

1 **STATUTORY CONSTRUCTION COMPLIANCE**

2 **AMENDMENTS**

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Rebecca D. Lockhart**

6 Senate Sponsor: Stephen H. Urquhart

7

8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions of Titles 1 through 16 of the Utah Code by correcting terms
11 to comply with rules of statutory construction applicable to the Utah Code.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ amends provisions of Titles 1 through 16 of the Utah Code by correcting terms to
15 comply with rules of statutory construction applicable to the Utah Code; and
16 ▶ makes technical changes.

17 **Monies Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

- 23 **3-1-1**, Utah Code Annotated 1953
24 **3-1-9**, as last amended by Laws of Utah 2007, Chapter 306
25 **3-1-11**, as last amended by Laws of Utah 2005, Chapter 110
26 **3-1-13.8**, as enacted by Laws of Utah 1994, Chapter 204
27 **3-1-14**, Utah Code Annotated 1953



28 **3-1-15**, Utah Code Annotated 1953
29 **3-1-15.1**, as enacted by Laws of Utah 1994, Chapter 204
30 **3-1-17**, as last amended by Laws of Utah 2007, Chapter 306
31 **3-1-22**, Utah Code Annotated 1953
32 **3-1-26**, Utah Code Annotated 1953
33 **3-1-35**, as last amended by Laws of Utah 1994, Chapter 203
34 **3-1-37**, as last amended by Laws of Utah 1994, Chapter 203
35 **4-1-7**, as enacted by Laws of Utah 1979, Chapter 2
36 **4-2-8.7**, as last amended by Laws of Utah 2009, Chapter 368
37 **4-2-15**, as enacted by Laws of Utah 1985, Chapter 104
38 **4-5-5**, as last amended by Laws of Utah 1990, Chapter 157
39 **4-5-7**, as last amended by Laws of Utah 2007, Chapter 179
40 **4-5-8**, as last amended by Laws of Utah 1990, Chapter 157
41 **4-5-9**, as last amended by Laws of Utah 2008, Chapter 382
42 **4-5-15**, as last amended by Laws of Utah 2007, Chapter 179
43 **4-5-18**, as last amended by Laws of Utah 1990, Chapter 157
44 **4-7-8**, as last amended by Laws of Utah 2003, Chapter 84
45 **4-7-11**, as last amended by Laws of Utah 1995, Chapter 41
46 **4-9-15**, as last amended by Laws of Utah 2008, Chapter 382
47 **4-14-3**, as last amended by Laws of Utah 2009, Chapter 183
48 **4-15-2**, as enacted by Laws of Utah 1981, Chapter 126
49 **4-15-10**, as enacted by Laws of Utah 1981, Chapter 126
50 **4-17-7**, as last amended by Laws of Utah 2009, Chapter 388
51 **4-22-3**, as last amended by Laws of Utah 1996, Chapter 243
52 **4-22-6**, as last amended by Laws of Utah 1999, Chapter 301
53 **4-23-5**, as last amended by Laws of Utah 2008, Chapter 382
54 **4-23-6**, as enacted by Laws of Utah 1979, Chapter 2
55 **4-23-8**, as last amended by Laws of Utah 2004, Chapter 128
56 **4-24-2**, as last amended by Laws of Utah 1997, Chapter 302
57 **4-24-12**, as last amended by Laws of Utah 2007, Chapter 240
58 **4-24-20**, as last amended by Laws of Utah 1997, Chapter 302

- 59 **4-26-5**, as enacted by Laws of Utah 1979, Chapter 2
- 60 **4-29-2**, as enacted by Laws of Utah 1979, Chapter 2
- 61 **4-30-7.6**, as enacted by Laws of Utah 1999, Chapter 298
- 62 **4-31-16**, as last amended by Laws of Utah 2007, Chapter 179
- 63 **4-31-16.5**, as last amended by Laws of Utah 2008, Chapter 382
- 64 **4-32-3**, as last amended by Laws of Utah 2007, Chapter 179
- 65 **4-32-7**, as last amended by Laws of Utah 2008, Chapter 382
- 66 **4-32-16**, as enacted by Laws of Utah 1979, Chapter 2
- 67 **4-32-22**, as last amended by Laws of Utah 2007, Chapter 179
- 68 **4-35-7**, as last amended by Laws of Utah 1990, Chapter 157
- 69 **4-37-102**, as renumbered and amended by Laws of Utah 1994, Chapter 153
- 70 **4-37-109**, as last amended by Laws of Utah 2008, Chapter 382
- 71 **4-37-110**, as enacted by Laws of Utah 1994, Chapter 153
- 72 **4-37-202**, as enacted by Laws of Utah 1994, Chapter 153
- 73 **4-37-203**, as enacted by Laws of Utah 1994, Chapter 153
- 74 **4-37-204**, as last amended by Laws of Utah 2008, Chapter 69
- 75 **4-37-302**, as enacted by Laws of Utah 1994, Chapter 153
- 76 **4-37-303**, as enacted by Laws of Utah 1994, Chapter 153
- 77 **4-37-305**, as enacted by Laws of Utah 1994, Chapter 153
- 78 **4-37-402**, as enacted by Laws of Utah 1994, Chapter 153
- 79 **4-37-502**, as last amended by Laws of Utah 2007, Chapter 191
- 80 **4-37-503**, as last amended by Laws of Utah 2008, Chapter 69
- 81 **4-39-201**, as enacted by Laws of Utah 1997, Chapter 302
- 82 **4-39-205**, as enacted by Laws of Utah 1997, Chapter 302
- 83 **4-39-206**, as enacted by Laws of Utah 1997, Chapter 302
- 84 **4-39-302**, as enacted by Laws of Utah 1997, Chapter 302
- 85 **4-39-304**, as enacted by Laws of Utah 1997, Chapter 302
- 86 **4-39-305**, as enacted by Laws of Utah 1997, Chapter 302
- 87 **4-39-306**, as enacted by Laws of Utah 1997, Chapter 302
- 88 **6-1-3**, Utah Code Annotated 1953
- 89 **6-1-9**, Utah Code Annotated 1953

90 **6-1-15**, Utah Code Annotated 1953
91 **7-1-303**, as enacted by Laws of Utah 1981, Chapter 16
92 **7-1-309**, as enacted by Laws of Utah 1981, Chapter 16
93 **7-1-607**, as enacted by Laws of Utah 1981, Chapter 16
94 **7-1-612**, as enacted by Laws of Utah 1981, Chapter 16
95 **7-1-806**, as enacted by Laws of Utah 1981, Chapter 16
96 **7-2-9**, as last amended by Laws of Utah 2008, Chapter 382
97 **7-2-10**, as last amended by Laws of Utah 1989, Chapter 267
98 **7-2-12**, as last amended by Laws of Utah 1989, Chapter 267
99 **7-5-2**, as last amended by Laws of Utah 2000, Chapter 300
100 **7-5-4**, as last amended by Laws of Utah 1982, Chapter 6
101 **7-5-7**, as last amended by Laws of Utah 2004, Chapter 89
102 **7-5-8**, as last amended by Laws of Utah 1982, Chapter 6
103 **7-5-11**, as last amended by Laws of Utah 1982, Chapter 6
104 **7-7-2**, as last amended by Laws of Utah 1995, Chapter 49
105 **7-7-4**, as last amended by Laws of Utah 1994, Chapter 200
106 **7-7-7**, as last amended by Laws of Utah 1994, Chapter 200
107 **7-7-14**, as last amended by Laws of Utah 1994, Chapter 200
108 **7-7-15**, as last amended by Laws of Utah 1989, Chapter 267
109 **7-7-17**, as enacted by Laws of Utah 1981, Chapter 16
110 **7-7-19**, as last amended by Laws of Utah 1994, Chapter 200
111 **7-7-21**, as last amended by Laws of Utah 1997, Chapter 111
112 **7-7-26**, as last amended by Laws of Utah 1995, Chapters 20 and 198
113 **7-7-29**, as last amended by Laws of Utah 1983, Chapter 8
114 **7-7-30**, as last amended by Laws of Utah 1983, Chapter 8
115 **7-7-32**, as last amended by Laws of Utah 1994, Chapter 200
116 **7-7-33**, as last amended by Laws of Utah 1994, Chapter 200
117 **7-7-43**, as enacted by Laws of Utah 1981, Chapter 16
118 **7-9-5**, as last amended by Laws of Utah 2003, Chapter 327
119 **7-9-19**, as enacted by Laws of Utah 1981, Chapter 16
120 **7-9-32**, as enacted by Laws of Utah 1981, Chapter 16

- 121 **7-14-5**, as enacted by Laws of Utah 1981, Chapter 16
- 122 **7-17-4**, as last amended by Laws of Utah 2002, Chapter 264
- 123 **7-17-6**, as enacted by Laws of Utah 1979, Chapter 124
- 124 **7-17-8**, as enacted by Laws of Utah 1979, Chapter 124
- 125 **7-17-9**, as enacted by Laws of Utah 1979, Chapter 124
- 126 **7-18a-301**, as enacted by Laws of Utah 1996, Chapter 63
- 127 **8-3-1**, Utah Code Annotated 1953
- 128 **9-3-407**, as last amended by Laws of Utah 2001, Chapter 151
- 129 **9-4-301**, as renumbered and amended by Laws of Utah 1992, Chapter 241
- 130 **9-4-602**, as last amended by Laws of Utah 2002, Chapter 185
- 131 **9-4-703**, as last amended by Laws of Utah 2006, Chapter 14
- 132 **9-4-914**, as last amended by Laws of Utah 2001, Chapter 319
- 133 **9-4-924**, as last amended by Laws of Utah 2001, Chapter 319
- 134 **9-6-203**, as renumbered and amended by Laws of Utah 1992, Chapter 241
- 135 **9-6-405**, as renumbered and amended by Laws of Utah 1992, Chapter 241
- 136 **9-6-504**, as last amended by Laws of Utah 2008, Chapter 382
- 137 **9-7-213**, as last amended by Laws of Utah 2008, Chapter 382
- 138 **9-7-504**, as last amended by Laws of Utah 2003, Chapter 47
- 139 **9-12-103**, as last amended by Laws of Utah 2008, Chapter 382
- 140 **9-12-201**, as renumbered and amended by Laws of Utah 1998, Chapter 336
- 141 **10-1-105**, as enacted by Laws of Utah 1977, Chapter 48
- 142 **10-1-108**, as last amended by Laws of Utah 1993, Chapter 4
- 143 **10-1-109**, as enacted by Laws of Utah 1977, Chapter 48
- 144 **10-1-112**, as enacted by Laws of Utah 1977, Chapter 48
- 145 **10-1-113**, as enacted by Laws of Utah 1977, Chapter 48
- 146 **10-2-109**, as last amended by Laws of Utah 2008, Chapter 16
- 147 **10-2-303**, as last amended by Laws of Utah 2008, Chapter 19
- 148 **10-2-403**, as last amended by Laws of Utah 2009, Chapters 205 and 273
- 149 **10-2-510**, as last amended by Laws of Utah 1997, Chapter 389
- 150 **10-2-614**, as enacted by Laws of Utah 1977, Chapter 48
- 151 **10-3-508**, as enacted by Laws of Utah 1977, Chapter 48

152 **10-3-608**, as last amended by Laws of Utah 1993, Chapter 4
153 **10-3-702**, as enacted by Laws of Utah 1977, Chapter 48
154 **10-3-704**, as enacted by Laws of Utah 1977, Chapter 48
155 **10-3-717**, as enacted by Laws of Utah 1977, Chapter 48
156 **10-3-905**, as enacted by Laws of Utah 1977, Chapter 48
157 **10-3-907**, as enacted by Laws of Utah 1977, Chapter 48
158 **10-3-912**, as last amended by Laws of Utah 1991, Chapter 221
159 **10-3-1004**, as last amended by Laws of Utah 1977, Chapter 39
160 **10-3-1011**, as enacted by Laws of Utah 1977, Chapter 48
161 **10-3-1012.5**, as enacted by Laws of Utah 1991, Chapter 221
162 **10-3-1306**, as last amended by Laws of Utah 1989, Chapter 147
163 **10-5-103**, as enacted by Laws of Utah 1983, Chapter 34
164 **10-5-107**, as last amended by Laws of Utah 2006, Chapter 178
165 **10-5-114**, as enacted by Laws of Utah 1983, Chapter 34
166 **10-5-115**, as enacted by Laws of Utah 1983, Chapter 34
167 **10-6-111**, as last amended by Laws of Utah 2009, Chapter 350
168 **10-6-116**, as last amended by Laws of Utah 1999, Chapter 300
169 **10-6-123**, as enacted by Laws of Utah 1979, Chapter 26
170 **10-6-159**, as last amended by Laws of Utah 1993, Chapter 4
171 **10-7-4**, as last amended by Laws of Utah 2004, Chapter 207
172 **10-7-5**, Utah Code Annotated 1953
173 **10-7-18**, as last amended by Laws of Utah 2002, Chapter 90
174 **10-7-32**, Utah Code Annotated 1953
175 **10-7-71**, Utah Code Annotated 1953
176 **10-7-72**, Utah Code Annotated 1953
177 **10-7-73**, Utah Code Annotated 1953
178 **10-7-85**, as enacted by Laws of Utah 1977, Chapter 36
179 **10-8-15**, Utah Code Annotated 1953
180 **10-8-16**, Utah Code Annotated 1953
181 **10-8-17**, Utah Code Annotated 1953
182 **10-8-33**, Utah Code Annotated 1953

- 183 **10-8-36**, Utah Code Annotated 1953
- 184 **10-8-58.5**, as last amended by Laws of Utah 2008, Chapter 382
- 185 **10-9a-403**, as last amended by Laws of Utah 2008, Chapter 168
- 186 **10-9a-509.5**, as last amended by Laws of Utah 2008, Chapter 112
- 187 **10-9a-514**, as renumbered and amended by Laws of Utah 2005, Chapter 254
- 188 **10-9a-519**, as renumbered and amended by Laws of Utah 2005, Chapter 254
- 189 **10-11-2**, Utah Code Annotated 1953
- 190 **10-15-4**, as last amended by Laws of Utah 2008, Chapter 360
- 191 **11-8-1**, as enacted by Laws of Utah 1957, Chapter 30
- 192 **11-13-309**, as renumbered and amended by Laws of Utah 2002, Chapter 286
- 193 **11-13-311**, as last amended by Laws of Utah 2003, Chapter 21
- 194 **11-14-302**, as last amended by Laws of Utah 2006, Chapter 83
- 195 **11-14-308**, as last amended by Laws of Utah 2007, Chapter 303
- 196 **11-14-313**, as last amended by Laws of Utah 2006, Chapter 83
- 197 **11-14-315**, as last amended by Laws of Utah 2009, Chapter 388
- 198 **11-17-1.5**, as last amended by Laws of Utah 2005, Chapter 148
- 199 **11-17-2**, as last amended by Laws of Utah 2009, Chapter 92
- 200 **11-17-4**, as last amended by Laws of Utah 1986, Chapter 206
- 201 **11-17-5**, as last amended by Laws of Utah 1986, Chapter 206
- 202 **11-17-7**, as last amended by Laws of Utah 1986, Chapter 206
- 203 **11-17-10**, as last amended by Laws of Utah 1987, Chapter 2
- 204 **11-25-9**, as enacted by Laws of Utah 1977, Chapter 276
- 205 **11-25-11**, as last amended by Laws of Utah 2006, Chapter 359
- 206 **11-27-5**, as last amended by Laws of Utah 2009, Chapter 388
- 207 **11-30-2**, as last amended by Laws of Utah 2007, Chapter 329
- 208 **11-31-2**, as last amended by Laws of Utah 2007, Chapter 329
- 209 **11-32-7**, as enacted by Laws of Utah 1987, Chapter 143
- 210 **11-34-1**, as last amended by Laws of Utah 2007, Chapter 329
- 211 **11-34-2**, as enacted by Laws of Utah 1987, Chapter 200
- 212 **11-36-401**, as last amended by Laws of Utah 2009, Chapter 181
- 213 **13-1-1**, as enacted by Laws of Utah 1983, Chapter 322

