damages as well as actual damages. The prevailing party may, in the court's sole discretion, be awarded
attorney's fees and expert witness fees in addition to such other relief as the court may deem equitable. In any action for failure to renew an agreement, damages shall be limited to actual damages, including the value of the dealer's equity in the dealership, together with reasonable attorney's fees and costs.

Section 206. Section 13-13-4 is amended to read:

13-13-4. Payment of percentage of receipts.

If an exhibitor is required by a license agreement to make any payment to the distributor that is based on a percentage of the theatre box office receipts the license agreement [shall not] may not require a guarantee of a minimum payment to the distributor or require the exhibitor to charge any per capita amount for ticket sales.

Section 207. Section 13-14b-103 is amended to read:

13-14b-103. Warranty claims.

(1) An equipment dealer may submit a warranty claim to a supplier if a warranty defect is identified and documented prior to the expiration of a supplier's warranty:

(a) while a dealer agreement is in effect; or

(b) after the termination of a dealer agreement if the claim is for work performed while the dealer agreement was in effect.

(2) (a) A supplier shall accept or reject a warranty claim submitted under Subsection (1) within 30 days of the date the supplier received the claim.

(b) A warranty claim not rejected within 30 days of the date the supplier received the claim is considered to be accepted by the supplier.

(3) No later than 30 days after the date a warranty claim is accepted or rejected under Subsection (2), the supplier shall:

(a) pay an accepted warranty claim; or

(b) send the dealer written notice of the reason the warranty claim was rejected.

(4) (a) (i) A supplier shall compensate the dealer for the warranty claim as follows:

(A) the dealer's established customer hourly retail labor rate multiplied by the reasonable and customary amount of time required to complete such work, including
diagnostic time, expressed in hours and fractions of an hour;

(B) the dealer's current net price plus 20% for parts to reimburse the dealer for reasonable costs of doing business in performing the warranty service on the supplier's behalf; and

(C) extraordinary freight and handling costs.

(ii) For purposes of Subsection (4)(a)(i)(C), "extraordinary freight and handling costs" mean costs that are above and beyond the normal reimbursement policy of the supplier for warranty repair work.

(b) (i) The supplier shall give due consideration to any extraordinary expenses incurred by the dealer in performing necessary warranty repairs.

(ii) If the repair work is for safety or mandatory modifications ordered by the supplier, the supplier shall reimburse the dealer for transportation costs incurred by the dealer.

(5) After payment of a warranty claim, a supplier may not charge back, off-set, or otherwise attempt to recover from the dealer all or part of the amount of the claim unless:

(a) the warranty claim was fraudulent;

(b) the services for which the warranty claim was made were not properly performed or were unnecessary to comply with the warranty; or

(c) the dealer did not substantiate the warranty claim according to the written requirements of the supplier that were in effect when the equipment was delivered to the dealer by the customer for warranty repairs.

(6) If a supplier denies a warranty claim due to a particular item or part of the claim, the denial shall only affect the items or parts in question and not the complete warranty claim.

(7) A supplier may not pass the cost of covering warranty claims under this chapter on to a dealer through any means including:

(a) surcharges;

(b) reduction of discounts; or

(c) certification standards.

(8) (a) The provisions of this chapter do not apply to a supplier or dealer where a
written dealer agreement provides for compensation to a dealer for warranty labor and parts costs either as part of the pricing of the equipment to the dealer or in the form of a lump-sum payment.

(b) The lump-sum payment under Subsection (8)(a) [must shall be at least 5% of the suggested retail price of the equipment.

Section 208. Section 13-15-4 is amended to read:

13-15-4. Information to be filed by seller -- Representations.

(1) Any seller of an assisted marketing plan shall file the following information with the division:

(a) the name, address, and principal place of business of the seller, and the name, address, and principal place of business of the parent or holding company of the seller, if any, who is responsible for statements made by the seller;

(b) all trademarks, trade names, service marks, or advertising or other commercial symbols that identify the products, equipment, supplies, or services to be offered, sold, or distributed by the prospective purchaser;

(c) an individual detailed statement covering the past five years of the business experience of each of the seller's current directors and executive officers and an individual statement covering the same period for the seller and the seller's parent company, if any, including the length of time each:

(i) has conducted a business of the type advertised or solicited for operation by a prospective purchaser;

(ii) has offered or sold the assisted marketing plan; and

(iii) has offered for sale or sold assisted marketing plans in other lines of business, together with a description of the other lines of business;

(d) a statement of the total amount that [must shall be paid by the purchaser to obtain or commence the business opportunity such as initial fees, deposits, down payments, prepaid rent, and equipment and inventory purchases; provided, that if all or part of these fees or deposits are returnable, the conditions under which they are returnable shall also be disclosed;
(e) a complete statement of the actual services the seller will perform for the purchaser;

(f) a complete statement of all oral, written, or visual representations that will be made to prospective purchasers about specific levels of potential sales, income, gross and net profits, or any other representations that suggest a specific level;

(g) a complete description of the type and length of any training promised to prospective purchasers;

(h) a complete description of any services promised to be performed by the seller in connection with the placement of the equipment, products, or supplies at any location from which they will be sold or used; and a complete description of those services together with any agreements that will be made by the seller with the owner or manager of the location where the purchaser's equipment, products, or supplies will be placed;

(i) a statement that discloses any person identified in Subsection (1)(a) who:

   (i) has been convicted of a felony or misdemeanor or pleaded nolo contendere to a felony or misdemeanor charge if the felony or misdemeanor involved fraud, embezzlement, fraudulent conversion, or misappropriation of property;

   (ii) has been held liable or consented to the entry of a stipulated judgment in any civil action based upon fraud, embezzlement, fraudulent conversion, misappropriation of property, or the use of untrue or misleading representations in the sale or attempted sale of any real or personal property, or upon the use of any unfair, unlawful or deceptive business practice; or

   (iii) is subject to an injunction or restrictive order relating to business activity as the result of an action brought by a public agency;

(j) a financial statement of the seller signed by one of the seller's officers, directors, trustees, or general or limited partners, under a declaration that certifies that to the signatory's knowledge and belief the information in the financial statement is true and accurate; a financial statement that is more than 13 months old is unacceptable;

(k) a copy of the entire marketing plan contract;

(l) the number of marketing plans sold to date, and the number of plans under
(m) geographical information including all states in which the seller's assisted marketing plans have been sold, and the number of plans in each such state;
(n) the total number of marketing plans that were cancelled by the seller in the past 12 months; and
(o) the number of marketing plans that were voluntarily terminated by purchasers within the past 12 months and the total number of such voluntary terminations to date.
(2) The seller of an assisted marketing plan filing information under Subsection (1) shall pay a fee as determined by the department in accordance with Section 63J-1-504.
(3) Before commencing business in this state, the seller of an assisted marketing plan shall file the information required under Subsection (1) and receive from the division proof of receipt of the filing.
(4) A seller of an assisted marketing plan claiming an exemption from filing under this chapter shall file a notice of claim of exemption from filing with the division. A seller claiming an exemption from filing bears the burden of proving the exemption. The division shall collect a fee for filing a notice of claim of exemption, as determined by the department in accordance with Section 63J-1-504.
(5) A representation described in Subsection (1)(f) shall be relevant to the geographic market in which the business opportunity is to be located. When the statements or representations are made, a warning after the representation in not less than 12 point upper and lower case boldface type shall appear as follows:

CAUTION

No guarantee of earnings or ranges of earnings can be made. The number of purchasers who have earned through this business an amount in excess of the amount of their initial payment is at least _____ which represents _____% of the total number of purchasers of this business opportunity.

Section 209. Section 13-15-5 is amended to read:

All the information required under Section 13-15-4 shall be contained in a single disclosure statement or prospectus which shall be provided to any prospective purchaser at least 10 business days prior to the earlier of:

(1) the execution by prospective purchaser of any agreement imposing a binding legal obligation on such prospective purchaser by which the seller knows or should know, in connection with the sale or proposed sale of the "assisted marketing plan"; or

(2) the payment by a prospective purchaser, by which the seller knows or should know of any consideration in connection with the sale or proposed sale of the "assisted marketing plan."

The disclosure statement or prospectus may not contain any material or information other than that required under Section 13-15-4. However, the seller may give prospective purchasers nondeceptive information other than that contained in the disclosure statement or prospectus if it does not contradict the information required to appear in the disclosure statement or prospectus. A cover sheet attached to the disclosure statement or prospectus shall conspicuously state the name of the seller, the date of issuance of the disclosure statement or prospectus, and a notice printed in not less than 12 point upper and lower case boldface type as follows:

INFORMATION FOR PURCHASE OF A MARKETING PLAN:

To protect you, the State Division of Consumer Protection has required your seller to give you this information. The State Division of Consumer Protection has not verified this information as to its accuracy. The notice may contain additional precautions deemed necessary and pertinent. The seller, in lieu of the information requested by Section 13-15-4, may file with the commission and provide to prospective purchasers certified disclosure documents authorized for use by the Federal Trade Commission pursuant to Title 16, Chapter I, Subchapter d, Trade Regulation Rules, Part 436, "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures."

Section 210. Section 13-32-103 is amended to read:


A vendor who is not a manufacturer's or distributor's representative may not
sell or offer for sale or exchange at a swap meet or flea market any:

- (1) food product which is manufactured and packaged specifically for consumption by a child under two years of age;
- (2) nonprescription or over-the-counter drug or medication other than herbal products, dietary supplements, botanical extracts, or vitamins; or
- (3) cosmetic or personal care product which has an expiration date.

Section 211. Section 13-32-104 is amended to read:

13-32-104. Receipts and transaction records -- Retention of receipts and transaction records.

(1) Every vendor shall maintain receipts or a permanent record book for the acquisition of new and unused property which [must] shall contain:

- (a) the date of the transaction on which the property was acquired;
- (b) the name and address of the person from whom the property was acquired;
- (c) an identification and description of the property acquired;
- (d) the price paid for such property; and
- (e) the signatures of the person selling the property and the vendor.

(2) The receipt or record for each transaction required by Subsection (1) shall be maintained by the vendor for a period of not less than one year following the date of the transaction.

Section 212. Section 13-32-107 is amended to read:


The provisions of this chapter [shall not] do not apply to:

- (1) the sale of a motor vehicle or trailer that is required to be registered or is subject to the certificate of title laws of this state;
- (2) the sale of agricultural products, forestry products, livestock, or food products other than those which are manufactured and packaged specifically for consumption by a child under two years of age;
- (3) business conducted at any industry or association trade show;
(4) the sale of arts or crafts by the person who produced such arts and crafts; and
(5) anyone who displays only samples, catalogs, or brochures and sells property for
future delivery.

Section 213. Section **13-32a-109.8** is amended to read:

**13-32a-109.8. Pawned or sold property subject to law enforcement investigation.**

(1) If the article pawned or sold under Section 13-32a-109 is subject to an
investigation and a criminal prosecution results, the prosecuting agency shall, prior to
disposition of the case:

(a) request restitution to the pawn or secondhand business for the crimes perpetrated
against the pawn or secondhand business as a victim of theft by deception; and
(b) request restitution for the original victim.

(2) If the original victim of the theft of the property files a police report and the
property is subsequently located at a pawn or secondhand business, the victim **must** shall
fully cooperate with the prosecution of the crimes perpetrated against the pawn or secondhand
business as a victim of theft by deception, in order to qualify for restitution regarding the
property.

(3) If the original victim does not pursue criminal charges or does not cooperate in the
prosecution of the property theft crimes charged against the defendant and the theft by
deception charges committed against the pawn or secondhand business, then the original
victim **must** shall pay to the pawn or secondhand business the amount of money financed or
paid by the pawn or secondhand business to the defendant in order to obtain the property.

(4) (a) The victim's cooperation in the prosecution of the property crimes and in the
prosecution of the theft by deception offense committed against the pawn or secondhand
business suspends the requirements of Subsections (2) and (3).
(b) If the victim cooperates in the prosecution under Subsection (4)(a) and the
defendants are convicted, the prosecuting agency shall direct the pawn or secondhand business
to turn over the property to the victim.
(c) Upon receipt of notice from the prosecuting agency that the property must be
turned over to the victim, the pawn or secondhand business shall return the property to the victim as soon as reasonably possible.

(5) A pawn or secondhand business shall fully cooperate in the prosecution of the property crimes committed against the original victim and the property crime of theft by deception committed against the pawn or secondhand business in order to participate in any court-ordered restitution.

(6) At all times during the course of a criminal investigation and subsequent prosecution, the article subject to a law enforcement hold shall be kept secure by the pawn or secondhand business subject to the hold unless a pawned or sold article has been seized by the law enforcement agency pursuant to Section 13-32a-109.5.

Section 214. Section 13-34-104 is amended to read:

**13-34-104. Prohibited acts -- Exceptions -- Responsibilities of proprietary schools.**

(1) Except as provided in this chapter, a proprietary school may not offer, sell, or award a degree or any other type of educational credential unless the student has enrolled in and successfully completed a prescribed program of study as outlined in the proprietary school's catalogue.

(2) The prohibition described in Subsection (1) does not apply to:

(a) honorary credentials clearly designated as such on the front side of a diploma; or

(b) certificates and awards by a proprietary school that offers other educational credentials requiring enrollment in and successful completion of a prescribed program of study in compliance with the requirements of this chapter.

(3) A proprietary school shall provide bona fide instruction through student-faculty interaction.

(4) A proprietary school may not enroll a student in a program unless the proprietary school has made a good-faith determination that the student has the ability to benefit from the program.

(5) A proprietary school may not make or cause to be made any oral, written, or visual
statement or representation that an institution described in Subsection 13-34-107(2)(a)(ii) knows or should know to be:

(a) false;

(b) deceptive;

(c) substantially inaccurate; or

(d) misleading.

The division shall establish standards and criteria by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the following:

(a) the awarding of educational credentials;

(b) bona fide instruction through student-faculty interaction; and

(c) determination of the ability of a student to benefit from a program.

Section 215. Section 13-34-105 is amended to read:

13-34-105. Exempted institutions.

(1) This chapter does not apply to the following institutions:

(a) a Utah institution directly supported, to a substantial degree, with funds provided by:

(i) the state;

(ii) a local school district; or

(iii) other Utah governmental subdivision;

(b) an institution that offers instruction exclusively at or below the 12th grade level;

(c) a lawful enterprise that offers only professional review programs, such as C.P.A. and bar examination review and preparation courses;

(d) a private, postsecondary educational institution that is owned, controlled, operated, or maintained by a bona fide church or religious denomination, which is exempted from property taxation under the laws of this state;

(e) subject to Subsection (3), a school or institution that is accredited by a regional or national accrediting agency recognized by the United States Department of Education;

(f) subject to Subsection (4), a business organization, trade or professional association,
fraternal society, or labor union that:

(i) sponsors or conducts courses of instruction or study predominantly for bona fide
employees or members; and

(ii) does not, in advertising, describe itself as a school;

(g) an institution that exclusively offers general education courses or instruction solely
remedial, avocational, nonvocational, or recreational in nature, that does not:

(i) advertise occupation objectives; or

(ii) grant educational credentials;

(h) an institution that offers only workshops or seminars:

(i) lasting no longer than three calendar days; and

(ii) for which academic credit is not awarded;

(i) an institution that offers programs:

(i) in barbering, cosmetology, real estate, or insurance; and

(ii) that are regulated and approved by a state or federal governmental agency;

(j) an education provider certified by the Division of Real Estate under Section
61-2c-204.1;

(k) an institution that offers aviation training if the institution:

(i) (A) is approved under Part 141, Federal Aviation Regulations, 14 C.F.R. Chapter
141; or

(ii) (B) provides aviation training under Part 61, Federal Aviation Regulations, 14 C.F.R.
Chapter 61; and

(ii) exclusively offers aviation training that a student fully receives within 24 hours
after the student pays any tuition, fee, or other charge for the aviation training; and

(l) an institution that provides emergency medical services training if all of the
institution's instructors, course coordinators, and courses are approved by the Department of
Health.

(2) (a) If available evidence suggests that an exempt institution under this section is
not in compliance with the standards of registration under this chapter and applicable division
rules, the division shall contact the institution and, if appropriate, the state or federal
government agency to request corrective action.
(b) Subsection (2)(a) does not apply to an institution exempted under Subsection
(1)(e).
(3) An institution, branch, extension, or facility operating within the state that is
affiliated with an institution operating in another state [must] shall be separately approved by
the affiliate's regional or national accrediting agency to qualify for the exemption described in
Subsection (1)(e).
(4) For purposes of Subsection (1)(f), a business organization, trade or professional
association, fraternal society, or labor union is considered to be conducting the course
predominantly for bona fide employees or members if it hires a majority of the persons who:
(a) successfully complete its course of instruction or study with a reasonable degree of
proficiency; and
(b) apply for employment with that same entity.
Section 216. Section 13-34-107 is amended to read:
13-34-107. Advertising, recruiting, or operating a proprietary school -- Required
registration statement or exemption -- Certificate of registration -- Registration does not
constitute endorsement.
(1) (a) Unless an institution complies with Subsection (1)(b), the institution may not
do any of the following in this state:
(i) advertise a proprietary school;
(ii) recruit students for a proprietary school; or
(iii) operate a proprietary school.
(b) An institution may not engage in an activity described in Subsection (1)(a) unless
the institution:
(i) (A) files with the division a registration statement relating to the proprietary school
that is in compliance with:
(I) applicable rules made by the division; and
(II) the requirements set forth in this chapter; and
(B) obtains a certificate of registration; or
(ii) establishes an exemption with the division.
(2) (a) The registration statement or exemption described in Subsection (1) shall be:
(i) verified by the oath or affirmation of the owner or a responsible officer of the proprietary school filing the registration statement or exemption; and
(ii) include a certification as to whether any of the following has violated laws, federal regulations, or state rules as determined in a criminal, civil, or administrative proceeding:
(A) the proprietary school; or
(B) any of the following with respect to the proprietary school:
(I) an owner;
(II) an officer;
(III) a director;
(IV) an administrator;
(V) a faculty member;
(VI) a staff member; or
(VII) an agent.
(b) The proprietary school shall:
(i) make available, upon request, a copy of the registration statement, showing the date upon which it was filed; and
(ii) display the certificate of registration obtained from the division in a conspicuous place on the proprietary school's premises.
(3) (a) A registration statement and the accompanying certificate of registration are not transferable.
(b) In the event of a change in ownership or in the governing body of the proprietary school, the new owner or governing body, within 30 days after the change, shall file a new registration statement.
(4) Except as provided in Subsection (3)(b), a registration statement or a renewal
statement and the accompanying certificate of registration are effective for a period of two years after the date of filing and issuance.

(5) (a) The division shall establish a graduated fee structure for the filing of registration statements by various classifications of institutions pursuant to Section 63J-1-504.

(6) (a) Each proprietary school shall:

(i) demonstrate fiscal responsibility at the time the proprietary school files its registration statement as prescribed by rules of the division; and

(ii) provide evidence to the division that the proprietary school:

(A) is financially sound; and

(B) can reasonably fulfill commitments to and obligations the proprietary school has incurred with students and creditors.

(7) (a) A proprietary school applying for an initial certificate of registration or seeking renewal shall provide in a form approved by the division:

(i) a surety bond;

(ii) a certificate of deposit; or

(iii) an irrevocable letter of credit.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules providing for:

(i) the amount of the bond, certificate, or letter of credit required under Subsection
(7)(a), not to exceed in amount the anticipated tuition and fees to be received by the
proprietary school during a school year;

(ii) the execution of the bond, certificate, or letter of credit;

(iii) cancellation of the bond, certificate, or letter of credit during or at the end of the
registration term; and

(iv) any other matters related to providing the bond, certificate, or letter of credit
required under Subsection (7)(a).

(c) The bond, certificate, or letter of credit shall be used as a protection against loss of
advanced tuition, book fees, supply fees, or equipment fees:

(i) collected by the proprietary school from a student or a student's parent, guardian, or
sponsor prior to the completion of the program or courses for which it was collected; or

(ii) for which the student is liable.

(8) (a) Except as provided in Section 13-34-113, the division may not refuse
acceptance of a registration statement that is:

(i) tendered for filing and, based on a preliminary review, appears to be in compliance
with Subsections (1), (2), and (6); and

(ii) accompanied by:

(A) the required fee; and

(B) one of the following required by Subsection (7):

(I) surety bond;

(II) certificate of deposit; or

(III) irrevocable letter of credit.

(b) A certificate of registration is effective upon the date of issuance.

(c) The responsibility of compliance is upon the proprietary school and not upon the
division.

(d) (i) If it appears to the division that a registration statement on file may not be in
compliance with this chapter, the division may advise the proprietary school as to the apparent
deficiencies.
(ii) After a proprietary school has been notified of a deficiency under Subsection (8)(d)(i), a new or amended statement may be presented for filing by the proprietary school, accompanied by:

(A) the required fee; and

(B) one of the following required by Subsection (7):

(I) surety bond;

(II) certificate of deposit; or

(III) irrevocable letter of credit.

(9) The following does not constitute and may not be represented by any person to constitute, an endorsement or approval of the proprietary school by either the division or the state:

(a) an acceptance of:

(i) a registration statement;

(ii) a renewal statement; or

(iii) an amended registration statement; and

(b) issuance of a certificate of registration.

Section 217. Section 13-41-102 is amended to read:


For purposes of this chapter:

(1) "Consumer" means a person who acquires a good or service for consumption.

(2) "Division" means the Division of Consumer Protection.

(3) (a) "Emergency territory" means the geographical area:

(i) for which there has been a state of emergency declared; and

(ii) that is directly affected by the events giving rise to a state of emergency.

(b) "Emergency territory" does not include a geographical area that is affected by the events giving rise to a state of emergency only by economic market forces.

(4) "Excessive price" means a price for a good or service that exceeds by more than 10% the average price charged by that person for that good or service in the 30-day period
immediately preceding the day on which the state of emergency is declared.

(5) "Good" means any personal property displayed, held, or offered for sale by a merchant that is necessary for consumption or use as a direct result of events giving rise to a state of emergency.

(6) "Retail" means the level of distribution where a good or service is typically sold directly, or otherwise provided, to a member of the public who is an end-user and does not resell the good or service.

(7) "Service" means any activity that is performed in whole or in part for the purpose of financial gain including, but not limited to, personal service, professional service, rental, leasing, or licensing for use that is necessary for consumption or use as a direct result of events giving rise to a state of emergency.

(8) "State of emergency" means a declaration of:

(a) an emergency or major disaster by the President of the United States of America;

or

(b) a state of emergency by the governor under Section 63K-4-203.

Section 218. Section 13-42-105 is amended to read:


(1) An application for registration as a provider [must] shall be in a form prescribed by the administrator.

(2) Subject to adjustment of dollar amounts pursuant to Subsection 13-42-132(6), an application for registration as a provider [must] shall be accompanied by:

(a) the fee established by the administrator in accordance with Section 63J-1-504;

(b) the bond required by Section 13-42-113;

(c) identification of all trust accounts required by Section 13-42-122 and an irrevocable consent authorizing the administrator to review and examine the trust accounts;

(d) evidence of insurance in the amount of $250,000;

(i) against the risks of dishonesty, fraud, theft, and other misconduct on the part of the
applicant or a director, employee, or agent of the applicant;

(ii) issued by an insurance company authorized to do business in this state and rated at least A or equivalent by a nationally recognized rating organization approved by the administrator;

(iii) with a deductible not exceeding $5,000;

(iv) payable for the benefit of the applicant, this state, and individuals who are residents of this state, as their interests may appear; and

(v) not subject to cancellation by the applicant or the insurer until 60 days after written notice has been given to the administrator;

(e) a record consenting to the jurisdiction of this state containing:

(i) the name, business address, and other contact information of its registered agent in this state for purposes of service of process; or

(ii) the appointment of the administrator as agent of the provider for purposes of service of process; and

(f) if the applicant is organized as a not-for-profit entity or is exempt from taxation, evidence of not-for-profit and tax-exempt status applicable to the applicant under the Internal Revenue Code, 26 U.S.C. Section 501.

(3) (a) The administrator may waive or reduce the insurance requirement in Subsection 13-42-105(2)(d) if the provider does not:

(i) maintain control of a trust account or receive money paid by an individual pursuant to a plan for distribution to creditors;

(ii) make payments to creditors on behalf of individuals;

(iii) collect fees by means of automatic payment from individuals; and

(iv) execute any powers of attorney that may be utilized by the provider to collect fees from or expend funds on behalf of an individual.

(b) A waiver or reduction in insurance requirements allowed by the administrator under Subsection (3)(a) shall balance the reduction in risk posed by a provider meeting the stated requirements against any continued need for insurance against employee and director
dishonesty.

Section 219. Section **13-42-106** is amended to read:

**13-42-106. Application for registration -- Required information.**

An application for registration [must] **shall** be signed under penalty of perjury and include:

1. the applicant's name, principal business address and telephone number, and all other business addresses in this state, electronic-mail addresses, and Internet website addresses;
2. all names under which the applicant conducts business;
3. the address of each location in this state at which the applicant will provide debt-management services or a statement that the applicant will have no such location;
4. the name and home address of each officer and director of the applicant and each person that owns at least 10% of the applicant;
5. identification of every jurisdiction in which, during the five years immediately preceding the application:
   a) the applicant or any of its officers or directors has been licensed or registered to provide debt-management services; or
   b) individuals have resided when they received debt-management services from the applicant;
6. a statement describing, to the extent it is known or should be known by the applicant, any material civil or criminal judgment or litigation and any material administrative or enforcement action by a governmental agency in any jurisdiction against the applicant, any of its officers, directors, owners, or agents, or any person who is authorized to have access to the trust account required by Section 13-42-122;
7. the applicant's financial statements, audited by an accountant licensed to conduct audits, for each of the two years immediately preceding the application or, if it has not been in operation for the two years preceding the application, for the period of its existence;
8. evidence of accreditation by an independent accrediting organization approved by
the administrator;

(9) evidence that, within 12 months after initial employment, each of the applicant's counselors becomes certified as a certified counselor;

(10) a description of the three most commonly used educational programs that the applicant provides or intends to provide to individuals who reside in this state and a copy of any materials used or to be used in those programs;

(11) a description of the applicant's financial analysis and initial budget plan, including any form or electronic model, used to evaluate the financial condition of individuals;

(12) a copy of each form of agreement that the applicant will use with individuals who reside in this state;

(13) the schedule of fees and charges that the applicant will use with individuals who reside in this state;

(14) at the applicant's expense, the results of a criminal records check, including fingerprints, conducted within the immediately preceding 12 months, covering every officer of the applicant and every employee or agent of the applicant who is authorized to have access to the trust account required by Section 13-42-122;

(15) the names and addresses of all employers of each director during the 10 years immediately preceding the application;

(16) a description of any ownership interest of at least 10% by a director, owner, or employee of the applicant in:

(a) any affiliate of the applicant; or

(b) any entity that provides products or services to the applicant or any individual relating to the applicant's debt-management services;

(17) a statement of the amount of compensation of the applicant's five most highly compensated employees for each of the three years immediately preceding the application or, if it has not been in operation for the three years preceding the application, for the period of its existence;

(18) the identity of each director who is an affiliate, as defined in Subsection
13-42-102(2)(a) or (2)(b)(i), (ii), (iv), (v), (vi), or (vii), of the applicant; and

(19) any other information that the administrator reasonably requires to perform the administrator's duties under Section 13-42-109.

Section 220. Section **13-42-111** is amended to read:

**13-42-111. Renewal of registration.**

(1) A provider [must] **shall** obtain a renewal of its registration annually.

(2) An application for renewal of registration as a provider [must] **shall** be in a form prescribed by the administrator, signed under penalty of perjury, and:

(a) be filed no fewer than 30 and no more than 60 days before the registration expires;

(b) be accompanied by the fee established by the administrator in accordance with Section 63J-1-504 and the bond required by Section 13-42-113;

(c) contain the matter required for initial registration as a provider by Subsections 13-42-106(8) and (9) and a financial statement, audited by an accountant licensed to conduct audits, for the applicant's fiscal year immediately preceding the application;

(d) disclose any changes in the information contained in the applicant's application for registration or its immediately previous application for renewal, as applicable;

(e) supply evidence of insurance in an amount equal to the larger of $250,000 or the highest daily balance in the trust account required by Section 13-42-122 during the six-month period immediately preceding the application:

(i) against risks of dishonesty, fraud, theft, and other misconduct on the part of the applicant or a director, employee, or agent of the applicant;

(ii) issued by an insurance company authorized to do business in this state and rated at least A or equivalent by a nationally recognized rating organization approved by the administrator;

(iii) with a deductible not exceeding $5,000;

(iv) payable for the benefit of the applicant, this state, and individuals who are residents of this state, as their interests may appear; and

(v) not subject to cancellation by the applicant or the insurer until 60 days after written...
notice has been given to the administrator;

(f) disclose the total amount of money received by the applicant pursuant to plans during the preceding 12 months from or on behalf of individuals who reside in this state and the total amount of money distributed to creditors of those individuals during that period;

(g) disclose, to the best of the applicant's knowledge, the gross amount of money accumulated during the preceding 12 months pursuant to plans by or on behalf of individuals who reside in this state and with whom the applicant has agreements; and

(h) provide any other information that the administrator reasonably requires to perform the administrator's duties under this section.

(3) Except for the information required by Subsections 13-42-106(7), (14), and (17) and the addresses required by Subsection 13-42-106(4), the administrator shall make the information in an application for renewal of registration as a provider available to the public.

(4) If a registered provider files a timely and complete application for renewal of registration, the registration remains effective until the administrator, in a record, notifies the applicant of a denial and states the reasons for the denial.

(5) If the administrator denies an application for renewal of registration as a provider, the applicant, within 30 days after receiving notice of the denial, may appeal and request a hearing pursuant to Title 63G, Chapter 4, Administrative Procedures Act. Subject to Section 13-42-134, while the appeal is pending the applicant shall continue to provide debt-management services to individuals with whom it has agreements. If the denial is affirmed, subject to the administrator's order and Section 13-42-134, the applicant shall continue to provide debt-management services to individuals with whom it has agreements until, with the approval of the administrator, it transfers the agreements to another registered provider or returns to the individuals all unexpended money that is under the applicant's control.

(6) (a) The administrator may waive or reduce the insurance requirement in Subsection 13-42-111(1)(e) if the provider does not:

(i) maintain control of a trust account or receive money paid by an individual pursuant
to a plan for distribution to creditors;
(ii) make payments to creditors on behalf of individuals;
(iii) collect fees by means of automatic payment from individuals; and
(iv) execute any powers of attorney that may be utilized by the provider to collect fees
from or expend funds on behalf of an individual.
(b) A waiver or reduction in insurance requirements allowed by the administrator
under Subsection (6)(a) shall balance the reduction in risk posed by a provider meeting the
stated requirements against any continued need for insurance against employee and director
dishonesty.
Section 221. Section 13-42-113 is amended to read:
(1) Except as otherwise provided in Section 13-42-114, a provider that is required to
be registered under this chapter shall file a surety bond with the administrator, which [must]
shall:
(a) be in effect during the period of registration and for two years after the provider
ceases providing debt-management services to individuals in this state; and
(b) run to this state for the benefit of this state and of individuals who reside in this
state when they agree to receive debt-management services from the provider, as their interests
may appear.
(2) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), a
surety bond filed pursuant to Subsection (1) [must] shall:
(a) be in the amount of $100,000;
(b) be issued by a bonding, surety, or insurance company authorized to do business in
this state and rated at least A by a nationally recognized rating organization; and
(c) have payment conditioned upon noncompliance of the provider or its agent with
this chapter.
(3) If the principal amount of a surety bond is reduced by payment of a claim or a
judgment, the provider shall immediately notify the administrator and, within 30 days after
notice by the administrator, file a new or additional surety bond in an amount to comply with
the $100,000 requirement. If for any reason a surety terminates a bond, the provider shall
immediately file a new surety bond in the amount of $100,000.

(4) The administrator or an individual may obtain satisfaction out of the surety bond
procured pursuant to this section if:

(a) the administrator assesses expenses under Subsection 13-42-132(2)(a), issues a
final order under Subsection 13-42-133(1)(b), or recovers a final judgment under Subsection
13-42-133(1)(d) or (e) or Subsection 13-42-133(4); or

(b) an individual recovers a final judgment pursuant to Subsection 13-42-135(1),
Subsection 13-42-135(2), or Subsection 13-42-135(3)(a), (b), or (d).

(5) If claims against a surety bond exceed or are reasonably expected to exceed the
amount of the bond, the administrator, on the initiative of the administrator or on petition of
the surety, shall, unless the proceeds are adequate to pay all costs, judgments, and claims,
distribute the proceeds in the following order:

(a) to satisfaction of a final order or judgment under Subsection 13-42-133(1)(a), (d),
or (e) or Subsection 13-42-133(4);

(b) to final judgments recovered by individuals pursuant to Subsection 13-42-135(1),
Subsection 13-42-135(2), or Subsection 13-42-135(3)(a), (b) or (d), pro rata;

(c) to claims of individuals established to the satisfaction of the administrator, pro
rata; and

(d) if a final order or judgment is issued under Subsection 13-42-133(1), to the
expenses charged pursuant to Subsection 13-42-132(2)(a).

Section 222. Section 13-42-117 is amended to read:

13-42-117. Prerequisites for providing debt-management services.

(1) Before providing debt-management services, a registered provider shall give the
individual an itemized list of goods and services and the charges for each. The list [must]
shall be clear and conspicuous, be in a record the individual may keep whether or not the
individual assents to an agreement, and describe the goods and services the provider offers:
(a) free of additional charge if the individual enters into an agreement;
(b) for a charge if the individual does not enter into an agreement; and
(c) for a charge if the individual enters into an agreement, using the following terminology, as applicable, and format:

Set-up fee _________________________________________________
dollar amount of fee
Monthly service fee __________________________________________
dollar amount of fee or method of determining amount
Settlement fee _______________________________________________
dollar amount of fee or method of determining amount
Goods and services in addition to those provided in connection with a plan:

__________________________
(item) dollar amount or method of determining amount

__________________________
(item) dollar amount or method of determining amount.

(2) A provider may not furnish debt-management services unless the provider, through the services of a certified counselor:

(a) provides the individual with reasonable education about the management of personal finance;
(b) has prepared a financial analysis; and
(c) if the individual is to make regular, periodic payments to a creditor or a provider:
(i) has prepared a plan for the individual;
(ii) has made a determination, based on the provider's analysis of the information provided by the individual and otherwise available to it, that the plan is suitable for the individual and the individual will be able to meet the payment obligations under the plan; and
(iii) believes that each creditor of the individual listed as a participating creditor in the plan will accept payment of the individual's debts as provided in the plan.

(3) Before an individual assents to an agreement to engage in a plan, a provider shall:
(a) provide the individual with a copy of the analysis and plan required by Subsection
(2) in a record that identifies the provider and that the individual may keep whether or not the
individual assents to the agreement;
(b) inform the individual of the availability, at the individual's option, of assistance by
a toll-free communication system or in person to discuss the financial analysis and plan
required by Subsection (2); and
(c) with respect to all creditors identified by the individual or otherwise known by the
provider to be creditors of the individual, provide the individual with a list of:
(i) creditors that the provider expects to participate in the plan and grant concessions;
(ii) creditors that the provider expects to participate in the plan but not grant
concessions;
(iii) creditors that the provider expects not to participate in the plan; and
(iv) all other creditors.
(4) Before an individual assents to an agreement, the provider shall inform the
individual, in a record that contains nothing else, that is given separately, and that the
individual may keep whether or not the individual assents to the agreement:
(a) of the name and business address of the provider;
(b) that plans are not suitable for all individuals and the individual may ask the
provider about other ways, including bankruptcy, to deal with indebtedness;
(c) that establishment of a plan may adversely affect the individual's credit rating or
credit scores;
(d) that nonpayment of debt may lead creditors to increase finance and other charges
or undertake collection activity, including litigation;
(e) unless it is not true, that the provider may receive compensation from the creditors
of the individual; and
(f) that, unless the individual is insolvent, if a creditor settles for less than the full
amount of the debt, the plan may result in the creation of taxable income to the individual,
even though the individual does not receive any money.
(5) If a provider may receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment, default, or delinquency, the provider may comply with Subsection (4) by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.

(2) Using a debt-management plan may make it harder for you to obtain credit.

(3) We may receive compensation for our services from your creditors.

____________________________________________

Name and business address of provider

(6) If a provider will not receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment, default, or delinquency, a provider may comply with Subsection (4) by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.

(2) Using a debt-management plan may make it harder for you to obtain credit.

____________________________________________

Name and business address of provider

(7) If an agreement contemplates that creditors will settle debts for less than the full principal amount of debt owed, a provider may comply with Subsection (4) by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Our program is not right for all individuals, and you may ask us to provide information about bankruptcy and other ways to deal with your debts.

(2) Nonpayment of your debts under our program may
hurt your credit rating or credit scores;
lead your creditors to increase finance and other charges; and
lead your creditors to undertake activity, including lawsuits, to collect the debts.
(3) Reduction of debt under our program may result in taxable income to you, even though you will not actually receive any money.

Name and business address of provider

Section 223. Section 13-42-118 is amended to read:

13-42-118. Communication by electronic or other means.

(1) In this section:
(a) "Consumer" means an individual who seeks or obtains goods or services that are used primarily for personal, family, or household purposes.
(b) "Federal act" means the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq.

(2) A provider may satisfy the requirements of Section 13-42-117, 13-42-119, or 13-42-127 by means of the Internet or other electronic means if the provider obtains a consumer's consent in the manner provided by Section 101(c)(1) of the federal act.

(3) The disclosures and materials required by Sections 13-42-117, 13-42-119, and 13-42-127 shall be presented in a form that is capable of being accurately reproduced for later reference.

(4) With respect to disclosure by means of an Internet website, the disclosure of the information required by Subsection 13-42-117(4) [must] shall appear on one or more screens that:
(a) contain no other information; and
(b) the individual [must] is able to see before proceeding to assent to formation of an agreement.

(5) At the time of providing the materials and agreement required by Subsections 13-42-117(3) and (4), Section 13-42-119, and Section 13-42-127, a provider shall inform the
individual that upon electronic, telephonic, or written request, it will send the individual a
written copy of the materials, and shall comply with a request as provided in Subsection (6).

(6) If a provider is requested, before the expiration of 90 days after an agreement is
completed or terminated, to send a written copy of the materials required by Subsections
13-42-117(3) and (4), Section 13-42-119, or Section 13-42-127, the provider shall send them
at no charge within three business days after the request, but the provider need not comply
with a request more than once per calendar month or if it reasonably believes the request is
made for purposes of harassment. If a request is made more than 90 days after an agreement is
completed or terminated, the provider shall send within a reasonable time a written copy of the
materials requested.

(7) A provider that maintains an Internet website shall disclose on the home page of its
website or on a page that is clearly and conspicuously connected to the home page by a link
that clearly reveals its contents:

(a) its name and all names under which it does business;

(b) its principal business address, telephone number, and electronic-mail address, if
any; and

(c) the names of its principal officers.

(8) Subject to Subsection (9), if a consumer who has consented to electronic
communication in the manner provided by Section 101 of the federal act withdraws consent as
provided in the federal act, a provider may terminate its agreement with the consumer.

(9) If a provider wishes to terminate an agreement with a consumer pursuant to
Subsection (8), it shall notify the consumer that it will terminate the agreement unless the
consumer, within 30 days after receiving the notification, consents to electronic
communication in the manner provided in Section 101(c) of the federal act. If the consumer
consents, the provider may terminate the agreement only as permitted by Subsection

Section 224. Section 13-42-119 is amended to read:

13-42-119. Form and contents of agreement.
An agreement must:

(a) be in a record;

(b) be dated and signed by the provider and the individual;

(c) include the name of the individual and the address where the individual resides;

(d) include the name, business address, and telephone number of the provider;

(e) be delivered to the individual immediately upon formation of the agreement; and

(f) disclose:

(i) the services to be provided;

(ii) the amount, or method of determining the amount, of all fees, individually itemized, to be paid by the individual;

(iii) the schedule of payments to be made by or on behalf of the individual, including the amount of each payment, the date on which each payment is due, and an estimate of the date of the final payment;

(iv) if a plan provides for regular periodic payments to creditors:

(A) each creditor of the individual to which payment will be made, the amount owed to each creditor, and any concessions the provider reasonably believes each creditor will offer; and

(B) the schedule of expected payments to each creditor, including the amount of each payment and the date on which it will be made;

(v) each creditor that the provider believes will not participate in the plan and to which the provider will not direct payment;

(vi) how the provider will comply with its obligations under Subsection 13-42-127(1);

(vii) that the provider may terminate the agreement for good cause, upon return of unexpended money of the individual;

(viii) that the individual may cancel the agreement as provided in Section 13-42-120;

(ix) that the individual may contact the administrator with any questions or complaints regarding the provider; and

(x) the address, telephone number, and Internet address or website of the
(2) For purposes of Subsection (1)(e), delivery of an electronic record occurs when it is made available in a format in which the individual may retrieve, save, and print it and the individual is notified that it is available.

(3) If the administrator supplies the provider with any information required under Subsection (1)(f)(x), the provider may comply with that requirement only by disclosing the information supplied by the administrator.

(4) An agreement [must] shall provide that:

(a) the individual has a right to terminate the agreement at any time, without penalty or obligation, by giving the provider written or electronic notice, in which event:

(i) the provider will refund all unexpended money that the provider or its agent has received from or on behalf of the individual for the reduction or satisfaction of the individual's debt;

(ii) with respect to an agreement that contemplates that creditors will settle debts for less than the principal amount of debt, the provider will refund 65% of any portion of the set-up fee that has not been credited against the settlement fee; and

(iii) all powers of attorney granted by the individual to the provider are revoked and ineffective;

(b) the individual authorizes any bank in which the provider or its agent has established a trust account to disclose to the administrator any financial records relating to the trust account; and

(c) the provider will notify the individual within five days after learning of a creditor's final decision to reject or withdraw from a plan and that this notice will include:

(i) the identity of the creditor; and

(ii) the right of the individual to modify or terminate the agreement.

(5) An agreement may confer on a provider a power of attorney to settle the individual's debt for no more than 50% of the principal amount of the debt. An agreement may not confer a power of attorney to settle a debt for more than 50% of that amount, but may
Enrolled Copy

7338 confer a power of attorney to negotiate with creditors of the individual on behalf of the
7339 individual. An agreement [must] shall provide that the provider will obtain the assent of the
7340 individual after a creditor has assented to a settlement for more than 50% of the principal
7341 amount of the debt.
7342 (6) An agreement may not:
7343 (a) provide for application of the law of any jurisdiction other than the United States
7344 and this state;
7345 (b) except as permitted by Section 2 of the Federal Arbitration Act, 9 U.S.C. Section
7346 2, or Title 78B, Chapter 11, Utah Uniform Arbitration Act, contain a provision that modifies
7347 or limits otherwise available forums or procedural rights, including the right to trial by jury,
7348 that are generally available to the individual under law other than this chapter;
7349 (c) contain a provision that restricts the individual's remedies under this chapter or law
7350 other than this chapter; or
7351 (d) contain a provision that:
7352 (i) limits or releases the liability of any person for not performing the agreement or for
7353 violating this chapter; or
7354 (ii) indemnifies any person for liability arising under the agreement or this chapter.
7355 (7) All rights and obligations specified in Subsection (4) and Section 13-42-120 exist
7356 even if not provided in the agreement. A provision in an agreement which violates Subsection
7357 (4), (5), or (6) is void.
7358 Section 225. Section 13-42-120 is amended to read:

13-42-120. Cancellation of agreement -- Waiver.

7359 (1) An individual may cancel an agreement before midnight of the third business day
7360 after the individual assents to it, unless the agreement does not comply with Subsection (2) or
7361 Section 13-42-119 or Section 13-42-128, in which event the individual may cancel the
7362 agreement within 30 days after the individual assents to it. To exercise the right to cancel, the
7363 individual [must] shall give notice in a record to the provider. Notice by mail is given when
7364 mailed.
An agreement must be accompanied by a form that contains in bold-face type, surrounded by bold black lines:

Notice of Right to Cancel

You may cancel this agreement, without any penalty or obligation, at any time before midnight of the third business day that begins the day after you agree to it by electronic communication or by signing it.

To cancel this agreement during this period, send an e-mail to ____________________________ or mail or deliver a signed, dated copy of this notice, or any other written notice to ________________________________

Name of provider

at ______________________________ before midnight on ___________________.

Address of provider Date

If you cancel this agreement within the 3-day period, we will refund all money you already have paid us.

You also may terminate this agreement at any later time, but we may not be required to refund fees you have paid us.

I cancel this agreement,

________________________________________________________

Print your name

________________________________________________________

Signature

________________________________________________________

Date

If a personal financial emergency necessitates the disbursement of an individual's money to one or more of the individual's creditors before the expiration of three days after an agreement is signed, an individual may waive the right to cancel. To waive the right, the individual must send or deliver a signed, dated statement in the individual's own words...
describing the circumstances that necessitate a waiver. The waiver [must] shall explicitly waive the right to cancel. A waiver by means of a standard form record is void.

Section 226. Section 13-42-121 is amended to read:

13-42-121. Required language.

Unless the administrator, by rule, provides otherwise, the disclosures and documents required by this chapter [must] shall be in English. If a provider communicates with an individual primarily in a language other than English, the provider [must] shall furnish a translation into the other language of the disclosures and documents required by this chapter.

Section 227. Section 13-42-122 is amended to read:

13-42-122. Trust account.

(1) All money paid to a provider by or on behalf of an individual for distribution to creditors pursuant to a plan is held in trust. Within two business days after receipt, the provider shall deposit the money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services.

(2) Money held in trust by a provider is not property of the provider or its designee. The money is not available to creditors of the provider or designee, except an individual from whom or on whose behalf the provider received money, to the extent that the money has not been disbursed to creditors of the individual.

(3) A provider shall:

(a) maintain separate records of account for each individual to whom the provider is furnishing debt-management services;

(b) disburse money paid by or on behalf of the individual to creditors of the individual as disclosed in the agreement, except that:

(i) the provider may delay payment to the extent that a payment by the individual is not final; and

(ii) if a plan provides for regular periodic payments to creditors, the disbursement [must] shall comply with the due dates established by each creditor; and

(c) promptly correct any payments that are not made or that are misdirected as a result...
of an error by the provider or other person in control of the trust account and reimburse the
individual for any costs or fees imposed by a creditor as a result of the failure to pay or
misdirection.

(4) A provider may not commingle money in a trust account established for the benefit
of individuals to whom the provider is furnishing debt-management services with money of
other persons.

(5) A trust account shall at all times have a cash balance equal to the sum of
the balances of each individual's account.

(6) If a provider has established a trust account pursuant to Subsection (1), the
provider shall reconcile the trust account at least once a month. The reconciliation shall compare the cash balance in the trust account with the sum of the balances in each individual's account. If the provider or its designee has more than one trust account, each trust account shall be individually reconciled.

(7) If a provider discovers, or has a reasonable suspicion of, embezzlement or other unlawful appropriation of money held in trust, the provider immediately shall notify the administrator by a method approved by the administrator. Unless the administrator by rule provides otherwise, within five days thereafter, the provider shall give notice to the administrator describing the remedial action taken or to be taken.

(8) If an individual terminates an agreement or it becomes reasonably apparent to a provider that a plan has failed, the provider shall promptly refund to the individual all money paid by or on behalf of the individual which has not been paid to creditors, less fees that are payable to the provider under Section 13-42-123.

(9) Before relocating a trust account from one bank to another, a provider shall inform the administrator of the name, business address, and telephone number of the new bank. As soon as practicable, the provider shall inform the administrator of the account number of the trust account at the new bank.

Section 228. Section 13-42-132 is amended to read:

(1) The administrator may act on its own initiative or in response to complaints and may receive complaints, take action to obtain voluntary compliance with this chapter, refer cases to the attorney general, and seek or provide remedies as provided in this chapter.

(2) The administrator may investigate and examine, in this state or elsewhere, by subpoena or otherwise, the activities, books, accounts, and records of a person that provides or offers to provide debt-management services, or a person to which a provider has delegated its obligations under an agreement or this chapter, to determine compliance with this chapter. Information that identifies individuals who have agreements with the provider shall not be disclosed to the public. In connection with the investigation, the administrator may:

(a) charge the person the reasonable expenses necessarily incurred to conduct the examination;

(b) require or permit a person to file a statement under oath as to all the facts and circumstances of a matter to be investigated; and

(c) seek a court order authorizing seizure from a bank at which the person maintains a trust account required by Section 13-42-122, any or all money, books, records, accounts, and other property of the provider that is in the control of the bank and relates to individuals who reside in this state.

(3) The administrator may adopt rules to implement the provisions of this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) The administrator may enter into cooperative arrangements with any other federal or state agency having authority over providers and may exchange with any of those agencies information about a provider, including information obtained during an examination of the provider.

(5) The administrator shall establish fees in accordance with Section 63J-1-504 to be paid by providers for the expense of administering this chapter.

Price Index for All Urban Consumers or, if that index is not available, another index adopted
by rule by the administrator. The administrator shall adopt a base year and adjust the dollar
amounts, effective on July 1 of each year, if the change in the index from the base year, as of
December 31 of the preceding year, is at least 10%. The dollar amount [must] shall be
rounded to the nearest $100, except that the amounts in Section 13-42-123 [must] shall be
rounded to the nearest dollar.

(7) The administrator shall notify registered providers of any change in dollar amounts
made pursuant to Subsection (6) and make that information available to the public.

Section 229. Section 13-42-137 is amended to read:


(1) An action or proceeding brought pursuant to Subsection 13-42-133(1), (2), or (3)
[must] shall be commenced within four years after the conduct that is the basis of the
administrator's complaint.

(2) An action brought pursuant to Section 13-42-135 [must] shall be commenced
within two years after the latest of:

(a) the individual's last transmission of money to a provider;

(b) the individual's last transmission of money to a creditor at the direction of the
provider;

(c) the provider's last disbursement to a creditor of the individual;

(d) the provider's last accounting to the individual pursuant to Subsection
13-42-127(1);

(e) the date on which the individual discovered or reasonably should have discovered
the facts giving rise to the individual's claim; or

(f) termination of actions or proceedings by the administrator with respect to a
violation of the chapter.

(3) The period prescribed in Subsection (2)(e) is tolled during any period during which
the provider or, if different, the defendant has materially and willfully misrepresented
information required by this chapter to be disclosed to the individual, if the information so
misrepresented is material to the establishment of the liability of the defendant under this chapter.

Section 230. Section 13-42-138 is amended to read:

In applying and construing this uniform act, consideration [must] shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 231. Section 14-1-20 is amended to read:

14-1-20. Preliminary notice requirement.
(1) Any person furnishing labor, service, equipment, or material for which a payment bond claim may be made under this chapter shall provide preliminary notice to the designated agent as prescribed by Section 38-1-32, except that this section does not apply:
   (a) to a person performing labor for wages; or
   (b) if a notice of commencement is not filed as prescribed in Section 38-1-31 for the project or improvement for which labor, service, equipment, or material is furnished.
(2) Any person who fails to provide the preliminary notice required by Subsection (1) may not make a payment bond claim under this chapter.
(3) The preliminary notice required by Subsection (1) [must] shall be provided prior to commencement of any action on the payment bond.

Section 232. Section 14-2-5 is amended to read:

14-2-5. Preliminary notice requirement.
(1) Any person furnishing labor, service, equipment, or material for which a payment bond claim may be made under this chapter shall provide preliminary notice to the designated agent as prescribed by Section 38-1-32, except that this section does not apply:
   (a) to a person performing labor for wages; or
   (b) if a notice of commencement is not filed as prescribed in Section 38-1-31 for the project or improvement for which labor, service, equipment, or material is furnished.
(2) Any person who fails to provide the preliminary notice required by Subsection (1)
may not make a payment bond claim under this chapter.

(3) The preliminary notice required by Subsection (1) [must] **shall** be provided prior to commencement of any action on the payment bond.

Section 233. Section 15-2-5 is amended to read:

**15-2-5. Blood donation by minor.**

Notwithstanding any other provision of the law, any minor who has reached the age of 18 years may give consent to the donation of his blood and to the necessary medical procedures to accomplish such donation. Consent **shall not** **may not** be subject to disaffirmance because of minority. The consent of the parent or parents of a minor **shall not** is **not necessary in order to authorize the donation of blood and such medical procedures.**

Section 234. Section 15-3-4 is amended to read:

**15-3-4. Effective date of chapter.**

This chapter **shall not** **does not** apply to conveyances, releases, sales or contracts made prior to July 1, 1929.

Section 235. Section 15-4-2 is amended to read:

**15-4-2. Discharge of co-obligors by judgment.**

A judgment against one or more of several obligors, or against one or more of joint or of joint and several obligors, **shall not** **may not** discharge a co-obligor who was not a party to the proceeding wherein the judgment was rendered.

Section 236. Section 15-4-4 is amended to read:

**15-4-4. Release of co-obligor -- Reservation of rights.**

Subject to the provisions of Section 15-4-3, the obligee's release or discharge of one or more of several obligors, or of one or more of joint or of joint and several obligors, **shall not** does **not discharge co-obligors against whom the obligee in writing and as part of the same transaction as the release or discharge expressly reserves his rights; and in the absence of such a reservation of rights shall discharge co-obligors only to the extent provided in Section 15-4-5.

Section 237. Section 15-4-7 is amended to read:
15-4-7. Effective date of chapter.
This chapter [shall not] does not apply to obligations arising prior to July 1, 1929.

Section 238. Section 15-9-105 is amended to read:

15-9-105. Registration as an athlete agent -- Form -- Requirements.