214 **13-1a-6**, as last amended by Laws of Utah 2008, Chapter 382
215 **13-2-6**, as last amended by Laws of Utah 2008, Chapter 382
216 **13-5-3**, as last amended by Laws of Utah 1993, Chapter 4
217 **13-5-12**, as last amended by Laws of Utah 1997, Chapter 10
218 **13-5-16**, Utah Code Annotated 1953
219 **13-7-1**, as last amended by Laws of Utah 1973, Chapter 18
220 **13-7-2**, as last amended by Laws of Utah 1987, Chapter 92
221 **13-11-6**, as last amended by Laws of Utah 1991, Chapter 268
222 **13-11-19**, as last amended by Laws of Utah 1995, Chapter 198
223 **13-11-20**, as last amended by Laws of Utah 1992, Chapter 30
224 **13-11a-3**, as last amended by Laws of Utah 2009, Chapter 133
225 **13-12-3**, as enacted by Laws of Utah 1975, First Special Session, Chapter 6
226 **13-12-4**, as enacted by Laws of Utah 1975, First Special Session, Chapter 6
227 **13-12-7**, as enacted by Laws of Utah 1975, First Special Session, Chapter 6
228 **13-13-4**, as enacted by Laws of Utah 1979, Chapter 147
229 **13-14b-103**, as enacted by Laws of Utah 2003, Chapter 225
230 **13-15-4**, as last amended by Laws of Utah 2009, Chapter 183
231 **13-15-5**, as last amended by Laws of Utah 1987, Chapter 92
232 **13-32-103**, as enacted by Laws of Utah 1999, Chapter 68
233 **13-32-104**, as enacted by Laws of Utah 1999, Chapter 68
234 **13-32-107**, as enacted by Laws of Utah 1999, Chapter 68
235 **13-32a-109.8**, as last amended by Laws of Utah 2009, Chapter 272
236 **13-34-104**, as last amended by Laws of Utah 2008, Chapter 382
237 **13-34-105**, as last amended by Laws of Utah 2009, Chapter 372
238 **13-34-107**, as last amended by Laws of Utah 2009, Chapter 183
239 **13-41-102**, as last amended by Laws of Utah 2008, Chapter 382
240 **13-42-105**, as last amended by Laws of Utah 2009, Chapters 183 and 229
241 **13-42-106**, as enacted by Laws of Utah 2006, Chapter 154
242 **13-42-111**, as last amended by Laws of Utah 2009, Chapters 183 and 229
243 **13-42-113**, as enacted by Laws of Utah 2006, Chapter 154
244 **13-42-117**, as last amended by Laws of Utah 2009, Chapter 229

- 245 **13-42-118**, as last amended by Laws of Utah 2009, Chapter 229
- 246 **13-42-119**, as last amended by Laws of Utah 2009, Chapter 229
- 247 **13-42-120**, as last amended by Laws of Utah 2009, Chapter 229
- 248 **13-42-121**, as enacted by Laws of Utah 2006, Chapter 154
- 249 **13-42-122**, as last amended by Laws of Utah 2009, Chapter 229
- 250 **13-42-132**, as last amended by Laws of Utah 2009, Chapter 183
- 251 **13-42-137**, as enacted by Laws of Utah 2006, Chapter 154
- 252 **13-42-138**, as enacted by Laws of Utah 2006, Chapter 154
- 253 **14-1-20**, as last amended by Laws of Utah 2005, Chapter 64
- 254 **14-2-5**, as last amended by Laws of Utah 2005, Chapter 64
- 255 **15-2-5**, as enacted by Laws of Utah 1971, Chapter 20
- 256 **15-3-4**, Utah Code Annotated 1953
- 257 **15-4-2**, Utah Code Annotated 1953
- 258 **15-4-4**, Utah Code Annotated 1953
- 259 **15-4-7**, Utah Code Annotated 1953
- 260 **15-9-105**, as last amended by Laws of Utah 2008, Chapter 382
- 261 **15-9-106**, as last amended by Laws of Utah 2008, Chapter 382
- 262 **15-9-109**, as last amended by Laws of Utah 2009, Chapter 183
- 263 **15-9-110**, as enacted by Laws of Utah 2001, Chapter 237
- 264 **15-9-118**, as enacted by Laws of Utah 2001, Chapter 237
- 265 **16-6a-709**, as last amended by Laws of Utah 2007, Chapter 315
- 266 **16-6a-808**, as last amended by Laws of Utah 2001, Chapter 127
- 267 **16-6a-1419**, as enacted by Laws of Utah 2000, Chapter 300
- 268 **16-7-10**, Utah Code Annotated 1953
- 269 **16-10a-103**, as last amended by Laws of Utah 2009, Chapter 388
- 270 **16-10a-120**, as last amended by Laws of Utah 2008, Chapter 364
- 271 **16-10a-201**, as enacted by Laws of Utah 1992, Chapter 277
- 272 **16-10a-202**, as last amended by Laws of Utah 2008, Chapter 364
- 273 **16-10a-401**, as last amended by Laws of Utah 2002, Chapter 222
- 274 **16-10a-601**, as enacted by Laws of Utah 1992, Chapter 277
- 275 **16-10a-602**, as enacted by Laws of Utah 1992, Chapter 277

276 **16-10a-603**, as enacted by Laws of Utah 1992, Chapter 277
277 **16-10a-604**, as enacted by Laws of Utah 1992, Chapter 277
278 **16-10a-620**, as enacted by Laws of Utah 1992, Chapter 277
279 **16-10a-621**, as enacted by Laws of Utah 1992, Chapter 277
280 **16-10a-625**, as enacted by Laws of Utah 1992, Chapter 277
281 **16-10a-704**, as last amended by Laws of Utah 1993, Chapter 184
282 **16-10a-705**, as enacted by Laws of Utah 1992, Chapter 277
283 **16-10a-706**, as enacted by Laws of Utah 1992, Chapter 277
284 **16-10a-707**, as enacted by Laws of Utah 1992, Chapter 277
285 **16-10a-720**, as last amended by Laws of Utah 2008, Chapter 364
286 **16-10a-722**, as last amended by Laws of Utah 2001, Chapter 218
287 **16-10a-723**, as enacted by Laws of Utah 1992, Chapter 277
288 **16-10a-725**, as enacted by Laws of Utah 1992, Chapter 277
289 **16-10a-727**, as enacted by Laws of Utah 1992, Chapter 277
290 **16-10a-730**, as enacted by Laws of Utah 1992, Chapter 277
291 **16-10a-732**, as enacted by Laws of Utah 1992, Chapter 277
292 **16-10a-801**, as enacted by Laws of Utah 1992, Chapter 277
293 **16-10a-803**, as enacted by Laws of Utah 1992, Chapter 277
294 **16-10a-808**, as enacted by Laws of Utah 1992, Chapter 277
295 **16-10a-822**, as enacted by Laws of Utah 1992, Chapter 277
296 **16-10a-823**, as enacted by Laws of Utah 1992, Chapter 277
297 **16-10a-825**, as enacted by Laws of Utah 1992, Chapter 277
298 **16-10a-904**, as enacted by Laws of Utah 1992, Chapter 277
299 **16-10a-1003**, as enacted by Laws of Utah 1992, Chapter 277
300 **16-10a-1007**, as enacted by Laws of Utah 1992, Chapter 277
301 **16-10a-1022**, as enacted by Laws of Utah 1992, Chapter 277
302 **16-10a-1023**, as enacted by Laws of Utah 2007, Chapter 85
303 **16-10a-1101**, as enacted by Laws of Utah 1992, Chapter 277
304 **16-10a-1102**, as enacted by Laws of Utah 1992, Chapter 277
305 **16-10a-1103**, as last amended by Laws of Utah 1993, Chapter 184
306 **16-10a-1202**, as enacted by Laws of Utah 1992, Chapter 277

- 307 **16-10a-1303**, as enacted by Laws of Utah 1992, Chapter 277
- 308 **16-10a-1320**, as enacted by Laws of Utah 1992, Chapter 277
- 309 **16-10a-1321**, as enacted by Laws of Utah 1992, Chapter 277
- 310 **16-10a-1322**, as enacted by Laws of Utah 1992, Chapter 277
- 311 **16-10a-1323**, as enacted by Laws of Utah 1992, Chapter 277
- 312 **16-10a-1325**, as enacted by Laws of Utah 1992, Chapter 277
- 313 **16-10a-1330**, as last amended by Laws of Utah 2008, Chapter 364
- 314 **16-10a-1402**, as enacted by Laws of Utah 1992, Chapter 277
- 315 **16-10a-1404**, as enacted by Laws of Utah 1992, Chapter 277
- 316 **16-10a-1406**, as enacted by Laws of Utah 1992, Chapter 277
- 317 **16-10a-1407**, as last amended by Laws of Utah 2009, Chapter 388
- 318 **16-10a-1434**, as enacted by Laws of Utah 1992, Chapter 277
- 319 **16-10a-1506**, as enacted by Laws of Utah 1992, Chapter 277
- 320 **16-10a-1507**, as enacted by Laws of Utah 1992, Chapter 277
- 321 **16-10a-1510**, as enacted by Laws of Utah 1992, Chapter 277
- 322 **16-10a-1533**, as enacted by Laws of Utah 1994, Chapter 31
- 323 **16-10a-1607**, as last amended by Laws of Utah 2008, Chapter 364
- 324 **16-11-6**, as enacted by Laws of Utah 1963, Chapter 20
- 325 **16-11-8**, as last amended by Laws of Utah 2000, Chapters 71 and 261
- 326 **16-11-15**, as last amended by Laws of Utah 1992, Third Special Session, Chapter 6
- 327 **16-11-16**, as last amended by Laws of Utah 2002, Chapter 222
- 328 **16-12-5**, as enacted by Laws of Utah 1965, Chapter 114
- 329 **16-12-6**, as enacted by Laws of Utah 1965, Chapter 114
- 330 **16-13-4**, as last amended by Laws of Utah 1992, Third Special Session, Chapter 6
- 331 **16-13-5**, as last amended by Laws of Utah 1979, Chapter 55
- 332 **16-13-9**, as last amended by Laws of Utah 1979, Chapter 55
- 333 **16-13-11**, as enacted by Laws of Utah 1965, Chapter 27
- 334 **16-16-111**, as enacted by Laws of Utah 2008, Chapter 363
- 335 **16-16-112**, as enacted by Laws of Utah 2008, Chapter 363
- 336 **16-16-113**, as enacted by Laws of Utah 2008, Chapter 363
- 337 **16-16-114**, as enacted by Laws of Utah 2008, Chapter 363

338 **16-16-117**, as enacted by Laws of Utah 2008, Chapter 363
339 **16-16-118**, as enacted by Laws of Utah 2008, Chapter 363
340 **16-16-119**, as enacted by Laws of Utah 2008, Chapter 363
341 **16-16-201**, as enacted by Laws of Utah 2008, Chapter 363
342 **16-16-203**, as enacted by Laws of Utah 2008, Chapter 363
343 **16-16-204**, as enacted by Laws of Utah 2008, Chapter 363
344 **16-16-207**, as enacted by Laws of Utah 2008, Chapter 363
345 **16-16-301**, as enacted by Laws of Utah 2008, Chapter 363
346 **16-16-302**, as enacted by Laws of Utah 2008, Chapter 363
347 **16-16-304**, as enacted by Laws of Utah 2008, Chapter 363
348 **16-16-402**, as enacted by Laws of Utah 2008, Chapter 363
349 **16-16-403**, as enacted by Laws of Utah 2008, Chapter 363
350 **16-16-404**, as enacted by Laws of Utah 2008, Chapter 363
351 **16-16-405**, as enacted by Laws of Utah 2008, Chapter 363
352 **16-16-407**, as enacted by Laws of Utah 2008, Chapter 363
353 **16-16-501**, as enacted by Laws of Utah 2008, Chapter 363
354 **16-16-507**, as enacted by Laws of Utah 2008, Chapter 363
355 **16-16-508**, as enacted by Laws of Utah 2008, Chapter 363
356 **16-16-603**, as enacted by Laws of Utah 2008, Chapter 363
357 **16-16-801**, as enacted by Laws of Utah 2008, Chapter 363
358 **16-16-803**, as enacted by Laws of Utah 2008, Chapter 363
359 **16-16-804**, as enacted by Laws of Utah 2008, Chapter 363
360 **16-16-809**, as enacted by Laws of Utah 2008, Chapter 363
361 **16-16-813**, as enacted by Laws of Utah 2008, Chapter 363
362 **16-16-1001**, as enacted by Laws of Utah 2008, Chapter 363
363 **16-16-1002**, as enacted by Laws of Utah 2008, Chapter 363
364 **16-16-1004**, as enacted by Laws of Utah 2008, Chapter 363
365 **16-16-1202**, as enacted by Laws of Utah 2008, Chapter 363
366 **16-16-1205**, as enacted by Laws of Utah 2008, Chapter 363
367 **16-16-1208**, as enacted by Laws of Utah 2008, Chapter 363
368 **16-16-1209**, as last amended by Laws of Utah 2009, Chapter 388

- 369 **16-16-1212**, as enacted by Laws of Utah 2008, Chapter 363
- 370 **16-16-1213**, as enacted by Laws of Utah 2008, Chapter 363
- 371 **16-16-1303**, as enacted by Laws of Utah 2008, Chapter 363
- 372 **16-16-1402**, as enacted by Laws of Utah 2008, Chapter 363
- 373 **16-16-1405**, as enacted by Laws of Utah 2008, Chapter 363
- 374 **16-16-1406**, as enacted by Laws of Utah 2008, Chapter 363
- 375 **16-16-1407**, as enacted by Laws of Utah 2008, Chapter 363
- 376 **16-16-1503**, as enacted by Laws of Utah 2008, Chapter 363
- 377 **16-16-1504**, as enacted by Laws of Utah 2008, Chapter 363
- 378 **16-16-1602**, as enacted by Laws of Utah 2008, Chapter 363
- 379 **16-16-1603**, as enacted by Laws of Utah 2008, Chapter 363
- 380 **16-16-1604**, as enacted by Laws of Utah 2008, Chapter 363
- 381 **16-16-1606**, as enacted by Laws of Utah 2008, Chapter 363
- 382 **16-16-1607**, as enacted by Laws of Utah 2008, Chapter 363
- 383 **16-16-1608**, as enacted by Laws of Utah 2008, Chapter 363
- 384 **16-16-1609**, as enacted by Laws of Utah 2008, Chapter 363
- 385 **16-16-1701**, as enacted by Laws of Utah 2008, Chapter 363
- 386 **16-17-202**, as enacted by Laws of Utah 2008, Chapter 364
- 387 **16-17-203**, as enacted by Laws of Utah 2008, Chapter 364
- 388 **16-17-204**, as enacted by Laws of Utah 2008, Chapter 364
- 389 **16-17-210**, as enacted by Laws of Utah 2008, Chapter 364
- 390 **16-17-301**, as enacted by Laws of Utah 2008, Chapter 364
- 391 **16-17-402**, as enacted by Laws of Utah 2008, Chapter 364



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

394 Section 1. Section **3-1-1** is amended to read:

395 **3-1-1. Declaration of policy.**

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

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

401 **3-1-9. Powers.**

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

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

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

418 (b) to make contracts and to exercise by its board or duly authorized officers or agents,
419 all such incidental powers as may be necessary, suitable or proper for the accomplishment of
420 the purposes of the association and not inconsistent with law or its articles, and that may be
421 conducive to or expedient for the interest or benefit of the association;

422 (c) to make loans or advances to members or producer-patrons or to the members of an
423 association which is itself a member or subsidiary thereof; to purchase, or otherwise acquire,
424 endorse, discount, or sell any evidence of debt, obligation or security;

425 (d) to establish and accumulate reasonable reserves and surplus funds and to abolish
426 the same; also to create, maintain, and terminate revolving funds or other similar funds which
427 may be provided for in the bylaws of the association;

428 (e) to own and hold membership in or shares of the stock of other associations and
429 corporations and the bonds or other obligations thereof, engaged in any related activity; or, in
430 producing, warehousing or marketing any of the products handled by the association; or, in

431 financing its activities; and while the owner thereof, to exercise all the rights of ownership,
432 including the right to vote thereon;

433 (f) to acquire, hold, sell, dispose of, pledge, or mortgage, any property which its
434 purposes may require;

435 (g) to borrow money without limitation as to amount, and to give its notes, bonds, or
436 other obligations therefor and secure the payment thereof by mortgage or pledge;

437 (h) to deal in products of, and handle machinery, equipment, supplies and perform
438 services for nonmembers to an amount not greater in annual value than such as are dealt in,
439 handled or performed for or on behalf of its members, but the value of the annual purchases
440 made for persons who are neither members nor producers ~~[shall not]~~ may not exceed 15 per
441 centum of the value of all its purchases. Business transacted by an association for or on behalf
442 of the United States or any agency or instrumentality thereof, shall be disregarded in
443 determining the volume or value of member and nonmember business transacted by such
444 association;

445 (i) if engaged in marketing the products of its members, to hedge its operations;

446 (j) to have a corporate seal and to alter the same at pleasure;

447 (k) to continue as a corporation for the time limited in its articles, and if no time limit
448 is specified then perpetually;

449 (l) to sue and be sued in its corporate name;

450 (m) to conduct business in this state and elsewhere as may be permitted by law; and

451 (n) to dissolve and wind up.