(1) An applicant for registration shall submit an application for registration to the division in a form prescribed by the division. An application filed under this section is a public record under Title 63G, Chapter 2, Government Records Access and Management Act. The application [must] shall be in the name of an individual and, except as otherwise provided in Subsection (2), signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:

(a) the name of the applicant and the address of the applicant's principal place of business;
(b) the name of the applicant's business or employer, if applicable;
(c) any business or occupation engaged in by the applicant for the five years immediately preceding the date of submission of the application;
(d) a description of the applicant's:
(i) formal training as an athlete agent;
(ii) practical experience as an athlete agent; and
(iii) educational background relating to the applicant's activities as an athlete agent;
(e) the names and addresses of three individuals not related to the applicant who are willing to serve as references;
(f) the name, sport, and last-known team for each individual for whom the applicant acted as an athlete agent during the five years next preceding the date of submission of the application;
(g) the names and addresses of all persons who are:
(i) with respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business; and
(ii) with respect to a corporation employing the athlete agent, the officers, directors,
and any shareholder of the corporation having an interest of 5% or greater;

(h) whether the applicant or any person named pursuant to Subsection (1)(g) has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;

(i) whether there has been any administrative or judicial determination that the applicant or any person named pursuant to Subsection (1)(g) has made a false, misleading, deceptive, or fraudulent representation;

(j) any instance in which the conduct of the applicant or any person named pursuant to Subsection (1)(g) resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;

(k) any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to Subsection (1)(g) arising out of occupational or professional conduct; and

(l) whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to Subsection (1)(g) as an athlete agent in any state.

(2) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to Subsection (1). The division shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:

(a) was submitted in the other state within six months immediately preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;

(b) contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and

(c) was signed by the applicant under penalty of perjury.
Section 239. Section 15-9-106 is amended to read:


(1) Except as otherwise provided in Subsection (2), the division shall issue a certificate of registration to an individual who complies with Subsection 15-9-105(1) or whose application has been accepted under Subsection 15-9-105(2).

(2) The division may refuse to issue a certificate of registration if the division determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the division may consider whether the applicant has:

(a) been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;
(b) made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;
(c) engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;
(d) engaged in conduct prohibited by Section 15-9-114;
(e) had a registration or licensure as an athlete agent suspended, revoked, or denied or been refused renewal of registration or licensure as an athlete agent in any state;
(f) engaged in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or educational institution; or
(g) engaged in conduct that significantly, adversely reflects on the applicant's credibility, honesty, or integrity.

(3) In making a determination under Subsection (2), the division shall consider:

(a) how recently the conduct occurred;
(b) the nature of the conduct and the context in which it occurred; and
(c) any other relevant conduct of the applicant.

(4) An athlete agent may apply to renew a registration by submitting an application for
renewal in a form prescribed by the division. An application filed under this section is a
public record under Title 63G, Chapter 2, Government Records Access and Management Act.
The application for renewal [must] shall be signed by the applicant under penalty of perjury
and [must] shall contain current information on all matters required in an original registration.
(5) An individual who has submitted an application for renewal of registration or
licensure in another state, in lieu of submitting an application for renewal in the form
prescribed pursuant to Subsection (4), may file a copy of the application for renewal and a
valid certificate of registration or licensure from the other state. The division shall accept the
application for renewal from the other state as an application for renewal in this state if the
application to the other state:
(a) was submitted in the other state within six months immediately preceding the filing
in this state and the applicant certifies the information contained in the application for renewal
is current;
(b) contains information substantially similar to or more comprehensive than that
required in an application for renewal submitted in this state; and
(c) was signed by the applicant under penalty of perjury.
(6) A certificate of registration or a renewal of a registration is valid for two years.
Section 240. Section 15-9-109 is amended to read:
(1) An application for registration or renewal of registration [must] shall be
accompanied by a fee in an amount determined by the division in accordance with Section
63J-1-504.
(2) The division shall establish fees for:
(a) an initial application for registration;
(b) an application for registration based upon a certificate of registration or licensure
issued by another state;
(c) an application for renewal of registration; and
(d) an application for renewal of registration based upon an application for renewal of
Section 241. Section 15-9-110 is amended to read:


(1) An agency contract [must] shall be in a record, signed or otherwise authenticated by the parties.

(2) An agency contract [must] shall state or contain:

(a) the amount and method of calculating the consideration to be paid by the student-athlete for services to be provided by the athlete agent under the contract and any other consideration the athlete agent has received or will receive from any other source for entering into the contract or for providing the services;

(b) the name of any person not listed in the application for registration or renewal of registration who will be compensated because the student-athlete signed the agency contract;

(c) a description of any expenses that the student-athlete agrees to reimburse;

(d) a description of the services to be provided to the student-athlete;

(e) the duration of the contract; and

(f) the date of execution.

(3) An agency contract [must] shall contain, in close proximity to the signature of the student-athlete, a conspicuous notice in boldface type in capital letters stating:

WARNING TO STUDENT-ATHLETE

IF YOU SIGN THIS CONTRACT:

(1) YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-ATHLETE IN YOUR SPORT;

(2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT [MUST] SHALL NOTIFY YOUR ATHLETIC DIRECTOR; AND

(3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.
(4) An agency contract that does not conform to this section is voidable by the student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required to pay any consideration under the contract or to return any consideration received from the athlete agent to induce the student-athlete to enter into the contract.

(5) The athlete agent shall give a record of the signed or otherwise authenticated agency contract to the student-athlete at the time of execution.

Section 242. Section 15-9-118 is amended to read:

15-9-118. Uniformity of application and construction.

In applying and construing this uniform act, consideration [must] shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enactment.

Section 243. Section 16-6a-709 is amended to read:

16-6a-709. Action by written ballot.

(1) Unless otherwise provided by the bylaws, any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the nonprofit corporation delivers a written ballot to every member entitled to vote on the matter.

(2) A written ballot described in Subsection (1) shall:

(a) set forth each proposed action; and

(b) provide an opportunity to vote for or against each proposed action.

(3) (a) Approval by written ballot pursuant to this section shall be valid only when:

(i) the time, as determined under Subsection (8), by which all ballots must be received by the nonprofit corporation has passed so that a quorum can be determined; and

(ii) the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(b) Unless otherwise provided in this chapter or in accordance with Section 16-6a-716, for purposes of taking action by written ballot the number of votes cast by written ballot pursuant to this section constitute a quorum for action on the matter.
(4) All solicitations for votes by written ballot shall:

(a) indicate the number of responses needed to meet the quorum requirements;

(b) state the percentage of approvals necessary to approve each matter other than election of directors;

(c) specify the time by which a ballot must be received by the nonprofit corporation in order to be counted; and

(d) be accompanied by written information sufficient to permit each person casting the ballot to reach an informed decision on the matter.

(5) Unless otherwise provided by the bylaws, a written ballot may not be revoked.

(6) Action taken under this section has the same effect as action taken at a meeting of members and may be described as such in any document.

(7) Unless otherwise provided by the bylaws, a written ballot delivered to every member entitled to vote on the matter or matters therein, as described in this section, may also be used in connection with any annual, regular, or special meeting of members, thereby allowing members the choice of either voting in person or by written ballot delivered by a member to the nonprofit corporation in lieu of attendance at such meeting. Any written ballot shall comply with the requirements of Subsection (2) and shall be counted equally with the votes of members in attendance at any meeting for every purpose, including satisfaction of a quorum requirement.

(8) (a) Members [must] shall be provided a fair and reasonable amount of time before the day on which the nonprofit corporation must receive ballots.

(b) An amount of time is considered to be fair and reasonable if:

(i) members are given at least 15 days from the day on which the notice is mailed, if the notice is mailed by first-class or registered mail;

(ii) members are given at least 30 days from the day on which the notice is mailed, if the notice is mailed by other than first-class or registered mail; or

(iii) considering all the circumstances, the amount of time is otherwise reasonable.

Section 244. Section 16-6a-808 is amended to read:
16-6a-808. Removal of directors.

(1) Directors elected by voting members or directors may be removed as provided in Subsections (1)(a) through (g).

(a) The voting members may remove one or more directors elected by them with or without cause unless the bylaws provide that directors may be removed only for cause.

(b) If a director is elected by a voting group, only that voting group may participate in the vote to remove that director.

(c) A director may be removed only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(d) A director elected by voting members may be removed by the voting members only:

(i) at a meeting called for the purpose of removing that director; and

(ii) if the meeting notice states that the purpose, or one of the purposes, of the meeting is removal of the director.

(e) An entire board of directors may be removed under Subsections (1)(a) through (d).

(f)(i) Except as provided in Subsection (1)(f)(ii), a director elected by the board of directors may be removed with or without cause by the vote of a majority of the directors then in office or such greater number as is set forth in the bylaws.

(ii) A director elected by the board of directors to fill the vacancy of a director elected by the voting members may be removed without cause by the voting members but not the board of directors.

(g) Notwithstanding Subsections (1)(a) through (f), if provided in the bylaws, any director no longer qualified to serve, under standards set forth in the bylaws, may be removed by a vote of a majority of the directors then in office or such greater number as set forth in the bylaws.

(h) A director who is removed pursuant to this section may deliver to the division for filing a statement to that effect pursuant to Section 16-6a-1608.

(2) Unless otherwise provided in the bylaws:
(a) an appointed director may be removed without cause by the person appointing the
director;
(b) the person described in Subsection (2)(a) shall remove the director by giving
written notice of the removal to:
   (i) the director; and
   (ii) the nonprofit corporation; and
(c) unless the written notice described in Subsection (2)(b) specifies a future effective
date, a removal is effective when the notice is received by both:
   (i) the director to be removed; and
   (ii) the nonprofit corporation.
(3) A designated director, as provided in Subsection 16-6a-804(5), may be removed by
an amendment to the bylaws deleting or changing the designation.
(4) Removal of a director under this section is not affected by
Subsection 16-6a-805(5).
Section 245. Section 16-6a-1419 is amended to read:

16-6a-1419. Deposit with state treasurer.
Assets of a dissolved nonprofit corporation that are to be transferred to a
creditor, claimant, or member of the nonprofit corporation shall be reduced to cash and
deposited with the state treasurer in accordance with Title 67, Chapter 4a, Unclaimed Property
Act, if the creditor, claimant, or member:
   (1) cannot be found; or
   (2) is not legally competent to receive the assets.
Section 246. Section 16-7-10 is amended to read:

16-7-10. Death of bishop, trustee, not incorporated -- Succession to property.
In case of the death, resignation or removal of any such archbishop, bishop, president,
trustee in trust, president of stake, president of congregation, overseer, presiding elder or
clergyman who at the time of his death, resignation or removal was holding the title to trust
property for the use or benefit of any church or religious society, and was not incorporated as a
corporation sole, the title to any and all such property held by him, of every nature and kind, [shall not] does not revert to the grantor nor vest in the heirs of such deceased person, but shall be deemed to be in abeyance after such death, resignation or removal until his successor is duly appointed to fill such vacancy, and upon the appointment of such successor the title to all the property held by his predecessor shall at once, without any other act or deed, vest in the person appointed to fill such vacancy.

Section 247. Section 16-10a-103 is amended to read:

**16-10a-103. Notice.**

(1) (a) Notice given under this chapter must shall be in writing unless oral notice is reasonable under the circumstances.

(b) Notice by electronic transmission is written notice.

(2) (a) Subject to compliance with any requirement that notice be in writing, notice may be communicated in person, by telephone, by any form of electronic transmission, or by mail or private carrier.

(b) If the forms of personal notice listed in Subsection (2)(a) are impracticable, notice may be communicated:

(i) (A) by a newspaper of general circulation in the county, or similar subdivision, in which the corporation's principal office is located; and

(B) by publication in accordance with Section 45-1-101;

(ii) by radio, television, or other form of public broadcast communication in the county or subdivision; or

(iii) if the corporation has no office in this state, in the manner allowed by Subsection (2)(b)(i) or (ii) but in Salt Lake County.

(3) (a) Written notice by a domestic or foreign corporation to its shareholders or directors, if in a comprehensible form, is effective as to each shareholder or director:

(i) when mailed, if addressed to the shareholder's or director's address shown in the corporation's current record of the shareholder or director; or

(ii) when electronically transmitted to the shareholder or director, in a manner and to
an address provided by the shareholder or director in an unrevoked consent.

(b) Consent under Subsection (3)(a)(ii) is considered revoked if:

(i) the corporation is unable to deliver by electronic transmission two consecutive

(ii) the corporation's inability to deliver notice by electronic transmission under

Subsection (3)(b)(i) is known by the:

(A) corporation's secretary;

(B) an assistant secretary or transfer agent of the corporation; or

(C) any other person responsible for providing notice.

(c) Notwithstanding Subsection (3)(b), a corporation's failure to treat consent under

Subsection (3)(a) as revoked does not invalidate any meeting or other act.

(d) Delivery of a notice to shareholders may be excused in accordance with Subsection

16-10a-705(5).

(4) Written notice to a domestic or foreign corporation authorized to transact business

in this state may be addressed to the corporation's:

(a) registered agent; or

(b) secretary at its principal office.

(5) Except as provided in Subsection (3), written notice, if in a comprehensible form,

is effective at the earliest of the following:

(a) when received;

(b) five days after it is mailed; or

(c) on the date shown on the return receipt if sent by registered or certified mail, return

receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice is effective when communicated if communicated in a comprehensible

manner.

(7) Notice by publication is effective on the date of first publication.

(8) (a) If this chapter prescribes notice requirements for particular circumstances,
(b) If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this chapter, those requirements govern.

Section 248. Section 16-10a-120 is amended to read:

16-10a-120. Filing requirements.

(1) A document must satisfy the requirements of this section, and of any other section of this chapter that adds to or varies these requirements, to be entitled to filing by the division.

(2) This chapter must require or permit filing the document with the division.

(3) (a) The document must contain the information required by this chapter.

(b) A document may contain information in addition to that required in Subsection (3)(a).

(4) The document must be typewritten or machine printed.

(5) (a) The document must be in the English language.

(b) A corporate name need not be in English if written in English letters, Arabic or Roman numerals.

(c) The certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(6) The document must be executed, or must be a true copy made by photographic, xerographic, electronic, or other process that provides similar copy accuracy of a document that has been executed:

(a) by the chairman of the board of directors of a domestic or foreign corporation, by all of its directors, or by one of its officers;

(b) if directors have not been selected or the corporation has not been formed, by an incorporator;

(c) if the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary;

(d) if the document is that of a registered agent, by the registered agent, if the person is an individual, or by a person authorized by the registered agent to execute the document, if the
7898 registered agent is an entity; or
7899 (e) by an attorney in fact if the corporation retains the power of attorney with the
7900 corporation's records.
7901 (7) The document shall state beneath or opposite the signature of the person executing
7902 the document the signer's name and the capacity in which the document is signed.
7903 (8) The document may, but need not, contain:
7904 (a) the corporate seal;
7905 (b) an attestation by the secretary or an assistant secretary; or
7906 (c) an acknowledgment, verification, or proof.
7907 (9) The signature of each person signing the document, whether or not the document
7908 contains an acknowledgment, verification, or proof permitted by Subsection (8), constitutes
7909 the affirmation or acknowledgment of the person, under penalties of perjury, that the
7910 document is the person's act and deed or the act and deed of the entity on behalf of which the
7911 document is executed, and that the facts stated in the document are true.
7912 (10) If the division has prescribed a mandatory form or cover sheet for the document
7913 under Section 16-10a-121, the document [must] shall be in or on the prescribed form or [must]
7914 shall have the required cover sheet.
7915 (11) The document [must] shall be delivered to the division for filing and [must] shall
7916 be accompanied by one exact or conformed copy, except as provided in Section 16-10a-1510,
7917 the correct filing fee, and any franchise tax, license fee, or penalty required by this chapter or
7918 other law.
7919 (12) Except with respect to a filing pursuant to Section 16-10a-1510, the document
7920 [must] shall state, or be accompanied by a writing stating, the address to which the division
7921 may send a copy upon completion of the filing.
7922 Section 249. Section 16-10a-201 is amended to read:
7923 16-10a-201. Incorporators.
7924 One or more persons may act as incorporators of a corporation by delivering to the
7925 division for filing articles meeting the requirements of Section 16-10a-202. An incorporator
who is a natural person [must] shall be at least 18 years old.

Section 250. Section 16-10a-202 is amended to read:

**16-10a-202. Articles of incorporation.**

(1) The articles of incorporation shall set forth:

(a) the purpose or purposes for which the corporation is organized;

(b) a corporate name for the corporation that satisfies the requirements of Section 16-10a-401;

(c) the number of shares the corporation is authorized to issue;

(d) the information required by Section 16-10a-601 with respect to each class of shares the corporation is authorized to issue;

(e) the information required by Subsection 16-17-203(1); and

(f) the name and address of each incorporator.

(2) The articles of incorporation may set forth:

(a) the names and addresses of the individuals who are to serve as the initial directors;

(b) provisions not inconsistent with law regarding:

(i) managing the business and regulating the affairs of the corporation;

(ii) defining, limiting, and regulating the powers of the corporation, its board of directors, and its shareholders;

(iii) a par value for authorized shares or classes of shares; and

(iv) the imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions; and

(c) any provision that under this chapter is permitted to be in the articles of incorporation or required or permitted to be set forth in the bylaws including elective provisions which, to be effective, [must] shall be included in the articles of incorporation, as provided in this chapter.

(3) It shall be sufficient under Subsection (1)(a) to state, either alone or with other purposes, that the purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the Utah Revised Business Corporation Act, and
by such statement all lawful acts and activities shall be within the purposes of the corporation, except for express limitations, if any.

(4) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

(5) The articles of incorporation shall be signed by each incorporator and meet the filing requirements of Section 16-10a-120.

(6) The appointment of the registered agent shall be signed by the registered agent on the articles of incorporation or on an attached acknowledgement.

(7) If this chapter conditions any matter upon the presence of a provision in the bylaws, the condition is satisfied if the provision is present either in the articles of incorporation or the bylaws. If this chapter conditions any matter upon the absence of a provision in the bylaws, the condition is satisfied only if the provision is absent from both the articles of incorporation and the bylaws.

Section 251. Section **16-10a-401** is amended to read:

**16-10a-401. Corporate name.**

(1) The name of a corporation:

(a) except for the name of a depository institution as defined in Section 7-1-103, [must] shall contain:

(i) the word:

(A) "corporation";

(B) "incorporated"; or

(C) "company";

(ii) the abbreviation:

(A) "corp.";

(B) "inc."; or

(C) "co."; or

(iii) words or abbreviations of like import to the words or abbreviations listed in Subsections (1)(a)(i) and (ii) in another language;
(b) may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by:

(i) Section 16-10a-301; and

(ii) the corporation's articles of incorporation;

(c) without the written consent of the United States Olympic Committee, may not contain the words:

(i) "Olympic";

(ii) "Olympiad"; or

(iii) "Citius Altius Fortius"; and

(d) without the written consent of the Division of Consumer Protection issued in accordance with Section 13-34-114, may not contain the words:

(i) "university";

(ii) "college"; or

(iii) "institute."

(2) Except as authorized by Subsections (3) and (4), the name of a corporation shall be distinguishable, as defined in Subsection (5), upon the records of the division from:

(a) the name of any domestic corporation incorporated in or foreign corporation authorized to transact business in this state;

(b) the name of any domestic or foreign nonprofit corporation incorporated or authorized to transact business in this state;

(c) the name of any domestic or foreign limited liability company formed or authorized to transact business in this state;

(d) the name of any limited partnership formed or authorized to transact business in this state;

(e) any name reserved or registered with the division for a corporation, limited liability company, or general or limited partnership, under the laws of this state; and

(f) any business name, fictitious name, assumed name, trademark, or service mark registered by the division.
A corporation may apply to the division for authorization to file its articles of incorporation under, or to register or reserve, a name that is not distinguishable upon its records from one or more of the names described in Subsection (2).

(b) The division shall approve the application filed under Subsection (3)(a) if:

(i) the other person whose name is not distinguishable from the name under which the applicant desires to file, or which the applicant desires to register or reserve:

(A) consents to the filing, registration, or reservation in writing; and

(B) submits an undertaking in a form satisfactory to the division to change its name to a name that is distinguishable from the name of the applicant; or

(ii) the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to make the requested filing in this state under the name applied for.

(4) A corporation may make a filing under the name, including the fictitious name, of another domestic or foreign corporation that is used or registered in this state if:

(a) the other corporation is incorporated or authorized to transact business in this state; and

(b) the filing corporation:

(i) has merged with the other corporation; or

(ii) has been formed by reorganization of the other corporation.

(5) (a) A name is distinguishable from other names, trademarks, and service marks on the records of the division if it:

(i) contains one or more different letters or numerals; or

(ii) has a different sequence of letters or numerals from the other names on the division's records.

(b) Differences which are not distinguishing are:

(i) the words or abbreviations of the words:

(A) "corporation";

(B) "company";
(C) "incorporated";
(D) "limited partnership";
(E) "L.P.";
(F) "limited";
(G) "ltd.";
(H) "limited liability company";
(I) "limited company";
(J) "L.C."; or
(K) "L.L.C.";
(ii) the presence or absence of the words or symbols of the words "the," "and," or "a";
(iii) differences in punctuation and special characters;
(iv) differences in capitalization;
(v) differences between singular and plural forms of words for a corporation:
(A) incorporated in or authorized to do business in this state on or after May 4, 1998;
(B) that changes its name on or after May 4, 1998;
(vi) differences in whether the letters or numbers immediately follow each other or are
separated by one or more spaces if:
(A) the sequence of letters or numbers is identical; and
(B) the corporation:
(I) is incorporated in or authorized to do business in this state on or after May 3, 1999;
(B) changes its name on or after May 3, 1999; or
(vii) differences in abbreviations, for a corporation:
(A) incorporated in or authorized to do business in this state on or after May 1, 2000;
(B) that changes its name on or after May 1, 2000.
(c) The director of the division has the power and authority reasonably necessary to
interpret and efficiently administer this section and to perform the duties imposed on the division by this section.

(6) A name that implies that the corporation is an agency of this state or of any of its political subdivisions, if it is not actually such a legally established agency or subdivision, may not be approved for filing by the division.

(7) (a) The requirements of Subsection (1)(d) do not apply to a corporation incorporated in or authorized to do business in this state on or before May 4, 1998, until December 31, 1998.

(b) On or after January 1, 1999, any corporation incorporated in or authorized to do business in this state shall comply with the requirements of Subsection (1)(d).

Section 252. Section 16-10a-601 is amended to read:

16-10a-601. Authorized shares.

(1) The articles of incorporation [must] shall prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation [must] shall prescribe a distinguishing designation for each class, and prior to the issuance of shares of a class the preferences, limitations, and relative rights of that class [must] shall be described in the articles of incorporation. All shares of a class [must] shall have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by this section and Section 16-10a-602.

(2) The articles of incorporation [must] shall authorize:

(a) one or more classes of shares that together have unlimited voting rights; and

(b) one or more classes of shares, which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.

(3) The articles of incorporation may authorize one or more classes of shares and one or more series of shares within any class that:

(a) have special, conditional, or limited voting rights, or no right to vote, except to the
(b) are redeemable or convertible as specified in the articles of incorporation:

(i) at the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event;

(ii) for money, indebtedness, securities, or other property; or

(iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

(c) entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or

(d) have preference over any other class or series of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(4) The description of the designations, preferences, limitations, and relative rights of share classes or series of shares in Subsection (3) is not exhaustive.

Section 253. Section 16-10a-602 is amended to read:

16-10a-602. Terms of class or series determined by board of directors.

(1) If the articles of incorporation so provide, the board of directors, without shareholder action but subject to any limitations and restrictions stated in the articles of incorporation, may amend the corporation's articles of incorporation pursuant to the authority granted to the board of directors by Subsection 16-10a-1002(1)(e) to do any of the following:

(a) designate in whole or in part, the preferences, limitations, and relative rights, within the limits set forth in Section 16-10a-601, of any class of shares before the issuance of any shares of that class;

(b) create one or more series within a class of shares, fix the number of shares of each such series, and designate, in whole or part, the preferences, limitations, and relative rights of the series, within the limits set forth in Section 16-10a-601, all before the issuance of any shares of that series;

(c) alter or revoke the preferences, limitations, and relative rights granted to or imposed upon any wholly unissued class of shares or any wholly unissued series of any class
of shares; or

(d) increase or decrease the number of shares constituting any series, the number of
shares of which was originally fixed by the board of directors, either before or after the
issuance of shares of the series, provided that the number may not be decreased below the
number of shares of the series then outstanding, or increased above the total number of
authorized shares of the applicable class of shares available for designation as a part of the
series.

(2) Each series of a class [must] shall be given a distinguishing designation.

(3) All shares of a series [must] shall have preferences, limitations, and relative rights
identical with those of other shares of the same series and, except to the extent otherwise
provided in the description of the series, with those of other series of the same class.

(4) Before issuing any shares of a class or series created under this section, or having
preferences, limitations, or relative rights designated by the board of directors as provided in
this section, and before any amendment to articles of incorporation contemplated by
Subsection (1) shall be effective, the corporation [must] shall deliver to the division for filing,
in accordance with the procedure set forth in Section 16-10a-1006, articles of amendment that
set forth:

(a) the name of the corporation;

(b) the text of the amendment adopted by the board of directors pursuant to Subsection
(1);

(c) the date the amendment was adopted by the board of directors;

(d) a statement that the amendment was duly adopted by the board of directors without
shareholder action and that shareholder action was not required; and

(e) if the amendment alters or revokes the preferences, limitations, or relative rights
granted to or imposed upon any wholly unissued class of shares or any wholly unissued series
of any class of shares, a statement that none of the shares of any class or series of shares so
affected has been issued.

Section 254. Section 16-10a-603 is amended to read:
16-10a-603. Issued and outstanding shares.

(1) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or cancelled.

(2) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of Subsection (3) and to Section 16-10a-640.

(3) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution [must] shall be outstanding.

Section 255. Section 16-10a-604 is amended to read:

16-10a-604. Fractional shares.

(1) A corporation may:

(a) issue fractions of a share or pay in money the value of fractions of a share;

(b) arrange for disposition of fractional shares by the shareholders; or

(c) issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(2) Each certificate representing scrip [must] shall be conspicuously labeled "scrip" and [must] shall contain the information required to be included on a share certificate by Subsections 16-10a-625(2) and (3) and Section 16-10a-627.

(3) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(4) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

(a) that the scrip will become void if not exchanged for full shares before a specified date; and

(b) that the shares for which the scrip is exchangeable may be sold and the proceeds
Section 256. Section 16-10a-620 is amended to read:

16-10a-620. Subscriptions for shares.

(1) A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree or the corporation consents to revocation of the subscription and provided the subscription is not considered revocable under the federal securities laws.

(2) The acceptance by the corporation of a subscription entered into before incorporation and the authorization of the issuance of shares pursuant thereto are subject to Section 16-10a-621.

(3) The board of directors may determine the payment terms of subscriptions for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors shall be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(4) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(5) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid more than 20 days after the corporation sends written demand for payment to the subscriber.

(6) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to Section 16-10a-621.

Section 257. Section 16-10a-621 is amended to read:

16-10a-621. Issuance of shares.

(1) The powers granted in this section to the board of directors may be reserved to the
shareholders by the articles of incorporation.

(2) The board of directors may authorize the issuance of shares for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts or arrangements for services to be performed, or other securities of the corporation. The terms and conditions of any tangible or intangible property or benefit to be provided in the future to the corporation, including contracts or arrangements for services to be performed, shall be set forth in writing. However, the failure to set forth the terms and conditions in writing does not affect the validity of the issuance of any shares issued for any consideration, or their status as fully paid and nonassessable shares.

(3) Before the corporation issues shares, the board of directors shall determine that the consideration received or to be received for the shares to be issued is adequate. The board of directors' determination regarding the adequacy of consideration for the issuance of shares is conclusive for the purpose of determining whether the shares are validly issued, fully paid, and nonassessable.

(4) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

(5) The corporation may place in escrow shares issued in consideration for contracts or arrangements for future services or benefits or in consideration for a promissory note, or make other arrangements to restrict the transfer of the shares issued for any such consideration, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid, or the benefits are received. If specified future services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be cancelled in whole or part.

(6) The board of directors may authorize a committee of the board of directors, or an officer of the corporation, to authorize or approve the issuance or sale, or contract for sale of shares, within limits specifically prescribed by the board of directors.

Section 258. Section 16-10a-625 is amended to read:

16-10a-625. Form and content of certificates.
(1) Shares may but need not be represented by certificates. Unless this chapter or another applicable statute expressly provides otherwise, the rights and obligations of shareholders are not affected by whether or not their shares are represented by certificates.

(2) Each share certificate [must] shall state on its face:

(a) the name of the issuing corporation and that it is organized under the laws of this state;
(b) the name of the person to whom the certificate is issued; and
(c) the number and class of shares and the designation of the series, if any, the certificate represents.

(3) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, preferences, limitations, and relative rights applicable to each class, the variations in preferences, limitations, and relative rights determined for each series, and the authority of the board of directors to determine variations for any existing or future class or series, [must] shall be summarized on the front or back of each share certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(4) Each share certificate:

(a) [must] shall be signed by two officers designated in the bylaws or by the board of directors;
(b) may bear the corporate seal or its facsimile; and
(c) may contain any other information as the corporation considers necessary or appropriate.

(5) The signatures of the officers upon a certificate may be facsimiles if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation.

(6) In case any officer who has signed or whose facsimile signature has been placed upon a certificate ceases to be an officer before the certificate is issued, the certificate may be
issued by the corporation with the same effect as if the person were an officer at the date of its
issue.

Section 259. Section 16-10a-704 is amended to read:

**16-10a-704. Action without meeting.**

(1) Unless otherwise provided in the articles of incorporation and Subsection (5), and
subject to the limitations of Subsection 16-10a-1704(4), any action which may be taken at any
annual or special meeting of shareholders may be taken without a meeting and without prior
notice, if one or more consents in writing, setting forth the action so taken, shall be signed by
the holders of outstanding shares having not less than the minimum number of votes that
would be necessary to authorize or take the action at a meeting at which all shares entitled to
vote thereon were present and voted.

(2) (a) Unless the written consents of all shareholders entitled to vote have been
obtained, notice of any shareholder approval without a meeting shall be given at least 10 days
before the consummation of the transaction, action, or event authorized by the shareholder
action to:

(i) those shareholders entitled to vote who have not consented in writing; and

(ii) those shareholders not entitled to vote and to whom this chapter requires that
notice of the proposed action be given.

(b) The notice [must] shall contain or be accompanied by the same material that,
under this chapter, would have been required to be sent in a notice of meeting at which the
proposed action would have been submitted to the shareholders for action.

(3) Any shareholder giving a written consent, or the shareholder's proxyholder, or a
transferee of the shares or a personal representative of the shareholder or their respective
proxyholder, may revoke the consent by a signed writing describing the action and stating that
the shareholder's prior consent is revoked, if the writing is received by the corporation prior to
the effectiveness of the action.

(4) A shareholder action taken pursuant to this section is not effective unless all
written consents on which the corporation relies for the taking of an action pursuant to
Subsection (1) are received by the corporation within a 60-day period and not revoked pursuant to Subsection (3). Action taken by the shareholders pursuant to this section is effective as of the date the last written consent necessary to effect the action is received by the corporation, unless all of the written consents necessary to effect the action specify a later date as the effective date of the action, in which case the later date shall be the effective date of the action. If the corporation has received written consents as contemplated by Subsection (1) signed by all shareholders entitled to vote with respect to the action, the effective date of the shareholder action may be any date that is specified in all the written consents as the effective date of the shareholder action. Unless otherwise provided by the bylaws, the writing may be received by the corporation by electronically transmitted facsimile or other form of communication providing the corporation with a complete copy thereof, including a copy of the signature thereto.

(5) Notwithstanding Subsection (1), directors may not be elected by written consent except by unanimous written consent of all shares entitled to vote for the election of directors.

(6) If not otherwise determined under Sections 16-10a-703 or 16-10a-707, the record date for determining shareholders entitled to take action without a meeting or entitled to be given notice under Subsection (2) of action so taken is the date the first shareholder delivers to the corporation a writing upon which the action is taken pursuant to Subsection (1).

(7) Action taken under this section has the same effect as action taken at a meeting of shareholders and may be so described in any document.

Section 260. Section 16-10a-705 is amended to read:

16-10a-705. Notice of meeting.

(1) A corporation shall give notice to shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than 10 nor more than 60 days before the meeting date. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(2) Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the
meeting is called.

(3) Notice of a special meeting [must] shall include a description of the purpose or purposes for which the meeting is called.

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

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

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

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

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

(b) Any action taken or meeting held without notice to a shareholder to whom notice is excused under Subsection (5) has the same force and effect as if notice had been duly given.

If a shareholder to whom notice is excused under Subsection (5) delivers to the corporation a written notice setting forth the shareholder's current address, or if another address for the shareholder is otherwise made known to the corporation, the requirement that notice be given
to the shareholder is reinstated. In the event that the action taken by the corporation requires
the filing of a certificate under any provision of this chapter, the certificate need not state that
notice was not given to shareholders to whom notice was not required pursuant to this
subsection.

Section 261. Section 16-10a-706 is amended to read:

16-10a-706. Waiver of notice.

(1) A shareholder may waive any notice required by this chapter, the articles of
incorporation, or the bylaws before or after the date and time stated in the notice as the date or
time when any action will occur or has occurred. The waiver [must] shall be in writing, be
signed by the shareholder entitled to the notice, and be delivered to the corporation for
inclusion in the minutes or filing with the corporate records.

(2) A shareholder's attendance at a meeting:

(a) waives objection to lack of notice or defective notice of the meeting, unless the
shareholder at the beginning of the meeting objects to holding the meeting or transacting
business at the meeting because of lack of notice or defective notice; and

(b) waives objection to consideration of a particular matter at the meeting that is not
within the purposes described in the meeting notice, unless the shareholder objects to
considering the matter when it is presented.

Section 262. Section 16-10a-707 is amended to read:

16-10a-707. Record date.

(1) The bylaws may fix or provide the manner of fixing the record date for one or more
voting groups in order to determine the shareholders entitled to be given notice of a
shareholders' meeting, to determine shareholders entitled to take action without a meeting, to
demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or
provide for the manner of fixing a record date, the board of directors of the corporation may
fix a future date as the record date.

(2) If not otherwise fixed under Section 16-10a-703 or Subsection (1), the record date
for determining shareholders entitled to notice of and to vote at an annual or special
shareholders' meeting is the close of business on the day before the first notice is delivered to shareholders.

(3) A record date fixed under this section may not be more than 70 days before the meeting or action requiring a determination of shareholders.

(4) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it [must] shall do if the meeting is adjourned to a date more than 120 days after the date fixed for the original meeting.

(5) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

Section 263. Section 16-10a-720 is amended to read:

16-10a-720. Shareholders' list for meeting.

(1) After fixing a record date for a shareholders' meeting, a corporation shall prepare a list of the names of all its shareholders who are entitled to be given notice of the meeting. The list [must] shall be arranged by voting group, and within each voting group by class or series of shares. The list [must] shall be alphabetical within each class or series and [must] shall show the address of, and the number of shares held by, each shareholder.

(2) The shareholders' list [must] shall be available for inspection by any shareholder, beginning on the earlier of 10 days before the meeting for which the list was prepared or two business days after notice of the meeting is given and continuing through the meeting and any meeting adjournments, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder or a shareholder's agent or attorney is entitled on written demand to the corporation and, subject to the requirements of Subsections 16-10a-1602(3) and (7), and the provisions of Subsections 16-10a-1603(2) and (3), to inspect and copy the list, during regular business hours and during the period it is available for inspection.

(3) The corporation shall make the shareholders' list available at the meeting, and any
shareholder, or any shareholder's agent or attorney is entitled to inspect the list at any time
during the meeting or any adjournment, for any purposes germane to the meeting.

(4) If the corporation refuses to allow a shareholder, or the shareholder's agent or
attorney, to inspect the shareholders' list before or at the meeting, or to copy the list as
permitted by Subsection (2), the district court of the county where a corporation's principal
office is located, or, if it has none in this state, the district court for Salt Lake County, on
application of the shareholder, may summarily order the inspection or copying at the
corporation's expense and may postpone the meeting for which the list was prepared until the
inspection or copying is complete.

(5) If a court orders inspection or copying of the shareholders' list pursuant to
Subsection (4), unless the corporation proves that it refused inspection or copying of the list in
good faith because it had a reasonable basis for doubt about the right of the shareholder or the
shareholder's agent or attorney to inspect or copy the shareholders' list:

(a) the court shall also order the corporation to pay the shareholder's costs, including
reasonable counsel fees, incurred to obtain the order;

(b) the court may order the corporation to pay the shareholder for any damages
incurred; and

(c) the court may grant the shareholder any other remedy afforded by law.

(6) If a court orders inspection or copying of the shareholders' list pursuant to
Subsection (4), the court may impose reasonable restrictions on the use or distribution of the
list by the shareholder.

(7) Refusal or failure to prepare or make available the shareholders' list does not affect
the validity of action taken at the meeting.

Section 264. Section 16-10a-722 is amended to read:

16-10a-722. Proxies.

(1) A shareholder may vote his shares in person or by proxy.

(2) A shareholder, his agent, or attorney-in-fact, may appoint a proxy to vote or
otherwise act for the shareholder by signing an appointment form or by an electronic
transmission. An electronic transmission [must] shall contain or be accompanied by information that indicates that the shareholder, the shareholder's agent, or the shareholder's attorney-in-fact authorized the transmission.

(3) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the inspector of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment form.

(4) An appointment of a proxy is revocable unless the appointment form or electronic transmission states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of any of the following persons or their designees:

(a) a pledgee;
(b) a person who purchased or agreed to purchase the shares;
(c) a creditor of the corporation who extended its credit under terms requiring the appointment;
(d) an employee of the corporation whose employment contract requires the appointment; or
(e) a party to a voting agreement created under Section 16-10a-731.

(5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless the appointment is not irrevocable and coupled with an interest, and notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the authority under the appointment.

(6) An appointment made irrevocable under Subsection (4) is revoked when the interest with which it is coupled is extinguished but the revocation does not affect the right of the corporation to accept the proxy's authority unless:

(a) the corporation had notice that the appointment was coupled with that interest and notice that the interest is extinguished is received by the secretary or other officer or agent
(b) other notice of the revocation of the appointment is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the authority under the appointment.

(7) The corporation is not required to recognize an appointment made irrevocable under Subsection (4) if it has received a writing revoking the appointment signed by the shareholder either personally or by the shareholder's attorney-in-fact, notwithstanding that the revocation may be a breach of an obligation of the shareholder to another person not to revoke the appointment. This provision [shall not] does not affect any claim the other person may have against the shareholder with respect to the revocation.

(8) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when acquiring the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(9) Subject to Section 16-10a-724 and to any express limitation on the proxy's authority stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

Section 265. Section 16-10a-723 is amended to read:

16-10a-723. Shares held by nominees.

(1) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(2) The procedure described in Subsection (1) may set forth:

(a) the types of nominees to which it applies;

(b) the rights or privileges that the corporation recognizes in a beneficial owner, which may include rights or privileges other than voting;

(c) the manner in which the procedure may be used by the nominee;

(d) the information that [must] shall be provided by the nominee when the procedure
Section 266. Section 16-10a-725 is amended to read:

**16-10a-725. Quorum and voting requirements for voting groups.**

(1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this chapter provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(2) Once a share is represented for any purpose at a meeting, including the purpose of determining that a quorum exists, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting, unless a new record date is or shall be set for that adjourned meeting.

(3) If a quorum exists, action on a matter, other than the election of directors, by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast within the voting group opposing the action, unless the articles of incorporation or this chapter requires a greater number of affirmative votes.

(4) The election of directors is governed by Section 16-10a-728.

Section 267. Section 16-10a-727 is amended to read:

**16-10a-727. Greater quorum or voting requirements.**

(1) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders, or voting groups of shareholders, than is provided for by this chapter.

(2) An amendment to the articles of incorporation that changes or deletes a greater quorum or voting requirement shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect.
Section 268. Section 16-10a-730 is amended to read:

### 16-10a-730. Voting trusts.

(1) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, and transferring to the trustee the shares with respect to which the trustee is to act. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust, and promptly cause the corporation to receive copies of the list and agreement. Thereafter the trustee shall cause the corporation to receive changes to the list promptly as they occur and amendments to the agreement promptly as they are made.

(2) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for the period provided in the agreement, but not more than 10 years after its effective date unless extended under Subsection (3).

(3) All or some of the parties to a voting trust may extend the voting trust for additional terms of not more than 10 years each by signing an extension agreement and obtaining the trustee's written consent to the extension. An extension is valid for not more than 10 years from the date the first shareholder signs the extension agreement. The trustee shall deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

Section 269. Section 16-10a-732 is amended to read:

### 16-10a-732. Shareholder agreements.

(1) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this chapter in that it:

(a) eliminates the board of directors or restricts the discretion or powers of the board of directors;

(b) governs the authorization or making of distributions whether or not in proportion
to ownership of shares, subject to the limitations in Section 16-10a-640;
(c) establishes who shall be directors or officers of the corporation, or their terms of
office or manner of selection or removal;
(d) governs, in general or in regard to specific matters, the exercise or division of
voting power by or between the shareholders and directors or by or among any of them,
including use of weighted voting rights or director proxies;
(e) establishes the terms and conditions of any agreement for the transfer or use of
property or the provision of services between the corporation and any shareholder, director,
officer or employee of the corporation or among any of them;
(f) transfers to one or more shareholders or other persons all or part of the authority to
exercise the corporate powers or to manage the business and affairs of the corporation,
including the resolution of any issue about which there exists a deadlock among directors or
shareholders;
(g) requires dissolution of the corporation at the request of one or more of the
shareholders or upon the occurrence of a specified event or contingency; or
(h) otherwise governs the exercise of the corporate powers or the management of the
business and affairs of the corporation or the relationship among the shareholders, the
directors and the corporation, or among any of them, and is not contrary to public policy.
(2) An agreement authorized by this section shall be:
(a) set forth:
(i) in the articles of incorporation or bylaws and approved by all persons who are
shareholders at the time of the agreement; or
(ii) in a written agreement that is signed by all persons who are shareholders at the
time of the agreement and is made known to the corporation;
(b) subject to amendment only by all persons who are shareholders at the time of the
amendment, unless the agreement provides otherwise; and
(c) valid for 10 years, unless the agreement provides otherwise.
(3) The existence of an agreement authorized by this section shall be noted
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conspicuously on the front or back of each certificate for outstanding shares or on the
information statement required by Section 16-10a-626(2). If at the time of the agreement the
corporation has shares outstanding represented by certificates, the corporation shall recall the
outstanding certificates and issue substitute certificates that comply with this subsection. The
failure to note the existence of the agreement on the certificate or information statement does
not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of
shares who, at the time of purchase, did not have knowledge of the existence of the agreement
is entitled to rescission of the purchase. A purchaser is considered to have knowledge of the
existence of the agreement if its existence is noted on the certificate or information statement
for the shares in compliance with this subsection and, if the shares are not represented by a
certificate, the information statement is delivered to the purchaser at or prior to the time of
purchase of the shares. An action to enforce the right of rescission authorized by this
subsection shall be commenced within the earlier of 90 days after discovery of the
existence of the agreement or two years after the time of purchase of the shares.

(4) An agreement authorized by this section shall cease to be effective when shares of
the corporation are listed on a national securities exchange or regularly traded in a market
maintained by one or more members of a national or affiliated securities association. If the
agreement ceases to be effective for any reason, the board of directors may, if the agreement is
contained or referred to in the corporation's articles of incorporation or bylaws, adopt an
amendment to the articles of incorporation or bylaws, without shareholder action, to delete the
agreement and any references to it.

(5) An agreement authorized by this section that limits the discretion or powers of the
board of directors shall relieve the directors of, and impose upon the person or persons in
whom the discretion or powers are vested, liability for acts or omissions imposed by laws on
directors to the extent that the discretion or powers of the directors are limited by the
agreement.

(6) The existence or performance of an agreement authorized by this section may not
be a ground for imposing personal liability on any shareholder for the acts or debts of the
corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

Section 270. Section 16-10a-801 is amended to read:

16-10a-801. Requirement for and duties of board of directors.

(1) Except as provided in Section 16-10a-732, each corporation shall have a board of directors.

(2) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under Section 16-10a-732.

Section 271. Section 16-10a-803 is amended to read:

16-10a-803. Number and election of directors.

(1) (a) Except as provided in Subsection (1)(b), a corporation’s board of directors shall consist of a minimum of three individuals.

(b) (i) Before any shares are issued, a corporation’s board of directors may consist of one or more individuals.

(ii) After shares are issued and for as long as a corporation has fewer than three shareholders entitled to vote for the election of directors, its board of directors may consist of a number of individuals equal to or greater than the number of those shareholders.

(c) The number of directors shall be specified in or fixed in accordance with the bylaws. Unless otherwise provided in the articles of incorporation, the number of initial directors stated in the articles of incorporation as originally filed with the division, if initial directors are so named in the articles of incorporation, shall be superseded by a provision in the bylaws specifying the number of authorized directors.
(d) The number of directors may be increased or decreased from time to time by amendment to the bylaws, but no decrease may have the effect of shortening the term of any incumbent director.

(e) In the absence of a provision in the bylaws or articles of incorporation fixing the number of individuals composing a board of directors, the number shall be the greater of:

(i) the number of directors then in office; or

(ii) the minimum number of directors permitted by this section.

(2) The bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a range is established, the number of directors may be fixed or changed from time to time within the range by the shareholders or the board of directors.

(3) Directors are elected at each annual meeting of the shareholders except as provided in Section 16-10a-806.

Section 272. Section 16-10a-808 is amended to read:

16-10a-808. Removal of directors by shareholders.

(1) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(2) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove him.

(3) If cumulative voting is in effect, a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against removal. If cumulative voting is not in effect, a director may be removed only if the number of votes cast to remove the director exceeds the number of votes cast against removal.

(4) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director and the meeting notice shall state that the purpose, or one of the purposes, of the meeting is removal of the director.

(5) A director who is removed pursuant to this section may deliver to the division for filing a statement to that effect pursuant to Section 16-10a-1608.
Section 273. Section 16-10a-822 is amended to read:

16-10a-822. Notice of meeting.

(1) Unless the articles of incorporation, bylaws, or this chapter provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purposes of the meeting.

(2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors [must] shall be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation, bylaws, or this chapter.

Section 274. Section 16-10a-823 is amended to read:

16-10a-823. Waiver of notice.

(1) A director may waive any notice of a meeting before or after the date and time of the meeting stated in the notice. Except as provided by Subsection (2), the waiver [must] shall be in writing and signed by the director entitled to the notice. The waiver shall be delivered to the corporation for filing with the corporate records, but delivery and filing are not conditions to its effectiveness.

(2) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting, or promptly upon the director's arrival, objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice, and does not thereafter vote for or assent to action taken at the meeting.

Section 275. Section 16-10a-825 is amended to read:

16-10a-825. Committees.

(1) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee [must] shall have two or more members, who serve at the pleasure of the board of directors.

(2) The creation of a committee and appointment of members to it [must] shall be
approved by the greater of:

(a) a majority of all the directors in office when the action is taken; or
(b) the number of directors required by the articles of incorporation or bylaws to take action under Section 16-10a-824.

(3) Sections 16-10a-820 through 16-10a-824, which govern meetings, action without meeting, notice, waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

(4) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under Section 16-10a-801.

(5) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in Section 16-10a-840.

Section 276. Section 16-10a-904 is amended to read:

16-10a-904. Advance of expenses for directors.

(1) A corporation may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) the director furnishes the corporation a written affirmation of his good faith belief that he has met the applicable standard of conduct described in Section 16-10a-902;

(b) the director furnishes to the corporation a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he did not meet the standard of conduct; and

(c) a determination is made that the facts then known to those making the determination would not preclude indemnification under this part.

(2) The undertaking required by Subsection (1)(b) [must] shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Determinations and authorizations of payments under this section shall be made in
the manner specified in Section 16-10a-906.

Section 277. Section 16-10a-1003 is amended to read:

16-10a-1003. Amendment by board of directors and shareholders.

(1) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

(2) For an amendment to the articles of incorporation proposed pursuant to Subsection (1) to be adopted:

(a) the board of directors must recommend the amendment to the shareholders unless the board determines that, because of conflicts of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and

(b) shareholders entitled to vote on the amendment must approve the amendment as provided in Subsection (5).

(3) The board of directors may condition its submission of the proposed amendment on any basis.

(4) The corporation shall give notice, in accordance with Section 16-10a-705, of the shareholders' meeting at which the amendment will be voted upon, to each shareholder entitled to vote on the proposed amendment. The notice of the meeting must state that one of the purposes of the meeting is to consider the proposed amendment and it must contain or be accompanied by a copy or summary of the amendment.

(5) Unless this chapter, the articles of incorporation, the bylaws, or the board of directors acting pursuant to Subsection (3) require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:

(a) a majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would create dissenters' rights;

(b) a majority of the votes entitled to be cast on the amendment by any voting group with respect to which the amendment would materially and adversely affect rights in respect of the shares of the voting group because it:
(i) alters or abolishes a preferential right of the shares;
(ii) creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares;
(iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;
(iv) excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or
(v) reduces the number of shares owned by the shareholder to a fraction of a share or scrip if the fractional share or scrip so created is to be acquired for cash or the scrip is to be voided under Section 16-10a-604; and
(c) the votes required by Sections 16-10a-725 and 16-10a-726 by every other voting group entitled to vote on the amendment.

(6) If any amendment to the articles of incorporation would impose personal liability on shareholders for the debts of a corporation, it must be approved by all of the outstanding shares affected, regardless of limitations or restrictions on the voting rights of the shares.

Section 278. Section 16-10a-1007 is amended to read:

16-10a-1007. Restated articles of incorporation.

(1) A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder action. A corporation's incorporators may restate its articles of incorporation at any time if the corporation has not issued shares and if no directors have been appointed.

(2) The restatement may include one or more amendments to the articles of incorporation. If the restatement includes an amendment requiring shareholder approval, it must be adopted as provided in Section 16-10a-1003.

(3) If the board of directors submits a restatement for shareholder action, the corporation shall give notice, in accordance with Section 16-10a-705, to each shareholder entitled to vote on the restatement, of the proposed shareholders' meeting at which the
restatement will be voted upon. The notice [must] shall state that the purpose, or one of the
purposes, of the meeting is to consider the proposed restatement and the notice shall contain or
be accompanied by a copy of the restatement that identifies any amendment or other change it
would make in the articles of incorporation.

(4) A corporation restating its articles of incorporation shall deliver to the division for
filing articles of restatement setting forth:

(a) the name of the corporation;

(b) the text of the restated articles of incorporation;

(c) if the restatement contains an amendment to the articles of incorporation, the
information required to be set forth in articles of amendment by Section 16-10a-1006;

(d) if the restatement does not contain an amendment to the articles of incorporation, a
statement to that effect; and

(e) if the restatement was adopted by the board of directors or incorporators without
shareholder action, a statement as to how the restatement was adopted and that shareholder
action was not required.

(5) Upon filing by the division or at any later effective date determined pursuant to
Section 16-10a-123, restated articles of incorporation supersede the original articles of
incorporation and all prior amendments to them.

Section 279. Section 16-10a-1022 is amended to read:

16-10a-1022. Bylaw changing quorum or voting requirement for directors.

(1) A bylaw that fixes a greater quorum or voting requirement for the board of
directors than is required by this chapter may be amended or repealed:

(a) if originally adopted by the shareholders, only by the shareholders, unless
otherwise permitted as contemplated by Subsection (2); or

(b) if originally adopted by the board of directors, by the shareholders or unless
otherwise provided in the articles of incorporation or bylaws, by the board of directors.

(2) A bylaw adopted or amended by the shareholders that fixes a greater quorum or
voting requirement for the board of directors may provide that it may be amended or repealed
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8794 only by a specified vote of either the shareholders or the board of directors.
8795
(3) Action by the board of directors under Subsection (1)(b) to amend or repeal a
8796 bylaw that changes the quorum or voting requirement for the board of directors shall
8797 meet the same quorum requirement and be adopted by the same vote required to take action
8798 under the quorum and voting requirement then in effect or proposed to be adopted, whichever
8799 is greater.
8800
Section 280. Section 16-10a-1023 is amended to read:
8801 16-10a-1023. Bylaw provisions relating to election of directors.
8802 (1) A corporation that has shares listed on a national securities exchange or regularly
8803 traded in a market maintained by one or more members of a national or affiliated securities
8804 association may elect in its bylaws to be governed in the election of directors by Subsection
8805 (2) unless the articles of incorporation:
8806 (a) specifically prohibit the adoption of a bylaw electing to be governed by this
8807 section;
8808 (b) alter the vote required by Subsection 16-10a-728(2); or
8809 (c) provide for cumulative voting.
8810 (2) A corporation may elect to be governed in the election of directors as follows:
8811 (a) Each vote entitled to be cast may be voted for or against up to that number of
8812 candidates that is equal to the number of directors to be elected, or the shareholder may
8813 indicate abstention, but without cumulating the votes.
8814 (b) To be elected, a nominee shall receive a plurality of the votes cast by
8815 shareholders of shares entitled to vote in the election at a meeting at which a quorum is
8816 present.
8817 (c) Notwithstanding Subsection (2)(b), a nominee who is elected but receives more
8818 votes against than for election shall serve as a director for a term that terminates on the earlier
8819 of:
8820 (i) 90 days after the day on which the corporation certifies the voting results; or
8821 (ii) the day on which a person is selected by the board of directors to fill the office

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held by the director, which selection constitutes the filling of a vacancy by the board for the
purpose of Section 16-10a-810.