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

453 **3-1-11. Certificates of and termination of membership -- Dividends and**
454 **distribution of reserves -- Preferred stock -- Certificates of interest -- Unclaimed credits.**

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

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

461 (3) (a) Savings in excess of dividends and additions to reserves and surplus shall be

462 distributed on the basis of patronage.

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

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

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

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

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

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

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

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

484 (5) (a) An association may issue preferred stock to members and nonmembers.

485 (b) Preferred stock may be redeemed or retired by the association on the terms and
486 conditions as are provided in the articles or bylaws and printed on the stock certificates.

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

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

492 (6) (a) The association may issue to each member a certificate of interest evidencing

493 the member's interest in any fund, capital investment, or other assets of the association.

494 (b) Those certificates may be transferred only to the association, or to other purchasers,
495 as approved by the board of directors, under the terms and conditions provided for in the
496 bylaws.

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

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

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

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

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

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

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

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

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

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

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

521 (B) provide funding for director training and education;

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

524 (D) provide other educational opportunities.

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

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

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

531 (ii) The report shall specify:

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

533 (B) the dollar amount of credit paid to claimants during the year; and

534 (C) the aggregate dollar amount of credits applied since January 1, 1996.

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

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

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

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

541 **3-1-13.8. Director committees.**

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

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

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

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

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

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

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

555 (5) The creation of, delegation of authority to, or action by a committee does not alone
556 constitute compliance by a director with the standards of conduct described in Section
557 3-1-13.3.

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

559 **3-1-14. Removal of director.**

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

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

574 **3-1-15. Officers.**

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

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

582 **3-1-15.1. Duties of officers.**

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

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

587 **3-1-17. Contracts with association.**

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

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

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

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

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

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

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

614 (b) Pending the adjudication of such an action and upon filing a verified complaint
615 showing the breach or threatened breach, and a bond in such form and amount as may be
616 approved by the court, the court may grant a temporary restraining order or preliminary

617 injunction against the member.

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

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

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

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

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

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

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

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

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

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

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

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

659 **3-1-22. Accrued rights not affected by chapter.**

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

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

665 **3-1-26. Separability clause.**

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

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

671 **3-1-35. Procedure at meeting to vote on plan of merger or consolidation --**

672 **Abandonment of merger or consolidation prior to filing articles.**

673 (1) At each meeting, a vote of the current members of each cooperative party to the
674 merger or consolidation having members and a vote of the shareholders of each party to the
675 merger or consolidation having stock or shares shall be taken on the proposed plan of merger
676 or consolidation.

677 (2) (a) If the articles of incorporation or bylaws of any party to the merger or
678 consolidation provide for the election by members or shareholders at district meetings of

679 delegates to vote at annual or special meetings of the association or noncooperative
680 corporation, these procedures shall be followed, and the vote of the delegates at the meeting
681 where the plan of merger or consolidation is voted on shall be counted in the same way and
682 entitled to the same weight as a vote of the delegates at any other meeting of the association or
683 noncooperative corporation.

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

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

688 (3) The plan of merger or consolidation [~~must~~] shall be approved by a 2/3 majority of:

689 (a) the voting members of cooperative parties; and

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

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

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

696 **3-1-37. Effect of merger or consolidation.**

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

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

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

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

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

709 (d) (i) The surviving or new corporation shall possess all rights, privileges, immunities,

710 and franchises of each of the merging associations and corporations.

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

714 (iii) The title to or interest in any real estate vested in any of the associations or
715 corporations [~~shall not~~] may not revert or be in any way impaired by the merger or
716 consolidation.

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

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

723 (iii) The rights of creditors or any liens upon the property of any association or
724 corporation [~~shall not~~] may not be impaired by the merger or consolidation.

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

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

728 **4-1-7. Severability clause.**

729 If any provision of this code or the application of any such provision to any person or
730 circumstance is held invalid, the invalidity [~~shall not~~] does not affect other provisions or
731 applications of this code which can be given effect without the invalid provision or application,
732 and to this end the provisions of this code are declared to be severable.

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

734 **4-2-8.7. Invasive Species Mitigation Fund created.**

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

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

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

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

- 741 (b) The fund shall consist of:
- 742 (i) money appropriated by the Legislature;
- 743 (ii) grants from the federal government; and
- 744 (iii) grants or donations from a person.
- 745 (3) Any unallocated balance in the fund at the end of the year is nonlapsing.
- 746 (4) (a) After consulting with the Department of Natural Resources and the
- 747 Conservation Commission, the department may expend fund monies:
- 748 (i) on a project implemented by:
- 749 (A) the department; or
- 750 (B) the Conservation Commission; or
- 751 (ii) by giving a grant for a project to:
- 752 (A) a state agency;
- 753 (B) a federal agency; or
- 754 (C) a federal, state, tribal, or private landowner.
- 755 (b) A grant to a federal landowner [~~must~~] shall be matched with at least an equal
- 756 amount of money by the federal landowner.
- 757 (c) In expending the fund monies authorized by Subsection (4)(a)(i), the department
- 758 shall use existing infrastructure and employees to plan and implement the project.
- 759 (5) In giving a grant, the department shall consider the effectiveness of a project in
- 760 preventing:
- 761 (a) first, the risk to public safety and health from:
- 762 (i) air pollution;
- 763 (ii) flooding; and
- 764 (iii) reduced visibility on a highway;
- 765 (b) second, damage to the environment, including:
- 766 (i) soil erosion;
- 767 (ii) degraded water quality; and
- 768 (iii) release of carbon; and
- 769 (c) third, damage to:
- 770 (i) a local economy; and
- 771 (ii) habitat for wildlife or livestock.

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

773 **4-2-15. Civil and criminal penalties -- Costs -- Civil liability.**

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

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

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

784 Section 16. Section **4-5-5** is amended to read:

785 **4-5-5. Adulterated or misbranded articles -- Tagging -- Detention or embargo --**
786 **Court proceedings for condemnation -- Perishable food.**

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

791 (i) the food is, or is suspected of being, adulterated or misbranded;

792 (ii) the food has been detained or embargoed; and

793 (iii) removal of the food is prohibited as provided in Subsection (1)(b).

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

797 (2) When food detained or embargoed under Subsection (1) has been found by an agent
798 to be adulterated or misbranded, the department shall petition the district court in whose
799 jurisdiction the food is detained or embargoed for an order of condemnation of the food. When
800 the agent has found that food so detained or embargoed is not adulterated or misbranded, the
801 department shall remove the tag or other marking.

802 (3) (a) If the court finds that detained or embargoed food is adulterated or misbranded,

803 the food [~~must~~] shall, after entry of the decree, be destroyed under the supervision of the agent.

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

807 (i) entry of the decree;

808 (ii) all costs, fees, and expenses have been paid; and

809 (iii) a sufficient bond, conditioned that the food [~~must~~] shall be properly labeled and
810 processed, has been executed.

811 (c) An agent of the department shall supervise, at the claimant's expense, the labeling
812 or processing of the food.

813 (d) The bond shall be returned to the claimant of the food upon:

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

816 (ii) the expenses of supervision have been paid.

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

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

822 **4-5-7. Adulterated food specified.**

823 A food is adulterated:

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

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

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

831 (B) a food additive; or

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

833 (ii) if it is a raw agricultural commodity and it bears or contains a pesticide chemical

834 that is unsafe within the meaning of 21 U.S.C. Sec. 346a; or

835 (iii) if it is or it bears or contains any food additive that is unsafe within the meaning of
836 21 U.S.C. Sec. 348; provided that where a pesticide chemical has been used in or on a raw
837 agricultural commodity in conformity with an exemption granted or tolerance prescribed under
838 21 U.S.C. 346a and the raw agricultural commodity has been subjected to processing such as
839 canning, cooking, freezing, dehydrating, or milling the residue of such pesticide chemical
840 remaining in or on such processed food shall, notwithstanding the provisions of Section 4-5-11
841 and this Subsection (1)(b)(iii), not be considered unsafe if such residue in or on the raw
842 agricultural commodity has been removed to the extent possible in good manufacturing
843 practice, and the concentration of such residue in the processed food when ready to eat is not
844 greater than the tolerance prescribed for the raw agricultural commodity;

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

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

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

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

855 (g) if it has been intentionally subjected to radiation, unless the use of the radiation was
856 in conformity with a rule or exemption in effect pursuant to Section 4-5-11, or 21 U.S.C. Sec.
857 348; or

858 (h) in meat or meat products are adulterated:

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

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

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

865 therefrom;

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

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

868 (d) if any substance has been added or mixed or packed therewith so as to increase its
869 bulk or weight, or reduce its quality or strength or make it appear better or of greater value than
870 it is; or

871 (3) if it is confectionery, and:

872 (a) has partially or completely imbedded therein any nonnutritive object; provided that
873 this Subsection (3)(a) [~~shall not~~] does not apply in the case of any nonnutritive objective if, in
874 the judgment of the department such object is of practical functional value to the confectionery
875 product and would not render the product injurious or hazardous to health;

876 (b) bears or contains any alcohol other than alcohol not in excess of .05% by volume
877 derived solely from the use of flavoring extracts; or

878 (c) bears or contains any nonnutritive substance; provided, that this Subsection (3)(c)
879 [~~shall not~~] does not apply to a safe nonnutritive substance that is in or on confectionery by
880 reason of its use for some practical functional purpose in the manufacture, packaging, or
881 storing of such confectionery if the use of the substance does not promote deception of the
882 consumer or otherwise result in adulteration or misbranding in violation of this chapter.

883 (4) The department may, for the purpose of avoiding or resolving uncertainty as to the
884 application of Subsection (3)(c), issue rules allowing or prohibiting the use of particular
885 nonnutritive substances.

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

887 **4-5-8. Misbranded food specified.**

888 (1) Food is misbranded if:

889 (a) its label is false or misleading in any way;

890 (b) its labeling or packaging fails to conform with the requirements of Section 4-5-15;

891 (c) it is offered for sale under the name of another food;

892 (d) its container is so made, formed, or filled with packing material or air as to be
893 misleading; or

894 (e) it fails to conform with any requirement specified in this section.

895 (2) A food that is an imitation of another food [~~must~~] shall bear a label, in type of

896 uniform size and prominence, stating the word "imitation," and, immediately thereafter, the
897 name of the food imitated.

898 (3) (a) A food in package form [~~must~~] shall bear a label containing:

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

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

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

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

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

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

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

914 (a) prominently placed on the label;

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

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

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

922 (a) conform to the definition and standard; and

923 (b) have a label bearing:

924 (i) the name of the food specified in the definition and standard; and

925 (ii) insofar as may be required by the rules, the common names of optional ingredients,
926 other than spices, flavorings, and colorings, present in the food.

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

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

935 (8) (a) Any food for which neither a definition nor standard of identity has been
936 prescribed by federal regulations or department rules as provided by Section 4-5-6 [~~must~~] shall
937 bear labeling clearly giving:

938 (i) the common or usual name of the food, if any; and

939 (ii) in case it is fabricated from two or more ingredients, the common or usual name of
940 each ingredient, except that spices, flavorings, and colorings, other than those sold as such,
941 may be designated as spices, flavorings, and colorings without naming each.

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

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

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

951 (11) The shipping container of any raw agricultural commodity bearing or containing a
952 pesticide chemical applied after harvest [~~must~~] shall bear labeling which declares the presence
953 of the chemical in or on the commodity and the common or usual name and function of the
954 chemical. The declaration is not required while the commodity, having been removed from
955 the shipping container, is being held or displaced for sale at retail out of the container in
956 accordance with the custom of the trade.

957 (12) A product intended as an ingredient of another food, when used according to the

958 directions of the purveyor, may not result in the final food product being adulterated or
959 misbranded.

960 (13) The packaging and labeling of a color additive [~~must~~] shall be in conformity with
961 the packaging and labeling requirements applicable to the color additive prescribed under the
962 federal act.

963 (14) Subsections (5), (8), and (10) with respect to artificial coloring do not apply to
964 butter, cheese, or ice cream. Subsection (10) with respect to chemical preservatives does not
965 apply to a pesticide chemical when used in or on a raw agricultural commodity.

966 Section 19. Section **4-5-9** is amended to read:

967 **4-5-9. Registration of food establishments -- Fee -- Suspension and reinstatement**
968 **of registration -- Inspection for compliance.**

969 (1) (a) Pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
970 department shall establish rules providing for the registration of food establishments to protect
971 public health and ensure a safe food supply.

972 (b) The owner or operator of a food establishment shall register with the department
973 before operating a food establishment.

974 (c) Prior to granting a registration to the owner or operator of a food establishment, the
975 department shall inspect and assess the food establishment to determine whether it complies
976 with the rules established under Subsection (1)(a).

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

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

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

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

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

988 (h) (i) The department may, as provided under Subsection 4-2-2(2), charge the food

989 establishment a registration fee.

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

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

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

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

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

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

999 (c) the registration issuance and expiration date.

1000 (4) (a) The department may immediately suspend a registration, issued under this
1001 section, if any of the conditions of registration have been violated.

1002 (b) (i) The holder of a registration suspended under Subsection (4)(a) may apply for the
1003 reinstatement of a registration.

1004 (ii) If the department determines that all registration requirements have been met, the
1005 department shall reinstate the registration.

1006 (5) (a) A food establishment, registered under this section, shall allow the department
1007 to have access to the food establishment to determine if the food establishment is complying
1008 with the registration requirements.

1009 (b) If a food establishment denies access for an inspection required under Subsection
1010 (5)(a), the department may suspend the food establishment's registration until the department is
1011 allowed access to the food establishment's premises.

1012 Section 20. Section **4-5-15** is amended to read:

1013 **4-5-15. Consumer commodities -- Labeling and packaging.**

1014 (1) All labels of consumer commodities, as defined by this chapter, shall conform with
1015 the requirements for the declaration of net quantity of contents of 15 U.S.C. Sec. 1453 and the
1016 regulations promulgated pursuant thereto: provided, that consumer commodities exempted
1017 from 15 U.S.C. Sec. 1453(4) shall also be exempt from this Subsection (1).

1018 (2) The label of any package of a consumer commodity that bears a representation as to
1019 the number of servings of the commodity contained in the package shall bear a statement of the

1020 net quantity in terms of weight, measure, or numerical count for each serving.