(d) Subject to Subsection (2)(e), a nominee who is elected but receives more votes
against than for election may not serve as a director beyond the 90-day period allowed by
Subsection (2)(c).

(e) The board of directors may select any qualified person to fill the office held by a
director who receives more votes against than for election.

(3) (a) Subsection (2) does not apply to an election of a director by a voting group if
there are more candidates for election by the voting group than the number of directors to be
elected, one or more of whom are properly proposed by shareholders.

(b) The determination of the number of candidates under Subsection (3)(a) is made:

(i) at the expiration of a time fixed by the articles of incorporation or bylaws for the
advance notification of director candidates; or

(ii) if there is no provision under Subsection (3)(b)(i), at a time fixed by the board of
directors not more than 14 days before notice is given of the meeting at which the election is
to occur.

(4) A person may not be considered a candidate for the purpose of Subsection (3) if
the board of directors determines before the notice of meeting is given that the person's
candidacy does not create a bona fide election contest.

(5) A bylaw electing to be governed by this section may be repealed:

(a) by the shareholders if originally adopted by the shareholders, unless otherwise
provided by the bylaws; or

(b) by the board of directors or the shareholders, if originally adopted by the board of
directors.

Section 281. Section 16-10a-1101 is amended to read:

16-10a-1101. Merger.

(1) One or more domestic corporations may merge into another domestic corporation
if the board of directors of each corporation adopts and its shareholders, if required by Section
16-10a-1103, approve the plan of merger.

(2) The plan of merger referred to in Subsection (1) [must] shall set forth:

(a) the name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;

(b) the terms and conditions of the merger;

(c) the manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or part; and

(d) any amendments to the articles of incorporation of the surviving corporation to be effected by the merger.

(3) The plan of merger may set forth other provisions relating to the merger.

Section 282. Section 16-10a-1102 is amended to read:

16-10a-1102. Share exchange.

(1) A domestic corporation may acquire all of the outstanding shares of one or more classes or series of one or more domestic corporations if the board of directors of each corporation adopts a plan of share exchange and the shareholders of the corporation, if required by Section 16-10a-1103, approve the plan of share exchange.

(2) The plan of share exchange referred to in Subsection (1) [must] shall set forth:

(a) the name of each corporation whose shares will be acquired and the name of the acquiring corporation;

(b) the terms and conditions of the share exchange; and

(c) the manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or for money or other property in whole or part.

(3) The plan of share exchange may set forth other provisions relating to the share exchange.

(4) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange of
Section 283. Section 16-10a-1103 is amended to read:

**16-10a-1103. Action on plan.**

(1) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of each corporation whose shares will be acquired in the share exchange, shall submit the plan of merger to its shareholders for approval, except as provided in:

(a) Subsection (7);

(b) Section 16-10a-1104; or

(c) the plan of share exchange.

(2) For a plan of merger or share exchange to be approved:

(a) the board of directors must recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and

(b) the shareholders entitled to vote on the plan of merger or share exchange must approve the plan as provided in Subsection (5).

(3) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(4) The corporation shall give notice of the shareholders' meeting in accordance with Section 16-10a-705 to each shareholder entitled to vote on the plan of merger or share exchange. The notice must state that one of the purposes of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.

(5) Unless this chapter, the articles of incorporation, the initial bylaws, the amended bylaws, or the board of directors acting pursuant to Subsection (3) requires a greater vote, the plan of merger or share exchange to be authorized must be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on
the plan by that voting group.

(6) Separate voting by voting groups is required on a plan of:

(a) merger if the plan contains a provision that, if contained in an amendment to the articles of incorporation, would require action by one or more separate voting groups on the amendment under Section 16-10a-1004; and

(b) share exchange by each class or series of shares included in the share exchange, with each class or series constituting a separate voting group.

(7) Action by the shareholders of the surviving corporation on a plan of merger is not required if:

(a) the articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in Section 16-10a-1002, from its articles of incorporation before the merger;

(b) each shareholder of the surviving corporation whose shares were outstanding immediately before the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger;

(c) the number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20% the total number of voting shares of the surviving corporation outstanding immediately before the merger; and

(d) the number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed by more than 20% the total number of participating shares outstanding immediately before the merger.

(8) As used in Subsection (7):

(a) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.
(b) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(9) After a plan of merger or share exchange is approved, and at any time before the merger or share exchange becomes effective the merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

(10) If a merger or share exchange is abandoned after articles of merger or share exchange have been filed by the division pursuant to Section 16-10a-1105 specifying a delayed effective date, the merger or share exchange may be prevented from becoming effective by delivering to the division for filing prior to the specified effective time and date a statement of abandonment stating that by appropriate corporate action the merger or share exchange has been abandoned. The statement of abandonment shall be executed in the same manner as the articles of merger or share exchange.

Section 284. Section 16-10a-1202 is amended to read:

16-10a-1202. Sale of property requiring shareholder approval.

(1) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without the good will, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the board of directors, if the board of directors proposes and the shareholders approve the transaction. A sale, lease, exchange, or other disposition of all, or substantially all, of the property of a corporation, with or without the good will, other than in the usual and regular course of business and other than pursuant to a court order, in connection with its dissolution is subject to the requirements of this section, but a sale, lease, exchange, or other disposition of all, or substantially all, of the property of a corporation, with or without the good will, that is pursuant to a court order is not subject to the requirements of this section.

(2) If a corporation is entitled to vote or otherwise consent, other than in the usual and regular course of its business, with respect to the sale, lease, exchange, or other disposition of
all, or substantially all, of the property, with or without the good will, of another entity which it controls, and if the shares or other interests held by the corporation in the other entity constitute all, or substantially all, of the property of the corporation, then the corporation shall consent to the transaction only if the board of directors proposes and the shareholders approve the consent.

(3) For a transaction described in Subsection (1) or a consent described in Subsection (2) to be authorized:

(a) the board of directors \[**must**] shall recommend the transaction or the consent to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and

(b) the shareholders entitled to vote on the transaction or the consent \[**must**] shall approve the transaction or the consent as provided in Subsections (5) and (6).

(4) The board of directors may condition the effectiveness of the transaction or the consent on any basis.

(5) The corporation shall give notice in accordance with Section 16-10a-705 to each shareholder entitled to vote on the transaction described in Subsection (1) or the consent described in Subsection (2), of the shareholders' meeting at which the transaction or the consent will be voted upon. The notice \[**must**] shall:

(a) state that the purpose, or one of the purposes, of the meeting is to consider:

(i) in the case of action pursuant to Subsection (1), the sale, lease, exchange, or other disposition of all, or substantially all, of the property of the corporation; or

(ii) in the case of action pursuant to Subsection (2), the corporation's consent to the sale, lease, exchange, or other disposition of all, or substantially all, of the property of another entity, \[**which shall be identified in the notice**\], the shares or other interests of which held by the corporation constitute all, or substantially all, of the property of the corporation; and

(b) contain or be accompanied by a description of the transaction, in the case of action pursuant to Subsection (1), or by a description of the transaction underlying the consent, in the
Unless this chapter, the articles of incorporation, the initial bylaws or the bylaws as amended pursuant to Section 16-10a-1021, or the board of directors acting pursuant to Subsection (4) requires a greater vote, the transaction described in Subsection (1) or the consent described in Subsection (2) shall be approved by each voting group entitled to vote on the transaction or the consent by a majority of all the votes entitled to be cast on the transaction or the consent by that voting group.

After a transaction described in Subsection (1) or a consent described in Subsection (2) is authorized, the transaction may be abandoned or the consent withheld or revoked by the corporation's board of directors subject to any contractual rights or other limitation on the abandonment, withholding, or revocation, without further shareholder action.

A transaction that constitutes a distribution is governed by Section 16-10a-640 and not by this section.

Section 285. Section 16-10a-1303 is amended to read:

16-10a-1303. Dissent by nominees and beneficial owners.

(1) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in his name only if the shareholder dissents with respect to all shares beneficially owned by any one person and causes the corporation to receive written notice which states the dissent and the name and address of each person on whose behalf dissenters' rights are being asserted. The rights of a partial dissenter under this subsection are determined as if the shares as to which the shareholder dissents and the other shares held of record by him were registered in the names of different shareholders.

(2) A beneficial shareholder may assert dissenters' rights as to shares held on his behalf only if:

(a) the beneficial shareholder causes the corporation to receive the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and

(b) the beneficial shareholder dissents with respect to all shares of which he is the
(3) The corporation may require that, when a record shareholder dissents with respect to the shares held by any one or more beneficial shareholders, each beneficial shareholder shall certify to the corporation that both he and the record shareholders of all shares owned beneficially by him have asserted, or will timely assert, dissenters' rights as to all the shares unlimited on the ability to exercise dissenters' rights. The certification requirement shall be stated in the dissenters' notice given pursuant to Section 16-10a-1322.

Section 286. Section 16-10a-1320 is amended to read:

16-10a-1320. Notice of dissenters' rights.

(1) If a proposed corporate action creating dissenters' rights under Section 16-10a-1302 is submitted to a vote at a shareholders' meeting, the meeting notice shall be sent to all shareholders of the corporation as of the applicable record date, whether or not they are entitled to vote at the meeting. The notice shall state that shareholders are or may be entitled to assert dissenters' rights under this part. The notice shall be accompanied by a copy of this part and the materials, if any, that under this chapter are required to be given the shareholders entitled to vote on the proposed action at the meeting. Failure to give notice as required by this subsection does not affect any action taken at the shareholders' meeting for which the notice was to have been given.

(2) If a proposed corporate action creating dissenters' rights under Section 16-10a-1302 is authorized without a meeting of shareholders pursuant to Section 16-10a-704, any written or oral solicitation of a shareholder to execute a written consent to the action contemplated by Section 16-10a-704 shall be accompanied or preceded by a written notice stating that shareholders are or may be entitled to assert dissenters' rights under this part, by a copy of this part, and by the materials, if any, that under this chapter would have been required to be given to shareholders entitled to vote on the proposed action if the proposed action were submitted to a vote at a shareholders' meeting. Failure to give written notice as provided by this subsection does not affect any action taken pursuant to Section 16-10a-704 for which the notice was to have been given.
Section 287. Section 16-10a-1321 is amended to read:

**16-10a-1321. Demand for payment -- Eligibility and notice of intent.**

(1) If a proposed corporate action creating dissenters' rights under Section 16-10a-1302 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights:

(a) [must] shall cause the corporation to receive, before the vote is taken, written notice of his intent to demand payment for shares if the proposed action is effectuated; and

(b) may not vote any of his shares in favor of the proposed action.

(2) If a proposed corporate action creating dissenters' rights under Section 16-10a-1302 is authorized without a meeting of shareholders pursuant to Section 16-10a-704, a shareholder who wishes to assert dissenters' rights may not execute a writing consenting to the proposed corporate action.

(3) In order to be entitled to payment for shares under this part, unless otherwise provided in the articles of incorporation, bylaws, or a resolution adopted by the board of directors, a shareholder [must] shall have been a shareholder with respect to the shares for which payment is demanded as of the date the proposed corporate action creating dissenters' rights under Section 16-10a-1302 is approved by the shareholders, if shareholder approval is required, or as of the effective date of the corporate action if the corporate action is authorized other than by a vote of shareholders.

(4) A shareholder who does not satisfy the requirements of Subsections (1) through (3) is not entitled to payment for shares under this part.

Section 288. Section 16-10a-1322 is amended to read:

**16-10a-1322. Dissenters' notice.**

(1) If proposed corporate action creating dissenters' rights under Section 16-10a-1302 is authorized, the corporation shall give a written dissenters' notice to all shareholders who are entitled to demand payment for their shares under this part.

(2) The dissenters' notice required by Subsection (1) [must] shall be sent no later than 10 days after the effective date of the corporate action creating dissenters' rights under Section...
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16-10a-1302, and shall:

(a) state that the corporate action was authorized and the effective date or proposed
effective date of the corporate action;

(b) state an address at which the corporation will receive payment demands and an
address at which certificates for certificated shares [must] shall be deposited;

(c) inform holders of uncertificated shares to what extent transfer of the shares will be
restricted after the payment demand is received;

(d) supply a form for demanding payment, which form requests a dissenter to state an
address to which payment is to be made;

(e) set a date by which the corporation must receive the payment demand and by
which certificates for certificated shares must be deposited at the address indicated in the
dissenters' notice, which dates may not be fewer than 30 nor more than 70 days after the date
the dissenters' notice required by Subsection (1) is given;

(f) state the requirement contemplated by Subsection 16-10a-1303(3), if the
requirement is imposed; and

(g) be accompanied by a copy of this part.

Section 289. Section 16-10a-1323 is amended to read:

16-10a-1323. Procedure to demand payment.

(1) A shareholder who is given a dissenters' notice described in Section 16-10a-1322,
who meets the requirements of Section 16-10a-1321, and wishes to assert dissenters' rights
[must] shall, in accordance with the terms of the dissenters' notice:

(a) cause the corporation to receive a payment demand, which may be the payment
demand form contemplated in Subsection 16-10a-1322(2)(d), duly completed, or may be
stated in another writing;

(b) deposit certificates for his certificated shares in accordance with the terms of the
dissenters' notice; and

(c) if required by the corporation in the dissenters' notice described in Section
16-10a-1322, as contemplated by Section 16-10a-1327, certify in writing, in or with the
payment demand, whether or not he or the person on whose behalf he asserts dissenters' rights acquired beneficial ownership of the shares before the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action creating dissenters' rights under Section 16-10a-1302.

(2) A shareholder who demands payment in accordance with Subsection (1) retains all rights of a shareholder except the right to transfer the shares until the effective date of the proposed corporate action giving rise to the exercise of dissenters' rights and has only the right to receive payment for the shares after the effective date of the corporate action.

(3) A shareholder who does not demand payment and deposit share certificates as required, by the date or dates set in the dissenters' notice, is not entitled to payment for shares under this part.

Section 290. Section 16-10a-1325 is amended to read:

16-10a-1325. Payment.

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

(2) Each payment made pursuant to Subsection (1) [must] shall be accompanied by:

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

(B) an income statement for that year;

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

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

(ii) the balance sheet and statements referred to in Subsection (2)(a)(i) [must] shall be audited if the corporation customarily provides audited financial statements to shareholders;
(b) a statement of the corporation's estimate of the fair value of the shares and the amount of interest payable with respect to the shares;
(c) a statement of the dissenter's right to demand payment under Section 16-10a-1328; and
(d) a copy of this part.

Section 291. Section 16-10a-1330 is amended to read:

16-10a-1330. Judicial appraisal of shares -- Court action.

(1) If a demand for payment under Section 16-10a-1328 remains unresolved, the corporation shall commence a proceeding within 60 days after receiving the payment demand contemplated by Section 16-10a-1328, and petition the court to determine the fair value of the shares and the amount of interest. If the corporation does not commence the proceeding within the 60-day period, it shall pay each dissenter whose demand remains unresolved the amount demanded.

(2) The corporation shall commence the proceeding described in Subsection (1) in the district court of the county in this state where the corporation's principal office, or if it has no principal office in this state, Salt Lake County. If the corporation is a foreign corporation, it shall commence the proceeding in the county in this state where the principal office of the domestic corporation merged with, or whose shares were acquired by, the foreign corporation was located, or, if the domestic corporation did not have its principal office in this state at the time of the transaction, in Salt Lake County.

(3) The corporation shall make all dissenters who have satisfied the requirements of Sections 16-10a-1321, 16-10a-1323, and 16-10a-1328, whether or not they are residents of this state whose demands remain unresolved, parties to the proceeding commenced under Subsection (2) as an action against their shares. All such dissenters who are named as parties [must] shall be served with a copy of the petition. Service on each dissenter may be by registered or certified mail to the address stated in his payment demand made pursuant to Section 16-10a-1328. If no address is stated in the payment demand, service may be made at the address stated in the payment demand given pursuant to Section 16-10a-1323. If no
address is stated in the payment demand, service may be made at the address shown on the
corporation's current record of shareholders for the record shareholder holding the dissenter's
shares. Service may also be made otherwise as provided by law.

(4) The jurisdiction of the court in which the proceeding is commenced under
Subsection (2) is plenary and exclusive. The court may appoint one or more persons as
appraisers to receive evidence and recommend decision on the question of fair value. The
appraisers have the powers described in the order appointing them, or in any amendment to it.
The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(5) Each dissenter made a party to the proceeding commenced under Subsection (2) is
entitled to judgment:

(a) for the amount, if any, by which the court finds that the fair value of his shares,
plus interest, exceeds the amount paid by the corporation pursuant to Section 16-10a-1325; or
(b) for the fair value, plus interest, of the dissenter's after-acquired shares for which
the corporation elected to withhold payment under Section 16-10a-1327.

Section 292. Section 16-10a-1402 is amended to read:

16-10a-1402. Authorization of dissolution after issuance of shares.

(1) After shares have been issued, dissolution of a corporation may be authorized in
the manner provided in Subsection (2).

(2) For a proposal to dissolve the corporation to be authorized:

(a) the board of directors must recommend dissolution to the shareholders unless the
board of directors determines that because of a conflict of interest or other special
circumstances it should make no recommendation and communicates the basis for its
determination to the shareholders; and

(b) the shareholders entitled to vote on the proposal must approve the proposal to
dissolve as provided in Subsection (5).

(3) The board of directors may condition the effectiveness of the dissolution on any
basis.

(4) The corporation shall give notice in accordance with Section 16-10a-705 to each
shareholder entitled to vote on the proposal to dissolve, of the proposed shareholders' meeting at which the proposal to dissolve will be voted upon. The notice shall state that the purpose or one of the purposes of the meeting is to consider the proposal to dissolve the corporation.

(5) The proposal to dissolve must be approved by each voting group entitled to vote separately on the proposal, by a majority of all the votes entitled to be cast on the proposal by that voting group, unless a greater vote is required by the articles of incorporation, the initial bylaws or the bylaws amended pursuant to Section 16-10a-1021, or the board of directors acting pursuant to Subsection (3).

Section 293. Section 16-10a-1404 is amended to read:

16-10a-1404. Revocation of dissolution.

(1) A corporation may revoke its dissolution within 120 days after the effective date of the dissolution.

(2) Revocation of dissolution shall be authorized in the same manner as the dissolution was authorized unless, in the case of authorization pursuant to Section 16-10a-1402, that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the division for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) the name of the corporation;
(b) the effective date of the dissolution that was revoked;
(c) the date that the revocation of dissolution was authorized;
(d) if pursuant to Subsection (2) the corporation's board of directors or incorporators revoked the dissolution authorized under Section 16-10a-1401, a statement to that effect;
(e) if pursuant to Subsection (2) the corporation's board of directors revoked a dissolution approved by the shareholders, a statement that the revocation was permitted by action by the board of directors alone pursuant to that authorization; and
(f) if the revocation of dissolution was approved pursuant to Subsection (2) by the
shareholders, the information required by Subsection 16-10a-1403(1)(e).

(4) Revocation of dissolution is effective as provided in Subsection 16-10a-123(1). A
provision may not be made for a delayed effective date for revocation pursuant to Subsection
16-10a-123(2).

(5) When the revocation of dissolution is effective, it relates back to and takes effect
as of the effective date of the dissolution and the corporation may carry on its business as if
dissolution had never occurred.

Section 294. Section 16-10a-1406 is amended to read:

16-10a-1406. Disposition of known claims by notification.

(1) A dissolved corporation may dispose of the known claims against it by following
the procedures described in this section.

(2) A dissolved corporation electing to dispose of known claims pursuant to this
section may give written notice of the dissolution to known claimants at any time after the
effective date of the dissolution. The written notice [must] shall:

(a) describe the information that must be included in a claim;

(b) provide an address to which written notice of any claim must be given to the
corporation;

(c) state the deadline, which may not be fewer than 120 days after the effective date of
the notice, by which the dissolved corporation must receive the claim; and

(d) state that unless sooner barred by any other state statute limiting actions, the claim
will be barred if not received by the deadline.

(3) Unless sooner barred by any other statute limiting actions, a claim against the
dissolved corporation is barred if:

(a) a claimant was given notice under Subsection (2) and the claim is not received by
the dissolved corporation by the deadline; or

(b) the dissolved corporation delivers to the claimant written notice of rejection of the
claim within 90 days after receipt of the claim and the claimant whose claim was rejected by
the dissolved corporation does not commence a proceeding to enforce the claim within 90 days after the effective date of the rejection notice.

(4) Claims which are not rejected by the dissolved corporation in writing within 90 days after receipt of the claim by the dissolved corporation shall be considered accepted.

(5) The failure of the dissolved corporation to give notice to any known claimant pursuant to Subsection (2) does not affect the disposition under this section of any claim held by any other known claimant.

(6) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Section 295. Section 16-10a-1407 is amended to read:

16-10a-1407. Disposition of claims by publication -- Disposition in absence of publication.

(1) A dissolved corporation may publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(2) The notice contemplated in Subsection (1) shall:

(a) be published:

(i) one time in a newspaper of general circulation in the county where the dissolved corporation's principal office is or was located or, if it has no principal office in this state, in Salt Lake County; and

(ii) as required in Section 45-1-101;

(b) describe the information that must be included in a claim and provide an address at which any claim must be given to the corporation; and

(c) state that unless sooner barred by any other statute limiting actions, the claim will be barred if an action to enforce the claim is not commenced within five years after the publication of the notice.

(3) If the dissolved corporation publishes a newspaper or website notice in accordance with Subsection (2), then unless sooner barred under Section 16-10a-1406 or under any other statute limiting actions, the claim of any claimant against the dissolved corporation is barred.
unless the claimant commences an action to enforce the claim against the dissolved corporation within five years after the publication date of the notice.

(4) (a) For purposes of this section, "claim" means any claim, including claims of this state, whether known, due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, or otherwise.

(b) For purposes of this section, an action to enforce a claim includes any civil action, and any arbitration under any agreement for binding arbitration between the dissolved corporation and the claimant.

(5) If a dissolved corporation does not publish a newspaper notice in accordance with Subsection (2), then unless sooner barred under Section 16-10a-1406 or under any other statute limiting actions, the claim of any claimant against the dissolved corporation is barred unless the claimant commences an action to enforce the claim against the dissolved corporation within seven years after the date the corporation was dissolved.

Section 296. Section 16-10a-1434 is amended to read:

**16-10a-1434. Election to purchase in lieu of dissolution.**

(1) In a proceeding under Subsection 16-10a-1430(2) to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association, the corporation may elect, or if it fails to elect, one or more shareholders may elect to purchase all shares of the corporation owned by the petitioning shareholder, at the fair value of the shares, determined as provided in this section. An election pursuant to this section is irrevocable unless the court determines that it is equitable to set aside or modify the election.

(2) (a) An election to purchase pursuant to this section may be filed with the court at any time within 90 days after the filing of the petition under Subsection 16-10a-1430(2) or at any later time as the court in its discretion may allow. If the corporation files an election with the court within the 90-day period, or at any later time allowed by the court, to purchase all shares of the corporation owned by the petitioning shareholder, the corporation shall purchase the shares in the manner provided in this section.
(b) If the corporation does not file an election with the court within the time period, but an election to purchase all shares of the corporation owned by the petitioning shareholder is filed by one or more shareholders within the time period, the corporation shall, within 10 days after the later of:
(i) the end of the time period allowed for the filing of elections to purchase under this section; or
(ii) notification from the court of an election by shareholders to purchase all shares of the corporation owned by the petitioning shareholder as provided in this section, give written notice of the election to purchase to all shareholders of the corporation, other than the petitioning shareholder. The notice shall state the name and number of shares owned by the petitioning shareholder and the name and number of shares owned by each electing shareholder. The notice shall advise any recipients who have not participated in the election of their right to join in the election to purchase shares in accordance with this section, and of the date by which any notice of intent to participate must be filed with the court.

(c) Shareholders who wish to participate in the purchase of shares from the petitioning shareholder shall file notice of their intention to join in the purchase by the electing shareholders, no later than 30 days after the effective date of the corporation's notice of their right to join in the election to purchase.

(d) All shareholders who have filed with the court an election or notice of their intention to participate in the election to purchase the shares of the corporation owned by the petitioning shareholder thereby become irrevocably obligated to participate in the purchase of shares from the petitioning shareholders upon the terms and conditions of this section, unless the court otherwise directs.

(e) After an election has been filed by the corporation or one or more shareholders, the proceedings under Subsection 16-10a-1430(2) may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of any shares of the corporation, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioning shareholders, to permit any discontinuance, settlement, sale, or other
(3) If, within 60 days after the earlier of:
   (a) the corporation's filing of an election to purchase all shares of the corporation
       owned by the petitioning shareholder; or
   (b) the corporation's mailing of a notice to its shareholders of the filing of an election
       by the shareholders to purchase all shares of the corporation owned by the petitioning
       shareholder, the petitioning shareholder and electing corporation or shareholders reach
       agreement as to the fair value and terms of purchase of the petitioning shareholder's shares, the
       court shall enter an order directing the purchase of petitioner's shares, upon the terms and
       conditions agreed to by the parties.

(4) If the parties are unable to reach an agreement as provided for in Subsection (3), upon application of any party the court shall stay the proceedings under Subsection 16-10a-1430(2) and determine the fair value of the petitioning shareholder's shares as of the day before the date on which the petition under Subsection 16-10a-1430(2) was filed or as of any other date the court determines to be appropriate under the circumstances and based on the factors the court determines to be appropriate.

(5) (a) Upon determining the fair value of the shares of the corporation owned by the petitioning shareholder, the court shall enter an order directing the purchase of the shares upon terms and conditions the court determines to be appropriate. The terms and conditions may include payment of the purchase price in installments, where necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses awarded by the court, and an allocation of shares among shareholders if the shares are to be purchased by shareholders.

   (b) In allocating the petitioning shareholders' shares among holders of different classes of shares, the court shall attempt to preserve the existing distribution of voting rights among holders of different share classes to the extent practicable. The court may direct that holders of a specific class or classes may not participate in the purchase. The court may not require any electing shareholder to purchase more of the shares of the corporation owned by
the petitioning shareholder than the number of shares that the purchasing shareholder may
have set forth in his election or notice of intent to participate filed with the court as the
maximum number of shares he is willing to purchase.

(c) Interest may be allowed at the rate and from the date determined by the court to be
equitable. However, if the court finds that the refusal of the petitioning shareholder to accept
an offer of payment was arbitrary or otherwise not in good faith, interest may not be allowed.
(d) If the court finds that the petitioning shareholder had probable grounds for relief
under Subsection 16-10a-1430(2)(b) or (d), it may award to the petitioning shareholder
reasonable fees and expenses of counsel and experts employed by the petitioning shareholder.
(6) Upon entry of an order under Subsection (3) or (5), the court shall dismiss the
petition to dissolve the corporation under Section 16-10a-1430, and the petitioning
shareholder shall no longer have any rights or status as a shareholder of the corporation, except
the right to receive the amounts awarded to him by the court. The award is enforceable in the
same manner as any other judgment.

(7) (a) The purchase ordered pursuant to Subsection (5) shall be made within 10 days
after the date the order becomes final, unless before that time the corporation files with the
court a notice of its intention to adopt articles of dissolution pursuant to Sections 16-10a-1402
and 16-10a-1403. The articles of dissolution must then be adopted and filed within 50 days
after notice.
(b) Upon filing of the articles of dissolution, the corporation is dissolved in
accordance with the provisions of Sections 16-10a-1405 through 16-10a-1408, and the order
entered pursuant to Subsection (5) is no longer of any force or effect. However, the court may
award the petitioning shareholder reasonable fees and expenses in accordance with the
provisions of Subsection (5)(d). The petitioning shareholder may continue to pursue any
claims previously asserted on behalf of the corporation.

(8) Any payment by the corporation pursuant to an order under Subsection (3) or (5),
other than an award of fees and expenses pursuant to Subsection (5)(d), is subject to the
provisions of Section 16-10a-640.
Section 297. Section 16-10a-1506 is amended to read:

16-10a-1506. Corporate name and assumed corporate name of foreign corporation.

(1) Except as provided in Subsection (2), if the corporate name of a foreign corporation does not satisfy the requirements of Section 16-10a-401, which applies to domestic corporations, the foreign corporation, in order to obtain authority to transact business in this state, must assume for use in this state a name that satisfies the requirements of Section 16-10a-401.

(2) A foreign corporation may obtain authority to transact business in this state with a name that does not meet the requirements of Subsection (1) because it is not distinguishable as required under Subsection 16-10a-401(2), if the foreign corporation delivers to the division for filing either:

(a) a written consent to the foreign corporation's use of the name, given and signed by the other person entitled to the use of the name together with a written undertaking by the other person, in a form satisfactory to the division, to change its name to a name that is distinguishable from the name of the applicant; or

(b) a certified copy of a final judgment of a court of competent jurisdiction establishing the prior right of the foreign corporation to use the requested name in this state.

(3) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign corporation that is used or registered in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(a) has merged with the other corporation; or

(b) has been formed by reorganization of the other corporation.

(4) If a foreign corporation authorized to transact business in this state, whether under its corporate name or an assumed corporate name, changes its corporate name to one that does not satisfy the requirements of Subsections (1) through (3), or the requirements of Section 16-10a-401, it may not transact business in this state under the changed name but must assume a name that satisfies the requirements.
use an assumed corporate name that does meet the requirements of this section and [must] shall deliver to the division for filing an amended application for authority to transact business pursuant to Section 16-10a-1504.

Section 298. Section 16-10a-1507 is amended to read:

16-10a-1507. Registered name of foreign corporation.

(1) A foreign corporation may register its corporate name as provided in this section if the name would be available for use as a corporate name for a domestic corporation under Section 16-10a-401. If the foreign corporation's corporate name would not be available for such use, then the foreign corporation may register its corporate name modified by the addition of any of the following words or abbreviations, if the modified name would be available for use under Section 16-10a-401: "corporation," "incorporated," "company," "corp.,” "inc.,” or "co."

(2) A foreign corporation registers its corporate name, or its corporate name with any addition permitted by Subsection (1), by delivering to the division for filing an application for registration:

(a) setting forth its corporate name, the name to be registered which [must] shall meet the requirements of Section 16-10a-401 that apply to domestic corporations, the state or country and date of incorporation, and a brief description of the nature of the business in which it is engaged; and

(b) accompanied by a certificate of existence, or a document of similar import from the state or country of incorporation as evidence that the foreign corporation is in existence or has authority to transact business under the laws of the state or country in which it is organized.

(3) The name is registered for the applicant upon the effective date of the application, and the initial registration is effective until the end of the calendar year in which it became effective.

(4) A foreign corporation that has in effect a registration of its corporate name as permitted by Subsection (1) may renew the registration for the following year by delivering to
the division for filing a renewal application for registration, which complies with the
requirements of Subsection (2), between October 1 and December 31 of the preceding year.
When filed, the renewal application for registration renews the registration for the following
calendar year.

(5) A foreign corporation that has in effect registration of its corporate name may
apply for authority to transact business in this state under the registered name in accordance
with the procedure set forth in this part or it may assign the registration to another foreign
corporation by delivering to the division for filing an assignment of the registration that states
the registered name, the name of the assigning foreign corporation, and the name of the
assignee, concurrently with the delivery to the division for filing of the assignee's application
for registration of the name. The assignee's application [must] shall meet the requirements of
this part.

(6) (a) A foreign corporation that has in effect registration of its corporate name may
terminate the registration at any time by delivering to the division for filing a statement of
termination setting forth the corporate name and stating that the registration is terminated.
(b) A registration automatically terminates upon the filing of an application for
authority to transact business in this state under the registered name.

(7) The registration of a corporate name under Subsection (1) constitutes authority by
the division to file an application meeting the requirements of this part for authority to transact
business in this state under the registered name, but the authorization is subject to the
limitations applicable to corporate names as set forth in Section 16-10a-403.

Section 299. Section 16-10a-1510 is amended to read:

16-10a-1510. Resignation of registered agent of foreign corporation.

(1) The registered agent of a foreign corporation authorized to transact business in this
state may resign the agency appointment by delivering to the division for filing a statement of
resignation, which [must] shall be signed by the resigning registered agent and accompanied
by two exact or conformed copies of the statement of resignation. The statement of resignation
may include a statement that the registered office is also discontinued. The statement of
resignation filed by the registered agent shall include a declaration that notice of the
resignation has been given to the corporation.

(2) After filing the statement of resignation, the division shall deliver one copy of the
resignation to the registered office of the foreign corporation and the other copy to its principal
office.

(3) The agency appointment terminates, and the registered office discontinues if so
provided, on the 31st day after the filing date of the statement of resignation.

Section 300. Section 16-10a-1533 is amended to read:

16-10a-1533. Domestication of foreign corporations.

(1) (a) Any foreign corporation may become a domestic corporation by delivering to
the division for filing articles of domestication meeting the requirements of Subsection (2) if
the board of directors of the corporation adopts, and its shareholders approve, the
domestication.

(b) The adoption and approval of the domestication shall be in accordance with the
consent requirements of Section 16-10a-1003 for amending articles of incorporation.

(2) (a) The articles of domestication shall meet the requirements applicable to articles
of incorporation set forth in Sections 16-10a-120 and 16-10a-202, except that:

(i) the articles of domestication need not name, or be signed by, the incorporators of
the foreign corporation; and

(ii) any reference to the corporation's registered office, registered agent, or directors
shall be to the registered office and agent in Utah, and the directors then in office at the time
of filing the articles of domestication.

(b) The articles of domestication shall set forth:

(i) the date on which and jurisdiction where the corporation was first formed,
incorporated, or otherwise came into being;

(ii) the name of the corporation immediately prior to the filing of the articles of
domestication;

(iii) any jurisdiction that constituted the seat, location of incorporation, principal place
of business, or central administration of the corporation immediately prior to the filing of the
articles of domestication; and
(iv) a statement that the articles of domestication were adopted by the corporation’s
board of directors and approved by its shareholders.
(3) (a) Upon the filing of articles of domestication with the division, the corporation
shall be domesticated in this state, shall thereafter be subject to all of the provisions of this
chapter, and shall continue as if it had been incorporated under this chapter.
(b) Notwithstanding any other provisions of this chapter, the existence of the
corporation shall be considered to have commenced on the date the corporation commenced
its existence in the jurisdiction in which the corporation was first formed, incorporated, or
otherwise came into being.
(4) The articles of domestication, upon filing with the division, shall become the
articles of incorporation of the corporation, and shall be subject to amendments or restatement
the same as any other articles of incorporation under this chapter.
(5) The domestication of any corporation in this state may not be
considered to affect any obligation or liability of the corporation incurred prior to its
domestication.
(6) The filing of the articles of domestication does not affect the choice of
law applicable to the corporation, except that from the date the articles of domestication are
filed, the law of Utah, including the provisions of this chapter, shall apply to the corporation to
the same extent as if the corporation had been incorporated as a corporation of this state on
that date.
Section 301. Section 16-10a-1607 is amended to read:
16-10a-1607. Annual report for division.
(1) Each domestic corporation, and each foreign corporation authorized to transact
business in this state, shall deliver to the division for filing an annual report on a form
provided by the division that sets forth:
(a) the corporate name of the domestic or foreign corporation and any assumed
(2) The division shall deliver a copy of the prescribed form of annual report to each domestic corporation and each foreign corporation authorized to transact business in this state.

(3) Information in the annual report [must] shall be current as of the date the annual report is executed on behalf of the corporation.

(4) The annual report of a domestic or foreign corporation shall be delivered annually to the division no later than the end of the second calendar month following the calendar month in which the report form is mailed by the division. Proof to the satisfaction of the division that the corporation has mailed an annual report form is considered in compliance with this subsection.

(5) If an annual report contains the information required by this section, the division shall file it. If a report does not contain the information required by this section, the division shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report was otherwise timely filed and is corrected to contain the information required by this section and delivered to the division within 30 days after the effective date of the notice of rejection, the annual report is considered to be timely filed.

(6) The fact that an individual's name is signed on an annual report form is prima facie evidence for division purposes that the individual is authorized to certify the report on behalf of the corporation.

(7) The annual report form provided by the division may be designed to provide a simplified certification by the corporation if no changes have been made in the required information from the last preceding report filed.

(8) A domestic or foreign corporation may, but may not be required to, deliver to the division for filing an amendment to its annual report reflecting any change in the information
Section 302. Section 16-11-6 is amended to read:

16-11-6. Purpose of professional corporation -- Power to own property and invest funds.

A professional corporation may be organized pursuant to the provisions of this act only for the purpose of rendering one specific type of professional service and services ancillary thereto and may not engage in any business other than rendering the professional service which it was organized to render and services ancillary thereto; provided, however, that a professional corporation may own real and personal property necessary or appropriate for rendering the type of professional service it was organized to render and may invest its funds in real estate, mortgages, stocks, bonds and any other type of investments.

Section 303. Section 16-11-8 is amended to read:

16-11-8. Officer, director, or shareholder [must] shall be licensed professional -- Nonlicensed person as secretary or treasurer.

(1)(a) Except as provided in Subsection (1)(b), a person may not be an officer, director, or shareholder of a professional corporation unless that person is:

(i) an individual licensed to render the same specific professional services as those for which the corporation is organized; or

(ii) qualified to be an officer, director, or shareholder under the applicable licensing act for the profession for which the corporation is organized.

(b) Notwithstanding Subsection (1)(a), a nonlicensed person may serve as secretary or treasurer of the professional corporation.

(2) For purposes of Subsection (1), professional services are considered the same specific professional services as those for which the corporation is organized if:

(a) the corporation is organized to provide services described in:

(i) Title 58, Chapter 67, Utah Medical Practice Act; or

(ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; and

(b) the officer, director, or shareholder is licensed under either of the chapters listed in
Section 304. Section 16-11-15 is amended to read:

16-11-15. Incorporation under Utah Revised Business Corporation Act

permitted -- Existing corporations may come under Professional Corporation Act.

This act [shall not] does not preclude incorporation by professional persons under Title
16, Chapter 10a, Utah Revised Business Corporation Act, where such persons would be
permitted to organize a corporation and perform professional services by means of such
corporation in the absence of this act. This act [shall not] does not apply to any corporation
organized by such persons prior to the passage of this act, but any such persons or any such
corporation may bring themselves and such corporation within the provisions of this act by
amending the articles of incorporation in such a manner as to be consistent with all of the
provisions of this act and by affirmatively stating in the amended articles of incorporation that
the shareholders have elected to bring the corporation within the provisions of this act.

Section 305. Section 16-11-16 is amended to read:

16-11-16. Corporate name.

(1) The name of each professional corporation as set forth in its articles of
incorporation:

(a) shall contain the terms:

(i) "professional corporation"; or

(ii) "P.C.";

(b) may not contain the words:

(i) "incorporated"; or

(ii) "inc.";

(c) may not contain language stating or implying that the professional corporation is
organized for a purpose other than that permitted by:

(i) Section 16-11-6; and

(ii) the professional corporation's articles of incorporation;

(d) without the written consent of the United States Olympic Committee, may not
contain the words:

(i) "Olympic";
(ii) "Olympiad"; or
(iii) "Citius Altius Fortius"; and
(e) without the written consent of the Division of Consumer Protection in accordance with Section 13-34-114, may not contain the words:

(i) "university";
(ii) "college"; or
(iii) "institute."

(2) The professional corporation may not imply by any word in the name that it is an agency of the state or of any of its political subdivisions.

(3) A person, other than a professional corporation formed or registered under this chapter, may not use in its name in this state any of the terms:

(a) "professional corporation"; or
(b) "P.C."

(4) Except as authorized by Subsection (5), the name of the professional corporation shall be distinguishable, as defined in Subsection (6), upon the records of the division from:

(a) the name of any domestic corporation incorporated in or foreign corporation authorized to transact business in this state;
(b) the name of any domestic or foreign nonprofit corporation incorporated or authorized to transact business in this state;
(c) the name of any domestic or foreign limited liability company formed or authorized to transact business in this state;
(d) the name of any limited partnership formed or authorized to transact business in this state;
(e) any name reserved or registered with the division for a corporation, limited liability company, or general or limited partnership, under the laws of this state; and
(f) any business name, fictitious name, assumed name, trademark, or service mark registered by the division.

(5) (a) A professional corporation may apply to the division for authorization to file its articles of incorporation under, or to register or reserve, a name that is not distinguishable upon its records from one or more of the names described in Subsection (4).

(b) The division shall approve the application filed under Subsection (5)(a) if:

(i) the other person whose name is not distinguishable from the name under which the applicant desires to file, or which the applicant desires to register or reserve:

(A) consents to the filing, registration, or reservation in writing; and

(B) submits an undertaking in a form satisfactory to the division to change its name to a name that is distinguishable from the name of the applicant; or

(ii) the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to make the requested filing in this state under the name applied for.

(6) (a) A name is distinguishable from other names, trademarks, and service marks registered with the division if it:

(i) contains one or more different letters or numerals from other names upon the division's records; or

(ii) has a different sequence of letter or numerals from the other names on the division's records.

(b) The following differences are not distinguishable:

(i) the words or abbreviations of the words:

(A) "corporation"

(B) "incorporated"

(C) "company"

(D) "limited partnership"

(E) "limited"

(F) "L.P."
(G) "Ltd.";
(H) "limited liability company";
(I) "limited company";
(J) "L.C."; or
(K) "L.L.C.";
(ii) the presence or absence of the words or symbols of the words "the," "and," "a," or "plus";
(iii) differences in punctuation and special characters;
(iv) differences in capitalization; or
(v) differences in abbreviations.

(7) The director of the division shall have the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties imposed upon the division by this section.

Section 306. Section 16-12-5 is amended to read:

16-12-5. Limited liability of shareholders or beneficiaries.

The shareholders or beneficiaries of a real estate investment trust shall not be personally liable for obligations of the real estate investment trust, and shall be under no obligation to the trust or its creditors with respect to such shares or interest other than the obligation to pay the trust the full amount of consideration for which such shares were issued or to be issued.

Section 307. Section 16-12-6 is amended to read:

16-12-6. Trustee governed by declaration of trust -- Liability.

A trustee of a real estate investment trust shall be governed by all the provisions of the declaration of trust and shall not be liable for any claims or damages that may result from his acts in the discharge of any duty imposed or power conferred upon him by the trust, if he exercises ordinary care, and acts in good faith, but shall be liable for his own willful misfeasance or malfeasance. Persons dealing with the trust through the trustees or agents shall look to the trust estate for performance of obligations.
Section 308. Section 16-13-4 is amended to read:

**16-13-4. General powers of business development corporation.**

In furtherance of the purposes of a development corporation, and in addition to the powers conferred on corporations by Title 16, Chapter 10a, Utah Revised Business Corporation Act, such corporation, subject to the restrictions and limitations contained in this act, shall have the following powers:

1. To borrow money from lenders, and otherwise incur indebtedness for any of its purposes; to issue its bonds, debentures, notes, or other evidences of indebtedness whether secured or unsecured therefor; and to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights and privileges of every kind and nature or any part thereof.

2. To lend money to, and to guarantee, indorse, or act as surety on the bonds, notes, contracts, or other obligations of, or otherwise assist financially, any person, firm, corporation, or association, and to establish and regulate the terms and conditions with respect to any such loans or financial assistance and the charges for interest and service connected therewith; provided, however, that the corporation may not approve any application for a loan unless and until the applicant shall have shown that the applicant has applied for the loan through ordinary financial channels and that the loan has been refused by at least one financial institution doing business in this state and, in the ordinary course of its business, granting loans similar in amount and kind to the requested loan.

3. To purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, mortgage, lease, pledge, or otherwise dispose of, upon such terms and conditions as its board of directors may deem advisable, real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by such corporation from time to time in the satisfaction of debts or enforcement of obligations.

4. To acquire the good will, business, rights, real and personal property, and other assets, or any part thereof, of such persons, firms, corporations, joint stock companies,
associations, or trusts as may be in furtherance of the corporate purposes provided herein, and
to assume, undertake, guarantee, or pay the obligations, debts, and liabilities of any such
person, firm, corporation, joint stock company, association, or trust; to acquire improved or
unimproved real estate for the purpose of constructing industrial plants or other business
establishments thereon or for the purpose of disposing of such real estate to others for the
construction of industrial plants or other business establishments, and, in furtherance of the
corporate purposes, to acquire, construct, or reconstruct, alter, repair, maintain, operate, sell,
lease, or otherwise dispose of industrial plants or business establishments.

[(e)] (5) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge,
or otherwise dispose of the stock, shares, bonds, debentures, notes, or other securities and
evidences of interest in, or indebtedness of, any person, firm, corporation, joint stock
company, association, or trust, and while the owner or holder thereof, to exercise all the rights,
powers, and privileges of ownership, including the right to vote thereon, but nothing herein
provided shall authorize the holding of securities of or otherwise engaging directly or
indirectly in a business where such holding of securities or engaging in business is not
authorized for corporations by general law.

[(f)] (6) To cooperate with and avail itself of the facilities of state departments and
other government agencies; and to cooperate with and assist, and otherwise encourage, local
organizations in the various communities in the state in the promotion, assistance, and
development of the business prosperity and economic welfare of such communities and of the
state.

Section 309. Section 16-13-5 is amended to read:

16-13-5. Bonds or securities, capital stock of development corporations --
Authority to purchase, hold, or dispose of -- Rights of holders -- Rights of financial
institutions.

(1) All persons, firms, partnerships, associations, trusts and domestic and foreign
corporations organized or authorized to do business in this state, including, without implied
limitation, all financial institutions, public utility corporations and insurance corporations, are
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Section 16-13-9 is amended to read:

16-13-9. Requirement before commencing business -- Cash consideration for
shares -- Minimum stated capital.

A development corporation incorporated after July 1, 1979, may not transact any business or incur any indebtedness, except as is incidental to its organization or to obtain subscriptions to or payment for its shares, until there has been paid in for the issuance of shares consideration in cash of at least $300,000. A development corporation shall have a stated capital of not less than $300,000.

Section 311. Section 16-13-11 is amended to read:


A development corporation may not deposit any of its funds in any banking institution unless such institution has been designated as a depository by a vote of a majority of the directors present at an authorized meeting of the board of directors, exclusive of any director who is an officer or director of the depository so designated. A development corporation may not receive money on deposit.

Section 312. Section 16-16-111 is amended to read:

16-16-111. Name.

(1) Use of the term "cooperative" or its abbreviation under this chapter is not a violation of the provisions restricting the use of the term under any other law of this state.

(2) Notwithstanding Section 48-2a-102, the name of a limited cooperative association must contain the words "limited cooperative association" or "limited cooperative" or the abbreviation "L.C.A." or "LCA". "Limited" may be abbreviated as "Ltd.". "Cooperative" may be abbreviated as "Co-op" or "Coop". "Association" may be abbreviated as "Assoc." or "Assn.". Use of the term "cooperative" or its abbreviation as permitted by this chapter is not a violation of the provisions restricting the use of the term under any other law of this state. A limited cooperative association or a member may enforce the restrictions on the use of the term "cooperative" under this chapter and any other law of this state. A limited cooperative association or a member may enforce the restrictions on the use of the term "cooperative" under any other law of this state.

(3) Except as otherwise provided in Subsection (4), a limited cooperative association
may use only a name that is available. A name is available if it is distinguishable in the
records of the division from:

(a) the name of any entity organized or authorized to transact business in this state;
(b) a name reserved under Section 16-16-112; and
(c) an alternative name approved for a foreign cooperative authorized to transact
business in this state.

(4) A limited cooperative association may apply to the division for authorization to
use a name that is not available. The division shall authorize use of the name if:

(a) the person with ownership rights to use the name consents in a record to the use
and applies in a form satisfactory to the division to change the name used or reserved to a
name that is distinguishable upon the records of the division from the name applied for; or
(b) the applicant delivers to the division a certified copy of the final judgment of a
court establishing the applicant's right to use the name in this state.

Section 313. Section 16-16-112 is amended to read:

16-16-112. Reservation of name.

(1) A person may reserve the exclusive use of the name of a limited cooperative
association, including a fictitious name for a foreign cooperative whose name is not available
under Section 16-16-111, by delivering an application to the division for filing. The
application [must] shall set forth the name and address of the applicant and the name proposed
to be reserved. If the division finds that the name applied for is available under Section
16-16-111, the division shall reserve the name for the applicant's exclusive use for a
nonrenewable period of 120 days.

(2) A person that has reserved a name for a limited cooperative association may
transfer the reservation to another person by delivering to the division a signed notice of the
transfer which states the name, street address, and, if different, the mailing address of the
transferee. If the person is an organizer of the association and the name of the association is
the same as the reserved name, the delivery of articles of organization for filing by the division
is a transfer by the person to the association.
Section 314. Section 16-16-113 is amended to read:


(1) The relations between a limited cooperative association and its members are consensual. Unless required, limited, or prohibited by this chapter, the organic rules may provide for any matter concerning the relations among the members of the association and between the members and the association, the activities of the association, and the conduct of its activities.

(2) The matters referred to in Subsections (2)(a) through (i) may be varied only in the articles of organization. The articles may:

(a) state a term of existence for the association under Subsection 16-16-105(3);

(b) limit or eliminate the acceptance of new or additional members by the initial board of directors under Subsection 16-16-303(2);

(c) vary the limitations on the obligations and liability of members for association obligations under Section 16-16-504;

(d) require a notice of an annual members meeting to state a purpose of the meeting under Subsection 16-16-508(2);

(e) vary the board of directors meeting quorum under Subsection 16-16-815(1);

(f) vary the matters the board of directors may consider in making a decision under Section 16-16-820;

(g) specify causes of dissolution under Subsection 16-16-1202(1);

(h) delegate amendment of the bylaws to the board of directors pursuant to Subsection 16-16-405(6);

(i) provide for member approval of asset dispositions under Subsection 16-16-1501;

and

(j) provide for any matters that may be contained in the organic rules, including those under Subsection (3).

(3) The matters referred to in Subsections (3)(a) through (y) may be varied only in the organic rules. The organic rules may:
(a) require more information to be maintained under Section 16-16-114 or provided to members under Subsection 16-16-505(11);

(b) provide restrictions on transactions between a member and an association under Section 16-16-115;

(c) provide for the percentage and manner of voting on amendments to the organic rules by district, class, or voting group under Subsection 16-16-404(1);

(d) provide for the percentage vote required to amend the bylaws concerning the admission of new members under Subsection 16-16-405(5)(e);

(e) provide for terms and conditions to become a member under Section 16-16-502;

(f) restrict the manner of conducting members meetings under Subsections 16-16-506(3) and 16-16-507(5);

(g) designate the presiding officer of members meetings under Subsections 16-16-506(5) and 16-16-507(7);

(h) require a statement of purposes in the annual meeting notice under Subsection 16-16-508(2);

(i) increase quorum requirements for members meetings under Section 16-16-510 and board of directors meetings under Section 16-16-815;

(j) allocate voting power among members, including patron members and investor members, and provide for the manner of member voting and action as permitted by Sections 16-16-511 through 16-16-517;

(k) authorize investor members and expand or restrict the transferability of members' interests to the extent provided in Sections 16-16-602 through 16-16-604;

(l) provide for enforcement of a marketing contract under Subsection 16-16-704(1);

(m) provide for qualification, election, terms, removal, filling vacancies, and member approval for compensation of directors in accordance with Sections 16-16-803 through 16-16-805, 16-16-807, 16-16-809, and 16-16-810;

(n) restrict the manner of conducting board meetings and taking action without a meeting under Sections 16-16-811 and 16-16-812;
(o) provide for frequency, location, notice and waivers of notice for board meetings under Sections 16-16-813 and 16-16-814;

(p) increase the percentage of votes necessary for board action under Subsection 16-16-816(2);

(q) provide for the creation of committees of the board of directors and matters related to the committees in accordance with Section 16-16-817;

(r) provide for officers and their appointment, designation, and authority under Section 16-16-822;

(s) provide for forms and values of contributions under Section 16-16-1002;

(t) provide for remedies for failure to make a contribution under Subsection 16-16-1003(2);

(u) provide for the allocation of profits and losses of the association, distributions, and the redemption or repurchase of distributed property other than money in accordance with Sections 16-16-1004 through 16-16-1007;

(v) specify when a member's dissociation is wrongful and the liability incurred by the dissociating member for damage to the association under Subsections 16-16-1101(2) and (3);

(w) provide the personal representative, or other legal representative of, a deceased member or a member adjudged incompetent with additional rights under Section 16-16-1103;

(x) increase the percentage of votes required for board of director approval of:

(i) a resolution to dissolve under Subsection 16-16-1205(1)(a);

(ii) a proposed amendment to the organic rules under Subsection 16-16-402(1)(a);

(iii) a plan of conversion under Subsection 16-16-1603(1);

(iv) a plan of merger under Subsection 16-16-1607(1); and

(v) a proposed disposition of assets under Subsection 16-16-1503(1); and

(y) vary the percentage of votes required for members' approval of:

(i) a resolution to dissolve under Section 16-16-1205;

(ii) an amendment to the organic rules under Section 16-16-405;

(iii) a plan of conversion under Section 16-16-1603;
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9914     (iv) a plan of merger under Section 16-16-1608; and
9915     (v) a disposition of assets under Section 16-16-1504.
9916     (4) The organic rules [must] shall address members' contributions pursuant to Section
9917     16-16-1001.
9918     Section 315. Section 16-16-114 is amended to read:
9919
9919     16-16-114. Required information.
9920     (1) Subject to Subsection (2), a limited cooperative association shall maintain in a
9921     record available at its principal office:
9922     (a) a list containing the name, last known street address and, if different, mailing
9923     address, and term of office of each director and officer;
9924     (b) the initial articles of organization and all amendments to and restatements of the
9925     articles, together with a signed copy of any power of attorney under which any article,
9926     amendment, or restatement has been signed;
9927     (c) the initial bylaws and all amendments to and restatements of the bylaws;
9928     (d) all filed articles of merger and statements of conversion;
9929     (e) all financial statements of the association for the six most recent years;
9930     (f) the six most recent annual reports delivered by the association to the division;
9931     (g) the minutes of members meetings for the six most recent years;
9932     (h) evidence of all actions taken by members without a meeting for the six most recent
9933     years;
9934     (i) a list containing:
9935     (i) the name, in alphabetical order, and last known street address and, if different,
9936     mailing address of each patron member and each investor member; and
9937     (ii) if the association has districts or classes of members, information from which each
9938     current member in a district or class may be identified;
9939     (j) the federal income tax returns, any state and local income tax returns, and any tax
9940     reports of the association for the six most recent years;
9941     (k) accounting records maintained by the association in the ordinary course of its
operations for the six most recent years;

(l) the minutes of directors meetings for the six most recent years;

(m) evidence of all actions taken by directors without a meeting for the six most recent years;

(n) the amount of money contributed and agreed to be contributed by each member;

(o) a description and statement of the agreed value of contributions other than money made and agreed to be made by each member;

(p) the times at which, or events on the happening of which, any additional contribution is to be made by each member;

(q) for each member, a description and statement of the member's interest or information from which the description and statement can be derived; and

(r) all communications concerning the association made in a record to all members, or to all members in a district or class, for the six most recent years.