1021 (3) (a) No person shall distribute or cause to be distributed in commerce any packaged
1022 consumer commodity if any qualifying words or phrases appear in conjunction with the
1023 separate statement of the net quantity of contents required by Subsection (1), but nothing in this
1024 section shall prohibit supplemental statements, at other places on the package, describing in
1025 nondeceptive terms the net quantity of contents.

1026 (b) Supplemental statements of net quantity of contents may not include any term
1027 qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the
1028 commodity contained in the package.

1029 (4) (a) Whenever the department determines that rules other than those prescribed by
1030 Subsection(1) are necessary to prevent the deception of consumers or to facilitate value
1031 comparisons as to any consumer commodity, the department shall promulgate rules effective
1032 to:

1033 (i) establish and define standards for the characterization of the size of a package
1034 enclosing any consumer commodity, which may be used to supplement the label statement of
1035 net quantity of contents of packages containing the commodity, but this Subsection (4) [~~shall~~
1036 ~~not be construed as authorizing~~] does not authorize any limitation on the size, shape, weight,
1037 dimensions, or number of packages that may be used to enclose any commodity;

1038 (ii) regulate the placement upon any package containing any commodity, or upon any
1039 label affixed to a commodity, of any printed matter stating or representing by implication that
1040 the commodity is offered for retail sale at a price lower than the ordinary and customary retail
1041 sale price or that a retail sale price advantage is accorded to purchasers by reason of the size of
1042 that package or the quantity of its contents;

1043 (iii) require that the label on each package of a consumer commodity bear:

1044 (A) the common or usual name of such consumer commodity, if any; and

1045 (B) if the consumer commodity consists of two or more ingredients, the common or
1046 usual name of each such ingredient listed in order of decreasing predominance, but nothing in
1047 this Subsection (4) shall be considered to require that any trade secret be divulged; or

1048 (iv) prevent the nonfunctional slack-fill of packages containing consumer
1049 commodities.

1050 (b) For the purposes of Subsection (4)(a)(iv), a package is nonfunctionally slack-filled

1051 if it is filled to substantially less than its capacity for reasons other than:

1052 (i) protection of the contents of such package; or

1053 (ii) the requirements of machines used for enclosing the contents in such package;

1054 provided, that the department may adopt any rules promulgated according to the Fair Packaging
1055 and Labeling Act, 15 U.S.C. Sec. 1453.

1056 Section 21. Section **4-5-18** is amended to read:

1057 **4-5-18. Inspection of premises and records -- Authority to take samples --**

1058 **Inspection results reported.**

1059 (1) An authorized agent of the department upon presenting appropriate credentials to
1060 the owner, operator, or agent in charge, may:

1061 (a) enter at reasonable times any factory, warehouse, or establishment in which food is
1062 manufactured, processed, packed, or held for introduction into commerce or after introduction
1063 into commerce;

1064 (b) enter any vehicle being used to transport or hold food in commerce;

1065 (c) inspect at reasonable times and within reasonable limits and in a reasonable manner
1066 any factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and
1067 unfinished materials, containers, and labeling located within it;

1068 (d) obtain samples necessary for the enforcement of this chapter so long as the
1069 department pays the posted price for the sample if requested to do so and receives a signed
1070 receipt from the person from whom the sample is taken;

1071 (e) have access to and copy all records of carriers in commerce showing:

1072 (i) the movement in commerce of any food;

1073 (ii) the holding of food during or after movement in commerce; and

1074 (iii) the quantity, shipper, and consignee of food.

1075 (2) Evidence obtained under this section may not be used in a criminal prosecution of
1076 the person from whom the evidence was obtained.

1077 (3) Carriers may not be subject to the other provisions of this chapter by reason of their
1078 receipt, carriage, holding, or delivery of food in the usual course of business as carriers.

1079 (4) Upon completion of the inspection of a factory, warehouse, consulting laboratory,
1080 or other establishment and prior to leaving the premises, the authorized agent making the
1081 inspection shall give to the owner, operator, or agent in charge a report in writing setting forth

1082 any conditions or practices observed by him which in his judgment indicate that any food in the
1083 establishment:

1084 (a) consists in whole or in part of any filthy, putrid, or decomposed substance; or

1085 (b) has been prepared, packed, or held under unsanitary conditions whereby it may
1086 have become contaminated with filth or whereby it may have been rendered injurious to health.

1087 (5) A copy of the report [must] shall be sent promptly to the department.

1088 (6) If the authorized agent making the inspection of a factory, warehouse, or other
1089 establishment has obtained any sample in the course of the inspection, the agent shall give to
1090 the owner, operator, or agent in charge a receipt describing the samples obtained.

1091 (7) When in the course of the inspection the officer or employee making the inspection
1092 obtains a sample of any food and an analysis is made of the sample for the purpose of
1093 ascertaining whether the food consists in whole or in part of any filthy, putrid, or decomposed
1094 substance or is otherwise unfit for food, a copy of the results of the analysis [must] shall be
1095 furnished promptly to the owner, operator, or agent in charge.

1096 Section 22. Section 4-7-8 is amended to read:

1097 **4-7-8. Applicant for dealer's license to post security -- Increase in amount of**
1098 **security posted -- Action on security authorized -- Duties of commissioner -- Option to**
1099 **require posting new security if action filed -- Effect of failure to post new security --**
1100 **Commissioner's authority to call bond if not renewed.**

1101 (1) (a) Before a license is issued to a dealer, the applicant [must] shall post a corporate
1102 surety bond, irrevocable letter of credit, trust fund agreement, or any other security agreement
1103 considered reasonable in an amount not less than \$10,000 nor more than \$200,000, as
1104 determined by the commissioner or as required by the Packers and Stockyards Act, 1921, 7
1105 U.S.C. Section 181 et seq.

1106 (b) Any bond shall be written by a surety licensed under the laws of Utah and name the
1107 state, as obligee, for the use and benefit of producers.

1108 (c) The bond or other security posted shall be conditioned upon:

1109 (i) the faithful performance of contracts and the faithful accounting for and handling of
1110 any product of agriculture consigned to the dealer;

1111 (ii) the performance of the obligations imposed under this chapter; and

1112 (iii) the payment of court costs and attorney's fees to the prevailing party incident to

1113 any suit upon the bond or other security posted.

1114 (2) (a) The commissioner may require a dealer who is issued a license to increase the
1115 amount of the bond or other security posted under Subsection (1)(a) if the commissioner
1116 determines the bond or other security posted is inadequate to secure performance of the dealer's
1117 obligations.

1118 (b) The commissioner shall notify the Packers and Stockyards Administration of an
1119 increase made under Subsection (2)(a).

1120 (c) The commissioner may suspend a dealer's license for failure to comply with
1121 Subsection (2)(a) within 10 days after notice is given to the dealer.

1122 (3) A consignor claiming damages, as a result of fraud, deceit, or willful negligence by
1123 a dealer or as a result of the dealer's failure to comply with this chapter, may bring an action
1124 upon the bond or other security posted for damages against both the principal and surety.

1125 (4) (a) If it is reported to the department by a consignor that a dealer has failed to pay
1126 in a timely manner for any product of agriculture received for sale, the commissioner shall:

1127 (i) ascertain the name and address of each consignor who is a creditor of the dealer;
1128 and

1129 (ii) request a verified written statement setting forth the amount claimed due from the
1130 dealer.

1131 (b) Upon receipt of the verified statements, the commissioner shall bring an action
1132 upon the bond or other security posted on behalf of the consignors who claim amounts due
1133 from the dealer.

1134 (5) (a) If an action is filed upon the bond or other security posted, the commissioner
1135 may require the filing of new security.

1136 (b) Immediately upon recovery in the action, the commissioner shall require the dealer
1137 to file a new bond or other security.

1138 (c) Failure, in either case, to file the bond or other security within 10 days after demand
1139 is cause for suspension of the license until a new bond or other security is filed.

1140 (d) If the bond or other security posted under this section is not renewed within 10 days
1141 of its expiration date, unless the commissioner states in writing that this is unnecessary, the
1142 commissioner may obtain, after a hearing, the full amount of the bond or other security before
1143 it expires.

1144 Section 23. Section 4-7-11 is amended to read:

1145 **4-7-11. Department authority -- Examination and investigation of transactions --**
1146 **Notice of agency action upon probable cause -- Settlement of disputes -- Cease and desist**
1147 **order -- Enforcement -- Review.**

1148 (1) For the purpose of enforcing this chapter the department may, upon its own motion,
1149 or shall, upon the verified complaint of an interested consignor, investigate, examine, or
1150 inspect any transaction involving:

1151 (a) the solicitation, receipt, sale, or attempted sale of any product of agriculture by a
1152 dealer or person assuming to act as a dealer;

1153 (b) the failure to make a correct account of sales;

1154 (c) the intentional making of a false statement about market conditions or the condition
1155 or quantity of any product of agriculture consigned;

1156 (d) the failure to remit payment in a timely manner to the consignor as required by
1157 contract or by this chapter;

1158 (e) any other consignment transaction alleged to have resulted in damage to the
1159 consignor; or

1160 (f) any dealer or agent with an unsatisfied judgment by a civil court related to an
1161 activity for which licensing is required by this chapter.

1162 (2) (a) After investigation upon its own motion, if the department determines that
1163 probable cause exists to believe that a dealer has engaged or is engaging in acts that violate this
1164 chapter, it shall issue a notice of agency action.

1165 (b) (i) Upon the receipt of a verified complaint, the department shall undertake to effect
1166 a settlement between the consignor and the dealer.

1167 (ii) If a settlement cannot be effected, the department shall treat the verified complaint
1168 as a request for agency action.

1169 (3) (a) In a hearing upon a verified complaint, if the commissioner, or hearing officer
1170 designated by the commissioner, determines by a preponderance of the evidence that the person
1171 complained of has violated this chapter and that the violation has resulted in damage to the
1172 complainant, the officer shall:

1173 (i) prepare written findings of fact detailing the findings and fixing the amount of
1174 damage suffered; and

1175 (ii) order the defendant to pay damages.

1176 (b) In a hearing initiated upon the department's own motion, if the commissioner or
1177 hearing officer determines by a preponderance of the evidence that the person complained of by
1178 the department has engaged in, or is engaging in, acts that violate this chapter, the
1179 commissioner or officer shall prepare written findings of fact and an order requiring the person
1180 to cease and desist from the activity.

1181 (4) The department may petition any court having jurisdiction in the county where the
1182 action complained of occurred to enforce its order.

1183 (5) Any dealer aggrieved by an order issued under this section may obtain judicial
1184 review of the order.

1185 (6) (a) The department may not act upon a verified complaint submitted to the
1186 department more than six months after the consignor allegedly suffered damage.

1187 (b) A livestock claim ~~[must]~~ shall be made in writing within 120 days from the date of
1188 the transaction.

1189 Section 24. Section **4-9-15** is amended to read:

1190 **4-9-15. Registration of commercial establishments using weights and measures --**
1191 **Approved weights and measures inspectors -- Application -- Fee -- Expiration -- Renewal.**

1192 (1) (a) Pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
1193 department shall establish rules providing for the registration of weights and measures users
1194 and issuance of certification of weights and measures devices to ensure the use of correct
1195 weights and measures in commerce or trade.

1196 (b) The division may:

1197 (i) determine whether weights and measures are correct through:

1198 (A) inspection and testing by department employees; or

1199 (B) acceptance of an inspection and testing report prepared by a registered weights and
1200 measures service person;

1201 (ii) establish standards and qualifications for registered weights and measures service
1202 persons; and

1203 (iii) determine the form and content of an inspection and testing report.

1204 (c) A weights and measures user shall register with the department.

1205 (d) Prior to granting a registration to a weights and measures user, the department shall

1206 determine whether the weights and measures user complies with the rules established under
1207 Subsection (1)(a).

1208 (e) An applicant shall register with the department, in writing, using forms required by
1209 the department.

1210 (f) The department shall issue a registration to an applicant, if the department
1211 determines that the applicant meets the qualifications of registration established under
1212 Subsection (1)(a).

1213 (g) If the applicant does not meet the qualifications of registration, the department shall
1214 notify the applicant, in writing, that the applicant's registration is denied.

1215 (h) (i) If an applicant submits an incomplete application, a written notice of conditional
1216 denial of registration shall be provided to an applicant.

1217 (ii) The applicant [~~must~~] shall correct the deficiencies within the time period specified
1218 in the notice to receive a registration.

1219 (i) (i) The department may, as provided under Subsection 4-2-2(2), charge the weights
1220 and measures user a registration fee.

1221 (ii) The department shall retain the fees as dedicated credits and shall use the fees to
1222 administer the registration of weights and measures users.

1223 (2) (a) A registration, issued under this section, shall be valid from the date the
1224 department issues the registration, to December 31 of the year the registration is issued.

1225 (b) A registration may be renewed for the following year by applying for renewal by
1226 December 31 of the year the registration expires.

1227 (3) A registration, issued under this section, shall specify:

1228 (a) the name and address of the weights and measures user;

1229 (b) the registration issuance and expiration date; and

1230 (c) the number and type of weights and measures devices to be certified.

1231 (4) (a) The department may immediately suspend a registration, issued under this
1232 section, if any of the requirements of Section 4-9-12 are violated.

1233 (b) (i) The holder of a registration suspended under Subsection (4)(a) may apply for the
1234 reinstatement of a registration.

1235 (ii) If the department determines that all requirements under Section 4-9-12 are being
1236 met, the department shall reinstate the registration.

1237 (5) (a) A weights and measures user, registered under this section, shall allow the
1238 department access to the weights and measures user's place of business to determine if the
1239 weights and measures user is complying with the registration requirements.

1240 (b) If a weights and measures user denies access for an inspection required under
1241 Subsection (5)(a), the department may suspend the weights and measures user's registration
1242 until the department is allowed access to the weights and measures user's place of business.

1243 Section 25. Section **4-14-3** is amended to read:

1244 **4-14-3. Registration required for distribution -- Application -- Fees -- Renewal --**
1245 **Local needs registration -- Distributor or applicator license -- Fees -- Renewal.**

1246 (1) (a) No person may distribute a pesticide in this state that is not registered with the
1247 department.

1248 (b) Application for registration shall be made to the department upon forms prescribed
1249 and furnished by it accompanied with an annual registration fee determined by the department
1250 pursuant to Subsection 4-2-2(2) for each pesticide registered.

1251 (c) Upon receipt by the department of a proper application and payment of the
1252 appropriate fee, the commissioner shall issue a registration to the applicant allowing
1253 distribution of the registered pesticide in this state through June 30 of each year, subject to
1254 suspension or revocation for cause.

1255 (d) (i) Each registration is renewable for a period of one year upon the payment of an
1256 annual registration renewal fee in an amount equal to the current applicable original
1257 registration fee.

1258 (ii) Each renewal fee shall be paid on or before June 30 of each year.

1259 (2) The application shall include the following information:

1260 (a) the name and address of the applicant and the name and address of the person
1261 whose name will appear on the label, if other than the applicant's name;

1262 (b) the name of the pesticide;

1263 (c) a complete copy of the label which will appear on the pesticide; and

1264 (d) any information prescribed by rule of the department considered necessary for the
1265 safe and effective use of the pesticide.

1266 (3) (a) Forms for the renewal of registration shall be mailed to registrants at least 30
1267 days before their registration expires.

1268 (b) A registration in effect on June 30 for which a renewal application has been filed
1269 and the registration fee tendered shall continue in effect until the applicant is notified either
1270 that the registration is renewed or that it is suspended or revoked pursuant to Section 4-14-8.

1271 (4) The department may, before approval of any registration, require the applicant to
1272 submit the complete formula of any pesticide including active and inert ingredients and may
1273 also, for any pesticide not registered according to 7 U.S.C. Sec. 136a or for any pesticide on
1274 which restrictions are being considered, require a complete description of all tests and test
1275 results that support the claims made by the applicant or the manufacturer of the pesticide.