(2) If a limited cooperative association has existed for less than the period for which records must be maintained under Subsection (1), the period records shall be kept is the period of the association's existence.

(3) The organic rules may require that more information be maintained.

Section 316. Section 16-16-117 is amended to read:

16-16-117. Designated office and agent for service of process.

(1) A limited cooperative association, or a foreign cooperative that has a certificate of authority under Section 16-16-1404, shall designate and continuously maintain in this state:

(a) an office, as its designated office, which need not be a place of the association's or foreign cooperative's activity in this state; and

(b) an agent for service of process at the designated office.

(2) An agent for service of process of a limited cooperative association or foreign cooperative shall be an individual who is a resident of this state or an entity that is authorized to do business in this state.

Section 317. Section 16-16-118 is amended to read:
16-16-118. Change of designated office or agent for service of process.

(1) Except as otherwise provided in Subsection 16-16-207(5), to change its designated office, its agent for service of process, or the street address or, if different, mailing address of its principal office, a limited cooperative association \[must\] shall deliver to the division for filing a statement of change containing:

(a) the name of the limited cooperative association;
(b) the street address and, if different, mailing address of its designated office;
(c) if the designated office is to be changed, the street address and, if different, mailing address of the new designated office;
(d) the name of its agent for service of process; and
(e) if the agent for service of process is to be changed, the name of the new agent.

(2) Except as otherwise provided in Subsection 16-16-207(5), to change its agent for service of process, the address of its designated office, or the street address or, if different, mailing address of its principal office, a foreign cooperative shall deliver to the division for filing a statement of change containing:

(a) the name of the foreign cooperative;
(b) the name, street address and, if different, mailing address of its designated office;
(c) if the current agent for service of process or an address of the designated office is to be changed, the new information;
(d) the street address and, if different, mailing address of its principal office; and
(e) if the street address or, if different, the mailing address of its principal office is to be changed, the street address and, if different, the mailing address of the new principal office.

(3) Except as otherwise provided in Section 16-16-204, a statement of change is effective when filed by the division.

Section 318. Section 16-16-119 is amended to read:

16-16-119. Resignation of agent for service of process.

(1) To resign as an agent for service of process of a limited cooperative association or foreign cooperative, the agent \[must\] shall deliver to the division for filing a statement of
resignation containing the name of the agent and the name of the association or foreign cooperative.

(2) After receiving a statement of resignation under Subsection (1), the division shall file it and mail or otherwise provide or deliver a copy to the limited cooperative association or foreign cooperative at its principal office.

(3) An agency for service of process of a limited cooperative association or foreign cooperative terminates on the earlier of:

(a) the 31st day after the division files a statement of resignation under Subsection (2); or

(b) when a record designating a new agent for service of process is delivered to the division for filing on behalf of the association or foreign cooperative and becomes effective.

Section 319. Section 16-16-201 is amended to read:

16-16-201. Signing of records delivered for filing to division.

(1) A record delivered to the division for filing pursuant to this chapter shall be signed as follows:

(a) The initial articles of organization shall be signed by at least one organizer.

(b) A statement of cancellation under Subsection 16-16-302(4) shall be signed by at least one organizer.

(c) Except as otherwise provided in Subsection (1)(d), a record signed on behalf of an existing limited cooperative association shall be signed by an officer.

(d) A record filed on behalf of a dissolved association shall be signed by a person winding up activities under Section 16-16-1206 or a person appointed under Section 16-16-1206 to wind up those activities.

(e) Any other record shall be signed by the person on whose behalf the record is delivered to the division.

(2) Any record to be signed under this chapter may be signed by an authorized agent.

Section 320. Section 16-16-203 is amended to read:

16-16-203. Delivery to and filing of records by division -- Effective time and
date.

(1) A record authorized or required by this chapter to be delivered to the division for filing must be captioned to describe the record's purpose, be in a medium and format permitted by the division, and be delivered to the division. If the filing fees have been paid, and unless the division determines that the record does not comply with the filing requirements of this chapter, the division shall file the record.

(2) The division, upon request and payment of the required fee, shall furnish a certified copy of any record filed by the division under this chapter to the person making the request.

(3) Except as otherwise provided in Sections 16-16-118 and 16-16-204, a record delivered to the division for filing under this chapter may specify an effective time and a delayed effective date that may include an effective time on that date. Except as otherwise provided in Sections 16-16-118 and 16-16-204, a record filed by the division under this chapter is effective:

(a) if the record does not specify an effective time and does not specify a delayed effective date, on the date and at the time the record is filed as evidenced by the division's endorsement of the date and time on the record;

(b) if the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;

(c) if the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of:

(i) the specified date; or

(ii) the 90th day after the record is filed; or

(d) if the record specifies an effective time and a delayed effective date, at the specified time on the earlier of:

(i) the specified date; or

(ii) the 90th day after the record is filed.

Section 321. Section 16-16-204 is amended to read:
16-16-204. Correcting filed record.

(1) A limited cooperative association or foreign cooperative may deliver to the division for filing a statement of correction to correct a record previously delivered by the association or foreign cooperative to the division and filed by the division if, at the time of filing, the record contained inaccurate information or was defectively signed.

(2) A statement of correction may not state a delayed effective date and shall:

(a) describe the record to be corrected, including its filing date, or have attached a copy of the record as filed;

(b) specify the inaccurate information and the reason it is inaccurate or the manner in which the signing was defective; and

(c) correct the inaccurate information or defective signature.

(3) When filed by the division, a statement of correction is effective:

(a) when filed as to persons relying on the inaccurate information or defective signature before its correction and adversely affected by the correction; and

(b) as to all other persons, retroactively as of the effective date and time of the record the statement corrects.

Section 322. Section 16-16-207 is amended to read:

16-16-207. Annual report for division.

(1) A limited cooperative association or foreign cooperative authorized to transact business in this state shall deliver to the division for filing an annual report that states:

(a) the name of the association or foreign cooperative;

(b) the street address and, if different, mailing address of the association's or foreign cooperative's designated office and the name of its agent for service of process at the designated office;

(c) the street address and, if different, mailing address of the association's or foreign cooperative's principal office; and

(d) in the case of a foreign cooperative, the state or other jurisdiction under whose law the foreign cooperative is formed and any alternative name adopted under Section 16-16-1405.
(2) Information in an annual report shall be current as of the date the report is delivered to the division.

(3) The first annual report shall be delivered to the division between January 1 and April 1 of the year following the calendar year in which the limited cooperative association is formed or the foreign cooperative is authorized to transact business in this state. For subsequent years, an annual report shall be delivered to the division during the month in which falls the anniversary of the limited cooperative association's organization or the foreign cooperative's authorization to transact business.

(4) If an annual report does not contain the information required by Subsection (1), the division shall promptly notify the reporting limited cooperative association or foreign cooperative and return the report for correction. If the report is corrected to contain the information required by Subsection (1) and delivered to the division not later than 30 days after the date of the notice from the division, it is timely delivered.

(5) If a filed annual report contains an address of the designated office, name of the agent for service of process, or address of the principal office which differs from the information shown in the records of the division immediately before the filing, the differing information in the annual report is considered a statement of change.

(6) If a limited cooperative association fails to deliver an annual report under this section, the division may proceed under Section 16-16-1211 to dissolve the association administratively.

(7) If a foreign cooperative fails to deliver an annual report under this section, the division may revoke the certificate of authority of the cooperative.

Section 323. Section 16-16-301 is amended to read:

16-16-301. Organizers.

A limited cooperative association shall be organized by one or more organizers.

Section 324. Section 16-16-302 is amended to read:

16-16-302. Formation of limited cooperative association -- Articles of organization.
(1) To form a limited cooperative association, an organizer of the association must deliver articles of organization to the division for filing. The articles must state:

(a) the name of the association;
(b) the purposes for which the association is formed;
(c) the street address and, if different, mailing address of the association's initial designated office and the name of the association's initial agent for service of process at the designated office;
(d) the street address and, if different, mailing address of the initial principal office;
(e) the name and street address and, if different, mailing address of each organizer; and
(f) the term for which the association is to exist if other than perpetual.

(2) Subject to Subsection 16-16-113(1), articles of organization may contain any other provisions in addition to those required by Subsection (1).

(3) A limited cooperative association is formed after articles of organization that substantially comply with Subsection (1) are delivered to the division, are filed, and become effective under Subsection 16-16-203(3).

(4) If articles of organization filed by the division state a delayed effective date, a limited cooperative association is not formed if, before the articles take effect, an organizer signs and delivers to the division for filing a statement of cancellation.

Section 325. Section 16-16-304 is amended to read:

16-16-304. Bylaws.

(1) Bylaws shall be in a record and, if not stated in the articles of organization, must include:

(a) a statement of the capital structure of the limited cooperative association, including:

(i) the classes or other types of members' interests and relative rights, preferences, and restrictions granted to or imposed upon each class or other type of member's interest; and

(ii) the rights to share in profits or distributions of the association;
(b) a statement of the method for admission of members;

c) a statement designating voting and other governance rights, including which members have voting power and any restriction on voting power;

d) a statement that a member's interest is transferable if it is to be transferable and a statement of the conditions upon which it may be transferred;

e) a statement concerning the manner in which profits and losses are allocated and distributions are made among patron members and, if investor members are authorized, the manner in which profits and losses are allocated and how distributions are made among investor members and between patron members and investor members;

(f) a statement concerning:

(i) whether persons that are not members but conduct business with the association may be permitted to share in allocations of profits and losses and receive distributions; and

(ii) the manner in which profits and losses are allocated and distributions are made with respect to those persons; and

g) a statement of the number and terms of directors or the method by which the number and terms are determined.

(2) Subject to Subsection 16-16-113(3) and the articles of organization, bylaws may contain any other provision for managing and regulating the affairs of the association.

(3) In addition to amendments permitted under Part 4, Amendment of Organic Rules of Limited Cooperative Association, the initial board of directors may amend the bylaws by a majority vote of the directors at any time before the admission of members.

Section 326. Section 16-16-402 is amended to read:


(1) Except as provided in Subsections 16-16-401(1) and 16-16-405(6), the organic rules of a limited cooperative association may be amended only at a members meeting. An amendment may be proposed by either:

(a) a majority of the board of directors, or a greater percentage if required by the organic rules; or
(b) one or more petitions signed by at least 10% of the patron members or at least 10% of the investor members.

(2) The board of directors shall call a members meeting to consider an amendment proposed pursuant to Subsection (1). The meeting shall be held not later than 90 days following the proposal of the amendment by the board or receipt of a petition. The board must mail or otherwise transmit or deliver in a record to each member:

(a) the proposed amendment, or a summary of the proposed amendment and a statement of the manner in which a copy of the amendment in a record may be reasonably obtained by a member;

(b) a recommendation that the members approve the amendment, or if the board determines that because of conflict of interest or other special circumstances it should not make a favorable recommendation, the basis for that determination;

(c) a statement of any condition of the board's submission of the amendment to the members; and

(d) notice of the meeting at which the proposed amendment will be considered, which [must] shall be given in the same manner as notice for a special meeting of members.

Section 327. Section 16-16-403 is amended to read:

16-16-403. Change to amendment of organic rules at meeting.

(1) A substantive change to a proposed amendment of the organic rules may not be made at the members meeting at which a vote on the amendment occurs.

(2) A nonsubstantive change to a proposed amendment of the organic rules may be made at the members meeting at which the vote on the amendment occurs and need not be separately voted upon by the board of directors.

(3) A vote to adopt a nonsubstantive change to a proposed amendment to the organic rules [must] shall be by the same percentage of votes required to pass a proposed amendment.

Section 328. Section 16-16-404 is amended to read:

16-16-404. Voting by district, class, or voting group.

(1) This section applies if the organic rules provide for voting by district or class, or if...
there is one or more identifiable voting groups that a proposed amendment to the organic rules would affect differently from other members with respect to matters identified in Subsections 16-16-405(5)(a) through (e). Approval of the amendment requires the same percentage of votes of the members of that district, class, or voting group required in Sections 16-16-405 and 16-16-514.

(2) If a proposed amendment to the organic rules would affect members in two or more districts or classes entitled to vote separately under Subsection (1) in the same or a substantially similar way, the districts or classes affected must vote as a single voting group unless the organic rules otherwise provide for separate voting.

Section 329. Section 16-16-405 is amended to read:

16-16-405. Approval of amendment.

(1) Subject to Section 16-16-404 and Subsections (3) and (4), an amendment to the articles of organization must be approved by:

(a) at least two-thirds of the voting power of members present at a members meeting called under Section 16-16-402; and

(b) if the limited cooperative association has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a greater percentage vote by patron members.

(2) Subject to Section 16-16-404 and Subsections (3), (4), (5), and (6), an amendment to the bylaws must be approved by:

(a) at least a majority vote of the voting power of all members present at a members meeting called under Section 16-16-402, unless the organic rules require a greater percentage; and

(b) if a limited cooperative association has investor members, a majority of the votes cast by patron members, unless the organic rules require a larger affirmative vote by patron members.

(3) The organic rules may require that the percentage of votes under Subsection (1)(a) or (2)(a) be:
(a) a different percentage that is not less than a majority of members voting at the
meeting;

(b) measured against the voting power of all members; or

(c) a combination of Subsections (3)(a) and (b).

(4) Consent in a record by a member [must] shall be delivered to a limited cooperative
association before delivery of an amendment to the articles of organization or restated articles
of organization for filing pursuant to Section 16-16-407, if as a result of the amendment the
member will have:

(a) personal liability for an obligation of the association; or

(b) an obligation or liability for an additional contribution.

(5) The vote required to amend bylaws [must] shall satisfy the requirements of
Subsection (1) if the proposed amendment modifies:

(a) the equity capital structure of the limited cooperative association, including the
rights of the association's members to share in profits or distributions, or the relative rights,
preferences, and restrictions granted to or imposed upon one or more districts, classes, or
voting groups of similarly situated members;

(b) the transferability of a member's interest;

(c) the manner or method of allocation of profits or losses among members;

(d) the quorum for a meeting and the rights of voting and governance; or

(e) unless otherwise provided in the organic rules, the terms for admission of new
members.

(6) Except for the matters described in Subsection (5), the articles of organization may
delegate amendment of all or a part of the bylaws to the board of directors without requiring
member approval.

(7) If the articles of organization delegate amendment of bylaws to the board of
directors, the board shall provide a description of any amendment of the bylaws made by the
board to the members in a record not later than 30 days after the amendment, but the
description may be provided at the next annual members meeting if the meeting is held within
the 30-day period.
Section 330. Section 16-16-407 is amended to read:

16-16-407. Amendment or restatement of articles of organization--Filing.
(1) To amend its articles of organization, a limited cooperative association [must] shall deliver to the division for filing an amendment of the articles, or restated articles of organization or articles of conversion or merger pursuant to Part 16, Conversion and Merger, which contain one or more amendments of the articles of organization, stating:
(a) the name of the association;
(b) the date of filing of the association's initial articles; and
(c) the changes the amendment makes to the articles as most recently amended or restated.
(2) Before the beginning of the initial meeting of the board of directors, an organizer who knows that information in the filed articles of organization was inaccurate when the articles were filed or has become inaccurate due to changed circumstances shall promptly:
(a) cause the articles to be amended; or
(b) if appropriate, deliver an amendment to the division for filing pursuant to Section 16-16-203.
(3) If restated articles of organization are adopted, the restated articles may be delivered to the division for filing in the same manner as an amendment.
(4) Upon filing, an amendment of the articles of organization or other record containing an amendment of the articles which has been properly adopted by the members is effective as provided in Subsection 16-16-203(3).

Section 331. Section 16-16-501 is amended to read:

16-16-501. Members.
To begin business, a limited cooperative association [must] shall have at least two patron members unless the sole member is a cooperative.

Section 332. Section 16-16-507 is amended to read:

16-16-507. Special meeting of members.
10278 (1) A special meeting of members may be called only:
10279 (a) as provided in the organic rules;
10280 (b) by a majority vote of the board of directors on a proposal stating the purpose of the
10281 meeting;
10282 (c) by demand in a record signed by members holding at least 20% of the voting
10283 power of the persons in any district or class entitled to vote on the matter that is the purpose of
10284 the meeting stated in the demand; or
10285 (d) by demand in a record signed by members holding at least 10% of the total voting
10286 power of all the persons entitled to vote on the matter that is the purpose of the meeting stated
10287 in the demand.
10288 (2) A demand under Subsection (1)(c) or (d) shall be submitted to the officer of
10289 the limited cooperative association charged with keeping its records.
10290 (3) Any voting member may withdraw its demand under Subsection (1)(c) or (d)
10291 before receipt by the limited cooperative association of demands sufficient to require a special
10292 meeting of members.
10293 (4) A special meeting of members may be held inside or outside this state at the place
10294 stated in the organic rules or selected by the board of directors not inconsistent with the
10295 organic rules.
10296 (5) Unless the organic rules otherwise provide, members may attend or conduct a
10297 special meeting of members through the use of any means of communication if all members
10298 attending the meeting can communicate with each other during the meeting.
10299 (6) Only business within the purpose or purposes stated in the notice of a special
10300 meeting of members may be conducted at the meeting.
10301 (7) Unless the organic rules otherwise provide, the presiding officer of a special
10302 meeting of members shall be designated by the board of directors.
10303 Section 333. Section 16-16-508 is amended to read:
10304 16-16-508. Notice of members meeting.
10305 (1) A limited cooperative association shall notify each member of the time, date, and
place of a members meeting at least 15 and not more than 60 days before the meeting.

(2) Unless the articles of organization otherwise provide, notice of an annual members meeting need not include any purpose of the meeting.

(3) Notice of a special meeting of members [must] **shall** include each purpose of the meeting as contained in the demand under Subsection 16-16-507(1)(c) or (d) or as voted upon by the board of directors under Subsection 16-16-507(1)(b).

(4) Notice of a members meeting [must] **shall** be given in a record unless oral notice is reasonable under the circumstances.

Section 334. Section 16-16-603 is amended to read:

**16-16-603. Transferability of member's interest.**

(1) The provisions of this chapter relating to the transferability of a member's interest are subject to Title 70A, Uniform Commercial Code.

(2) Unless the organic rules otherwise provide, a member's interest other than financial rights is not transferable.

(3) Unless a transfer is restricted or prohibited by the organic rules, a member may transfer the member's financial rights in the limited cooperative association.

(4) The terms of any restriction on transferability of financial rights [must] **shall** be:

(a) set forth in the organic rules and the member records of the association; and

(b) conspicuously noted on any certificates evidencing a member's interest.

(5) A transferee of a member's financial rights, to the extent the rights are transferred, has the right to share in the allocation of profits or losses and to receive the distributions to the member transferring the interest to the same extent as the transferring member.

(6) A transferee of a member's financial rights does not become a member upon transfer of the rights unless the transferee is admitted as a member by the limited cooperative association.

(7) A limited cooperative association need not give effect to a transfer under this section until the association has notice of the transfer.

(8) A transfer of a member's financial rights in violation of a restriction on transfer
Section 335. Section 16-16-801 is amended to read:

**16-16-801. Board of directors.**

(1) A limited cooperative association [must] shall have a board of directors of at least three individuals, unless the association has fewer than three members. If the association has fewer than three members, the number of directors may not be fewer than the number of members.

(2) The affairs of a limited cooperative association [must] shall be managed by, or under the direction of, the board of directors. The board may adopt policies and procedures that do not conflict with the organic rules or this chapter.

(3) An individual is not an agent for a limited cooperative association solely by being a director.

Section 336. Section 16-16-803 is amended to read:

**16-16-803. Qualifications of directors.**

(1) Unless the organic rules otherwise provide, and subject to Subsection (3), each director of a limited cooperative association [must] shall be an individual who is a member of the association or an individual who is designated by a member that is not an individual for purposes of qualifying and serving as a director. Initial directors need not be members.

(2) Unless the organic rules otherwise provide, a director may be an officer or employee of the limited cooperative association.

(3) If the organic rules provide for nonmember directors, the number of nonmember directors may not exceed:

(a) one, if there are two through four directors;

(b) two, if there are five through eight directors; or

(c) 1/3 of the total number of directors if there are at least nine directors.

(4) The organic rules may provide qualifications for directors in addition to those in this section.
Section 337. Section 16-16-804 is amended to read:

16-16-804. Election of directors and composition of board.

(1) Unless the organic rules require a greater number:
   (a) the number of directors that must be patron members may not be fewer than:
      (i) one, if there are two or three directors;
      (ii) two, if there are four or five directors;
      (iii) three, if there are six through eight directors; or
      (iv) 1/3 of the directors if there are at least nine directors; and
   (b) a majority of the board of directors must be elected exclusively by patron members.

(2) Unless the organic rules otherwise provide, if a limited cooperative association has investor members, the directors who are not elected exclusively by patron members are elected by the investor members.

(3) Subject to Subsection (1), the organic rules may provide for the election of all or a specified number of directors by one or more districts or classes of members.

(4) Subject to Subsection (1), the organic rules may provide for the nomination or election of directors by districts or classes, directly or by district delegates.

(5) If a class of members consists of a single member, the organic rules may provide for the member to appoint a director or directors.

(6) Unless the organic rules otherwise provide, cumulative voting for directors is prohibited.

(7) Except as otherwise provided by the organic rules, Subsection (5), or Sections 16-16-303, 16-16-516, 16-16-517, and 16-16-809, member directors must be elected at an annual members meeting.

Section 338. Section 16-16-809 is amended to read:

16-16-809. Vacancy on board.

(1) Unless the organic rules otherwise provide, a vacancy on the board of directors
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[10390] shall be filled:

(a) within a reasonable time by majority vote of the remaining directors until the next annual members meeting or a special meeting of members called to fill the vacancy; and

(b) for the unexpired term by members at the next annual members meeting or a special meeting of members called to fill the vacancy.

(2) Unless the organic rules otherwise provide, if a vacating director was elected or appointed by a class of members or a district:

(a) the new director shall be of that class or district; and

(b) the selection of the director for the unexpired term shall be conducted in the same manner as would the selection for that position without a vacancy.

(3) If a member appointed a vacating director, the organic rules may provide for that member to appoint a director to fill the vacancy.

Section 339. Section 16-16-813 is amended to read:

16-16-813. Meetings and notice.

(1) Unless the organic rules otherwise provide, a board of directors may establish a time, date, and place for regular board meetings, and notice of the time, date, place, or purpose of those meetings is not required.

(2) Unless the organic rules otherwise provide, notice of the time, date, and place of a special meeting of a board of directors be given to all directors at least three days before the meeting, the notice shall contain a statement of the purpose of the meeting, and the meeting is limited to the matters contained in the statement.

Section 340. Section 16-16-1001 is amended to read:

16-16-1001. Members' contributions.

The organic rules shall establish the amount, manner, or method of determining any contribution requirements for members or authorize the board of directors to establish the amount, manner, or other method of determining any contribution requirements for members.

Section 341. Section 16-16-1002 is amended to read:
16-16-1002. Contribution and valuation.

(1) Unless the organic rules otherwise provide, the contributions of a member to a limited cooperative association may consist of tangible or intangible property or other benefit to the association, including money, labor or other services performed or to be performed, promissory notes, other agreements to contribute money or property, and contracts to be performed.

(2) The receipt and acceptance of contributions and the valuation of contributions shall be reflected in a limited cooperative association's records.

(3) Unless the organic rules otherwise provide, the board of directors shall determine the value of a member's contributions received or to be received and the determination by the board of directors of valuation is conclusive for purposes of determining whether the member's contribution obligation has been met.

Section 342. Section 16-16-1004 is amended to read:

16-16-1004. Allocations of profits and losses.

(1) The organic rules may provide for allocating profits of a limited cooperative association among members, among persons that are not members but conduct business with the association, to an unallocated account, or to any combination thereof. Unless the organic rules otherwise provide, losses of the association shall be allocated in the same proportion as profits.

(2) Unless the organic rules otherwise provide, all profits and losses of a limited cooperative association shall be allocated to patron members.

(3) If a limited cooperative association has investor members, the organic rules may not reduce the allocation to patron members to less than 50% of profits. For purposes of this Subsection (3), the following rules apply:

(a) Amounts paid or due on contracts for the delivery to the association by patron members of products, goods, or services are not considered amounts allocated to patron members.

(b) Amounts paid, due, or allocated to investor members as a stated fixed return on
equity are not considered amounts allocated to investor members.

(4) Unless prohibited by the organic rules, in determining the profits for allocation under Subsections (1), (2), and (3), the board of directors may first deduct and set aside a part of the profits to create or accumulate:

(a) an unallocated capital reserve; and

(b) reasonable unallocated reserves for specific purposes, including expansion and replacement of capital assets; education, training, cooperative development; creation and distribution of information concerning principles of cooperation; and community responsibility.

(5) Subject to Subsections (2) and (6) and the organic rules, the board of directors shall allocate the amount remaining after any deduction or setting aside of profits for unallocated reserves under Subsection (4):

(a) to patron members in the ratio of each member's patronage to the total patronage of all patron members during the period for which allocations are to be made; and

(b) to investor members, if any, in the ratio of each investor member's contributions to the total contributions of all investor members.

(6) For purposes of allocation of profits and losses or specific items of profits or losses of a limited cooperative association to members, the organic rules may establish allocation units or methods based on separate classes of members or, for patron members, on class, function, division, district, department, allocation units, pooling arrangements, members' contributions, or other equitable methods.

Section 343. Section 16-16-1202 is amended to read:

16-16-1202. Nonjudicial dissolution.