1276 (5) A registrant who desires to register a pesticide to meet special local needs
1277 according to 7 U.S.C. Sec. 136v(c) shall, in addition to complying with Subsections (1) and
1278 (2), satisfy the department that:

1279 (a) a special local need exists;

1280 (b) the pesticide warrants the claims made for it;

1281 (c) the pesticide, if used in accordance with commonly accepted practices, will not
1282 cause unreasonable adverse effects on the environment; and

1283 (d) the proposed classification for use conforms with 7 U.S.C. Sec. 136a(d).

1284 (6) No registration is required for a pesticide distributed in this state pursuant to an
1285 experimental use permit issued by the EPA or under Section 4-14-5.

1286 (7) No pesticide dealer may distribute a restricted use pesticide in this state without a
1287 license.

1288 (8) A person [~~must~~] shall receive a license before applying:

1289 (a) a restricted use pesticide; or

1290 (b) a general use pesticide for hire or in exchange for compensation.

1291 (9) (a) A license to engage in an activity listed in Subsection (7) or (8) may be obtained
1292 by:

1293 (i) submitting an application on a form provided by the department;

1294 (ii) paying the license fee determined by the department according to Subsection
1295 4-2-2(2); and

1296 (iii) complying with the rules adopted as authorized by this chapter.

1297 (b) A person may apply for a license that expires on December 31:

1298 (i) of the calendar year in which the license is issued; or

1299 (ii) of the second calendar year after the calendar year in which the license is issued.

1300 (c) (i) Notwithstanding Section 63J-1-504, the department shall retain the fees as
1301 dedicated credits and may only use the fees to administer and enforce this chapter.

1302 (ii) The Legislature may annually designate the revenue generated from the fee as
1303 nonlapsing in an appropriations act.

1304 Section 26. Section **4-15-2** is amended to read:

1305 **4-15-2. Definitions.**

1306 As used in this chapter:

1307 (1) "Balled and burlapped stock" means nursery stock which is removed from the
1308 growing site with a ball of soil containing its root system intact and encased in burlap or other
1309 material to hold the soil in place;

1310 (2) "Bare-root stock" means nursery stock which is removed from the growing site
1311 with the root system free of soil;

1312 (3) "Container stock" means nursery stock which is transplanted in soil or in a potting
1313 mixture contained within a metal, clay, plastic, or other rigid container for a period sufficient to
1314 allow newly developed fibrous roots to form so that if the plant is removed from the container
1315 its root-media ball will remain intact;

1316 (4) "Etiolated growth" means bleached and unnatural growth resulting from the
1317 exclusion of sunlight;

1318 (5) "Minimum indices of vitality" mean standards adopted by the department to
1319 determine the health and vigor of nursery stock offered for sale in this state;

1320 (6) "Nonestablished container stock" means deciduous nursery stock which is
1321 transplanted in soil or in a potting mixture contained within a metal, clay, plastic, or other rigid
1322 container for a period insufficient to allow the formation of fibrous roots sufficient to form a
1323 root-media ball;

1324 (7) "Nursery" means any place where nursery stock is propagated and grown for sale or
1325 distribution;

1326 (8) "Nursery outlet" means any place or location where nursery stock is offered for
1327 wholesale or retail sale;

1328 (9) "Nursery stock" means all plants, whether field grown, container grown, or
1329 collected native plants; trees, shrubs, vines, grass sod; seedlings, perennials, biennials; and

1330 buds, cuttings, grafts, or scions grown or collected or kept for propagation, sale, or distribution;
1331 except that it [~~shall not mean~~] does not include dormant bulbs, tubers, roots, corms, rhizomes,
1332 pips; field, vegetable, or flower seeds; or bedding plants, annual plants, florists' greenhouse or
1333 field-grown plants, flowers or cuttings;

1334 (10) "Place of business" means each separate nursery, or nursery outlet, where nursery
1335 stock is offered for sale, sold, or distributed;

1336 (11) "Packaged stock" means bare-root stock which is packed either in bundles or in
1337 single plants with the roots in some type of moisture-retaining material designed to retard
1338 evaporation and hold the moisture-retaining material in place.

1339 Section 27. Section **4-15-10** is amended to read:

1340 **4-15-10. Infested or diseased stock not to be offered for sale -- Identification of**
1341 **"nonestablished container stock" -- Requirements for container stock -- Inspected and**
1342 **certified stock only to be offered for sale -- Prohibition against coating aerial plant**
1343 **surfaces.**

1344 (1) Nursery stock which is infested with plant pests, including noxious weeds, or
1345 infected with disease or which does not meet minimum indices of vitality [~~shall not~~] may not
1346 be offered for sale.

1347 (2) All nonestablished container stock offered for sale shall be identified by the words
1348 "nonestablished container stock" legibly printed on a water resistant tag which states the length
1349 of time it has been planted or the date it was planted and [~~shall not~~] may not be offered for sale
1350 in any manner which leads a purchaser to believe it is container stock.

1351 (3) All container stock offered for sale shall be established with a root-media mass that
1352 will retain its shape and hold together when removed from the container.

1353 (4) No nursery stock other than officially inspected and certified stock shall be offered
1354 for wholesale or retail sale in this state.

1355 (5) Colored waxes or other materials which coat the aerial parts of a plant and change
1356 the appearance of the plant surface are prohibited.

1357 Section 28. Section **4-17-7** is amended to read:

1358 **4-17-7. Notice of noxious weeds to be published annually in county -- Notice to**
1359 **particular property owners to control noxious weeds -- Methods of prevention or control**
1360 **specified -- Failure to control noxious weeds considered public nuisance.**

1361 (1) Each county weed control board before May 1 of each year shall post a general
1362 notice of the noxious weeds within the county in at least three public places within the county
1363 and publish the same notice on:

1364 (a) at least three occasions in a newspaper or other publication of general circulation
1365 within the county; and

1366 (b) as required in Section 45-1-101.

1367 (2) If the county weed control board determines that particular property within the
1368 county requires prompt and definite attention to prevent or control noxious weeds, it shall serve
1369 the owner or the person in possession of the property, personally or by certified mail, a notice
1370 specifying when and what action [~~should~~] is required to be taken on the property. Methods of
1371 prevention or control may include definite systems of tillage, cropping, use of chemicals, and
1372 use of livestock.

1373 (3) An owner or person in possession of property who fails to take action to control or
1374 prevent the spread of noxious weeds as specified in the notice is maintaining a public nuisance.

1375 Section 29. Section **4-22-3** is amended to read:

1376 **4-22-3. Commission -- Organization -- Quorum to transact business -- Vacancies**
1377 **-- Ineligibility to serve -- Compensation.**

1378 (1) The members of the commission shall elect a chair, vice chair, and secretary from
1379 among their number.

1380 (2) Attendance of a simple majority of the commission members at a called meeting
1381 shall constitute a quorum for the transaction of official business.

1382 (3) The commission shall meet:

1383 (a) at the time and place designated by the chair; and

1384 (b) no less often than once every three months.

1385 (4) Vacancies which occur on the commission for any reason shall be filled for the
1386 unexpired term of the vacated member by appointment of a majority of the remaining
1387 members.

1388 (5) If a member moves from the district that he represents or ceases to act as a producer
1389 during his term of office, he [~~must~~] shall resign from the commission within 30 days after
1390 moving from the district or ceasing production.

1391 (6) (a) (i) Members who are not government employees shall receive no compensation

1392 or benefits for their services, but may receive per diem and expenses incurred in the
1393 performance of the member's official duties at the rates established by the Division of Finance
1394 under Sections 63A-3-106 and 63A-3-107.

1395 (ii) Members may decline to receive per diem and expenses for their service.

1396 (b) (i) State government officer and employee members who do not receive salary, per
1397 diem, or expenses from their agency for their service may receive per diem and expenses
1398 incurred in the performance of their official duties from the commission at the rates established
1399 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

1400 (ii) State government officer and employee members may decline to receive per diem
1401 and expenses for their service.

1402 (c) (i) Higher education members who do not receive salary, per diem, or expenses
1403 from the entity that they represent for their service may receive per diem and expenses incurred
1404 in the performance of their official duties from the committee at the rates established by the
1405 Division of Finance under Sections 63A-3-106 and 63A-3-107.

1406 (ii) Higher education members may decline to receive per diem and expenses for their
1407 service.

1408 Section 30. Section **4-22-6** is amended to read:

1409 **4-22-6. Commission to conduct elections -- Nomination of candidates -- Expenses**
1410 **of election paid by commission.**

1411 (1) (a) The commissioner shall administer all commission elections.

1412 (b) The commissioner shall mail a ballot to each producer within the district in which
1413 an election is to be held by May 15 of each election year.

1414 (c) The candidate who receives the highest number of votes cast in the candidate's
1415 district shall be elected.

1416 (d) The commissioner shall determine all questions of eligibility.

1417 (e) A ballot [~~must~~] shall be postmarked by May 31 of an election year.

1418 (f) (i) All ballots received by the commissioner shall be counted and tallied by June 15.

1419 (ii) A member of the commission whose name appears on a ballot may not participate
1420 in counting or tallying the ballots.

1421 (2) (a) Candidates for election to the commission shall be nominated, not later than
1422 April 15, by a petition signed by five or more producers who are residents of the district in

1423 which the election is to be held.

1424 (b) If two or more candidates are not nominated by petition, the commission shall
1425 select a nominating committee composed of three producers who are residents of the district
1426 who shall select the candidates not nominated by petition.

1427 (3) The names of all nominees, whether nominated by petition or by a nominating
1428 committee, shall be submitted to the commissioner on or before May 1 of each year in which
1429 an election is held.

1430 (4) All election expenses incurred by the commissioner shall be paid by the
1431 commission.

1432 Section 31. Section **4-23-5** is amended to read:

1433 **4-23-5. Board responsibilities -- Damage prevention policy -- Rules -- Methods to**
1434 **control predators and depredating birds and animals.**

1435 (1) The board is responsible for the formulation of the agricultural and wildlife damage
1436 prevention policy of the state and in conjunction with its responsibility may, consistent with
1437 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, adopt rules to implement its policy
1438 which shall be administered by the department.

1439 (2) In its policy deliberations the board shall:

1440 (a) specify programs designed to prevent damage to livestock, poultry, and agricultural
1441 crops; and

1442 (b) specify methods for the prevention of damage and for the selective control of
1443 predators and depredating birds and animals including[~~, but not limited to,~~] hunting, trapping,
1444 chemical toxicants, and the use of aircraft.

1445 (3) The board may also:

1446 (a) specify bounties on designated predatory animals and recommend procedures for
1447 the payment of bounty claims, recommend bounty districts, recommend persons not authorized
1448 to receive bounty, and recommend to the department other actions it considers advisable for the
1449 enforcement of its policies; and

1450 (b) cooperate with federal, state, and local governments, educational institutions, and
1451 private persons or organizations, through agreement or otherwise, to effectuate its policies.

1452 Section 32. Section **4-23-6** is amended to read:

1453 **4-23-6. Department to issue licenses and permits -- Department to issue aircraft**

1454 **use permits -- Reports.**

1455 The department is responsible for the issuance of permits and licenses for the purposes
1456 of the federal Fish and Wildlife Act of 1956. No state agency or private person shall use any
1457 aircraft for the prevention of damage without first obtaining a use permit from the department.
1458 A state agency which contemplates the use of aircraft for the protection of agricultural crops,
1459 livestock, poultry, or wildlife shall file an application with the department for an aircraft use
1460 permit to enable the agency to issue licenses to personnel within the agency charged with the
1461 responsibility to protect such resources. Persons who desire to use privately owned aircraft for
1462 the protection of land, water, crops, wildlife, or livestock [~~shall not~~] may not engage in any
1463 such protective activity without first obtaining an aircraft permit from the department.
1464 Agencies and private persons which obtain aircraft use permits shall file such reports with the
1465 department as it deems necessary in the administration of its licensing authority.

1466 Section 33. Section **4-23-8** is amended to read:

1467 **4-23-8. Proceeds of sheep fee -- Refund of sheep fees -- Annual audit of books,**
1468 **records, and accounts.**

1469 (1) (a) The commissioner may spend an amount not to exceed the equivalent of 16
1470 cents per head each year from the proceeds collected from the fee imposed on sheep for the
1471 promotion, advancement, and protection of the sheep interests of the state.

1472 (b) All costs to promote or advance sheep interests shall be deducted from the total
1473 revenue collected before calculating the annual budget request, which shall be made by the
1474 Division of Wildlife Resources as specified in Section 4-23-9.

1475 (c) A sheep fee is refundable in an amount equal to that part of the fee used to promote,
1476 advance, or protect sheep interests.

1477 (d) A refund claim [~~must~~] shall be filed with the department on or before January 1 of
1478 the year immediately succeeding the year for which the fee was paid.

1479 (e) A refund claim [~~must~~] shall be certified by the department to the state treasurer for
1480 payment from the Agricultural and Wildlife Damage Prevention Account created in Section
1481 4-23-7.5.

1482 (2) Any expense incurred by the department in administering refunds shall be paid
1483 from funds allocated for the promotion, advancement, and protection of the sheep interests of
1484 the state.

1485 (3) (a) The books, records, and accounts of the Utah Woolgrowers Association, or any
1486 other organization which receives funds from the agricultural and wildlife damage prevention
1487 account, for the purpose of promoting, advancing, or protecting the sheep interests of the state,
1488 shall be audited at least once annually by a licensed accountant.

1489 (b) The results of this audit shall be submitted to the commissioner.

1490 Section 34. Section **4-24-2** is amended to read:

1491 **4-24-2. Definitions.**

1492 As used in this chapter:

1493 (1) "Brand" means any identifiable mark applied to livestock which is intended to show
1494 ownership.

1495 (2) "Carcass" means any part of the body of an animal, including [~~but not limited to~~]
1496 hides, entrails, and edible meats.

1497 (3) "Domesticated elk" shall have the meaning as defined in Section 4-39-102.

1498 (4) "Hide" means any skins or wool removed from livestock.

1499 (5) "Livestock" means cattle, calves, horses, mules, sheep, goats, hogs, or domesticated
1500 elk.

1501 (6) (a) "Livestock market" means a public market place consisting of pens or other
1502 enclosures where cattle, calves, horses, or mules are received on consignment and kept for
1503 subsequent sale, either through public auction or private sale.

1504 (b) "Livestock market" does not mean:

1505 (i) a place used solely for liquidation of livestock by a farmer, dairyman, livestock
1506 breeder, or feeder who is going out of business; or

1507 (ii) a place where an association of livestock breeders under its own management,
1508 offers registered livestock or breeding sires for sale and assumes all responsibility for the sale,
1509 guarantees title to the livestock or sires sold, and arranges with the department for brand
1510 inspection of all animals sold.

1511 (7) "Mark" means any dulap, waddle, or cutting and shaping of the ears or brisket area
1512 of livestock which is intended to show ownership.

1513 (8) "Slaughterhouse" means any building, plant, or establishment where animals are
1514 killed, dressed, or processed and their meat or meat products offered for sale for human
1515 consumption.

1516 Section 35. Section **4-24-12** is amended to read:

1517 **4-24-12. Livestock -- Verification of ownership through brand inspection --**
1518 **Issuance of certificate of brand inspection -- Brand inspector may demand evidence of**
1519 **ownership-- Brand inspection of livestock seized by the federal government prohibited --**
1520 **Exception.**

1521 (1) A brand inspector, as an agent of the department, shall verify livestock ownership
1522 by conducting a brand inspection during daylight hours.

1523 (2) After conducting the brand inspection, the brand inspector, if satisfied that the
1524 livestock subject to inspection bears registered brands or marks owned by the owner of the
1525 livestock, shall issue a brand inspection certificate to the owner or owner's agent.

1526 (3) The brand inspector shall record the number, sex, breed, and brand or mark on each
1527 animal inspected together with the owner's name.

1528 (4) If any livestock subject to inspection bears a brand or mark other than that of the
1529 owner or, if no brand or mark appears on such livestock, the brand inspector may demand
1530 evidence of ownership such as a bill of sale or other evidence of ownership before issuing a
1531 brand inspection certificate.

1532 (5) A brand inspector [~~shall not~~] may not issue a brand inspection certificate for any
1533 privately owned livestock seized by the federal government unless:

1534 (a) the brand inspector receives consent from the livestock's owner;

1535 (b) the owner is unknown; or

1536 (c) the brand inspector receives a copy of a court order authorizing the seizure.

1537 Section 36. Section **4-24-20** is amended to read:

1538 **4-24-20. Livestock sold at market to be brand inspected -- Proceeds of sale may**
1539 **be withheld -- Distribution of withheld proceeds -- Effect of receipt of proceeds by**
1540 **department -- Deposit of proceeds -- Use of proceeds if ownership not established.**

1541 (1) Livestock [~~shall not~~] may not be sold at any livestock market until after they have
1542 been brand inspected by the department. Title to purchased livestock shall be furnished to the
1543 buyer by the livestock market.

1544 (2) Upon notice from the department that a question exists concerning the ownership of
1545 consigned livestock, the operator of the livestock market or meat packing plant shall withhold
1546 the proceeds from the sale of the livestock for 60 days to allow the consignor of the questioned

1547 livestock to establish ownership. If the owner or consignor fails within 60 days to establish
1548 ownership to the satisfaction of the department, the proceeds of the sale shall be transmitted to
1549 the department. Receipt of the proceeds by the department shall relieve the livestock market or
1550 meat packing plant from further responsibility for the proceeds.

1551 (3) Proceeds withheld under Subsection (2) shall be deposited in the Utah Livestock
1552 Brand and Anti-Theft Account created in Section 4-24-24. If ownership is not satisfactorily
1553 established within one year, the department shall use the proceeds for animal identification.

1554 Section 37. Section **4-26-5** is amended to read:

1555 **4-26-5. Adjoining landowners -- Partition fences -- Contribution.**

1556 If two or more persons agree to a fence enclosure or to the construction of a partition
1557 fence, the cost of construction and maintenance of the fence shall be apportioned between each
1558 party to the agreement based upon the amount of land enclosed. A person who is a party to
1559 such agreement and who fails to maintain such person's part of the fence is liable in a civil
1560 action for any damage sustained by another party to the agreement as a result of the failure to
1561 maintain the fence. If a person has enclosed land with a fence and the owner of adjoining land
1562 desires to enclose land adjoining the fence so that the existing fence or any part of it will
1563 become a partition fence between such tracts of land, the owner of the adjoining land shall
1564 before making the enclosure pay to the owner of the existing fence one-half of the value of all
1565 that part of the fence that will become a partition fence; and when one party ceases to improve
1566 or cultivate his land or opens his enclosure he ~~[must not]~~ may not take away any part of the
1567 partition fence belonging to him, if the owner or occupant of the adjoining enclosure within 30
1568 days after notice, pays for the value of such fence; nor shall the partition fence be removed if
1569 the crops enclosed by it will be exposed to injury.

1570 Section 38. Section **4-29-2** is amended to read:

1571 **4-29-2. Restrictions on importation of chickens, turkeys, chicks, turkey poults,**
1572 **and hatching eggs -- Certificate to accompany shipment -- Disposition of nonconforming**
1573 **shipments.**

1574 (1) No chickens, turkeys, chicks, turkey poults, or hatching eggs to be used for breeding
1575 purposes shall be imported to this state, or sold by hatcheries or others within this state unless
1576 they originate from flocks participating in the pullorum control and eradication phase of the
1577 National Poultry Improvement Plan, or the National Turkey Improvement Plan, or have passed

1578 a negative agglutination blood test for pullorum disease administered under the supervision of
1579 the department within 12 months prior to the date of sale.

1580 (2) Baby chicks, turkey poults, or hatching eggs to be used for purposes other than
1581 breeding [~~shall not~~] may not be imported to this state, or sold by hatcheries or others within this
1582 state unless they originate from flocks participating in the pullorum control and eradication
1583 phase of the National Poultry Improvement Plan, or the National Turkey Improvement Plan, or
1584 have passed a negative agglutination blood test for pullorum disease administered under
1585 supervision of the department within 12 months prior to the date of sale.

1586 (3) A certificate issued by the appropriate authority of the "state of origin" shall
1587 accompany each shipment of hatching eggs, baby chicks, poults, started chicks, started poults,
1588 or chicken or turkey breed stock imported to this state. The certificate shall specify that the
1589 contents of the shipment is free of pullorum or other poultry disease, the name and address of
1590 the consignee in this state, the name and address of the person who consigned the poultry for
1591 shipment, the name of the certifying authority in the state of origin, and the date the test or
1592 inspection for pullorum was performed by such authority.

1593 (4) The department may seize and destroy any shipment of chickens, chicks, turkeys,
1594 poults, or hatching eggs transported into this state in contravention of this section without
1595 notice to the person who consigned the poultry for shipment to this state, or it may return the
1596 contents of the shipment to such person at the latter's expense.

1597 Section 39. Section ~~4-30-7.6~~ is amended to read:

1598 **4-30-7.6. Custodial accounts for trust funds.**

1599 (1) (a) Each payment that a livestock buyer makes to a livestock market selling on
1600 commission is a trust fund.

1601 (b) Funds deposited in custodial accounts are trust funds.

1602 (2) Each livestock market engaged in selling livestock on a commission or agency
1603 basis shall establish and maintain a separate bank account designated as "custodial account for
1604 shippers' proceeds" or some similar identifying designation, to disclose that the depositor is
1605 acting as a fiduciary and that the funds in the account are trust funds.

1606 (3) (a) The livestock market shall deposit in its custodial account before the close of
1607 the next business day after the livestock is sold:

1608 (i) the proceeds from the sale of the livestock that have been collected; and

1609 (ii) an amount equal to the proceeds receivable from the sale of livestock that are due
1610 from:

1611 (A) the livestock market;

1612 (B) any owner, officer, or employee of the livestock market; and

1613 (C) any buyer to whom the livestock market has extended credit.

1614 (b) The livestock market shall thereafter deposit in the custodial account all proceeds
1615 collected until the account has been reimbursed in full, and shall, before the close of the
1616 seventh day following the sale of livestock, deposit an amount equal to all the remaining
1617 proceeds receivable whether or not the proceeds have been collected by the livestock market.

1618 (4) The custodial account shall be drawn on only for payment of:

1619 (a) the net proceeds to the consignor or shipper, or to any person that the livestock
1620 market knows is entitled to payment;

1621 (b) to pay lawful charges against the consignment of livestock which the market agency
1622 shall, in its capacity as agent, be required to pay; and

1623 (c) to obtain any sums due the livestock market as compensation for its services.

1624 (5) (a) Each livestock market shall keep accounts and records that will disclose at all
1625 times the handling of funds in the custodial account.

1626 (b) Accounts and records [~~must~~] shall at all times disclose the name of the consignors
1627 and the amount due and payable to each from funds in the custodial account.

1628 (6) The custodial account [~~must~~] shall be established and maintained in a bank whose
1629 deposits are insured by the Federal Deposit Insurance Corporation.

1630 Section 40. Section **4-31-16** is amended to read:

1631 **4-31-16. Contagious or infectious disease -- Duties of department.**

1632 (1) (a) The department shall investigate and may quarantine any reported case of
1633 contagious or infectious disease, or any epidemic, or poisoning affecting domestic animals or
1634 any animal or animals that it believes may jeopardize the health of animals within the state.

1635 (b) The department shall make a prompt and thorough examination of all
1636 circumstances surrounding the disease, epidemic, or poisoning and may order quarantine, care,
1637 or any necessary remedies.

1638 (c) The department may also order immunization or testing and sanitary measures to
1639 prevent the spread of disease.

1640 (d) Investigations involving fish or wildlife shall be conducted under a cooperative
1641 agreement with the Division of Wildlife Resources.

1642 (2) (a) If the owner or person in possession of such animals, after written notice from
1643 the department, fails to take the action ordered, the commissioner is authorized to seize and
1644 hold the animals and take action necessary to prevent the spread of disease, including [~~but not~~
1645 ~~limited to:~~] immunization[;], testing[;], dipping[;], or spraying.

1646 (b) Animals seized for testing or treatment under this section shall be sold by the
1647 commissioner at public sale to reimburse the department for all costs incurred in the seizure,
1648 testing, treatment, maintenance, and sale of such animals unless the owner sooner tenders
1649 payment for the costs incurred by the department.

1650 (c) (i) No seized animal shall be sold, however, until the owner or person in possession
1651 is served with a notice specifying the itemized costs incurred by the department and the time,
1652 place, and purpose of sale and the number of animals to be sold.

1653 (ii) The notice shall be served at least three days in advance of sale in the manner:

1654 (A) prescribed for personal service in Rule 4(d)(1), Utah Rules of Civil Procedure; or

1655 (B) if the owner cannot be found after due diligence, in the manner prescribed for
1656 service by publication in Rule 4(d)(4), Utah Rules of Civil Procedure.

1657 (3) Any amount realized from the sale of the animals over the total charges shall be
1658 paid to the owner of the animals if the owner is known or can by reasonable diligence be found;
1659 otherwise, the excess shall be paid to the tuberculosis and Bangs Disease Control Account.

1660 Section 41. Section **4-31-16.5** is amended to read:

1661 **4-31-16.5. Brucellosis -- Vaccination required for certain cattle -- Testing**
1662 **required to import certain cattle.**

1663 (1) As used in this section, "test-eligible" has the meaning defined in 9 C.F.R. Sec.
1664 78.1.

1665 (2) (a) Instate origin replacement cattle that are kept for breeding stock [~~must~~] shall be
1666 official calfhod vaccinated for brucellosis.

1667 (b) Female cattle from within the state that are not kept for breeding stock will not be
1668 required to be vaccinated.

1669 (c) For purposes of this Subsection (2), the department may make rules in accordance
1670 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, governing non-legible

1671 brucellosis tattoos and may accept brucellosis vaccination record forms as evidence that
1672 brucellosis vaccinations were performed.

1673 (3) All female beef-breed cattle imported into the state are required to be official
1674 calfhood vaccinated for brucellosis except female cattle:

1675 (a) less than four months of age;

1676 (b) going directly to slaughter;

1677 (c) going to a qualified feedlot; or

1678 (d) going to an approved auction to be vaccinated on arrival or designated for slaughter
1679 only.

1680 (4) (a) Test-eligible cattle imported from states designated as brucellosis-free under 9
1681 C.F.R. Sec. 78.43 that are acquired directly from the farm of origin are not required to be tested
1682 for brucellosis before movement into the state.

1683 (b) Test-eligible cattle imported from states designated as brucellosis-free under 9
1684 C.F.R. Sec. 78.43 that are acquired through trading channels [~~must~~] shall test negative for
1685 brucellosis within 30 days before movement into the state.

1686 (5) Test-eligible cattle imported from states that have not been designated as
1687 brucellosis-free under 9 C.F.R. Sec. 78.43 [~~must~~] shall test negative for brucellosis within 30
1688 days before movement into the state.

1689 (6) The department may investigate situations where fees for brucellosis vaccinations
1690 are considered to be excessive.

1691 (7) The department may make rules in accordance with Title 63G, Chapter 3, Utah
1692 Administrative Rulemaking Act, for beef-breed cattle that are acquired for specialized breeding
1693 purposes, and may exempt those cattle from brucellosis vaccination requirements.

1694 (8) The department shall make rules in accordance with Title 63G, Chapter 3, Utah
1695 Administrative Rulemaking Act, to implement this section.

1696 Section 42. Section ~~4-32-3~~ is amended to read:

1697 **4-32-3. Definitions.**

1698 As used in this chapter:

1699 (1) "Adulterated" means any livestock product or poultry product that:

1700 (a) bears or contains any poisonous or deleterious substance that may render it
1701 injurious to health, but, if the substance is not an added substance, the livestock product [~~shall~~

1702 ~~not be]~~ is not considered adulterated under this subsection if the quantity of the substance in or
1703 on the livestock product does not ordinarily render it injurious to health;

1704 (b) bears or contains, by reason of the administration of any substance to the livestock
1705 or poultry or otherwise, any added poisonous or added deleterious substance which in the
1706 judgment of the commissioner makes the livestock product unfit for human food;

1707 (c) contains, in whole or in part, a raw agricultural commodity and such commodity
1708 bears or contains a pesticide chemical that is unsafe within the meaning of 21 U.S.C. Sec.
1709 346a;

1710 (d) bears or contains any food additive that is unsafe within the meaning of 21 U.S.C.
1711 Sec. 348;

1712 (e) bears or contains any color additive that is unsafe within the meaning of 21 U.S.C.
1713 Sec. 379e; provided, that a livestock product which is not otherwise considered adulterated
1714 under Subsections (1)(c), (d), or (e) of this section shall nevertheless be considered adulterated
1715 if use of the pesticide chemical, food additive, or color additive is prohibited in official
1716 establishments by rules of the department;

1717 (f) consists, in whole or in part, of any filthy, putrid, or decomposed substance or is for
1718 any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

1719 (g) has been prepared, packaged, or held under unsanitary conditions if it may have
1720 become contaminated with filth, or if it may have been rendered injurious to health;

1721 (h) is in whole or in part the product of an animal that has died otherwise than by
1722 slaughter;

1723 (i) is contained in a container that is composed, in whole or in part, of any poisonous or
1724 deleterious substance that may render the meat product injurious to health;

1725 (j) has been intentionally subjected to radiation, unless the use of the radiation was in
1726 conformity with a regulation or exemption in effect pursuant to 21 U.S.C. Sec. 348;

1727 (k) has a valuable constituent in whole or in part omitted, abstracted, or substituted; or
1728 if damage or inferiority is concealed in any manner; or if any substance has been added, mixed,
1729 or packed with the meat product to increase its bulk or weight, or reduce its quality or strength,
1730 or to make it appear better or of greater value; or

1731 (l) is margarine containing animal fat and any of the raw material used in the margarine
1732 consists in whole or in part of any filthy, putrid, or decomposed substance.

1733 (2) "Animal food manufacturer" means any person engaged in the business of
1734 preparing animal food derived from livestock carcasses or parts or products of such carcasses.

1735 (3) "Broker" means any person engaged in the business of buying or selling livestock
1736 or livestock products on commission, or otherwise negotiating purchases or sales of livestock
1737 or livestock products other than for such person's own account.

1738 (4) "Capable of use as human food" means any livestock carcass, or part or product of
1739 a carcass, unless it is denatured or otherwise identified as required by rules of the department to
1740 deter its use as human food, or unless it is naturally inedible by humans.

1741 (5) "Container" or "package" means any box, can, tin, cloth, plastic, or other receptacle,
1742 wrapper, or cover.

1743 (6) "Director of meat inspection" means a licensed graduate veterinarian whose duties
1744 and responsibilities are specified by the commissioner.

1745 (7) "Domesticated elk" shall have the meaning as defined in Section 4-39-102.

1746 (8) "Farm custom slaughter" means custom slaughtering of livestock or poultry for an
1747 owner without inspection.

1748 (9) "Farm custom slaughter permit" means a permit issued by the department to allow
1749 farm custom slaughter.

1750 (10) "Farm custom slaughter tag" means a tag which specifies the animal's
1751 identification and certifies its ownership which is issued by the department through a brand
1752 inspector to the owner of the animal before it is slaughtered.

1753 (11) "Federal Food, Drug and Cosmetic Act" means the act so entitled, approved June
1754 25, 1938 (52 Stat. 1040) (21 U.S.C. 301 et seq.), and any amendments to it.

1755 (12) "Federal Meat Inspection Act" means the act so entitled approved March 4, 1907
1756 (34 Stat. 1260), as amended by the Wholesome Meat Act, 21 U.S.C. 601 et seq.; the term
1757 "federal Poultry Products Inspection Act" means the act so entitled approved August 28, 1957
1758 71 Stat. 441, as amended by the Wholesome Poultry Products Act, 82 Stat. 791 21 U.S.C. 451
1759 et seq.; and the term "federal acts" means these two federal acts.