Except as otherwise provided in Sections 16-16-1203 and 16-16-1211, a limited cooperative association is dissolved and its activities shall be wound up:

(1) upon the occurrence of an event or at a time specified in the articles of organization;

(2) upon the action of the association's organizers, board of directors, or members
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10474 under section 16-16-1204 or 16-16-1205; or
10475 (3) 90 days after the dissociation of a member, which results in the association having
10476 one patron member and no other members, unless the association:
10477 (a) has a sole member that is a cooperative; or
10478 (b) not later than the end of the 90-day period, admits at least one member in
10479 accordance with the organic rules and has at least two members, at least one of which is a
10480 patron member.
10481 section 344. section 16-16-1205 is amended to read:
10482 16-16-1205. voluntary dissolution by the board and members.
10483 (1) Except as otherwise provided in section 16-16-1204, for a limited cooperative
10484 association to voluntarily dissolve:
10485 (a) a resolution to dissolve [must] shall be approved by a majority vote of the board of
directors unless a greater percentage is required by the organic rules;
10486 (b) the board of directors [must] shall call a members meeting to consider the
resolution, to be held not later than 90 days after adoption of the resolution; and
10487 (c) the board of directors [must] shall mail or otherwise transmit or deliver to each
member in a record that complies with section 16-16-508:
10488 (i) the resolution required by subsection (1)(a);
10489 (ii) a recommendation that the members vote in favor of the resolution or, if the board
determines that because of conflict of interest or other special circumstances it should not
make a favorable recommendation, the basis of that determination; and
10490 (iii) notice of the members meeting, which [must] shall be given in the same manner
as notice of a special meeting of members.
10491 (2) Subject to subsection (3), a resolution to dissolve [must] shall be approved by:
10492 (a) at least two-thirds of the voting power of members present at a members meeting
called under subsection (1)(b); and
10493 (b) if the limited cooperative association has investor members, at least a majority of
the votes cast by patron members, unless the organic rules require a greater percentage.
(3) The organic rules may require that the percentage of votes under Subsection (2)(a) is:

(a) a different percentage that is not less than a majority of members voting at the meeting;
(b) measured against the voting power of all members; or
(c) a combination of Subsections (3)(a) and (b).

Section 345. Section 16-16-1208 is amended to read:

16-16-1208. Known claims against dissolved limited cooperative association.

(1) Subject to Subsection (4), a dissolved limited cooperative association may dispose of the known claims against it by following the procedure in Subsections (2) and (3).

(2) A dissolved limited cooperative association may notify its known claimants of the dissolution in a record. The notice [must] shall:

(a) specify that a claim be in a record;
(b) specify the information required to be included in the claim;
(c) provide an address to which the claim [must] shall be sent;
(d) state the deadline for receipt of the claim, which may not be less than 120 days after the date the notice is received by the claimant; and
(e) state that the claim will be barred if not received by the deadline.

(3) A claim against a dissolved limited cooperative association is barred if the requirements of Subsection (2) are met, and:

(a) the association is not notified of the claimant's claim, in a record, by the deadline specified in the notice under Subsection (2)(d);
(b) in the case of a claim that is timely received but rejected by the association, the claimant does not commence an action to enforce the claim against the association not later than 90 days after receipt of the notice of the rejection; or
(c) if a claim is timely received but is neither accepted nor rejected by the association not later than 120 days after the deadline for receipt of claims, the claimant does not commence an action to enforce the claim against the association:
Section 346. Section 16-16-1209 is amended to read:

16-16-1209. Other claims against dissolved limited cooperative association.

(1) A dissolved limited cooperative association may publish notice of its dissolution and request persons having claims against the association to present them in accordance with the notice.

(2) A notice under Subsection (1) [must] shall:

(a) be published:

(i) at least once in a newspaper of general circulation in the county in which the dissolved limited cooperative association's principal office is located or, if the association does not have a principal office in this state, in the county in which the association's designated office is or was last located; and

(ii) as required in Section 45-1-101;

(b) describe the information required to be contained in a claim and provide an address to which the claim is to be sent; and

(c) state that a claim against the association is barred unless an action to enforce the claim is commenced not later than three years after publication of the notice.

(3) If a dissolved limited cooperative association publishes a notice in accordance with Subsection (2), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim not later than three years after the first publication date of the notice:

(a) a claimant that is entitled to but did not receive notice in a record under Section 16-16-1208; and

(b) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.
A claim not barred under this section may be enforced:

(a) against a dissolved limited cooperative association, to the extent of its undistributed assets; or

(b) if the association's assets have been distributed in connection with winding up the association's activities against a member or holder of financial rights to the extent of that person's proportionate share of the claim or the association's assets distributed to the person in connection with the winding up, whichever is less. The person's total liability for all claims under this Subsection (4) may not exceed the total amount of assets distributed to the person as part of the winding up of the association.

Section 347. Section 16-16-1212 is amended to read:

16-16-1212. Reinstatement following administrative dissolution.

(1) A limited cooperative association that has been dissolved administratively may apply to the division for reinstatement not later than two years after the effective date of dissolution. The application shall be delivered to the division for filing and state:

(a) the name of the association and the effective date of its administrative dissolution;

(b) that the grounds for dissolution either did not exist or have been eliminated; and

(c) that the association's name satisfies the requirements of Section 16-16-111.

(2) If the division determines that an application contains the information required by Subsection (1) and that the information is correct, the division shall:

(a) prepare a declaration of reinstatement;

(b) file the original of the declaration; and

(c) serve a copy of the declaration on the association.

(3) When reinstatement under this section becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the limited cooperative association may resume or continue its activities as if the administrative dissolution had not occurred.

Section 348. Section 16-16-1213 is amended to read:

16-16-1213. Denial of reinstatement -- Appeal.
(1) If the division denies a limited cooperative association's application for reinstatement following administrative dissolution, the division shall prepare and file a notice that explains the reason for denial and serve the association with a copy of the notice.

(2) Not later than 30 days after service of a notice of denial of reinstatement by the division, a limited cooperative association may appeal the denial by petitioning the district court to set aside the dissolution. The petition [must] shall be served on the division and contain a copy of the division's declaration of dissolution, the association's application for reinstatement, and the division's notice of denial.

(3) The court may summarily order the division to reinstate the dissolved cooperative association or may take other action the court considers appropriate.

Section 349. Section 16-16-1303 is amended to read:

16-16-1303. Pleading.

In a derivative action to enforce a right of a limited cooperative association, the complaint [must] shall state:

(1) the date and content of the plaintiff's demand under Subsection 16-16-1301(1) and the association's response;

(2) if 90 days have not expired since the demand, how irreparable harm to the association would result by waiting for the expiration of 90 days; and

(3) if the association agreed to bring an action demanded, that the action has not been brought within a reasonable time.

Section 350. Section 16-16-1402 is amended to read:

16-16-1402. Application for certificate of authority.

(1) A foreign cooperative may apply for a certificate of authority by delivering an application to the division for filing. The application [must] shall state:

(a) the name of the foreign cooperative and, if the name does not comply with Section 16-16-111, an alternative name adopted pursuant to Section 16-16-1405;

(b) the name of the state or other jurisdiction under whose law the foreign cooperative is organized;
(c) the street address and, if different, mailing address of the principal office and, if the law of the jurisdiction under which the foreign cooperative is organized requires the foreign cooperative to maintain another office in that jurisdiction, the street address and, if different, mailing address of the required office;

(d) the street address and, if different, mailing address of the foreign cooperative's designated office in this state, and the name of the foreign cooperative's agent for service of process at the designated office; and

(e) the name, street address and, if different, mailing address of each of the foreign cooperative's current directors and officers.

(2) A foreign cooperative shall deliver with a completed application under Subsection (1) a certificate of good standing or a similar record signed by the division or other official having custody of the foreign cooperative's publicly filed records in the state or other jurisdiction under whose law the foreign cooperative is organized.

Section 351. Section 16-16-1405 is amended to read:

16-16-1405. Noncomplying name of foreign cooperative.

(1) A foreign cooperative whose name does not comply with Section 16-16-111 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternative name that complies with Section 16-16-111. A foreign cooperative that adopts an alternative name under this Subsection (1) and then obtains a certificate of authority with that name need not also comply with Section 42-2-5. After obtaining a certificate of authority with an alternative name, a foreign cooperative's business in this state [must] shall be transacted under that name unless the foreign cooperative is authorized under Section 42-2-5 to transact business in this state under another name.

(2) If a foreign cooperative authorized to transact business in this state changes its name to one that does not comply with Section 16-16-111, it may not thereafter transact business in this state until it complies with Subsection (1) and obtains an amended certificate of authority.

Section 352. Section 16-16-1406 is amended to read:
16-16-1406. Revocation of certificate of authority.

(1) A certificate of authority may be revoked by the division in the manner provided in Subsection (2) if the foreign cooperative does not:

(a) pay, not later than 60 days after the due date, any fee, tax, or penalty due to the division under this chapter or any other law of this state;

(b) deliver, not later than 60 days after the due date, its annual report;

(c) appoint and maintain an agent for service of process; or

(d) deliver for filing a statement of change not later than 30 days after a change has occurred in the name of the agent or the address of the foreign cooperative's designated office.

(2) To revoke a certificate of authority, the division shall file a notice of revocation and send a copy to the foreign cooperative's registered agent for service of process in this state or, if the foreign cooperative does not appoint and maintain an agent for service of process in this state, to the foreign cooperative's principal office. The notice shall state:

(a) the revocation's effective date, which shall be at least 60 days after the date the division sends the copy; and

(b) the foreign cooperative's noncompliance that is the reason for the revocation.

(3) The authority of a foreign cooperative to transact business in this state ceases on the effective date of the notice of revocation unless before that date the foreign cooperative cures each failure to comply stated in the notice. If the foreign cooperative cures the failures, the division shall so indicate on the filed notice.

Section 353. Section 16-16-1407 is amended to read:

16-16-1407. Cancellation of certificate of authority -- Effect of failure to have certificate.

(1) To cancel its certificate of authority, a foreign cooperative shall deliver to the division for filing a notice of cancellation. The certificate is canceled when the notice becomes effective under Section 16-16-203.

(2) A foreign cooperative transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority.
(3) The failure of a foreign cooperative to have a certificate of authority does not impair the validity of a contract or act of the foreign cooperative or prevent the foreign cooperative from defending an action or proceeding in this state.

(4) A member of a foreign cooperative is not liable for the obligations of the foreign cooperative solely by reason of the foreign cooperative's having transacted business in this state without a certificate of authority.

(5) If a foreign cooperative transacts business in this state without a certificate of authority or cancels its certificate, it appoints the division as its agent for service of process for an action arising out of the transaction of business in this state.

Section 354. Section 16-16-1503 is amended to read:

16-16-1503. Notice and action on disposition of assets.

For a limited cooperative association to dispose of assets under Section 16-16-1502:

(1) a majority of the board of directors, or a greater percentage if required by the organic rules, shall approve the proposed disposition; and

(2) the board of directors shall call a members meeting to consider the proposed disposition, hold the meeting not later than 90 days after approval of the proposed disposition by the board, and mail or otherwise transmit or deliver in a record to each member:

(a) the terms of the proposed disposition;

(b) a recommendation that the members approve the disposition, or if the board determines that because of conflict of interest or other special circumstances it should not make a favorable recommendation, the basis for that determination;

(c) a statement of any condition of the board's submission of the proposed disposition to the members; and

(d) notice of the meeting at which the proposed disposition will be considered, which shall be given in the same manner as notice of a special meeting of members.

Section 355. Section 16-16-1504 is amended to read:

16-16-1504. Disposition of assets.

(1) Subject to Subsection (2), a disposition of assets under Section 16-16-1502 [must]
shall be approved by:

(a) at least two-thirds of the voting power of members present at a members meeting called under Subsection 16-16-1503(2); and

(b) if the limited cooperative association has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a greater percentage vote by patron members.

(2) The organic rules may require that the percentage of votes under Subsection (1)(a)

is:

(a) a different percentage that is not less than a majority of members voting at the meeting;

(b) measured against the voting power of all members; or

(c) a combination of Subsections (2)(a) and (b).

(3) Subject to any contractual obligations, after a disposition of assets is approved and at any time before the consummation of the disposition, a limited cooperative association may approve an amendment to the contract for disposition or the resolution authorizing the disposition or approve abandonment of the disposition:

(a) as provided in the contract or the resolution; and

(b) except as prohibited by the resolution, with the same affirmative vote of the board of directors and of the members as was required to approve the disposition.

(4) The voting requirements for districts, classes, or voting groups under Section 16-16-404 apply to approval of a disposition of assets under this part.

Section 356. Section 16-16-1602 is amended to read:

16-16-1602. Conversion.

(1) An entity that is not a limited cooperative association may convert to a limited cooperative association and a limited cooperative association may convert to an entity that is not a limited cooperative association pursuant to this section, Sections 16-16-1603 through 16-16-1605, and a plan of conversion, if:

(a) the other entity's organic law authorizes the conversion;
(b) the conversion is not prohibited by the law of the jurisdiction that enacted the other entity's organic law; and

c) the other entity complies with its organic law in effecting the conversion.

(2) A plan of conversion [must] shall be in a record and [must] shall include:

(a) the name and form of the entity before conversion;

(b) the name and form of the entity after conversion;

(c) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting entity into any combination of money, interests in the converted entity, and other consideration; and

(d) the organizational documents of the proposed converted entity.

Section 357. Section 16-16-1603 is amended to read:

16-16-1603. Action on plan of conversion by converting limited cooperative association.

(1) For a limited cooperative association to convert to another entity, a plan of conversion [must] shall be approved by a majority of the board of directors, or a greater percentage if required by the organic rules, and the board of directors [must] shall call a members meeting to consider the plan of conversion, hold the meeting not later than 90 days after approval of the plan by the board, and mail or otherwise transmit or deliver in a record to each member:

(a) the plan, or a summary of the plan and a statement of the manner in which a copy of the plan in a record may be reasonably obtained by a member;

(b) a recommendation that the members approve the plan of conversion, or if the board determines that because of a conflict of interest or other circumstances it should not make a favorable recommendation, the basis for that determination;

(c) a statement of any condition of the board's submission of the plan of conversion to the members; and

(d) notice of the meeting at which the plan of conversion will be considered, which [must] shall be given in the same manner as notice of a special meeting of members.
Subject to Subsections (3) and (4), a plan of conversion shall be approved by:

(a) at least two-thirds of the voting power of members present at a members meeting called under Subsection (1); and

(b) if the limited cooperative association has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a greater percentage vote by patron members.

The organic rules may require that the percentage of votes under Subsection (2)(a) is:

(a) a different percentage that is not less than a majority of members voting at the meeting;

(b) measured against the voting power of all members; or

(c) a combination of Subsections (3)(a) and (b).

The vote required to approve a plan of conversion may not be less than the vote required for the members of the limited cooperative association to amend the articles of organization.

Consent in a record to a plan of conversion by a member shall be delivered to the limited cooperative association before delivery of articles of conversion for filing if as a result of the conversion the member will have:

(a) personal liability for an obligation of the association; or

(b) an obligation or liability for an additional contribution.

Subject to Subsection (5) and any contractual rights, after a conversion is approved and at any time before the effective date of the conversion, a converting limited cooperative association may amend a plan of conversion or abandon the planned conversion:

(a) as provided in the plan; and

(b) except as prohibited by the plan, by the same affirmative vote of the board of directors and of the members as was required to approve the plan.

The voting requirements for districts, classes, or voting groups under Section
16-16-404 apply to approval of a conversion under this part.

Section 358. Section 16-16-1604 is amended to read:

16-16-1604. Filings required for conversion -- Effective date.

(1) After a plan of conversion is approved:

(a) a converting limited cooperative association shall deliver to the division for filing articles of conversion, which [must] shall include:

(i) a statement that the limited cooperative association has been converted into another entity;

(ii) the name and form of the converted entity and the jurisdiction of its governing statute;

(iii) the date the conversion is effective under the governing statute of the converted entity;

(iv) a statement that the conversion was approved as required by this chapter;

(v) a statement that the conversion was approved as required by the governing statute of the converted entity; and

(vi) if the converted entity is an entity organized in a jurisdiction other than this state and is not authorized to transact business in this state, the street address and, if different, mailing address of an office which the division may use for purposes of Section 16-16-120;

(b) if the converting entity is not a converting limited cooperative association, the converting entity shall deliver to the division for filing articles of organization, which [must] shall include, in addition to the information required by Section 16-16-302:

(i) a statement that the association was converted from another entity;

(ii) the name and form of the converting entity and the jurisdiction of its governing statute; and

(iii) a statement that the conversion was approved in a manner that complied with the converting entity's governing statute.

(2) A conversion becomes effective:
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(a) if the converted entity is a limited cooperative association, when the articles of conversion take effect pursuant to Subsection 16-16-203(3); or
(b) if the converted entity is not a limited cooperative association, as provided by the governing statute of the converted entity.

Section 359. Section 16-16-1606 is amended to read:

16-16-1606. Merger.

(1) One or more limited cooperative associations may merge with one or more other entities pursuant to this part and a plan of merger if:

(a) the governing statute of each of the other entities authorizes the merger;
(b) the merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes; and
(c) each of the other entities complies with its governing statute in effecting the merger.

(2) A plan of merger [must] shall be in a record and [must] shall include:

(a) the name and form of each constituent entity;
(b) the name and form of the surviving entity and, if the surviving entity is to be created by the merger, a statement to that effect;
(c) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent entity into any combination of money, interests in the surviving entity, and other consideration;
(d) if the surviving entity is to be created by the merger, the surviving entity's organizational documents;
(e) if the surviving entity is not to be created by the merger, any amendments to be made by the merger to the surviving entity's organizational documents; and
(f) if a member of a constituent limited cooperative association will have personal liability with respect to a surviving entity, the identity of the member by descriptive class or other reasonable manner.

Section 360. Section 16-16-1607 is amended to read:
Notice and action on plan of merger by constituent limited cooperative association.

(1) For a limited cooperative association to merge with another entity, a plan of merger shall be approved by a majority vote of the board of directors or a greater percentage if required by the association's organic rules.

(2) The board of directors shall call a members meeting to consider a plan of merger approved by the board, hold the meeting not later than 90 days after approval of the plan by the board, and mail or otherwise transmit or deliver in a record to each member:

(a) the plan of merger, or a summary of the plan and a statement of the manner in which a copy of the plan in a record may be reasonably obtained by a member;

(b) a recommendation that the members approve the plan of merger, or if the board determines that because of conflict of interest or other special circumstances it should not make a favorable recommendation, the basis for that determination;

(c) a statement of any condition of the board's submission of the plan of merger to the members; and

(d) notice of the meeting at which the plan of merger will be considered, which shall be given in the same manner as notice of a special meeting of members.

Section 361. Section 16-16-1608 is amended to read:

Approval or abandonment of merger by members.

(1) Subject to Subsections (2) and (3), a plan of merger shall be approved by:

(a) at least two-thirds of the voting power of members present at a members meeting called under Subsection 16-16-1607(2); and

(b) if the limited cooperative association has investor members, at least a majority of the votes cast by patron members, unless the organic rules require a greater percentage vote by patron members.

(2) The organic rules may provide that the percentage of votes under Subsection (1)(a) is:

(a) a different percentage that is not less than a majority of members voting at the
(b) measured against the voting power of all members; or
(c) a combination of Subsections (2)(a) and (b).
(3) The vote required to approve a plan of merger may not be less than the vote required for the members of the limited cooperative association to amend the articles of organization.
(4) Consent in a record to a plan of merger by a member must be delivered to the limited cooperative association before delivery of articles of merger for filing pursuant to Section 16-16-1609 if as a result of the merger the member will have:
(a) personal liability for an obligation of the association; or
(b) an obligation or liability for an additional contribution.
(5) Subject to Subsection (4) and any contractual rights, after a merger is approved, and at any time before the effective date of the merger, a limited cooperative association that is a party to the merger may approve an amendment to the plan of merger or approve abandonment of the planned merger:
(a) as provided in the plan; and
(b) except as prohibited by the plan, with the same affirmative vote of the board of directors and of the members as was required to approve the plan.
(6) The voting requirements for districts, classes, or voting groups under Section 16-16-404 apply to approval of a merger under this part.
Section 362. Section 16-16-1609 is amended to read:
16-16-1609. Filings required for merger -- Effective date.
(1) After each constituent entity has approved a merger, articles of merger must be signed on behalf of each constituent entity by an authorized representative.
(2) The articles of merger must include:
(a) the name and form of each constituent entity and the jurisdiction of its governing statute;
(b) the name and form of the surviving entity, the jurisdiction of its governing statute,
and, if the surviving entity is created by the merger, a statement to that effect;

(c) the date the merger is effective under the governing statute of the surviving entity;

(d) if the surviving entity is to be created by the merger and:

(i) will be a limited cooperative association, the limited cooperative association’s articles of organization; or

(ii) will be an entity other than a limited cooperative association, the organizational document that creates the entity;

(e) if the surviving entity is not created by the merger, any amendments provided for in the plan of merger to the organizational document that created the entity;

(f) a statement as to each constituent entity that the merger was approved as required by the entity's governing statute;

(g) if the surviving entity is a foreign organization not authorized to transact business in this state, the street address and, if different, mailing address of an office which the division may use for the purposes of Section 16-16-120; and

(h) any additional information required by the governing statute of any constituent entity.

(3) Each limited cooperative association that is a party to a merger shall deliver the articles of merger to the division for filing.

(4) A merger becomes effective under this part:

(a) if the surviving entity is a limited cooperative association, upon the later of:

(i) compliance with Subsection (3); or

(ii) subject to Subsection 16-16-203(3), as specified in the articles of merger; or

(b) if the surviving entity is not a limited cooperative association, as provided by the governing statute of the surviving entity.

Section 363. Section 16-16-1701 is amended to read:

16-16-1701. Uniformity of application and construction.

In applying and construing this uniform act, consideration [must] shall be given to the need to promote uniformity of the law with respect to its subject matter among states that
Section 364. Section 16-17-202 is amended to read:

16-17-202. Addresses in filings.
Whenever a provision of this chapter other than Subsection 16-17-209(1)(d) requires that a filing state an address, the filing shall state:
(1) an actual street address or rural route box number in this state; and
(2) a mailing address in this state, if different from the address under Subsection (1).

Section 365. Section 16-17-203 is amended to read:

16-17-203. Appointment of registered agent.
(1) A registered agent filing shall state:
(a) the name of the represented entity's commercial registered agent; or
(b) if the entity does not have a commercial registered agent:
   (i) the name and address of the entity's noncommercial registered agent; or
   (ii) the title of an office or other position with the entity if service of process is to be sent to the person holding that office or position, and the address of the business office of that person.
(2) The appointment of a registered agent pursuant to Subsection (1)(a) or (b)(i) is an affirmation by the represented entity that the agent has consented to serve as such.
(3) The division shall make available in a record as soon as practicable a daily list of filings that contain the name of a registered agent. The list shall:
(a) be available for at least 14 calendar days;
(b) list in alphabetical order the names of the registered agents; and
(c) state the type of filing and name of the represented entity making the filing.

Section 366. Section 16-17-204 is amended to read:

16-17-204. Listing of commercial registered agent.
(1) An individual or a domestic or foreign entity may become listed as a commercial registered agent by filing with the division a commercial registered agent listing statement signed by or on behalf of the person which states:
(a) the name of the individual or the name, type, and jurisdiction of organization of the
d entity;

(b) that the person is in the business of serving as a commercial registered agent in this
state; and

(c) the address of a place of business of the person in this state to which service of
process and other notice and documents being served on or sent to entities represented by it
may be delivered.

(2) A commercial registered agent listing statement may include the information
regarding acceptance of service of process in a record by the commercial registered agent
provided for in Subsection 16-17-301(4).

(3) If the name of a person filing a commercial registered agent listing statement is not
distinguishable on the records of the division from the name of another commercial registered
agent listed under this section, the person [must] shall adopt a fictitious name that is
distinguishable and use that name in its statement and when it does business in this state as a
commercial registered agent.

(4) A commercial registered agent listing statement takes effect on filing.

(5) The division shall note the filing of the commercial registered agent listing
statement in the index of filings maintained by the division for each entity represented by the
registered agent at the time of the filing. The statement has the effect of deleting the address
of the registered agent from the registered agent filing of each of those entities.

Section 367. Section 16-17-210 is amended to read:

16-17-210. Appointment of agent by nonfiling or nonqualified foreign entity.

(1) A domestic entity that is not a filing entity or a nonqualified foreign entity may file
with the division a statement appointing an agent for service of process signed on behalf of the
entity which states:

(a) the name, type, and jurisdiction of organization of the entity; and

(b) the information required by Subsection 16-17-203(1).

(2) A statement appointing an agent for service of process takes effect on filing.
(3) The appointment of a registered agent under this section does not qualify a nonqualified foreign entity to do business in this state and is not sufficient alone to create personal jurisdiction over the nonqualified foreign entity in this state.

(4) A statement appointing an agent for service of process may not be rejected for filing because the name of the entity filing the statement is not distinguishable on the records of the division from the name of another entity appearing in those records. The filing of a statement appointing an agent for service of process does not make the name of the entity filing the statement unavailable for use by another entity.

(5) An entity that has filed a statement appointing an agent for service of process may cancel the statement by filing a statement of cancellation, which shall take effect upon filing, and [must] shall state the name of the entity and that the entity is canceling its appointment of an agent for service of process in this state. A statement appointing an agent for service of process which has not been canceled earlier is effective for a period of five years after the date of filing.

(6) A statement appointing an agent for service of process for a nonqualified foreign entity terminates automatically on the date the entity becomes a qualified foreign entity.

Section 368. Section 16-17-301 is amended to read:

16-17-301. Service of process on entities.

(1) A registered agent is an agent of the represented entity authorized to receive service of any process, notice, or demand required or permitted by law to be served on the entity.

(2) If an entity that previously filed a registered agent filing with the division no longer has a registered agent, or if its registered agent cannot with reasonable diligence be served, the entity may be served by registered or certified mail, return receipt requested, addressed to the governors of the entity by name at its principal office in accordance with any applicable judicial rules and procedures. The names of the governors and the address of the principal office may be as shown in the most recent annual report filed with the division. Service is perfected under this Subsection (2) at the earliest of:
11006 (a) the date the entity receives the mail;
11007 (b) the date shown on the return receipt, if signed on behalf of the entity; or
11008 (c) five days after its deposit with the United States Postal Service, if correctly
11009 addressed and with sufficient postage.
11010 (3) If process, notice, or demand cannot be served on an entity pursuant to Subsection
11011 (1) or (2), service of process may be made by handing a copy to the manager, clerk, or other
11012 person in charge of any regular place of business or activity of the entity if the person served is
11013 not a plaintiff in the action.
11014 (4) Service of process, notice, or demand on a registered agent [must] shall be in the
11015 form of a written document, except that service may be made on a commercial registered agent
11016 in such other forms of a record, and subject to such requirements as the agent has stated from
11017 time to time in its listing under Section 16-17-204 that it will accept.
11018 (5) Service of process, notice, or demand may be perfected by any other means
11019 prescribed by law other than this chapter.
11020 Section 369. Section 16-17-402 is amended to read:
11021 16-17-402. Consistency of application.
11022 In applying and construing this chapter, consideration [must] shall be given to the need
11023 to promote consistency of the law with respect to its subject matter among states that enact it.