1760 (13) "Immediate container" means any consumer package, or any other container in
1761 which livestock products not consumer packaged, are packed.

1762 (14) "Inspector" means a licensed veterinarian or competent lay person working under
1763 the supervision of a licensed graduate veterinarian.

1764 (15) "Label" means a display of printed, or graphic matter upon any livestock or
1765 poultry product or the immediate container, not including package liners, of any such product.

1766 (16) "Labeling" means all labels and other printed, or graphic matter:

1767 (a) upon any livestock product or any of its containers or wrappers; or

1768 (b) accompanying a livestock product.

1769 (17) "Livestock" means any cattle, domesticated elk, sheep, swine, goats, horses, mules
1770 or other equines, whether living or dead.

1771 (18) "Livestock product" means any carcass, part of a carcass, meat, or meat food
1772 product of any livestock.

1773 (19) "Meat food product" means any product capable of use as human food that is
1774 made wholly or in part from any meat or other part of the carcass of any cattle, sheep, swine, or
1775 goats, excepting products that contain meat or other parts of such carcasses in relatively small
1776 proportion or that historically have not been considered by consumers as products of the meat
1777 food industry, and which are exempted from definition as a meat food product by the
1778 commissioner. Meat food product as applied to food products of equines shall have a meaning
1779 comparable to that provided in this subsection with respect to cattle, sheep, swine, and goats.

1780 (20) "Misbranded" means any livestock product or poultry product that:

1781 (a) bears a label that is false or misleading in any particular;

1782 (b) is offered for sale under the name of another food;

1783 (c) is an imitation of another food, unless the label bears, in type of uniform size and
1784 prominence, the word "imitation" followed by the name of the food imitated;

1785 (d) if its container is so made, formed, or filled as to be misleading;

1786 (e) does not bear a label showing:

1787 (i) the name and place of business of the manufacturer, packer, or distributor; and

1788 (ii) an accurate statement of the quantity of the product in terms of weight, measure, or
1789 numerical count; provided, that under this Subsection (20)(e), exemptions as to livestock

1790 products not in containers may be established by rules of the department and that under this

1791 Subsection (20)(e)(ii), reasonable variations may be permitted, and exemptions for small

1792 packages may be established for livestock or poultry products by rule of the department;

1793 (f) does not bear any word, statement, or other information required by or under

1794 authority of this chapter to appear on the label or other labeling is not prominently placed with

1795 such conspicuousness, as compared with other words, statements, designs, or devices, in the
1796 labeling, and in such terms as to render it likely to be read and understood by the ordinary
1797 individual under customary conditions of purchase and use;

1798 (g) is a food for which a definition and standard of identity or composition has been
1799 prescribed by rules of the department under Section 4-32-7 if the food does not conform to
1800 such definition and standard and the label does not bear the name of the food and any other
1801 information that is required by the rule;

1802 (h) is a food for which a standard of fill has been prescribed by rule of the department
1803 for the container and the actual fill of the container falls below that prescribed unless its label
1804 bears, in such manner and form as such rules specify, a statement that it falls below such
1805 standard;

1806 (i) is a food for which no standard or definition of identity has been prescribed under
1807 Subsection (20)(g) unless its label bears:

1808 (i) the common or usual name of the food, if there be any; and

1809 (ii) if it is fabricated from two or more ingredients, the common or usual name of each
1810 such ingredient; except that spices, flavorings, and colorings may, when authorized by the
1811 department, be designated as spices, flavorings, and colorings without naming each; provided,
1812 that to the extent that compliance with the requirements of Subsection (20)(i)(ii) is
1813 impracticable, or results in deception or unfair competition, exemptions shall be established by
1814 rule;

1815 (j) is a food that purports to be or is represented to be for special dietary uses, unless its
1816 label bears such information concerning its vitamin, mineral, and other dietary properties as the
1817 department, after consultation with the Secretary of Agriculture of the United States, prescribes
1818 by rules as necessary to inform purchasers as to its value for such uses;

1819 (k) bears or contains any artificial flavoring, artificial coloring, or chemical
1820 preservative, unless it bears labeling stating that fact; provided, that to the extent that
1821 compliance with the requirements of this subsection are impracticable, exemptions shall be
1822 prescribed by rules of the department; or

1823 (l) does not bear directly thereon and on its containers, as the department may prescribe
1824 by rule, the official inspection legend and establishment number of the official establishment
1825 where the product was prepared, and, unrestricted by any of the foregoing, such other

1826 information as the department may require by rules to assure that it will not have false or
1827 misleading labeling and that the public will be informed of the manner of handling required to
1828 maintain it in a wholesome condition.

1829 (21) "Official certificate" means any certificate prescribed by rules of the department
1830 for issuance by an inspector or other person performing official functions under this chapter.

1831 (22) "Official device" means any device prescribed or authorized by the commissioner
1832 for use in applying any official mark.

1833 (23) "Official establishment" means any establishment at which inspection of the
1834 slaughter of livestock or the preparation of livestock products is maintained under the authority
1835 of this chapter.

1836 (24) "Official inspection legend" means any symbol prescribed by rules of the
1837 department showing that a livestock product was inspected and passed in accordance with this
1838 chapter.

1839 (25) "Official mark" means the official legend or any other symbol prescribed by rules
1840 of the department to identify the status of any livestock or livestock product under this chapter.

1841 (26) "Permittee" means a person who holds a valid farm custom slaughter permit.

1842 (27) "Pesticide chemical," "food additive," "color additive," and "raw agricultural
1843 commodity," have the same meanings for purposes of this chapter as ascribed to them in the
1844 Federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 301 et seq.

1845 (28) "Poultry" means any domesticated bird, whether living or dead.

1846 (29) "Poultry product" means any product capable of use as human food that is made
1847 wholly or in part from any poultry carcass, excepting products that contain poultry ingredients
1848 in relatively small proportion or that historically have not been considered by consumers as
1849 products of the poultry food industry, and that are exempted from definition as a poultry
1850 product by the commissioner.

1851 (30) "Prepared" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or
1852 otherwise manufactured or processed.

1853 (31) "Renderer" means any person engaged in the business of rendering livestock
1854 carcasses, or parts or products of such carcasses, except rendering conducted under inspection
1855 or exemption under this chapter.

1856 (32) "Slaughter" means the killing of livestock or poultry in a humane manner

1857 including skinning, dressing, or the process of performing any of the specified acts in preparing
1858 livestock or poultry for human consumption.

1859 (33) "Slaughterhouse" or "custom slaughterhouse" means any building, plant, or
1860 establishment used for the purpose of killing, dressing, or processing, whether such dressing or
1861 processing is in conjunction with a killing operation or is a separate business, livestock or
1862 livestock products or poultry or poultry products offered for sale or to be used for human
1863 consumption.

1864 (34) "Slaughtering of livestock or poultry as a business" means the slaughtering of
1865 livestock or poultry for the owner or caretaker of the livestock or poultry by a person who is
1866 not a full-time employee of the owner or caretaker of such livestock or poultry.

1867 Section 43. Section **4-32-7** is amended to read:

1868 **4-32-7. Mandatory functions, powers, and duties of department prescribed.**

1869 The department shall make rules pursuant to Title 63G, Chapter 3, Utah Administrative
1870 Rulemaking Act, regarding the following functions, powers, and duties, in addition to those
1871 specified in Title 4, Chapter 1, Utah Agricultural Code, for the administration and enforcement
1872 of this chapter:

1873 (1) The department shall require antemortem and postmortem inspections, quarantine,
1874 segregation, and reinspections by inspectors appointed for those purposes with respect to the
1875 slaughter of livestock and poultry and the preparation of livestock and poultry products at
1876 official establishments, except as provided in Subsection 4-32-8(13).

1877 (2) The department shall require that:

1878 (a) livestock and poultry be identified for inspection purposes;

1879 (b) livestock or poultry products, or their containers be marked or labeled as:

1880 (i) "Utah Inspected and Passed" if, upon inspection, the products are found to be
1881 unadulterated; and

1882 (ii) "Utah Inspected and Condemned" if, upon inspection, the products are found to be
1883 adulterated; and

1884 (c) condemned products, which otherwise would be used for human consumption, be
1885 destroyed under the supervision of an inspector.

1886 (3) The department shall prohibit or limit livestock products, poultry products, or other
1887 materials not prepared under inspection procedures provided in this chapter, from being

1888 brought into official establishments.

1889 (4) The department shall require that labels and containers for livestock and poultry
1890 products:

1891 (a) bear all information required under Section 4-32-3 if the product leaves the official
1892 establishment; and

1893 (b) be approved prior to sale or transportation.

1894 (5) For official establishments required to be inspected under Subsection (1), the
1895 department shall:

1896 (a) prescribe sanitary standards;

1897 (b) require experts in sanitation or other competent investigators to investigate sanitary
1898 conditions; and

1899 (c) refuse to provide inspection service if the sanitary conditions allow adulteration of
1900 any livestock or poultry product.

1901 (6) (a) The department shall require that any person engaged in a business referred to in
1902 Subsection (6)(b) shall:

1903 (i) keep accurate records disclosing all pertinent business transactions;

1904 (ii) allow inspection of the business premises at reasonable times and examination of
1905 inventory, records, and facilities; and

1906 (iii) allow inventory samples to be taken after payment of their fair market value.

1907 (b) Subsection (6)(a) shall refer to any person who:

1908 (i) slaughters livestock or poultry;

1909 (ii) prepares, freezes, packages, labels, buys, sells, transports, or stores any livestock or
1910 poultry products for human or animal consumption;

1911 (iii) renders livestock or poultry; or

1912 (iv) buys, sells, or transports any dead, dying, disabled, or diseased livestock or poultry,
1913 or parts of their carcasses that died by a method other than slaughter.

1914 (7) (a) The department shall:

1915 (i) adopt by reference rules and regulations under federal acts with changes that the
1916 commissioner considers appropriate to make the rules and regulations applicable to operations
1917 and transactions subject to this chapter; and

1918 (ii) promulgate any other rules considered necessary for the efficient execution of the

1919 provisions of this chapter, including rules of practice providing an opportunity for hearing in
1920 connection with the issuance of orders under Subsection (5) or under Subsection 4-32-8(1), (2),
1921 or (3) and prescribing procedures for proceedings in these cases.

1922 (b) These procedures [~~shall not~~] do not preclude requiring that a label or container be
1923 withheld from use, or inspection be refused under Subsections (1) and (5), or Subsection
1924 4-32-8(3), pending issuance of a final order in the proceeding.

1925 (8) (a) To prevent the inhumane slaughtering of livestock and poultry, inspectors shall
1926 be appointed to examine and inspect methods of handling and slaughtering livestock and
1927 poultry.

1928 (b) Inspection of new slaughtering establishments may be refused or temporarily
1929 suspended if livestock or poultry have been slaughtered or handled by any method not in
1930 accordance with the Humane Methods of Slaughter Act of 1978, Public Law 95-445.

1931 (9) (a) The department shall require all livestock and poultry showing symptoms of
1932 disease during antemortem inspection, performed by an inspector appointed for that purpose, to
1933 be set apart and slaughtered separately from other livestock and poultry.

1934 (b) When slaughtered, the carcasses of livestock and poultry shall be subject to careful
1935 examination and inspection in accordance with rules prescribed by the commissioner.

1936 Section 44. Section **4-32-16** is amended to read:

1937 **4-32-16. Detention of animals or livestock or poultry products -- Removal of**
1938 **official marks.**

1939 Whenever any livestock or poultry product or any product exempted from the definition
1940 of a livestock or poultry product, or any dead, dying, disabled, or diseased livestock or poultry,
1941 is found by any authorized representative of the commissioner, and there is reason to believe
1942 that it is adulterated or misbranded and is capable of use as human food, or that it has not been
1943 inspected and passed, or that it has been or is intended to be distributed in violation of this
1944 chapter, it may be detained by such representative pending action under Section 4-32-17, and
1945 [~~shall not~~] may not be moved by any person from the place at which it is located when so
1946 detained, until released by such representative. All official marks may be required by such
1947 representative to be removed from such product or animal before it is released.

1948 Section 45. Section **4-32-22** is amended to read:

1949 **4-32-22. Livestock or poultry slaughtered or the products of either not intended**

1950 **for human use -- No inspection -- Products to be denatured or otherwise identified.**

1951 Inspection [~~shall not~~] may not be provided under this chapter at any establishment for
1952 the slaughter of livestock or poultry or the preparation of any livestock products or poultry
1953 products that are not intended for use as human food, but such products shall be denatured or
1954 otherwise identified as prescribed by rules of the department prior to their offer for sale or
1955 transportation.

1956 Section 46. Section **4-35-7** is amended to read:

1957 **4-35-7. Notice to owner or occupant -- Corrective action required -- Directive**
1958 **issued by department -- Costs -- Owner or occupant may prohibit spraying.**

1959 (1) The department or an authorized agent of the department shall notify the owner or
1960 occupant of the problem and the available alternatives to remedy the problem. The owner or
1961 occupant [~~must~~] shall take corrective action within 30 days.

1962 (2) If the owner or occupant fails to take corrective action under Subsection (1), the
1963 department may issue a directive for corrective action which [~~must~~] shall be taken within 15
1964 days. If the owner or occupant fails to act within the required time, the department shall take
1965 the necessary action. The department may recover costs incurred for controlling an insect
1966 infestation emergency from the owner or occupant of the property on whose property corrective
1967 action was taken.

1968 (3) Owners or occupants of property may prohibit spraying by presenting an affidavit
1969 from their attending physician to the department which states that the spraying as planned is a
1970 danger to their health. The department shall provide the owner or occupant with alternatives to
1971 spraying which will abate the infestation.

1972 Section 47. Section **4-37-102** is amended to read:

1973 **4-37-102. Purpose statement -- Aquaculture considered a branch of agriculture.**

1974 (1) The Legislature declares that it is in the interest of the people of the state to
1975 encourage the practice of aquaculture, while protecting the public fishery resource, in order to
1976 augment food production, expand employment, promote economic development, and protect
1977 and better utilize the land and water resources of the state.

1978 (2) The Legislature further declares that aquaculture [~~should be~~] is considered a branch
1979 of the agricultural industry of the state for purposes of any laws that apply to or provide for the
1980 advancement, benefit, or protection of the agricultural industry within the state.

1981 Section 48. Section **4-37-109** is amended to read:

1982 **4-37-109. Department to make rules.**

1983 (1) The department shall make rules in accordance with Title 63G, Chapter 3, Utah
1984 Administrative Rulemaking Act:

1985 (a) specifying procedures for the application and renewal of certificates of registration
1986 for operating an aquaculture or fee fishing facility; and

1987 (b) governing the disposal or removal of aquatic animals from an aquaculture or fee
1988 fishing facility for which the certificate of registration has lapsed or been revoked.

1989 (2) (a) The department may make other rules consistent with its responsibilities set
1990 forth in Section 4-37-104.

1991 (b) Except as provided by this chapter, the rules authorized by Subsection (2)(a) [~~must~~]
1992 shall be consistent with the suggested procedures for the detection and identification of
1993 pathogens published by the American Fisheries Society's Fish Health Section.

1994 Section 49. Section **4-37-110** is amended to read:

1995 **4-37-110. Inspection of records and facilities.**

1996 (1) The following records and information [~~must~~] shall be maintained by an
1997 aquaculture or fee fishing facility for a period of two years and [~~must~~] shall be available for
1998 inspection by a department representative during reasonable hours:

1999 (a) records of purchase, acquisition, distribution, and production histories of aquatic
2000 animals;

2001 (b) certificate of registration; and

2002 (c) valid identification of stocks, including origin of stocks.

2003 (2) Department representatives may conduct pathological, fish culture, or physical
2004 investigations at any aquaculture, public aquaculture, or fee fishing facility during reasonable
2005 hours.

2006 Section 50. Section **4-37-202** is amended to read:

2007 **4-37-202. Acquisition of aquatic animals for use in aquaculture facilities.**

2008 (1) Live aquatic animals intended for use in aquaculture facilities may be purchased or
2009 acquired only from:

2010 (a) aquaculture facilities within the state that have a certificate of registration and
2011 health approval number;

2012 (b) public aquaculture facilities within the state that have a health approval number; or
2013 (c) sources outside the state that are health approved as provided in Part 5.

2014 (2) A person holding a certificate of registration for an aquaculture facility [must] shall
2015 submit annually to the department a record of each purchase of live aquatic animals and
2016 transfer of live aquatic animals into the facility. This record [must] shall include the following
2017 information:

2018 (a) name, address, and health approval number of the source;

2019 (b) date of transaction; and

2020 (c) number and weight by species.

2021 (3) The records required by Subsection (2) [must] shall be submitted to the department
2022 before a certificate of registration is renewed or a subsequent certificate of registration is
2023 issued.

2024 Section 51. Section **4-37-203** is amended to read:

2025 **4-37-203. Transportation of aquatic animals to or from aquaculture facilities.**

2026 (1) Any person holding a certificate of registration for an aquaculture facility may
2027 transport the live aquatic animals specified on the certificate of registration to the facility or to
2028 any person who has been issued a certificate of registration to possess those aquatic animals.

2029 (2) Each transfer or shipment of live aquatic animals from or to an aquaculture facility
2030 within the state [must] shall be accompanied by documentation of the source and destination of
2031 the fish, including:

2032 (a) name, address, certificate of registration number and health approval number of the
2033 source;

2034 (b) number and weight being shipped, by species; and

2035 (c) name, address, and certificate of registration number of the destination.

2036 Section 52. Section **4-37-204** is amended to read:

2037 **4-37-204. Sale of aquatic animals from aquaculture facilities.**

2038 (1) (a) Except as provided by Subsection (1)(b), a person holding a certificate of
2039 registration for an aquaculture facility may take an aquatic animal as approved on the certificate
2040 of registration from the facility at any time and offer the aquatic animal for sale; however, live
2041 aquatic animals may be sold within Utah only to a person who has been issued a certificate of
2042 registration to possess the aquatic animal.

- 2043 (b) A person who owns or operates an aquaculture facility may stock a live aquatic
2044 animal in a private fish pond if the person:
- 2045 (i) obtains a health approval number for the aquaculture facility;
 - 2046 (ii) provides the private fish pond's owner with a brochure published by the Division of
2047 Wildlife Resources that summarizes the statutes and rules related to a private fish pond and the
2048 possession of an aquatic animal;
 - 2049 (iii) inspects the private fish pond to verify that the private fish pond is in compliance
2050 with Subsections 23-15-10(2) and (3)(c); and
 - 2051 (iv) stocks the species, strain, and reproductive capability of aquatic animal authorized
2052 by the Wildlife Board in accordance with Section 23-15-10 for stocking in the area where the
2053 private fish pond is located.
- 2054 (2) An aquatic animal sold or transferred by the owner or operator of an aquaculture
2055 facility [~~must~~] shall be accompanied by the seller's receipt that contains the following
2056 information:
- 2057 (a) date of transaction;
 - 2058 (b) name, address, certificate of registration number, health approval number, and
2059 signature of seller;
 - 2060 (c) number and weight of aquatic animal by:
 - 2061 (i) species;
 - 2062 (ii) strain; and
 - 2063 (iii) reproductive capability; and
 - 2064 (d) name and address of the receiver.
- 2065 (3) (a) A person holding a certificate of registration for an aquaculture facility [~~must~~]
2066 shall submit to the department an annual report of each sale of live aquatic animals or each
2067 transfer of live aquatic animals to:
- 2068 (i) another aquaculture facility; or
 - 2069 (ii) a fee fishing facility.
- 2070 (b) The report [~~must~~] shall contain the following information:
- 2071 (i) name, address, and certificate of registration number of the seller or supplier;
 - 2072 (ii) number and weight by species;
 - 2073 (iii) date of sale or transfer; and

2074 (iv) name, address, phone number, and certificate of registration number of the
2075 receiver.

2076 (4) (a) A person who owns or operates an aquaculture facility shall submit to the
2077 Division of Wildlife Resources an annual report of each sale or transfer of a live aquatic animal
2078 to a private fish pond.

2079 (b) The report shall contain:

2080 (i) the name, address, and health approval number of the person;

2081 (ii) the name, address, and phone number of the private fish pond's owner or operator;

2082 (iii) the number and weight of aquatic animal by:

2083 (A) species;

2084 (B) strain; and

2085 (C) reproductive capability;

2086 (iv) date of sale or transfer;

2087 (v) the private fish pond's location; and

2088 (vi) verification that the private fish pond was inspected and is in compliance with
2089 Subsections 23-15-10(2) and (3)(c).

2090 (5) The reports required by Subsections (3) and (4) [~~must~~] shall be submitted before:

2091 (a) a certificate of registration is renewed or a subsequent certificate of registration is
2092 issued for an aquaculture facility in the state; or

2093 (b) a health approval number is issued for an out-of-state source.

2094 Section 53. Section **4-37-302** is amended to read:

2095 **4-37-302. Acquisition of aquatic animals for use in fee fishing facilities.**

2096 (1) Live aquatic animals intended for use in fee fishing facilities may be purchased or
2097 acquired only from:

2098 (a) aquaculture facilities within the state that have a certificate of registration and
2099 health approval number;

2100 (b) public aquaculture facilities within the state that have a health approval number; or

2101 (c) sources outside the state that are health approved pursuant to Part 5.

2102 (2) (a) A person holding a certificate of registration for a fee fishing facility [~~must~~]
2103 shall submit to the department an annual report of all live fish purchased or acquired.

2104 (b) The report [~~must~~] shall contain the following information:

- 2105 (i) name, address, and certificate of registration number of the seller or supplier;
- 2106 (ii) number and weight by species;
- 2107 (iii) date of purchase or transfer; and
- 2108 (iv) name, address, and certificate of registration number of the receiver.
- 2109 (c) The report [~~must~~] shall be submitted to the department before a certificate of
- 2110 registration is renewed or subsequent certificate of registration is issued.

2111 Section 54. Section **4-37-303** is amended to read:

2112 **4-37-303. Transportation of live aquatic animals to fee fishing facilities.**

2113 (1) Any person holding a certificate of registration for a fee fishing facility may

2114 transport the live aquatic animals specified on the certificate of registration to the facility.

2115 (2) Each transfer or shipment of live aquatic animals to a fee fishing facility within the

2116 state [~~must~~] shall be accompanied by documentation of the source and destination of the fish,

2117 including:

- 2118 (a) name, address, certificate of registration number and health approval number of the
- 2119 source;
- 2120 (b) number and weight being shipped by species; and
- 2121 (c) name, address, and certificate of registration number of the destination.

2122 Section 55. Section **4-37-305** is amended to read:

2123 **4-37-305. Fishing license not required to fish at fee fishing facilities --**

2124 **Transportation of dead fish.**

2125 (1) A fishing license is not required to take fish from fee fishing facilities.

2126 (2) To transport dead fish from fee fishing facilities the fish [~~must~~] shall be

2127 accompanied by the seller's receipt containing the following information:

- 2128 (a) species and number of fish;
- 2129 (b) date caught;
- 2130 (c) certificate of registration number of the fee fishing facility; and
- 2131 (d) name, address, and telephone number of the seller.

2132 Section 56. Section **4-37-402** is amended to read:

2133 **4-37-402. Documentation required to import aquatic animals.**

2134 Any aquatic animals classified as controlled species by rules of the Wildlife Board that

2135 are imported into the state for use in aquaculture or fee fishing facilities [~~must~~] shall be

2136 accompanied by documentation indicating the following:

- 2137 (1) the health approval number assigned by the department to the source facility;
- 2138 (2) common or scientific names of the imported animals;
- 2139 (3) name and address of the consignor and consignee;
- 2140 (4) origin of shipment;
- 2141 (5) final destination;
- 2142 (6) number or pounds shipped;
- 2143 (7) purpose for which shipped;
- 2144 (8) method of transportation; and
- 2145 (9) any other information required by the department.

2146 Section 57. Section **4-37-502** is amended to read:

2147 **4-37-502. Inspections -- Health approval report -- Report for quarantine facility**
2148 **-- Qualifications of inspectors -- Notification of department.**

2149 (1) (a) Except as provided by Subsection (1)(b), approval shall be based upon
2150 inspections carried out in accordance with standards and rules of the Fish Health Policy Board
2151 made pursuant to Section 4-37-503.

2152 (b) An owner or operator of an aquaculture facility that is under quarantine or whose
2153 health approval has been canceled or denied prior to July 1, 2007 may seek health approval
2154 without submitting or complying with a biosecurity plan required by rule by submitting a new
2155 health inspection report to the department.

2156 (2) (a) The inspections [~~must~~] shall be done by an individual who has received
2157 certification from the American Fisheries Society as a fish health inspector.

2158 (b) An inspection of an aquaculture facility may not be done by an inspector who is
2159 employed by, or has pecuniary interest in, the facility being inspected.

2160 (c) The department shall post on its website a current list of:

- 2161 (i) certified fish health inspectors; and
- 2162 (ii) approved laboratories to which a fish health inspector may send the samples
2163 collected during the inspections required by this section.

2164 (d) (i) If the fish health inspector conducting the inspection is not an employee of the
2165 department, the owner or operator of the aquaculture facility shall notify the department of the
2166 date and time of the inspection at least five business days before the date on which the

2167 inspection will occur.

2168 (ii) The department may be present for the inspection.

2169 (3) To receive a health approval number, inspection reports and other evidence of the
2170 disease status of a source facility [~~must~~] shall be submitted to the agency responsible for
2171 certifying the source as health approved pursuant to Section 4-37-501.

2172 Section 58. Section **4-37-503** is amended to read:

2173 **4-37-503. Fish Health Policy Board.**

2174 (1) There is created within the department the Fish Health Policy Board which shall
2175 establish policies designed to prevent the outbreak of, control the spread of, and eradicate
2176 pathogens that cause disease in aquatic animals.

2177 (2) The Fish Health Policy Board shall:

2178 (a) in accordance with Subsection (6)(b), determine procedures and requirements for
2179 certifying a source of aquatic animals as health approved, including:

2180 (i) the pathogens for which inspection is required to receive health approval;

2181 (ii) the pathogens that may not be present to receive health approval; and

2182 (iii) standards and procedures required for the inspection of aquatic animals;

2183 (b) establish procedures for the timely reporting of the presence of a pathogen and
2184 disease threat;

2185 (c) create policies and procedures for, and appoint, an emergency response team to:

2186 (i) investigate a serious disease threat;

2187 (ii) develop and monitor a plan of action; and

2188 (iii) report to:

2189 (A) the commissioner of agriculture and food;

2190 (B) the director of the Division of Wildlife Resources; and

2191 (C) the chair of the Fish Health Policy Board; and

2192 (d) develop a unified statewide aquaculture disease control plan.

2193 (3) The Fish Health Policy Board shall advise the commissioner of agriculture and
2194 food and the executive director of the Department of Natural Resources regarding:

2195 (a) educational programs and information systems to educate and inform the public
2196 about practices that the public may employ to prevent the spread of disease; and

2197 (b) communication and interaction between the department and the Division of

2198 Wildlife Resources regarding fish health policies and procedures.

2199 (4) (a) (i) The governor shall appoint the following seven members to the Fish Health
2200 Policy Board:

2201 (A) one member from names submitted by the Department of Natural Resources;

2202 (B) one member from names submitted by the Department of Agriculture and Food;

2203 (C) one member from names submitted by a nonprofit corporation that promotes sport
2204 fishing;

2205 (D) one member from names submitted by a nonprofit corporation that promotes the
2206 aquaculture industry;

2207 (E) one member from names submitted by the Department of Natural Resources and
2208 the Department of Agriculture and Food;

2209 (F) one member from names submitted by a nonprofit corporation that promotes sport
2210 fishing; and

2211 (G) one member from names submitted by a nonprofit corporation that promotes the
2212 aquaculture industry.

2213 (ii) The members appointed under Subsections (4)(a)(i)(E) through (G) shall be:

2214 (A) (I) faculty members of an institution of higher education; or

2215 (II) qualified professionals; and

2216 (B) have education and knowledge in:

2217 (I) fish pathology;

2218 (II) business;

2219 (III) ecology; or

2220 (IV) parasitology.

2221 (iii) At least one member appointed under Subsections (4)(a)(i)(E) through (G) shall
2222 have education and knowledge about fish pathology.

2223 (iv) (A) A nominating person shall submit at least three names to the governor.

2224 (B) If the governor rejects all the names submitted for a member, the recommending
2225 person shall submit additional names.

2226 (b) Except as required by Subsection (4)(c), the term of office of board members shall
2227 be four years.

2228 (c) Notwithstanding the requirements of Subsection (4)(b), the governor shall, at the

2229 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
2230 board members are staggered so that approximately half of the board is appointed every two
2231 years.

2232 (d) When a vacancy occurs in the membership for any reason, the replacement shall be
2233 appointed for the unexpired term.

2234 (e) The board members shall elect a chair of the board from the board's membership.

2235 (f) The board shall meet upon the call of the chair or a majority of the board members.

2236 (g) An action of the board shall be adopted upon approval of the majority of voting
2237 members.

2238 (5) (a) (i) A member who is not a government employee may not receive compensation
2239 or benefits for the member's service, but may receive per diem and expenses incurred in the
2240 performance of the member's official duties at the rates established by the Division of Finance
2241 under Sections 63A-3-106 and 63A-3-107.

2242 (ii) A member may decline to receive per diem and expenses for the member's service.

2243 (b) (i) A state government officer and employee member who does not receive salary,
2244 per diem, or expenses from the agency the member represents for the member's service may
2245 receive per diem and expenses incurred in the performance of the member's official duties at
2246 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

2247 (ii) A state government officer and employee member may decline to receive per diem
2248 and expenses for the member's service.

2249 (c) (i) A higher education member who does not receive salary, per diem, or expenses
2250 from the entity that the member represents for the member's service may receive per diem and
2251 expenses incurred in the performance of the member's official duties at the rates established by
2252 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

2253 (ii) A higher education member may decline to receive per diem and expenses for the
2254 member's service.

2255 (6) (a) The board shall make rules consistent with its responsibilities and duties
2256 specified in this section.

2257 (b) Except as provided by this chapter, all rules adopted by the Fish Health Policy
2258 Board [~~must~~] shall be consistent with the suggested procedures for the detection and
2259 identification of pathogens published by the American Fisheries Society's Fish Health Section.

2260 (c) (i) Rules of the department and Fish Health Policy Board pertaining to the control
2261 of disease shall remain in effect until the Fish Health Policy Board enacts rules to replace those
2262 provisions.

2263 (ii) The Fish Health Policy Board shall promptly amend rules that are inconsistent with
2264 the current suggested procedures published by the American Fisheries Society.

2265 (d) The Fish Health Policy Board may waive a requirement established by the Fish
2266 Health Policy Board's rules if:

2267 (i) the rule specifies the waiver criteria and procedures; and

2268 (ii) the waiver will not threaten other aquaculture facilities or wild aquatic animal
2269 populations.

2270 Section 59. Section **4-39-201** is amended to read:

2271 **4-39-201. Fencing, posts, and gates.**

2272 (1) Each domesticated elk facility shall, at a minimum, meet the requirements of this
2273 section and shall be constructed to prevent the movement of domesticated elk into or out of the
2274 facility.

2275 (2) (a) All perimeter fences and gates shall be:

2276 (i) a minimum of eight feet above ground level; and

2277 (ii) constructed of hi-tensile steel.

2278 (b) At least the bottom four feet [~~must~~] shall be mesh with a maximum mesh size of 6"
2279 x 6".

2280 (c) The remaining four feet shall be mesh with a maximum mesh size of 12" x 6".

2281 (3) The minimum wire gauge shall be 14-1/2 gauge for a 2 woven hi-tensile fence.

2282 (4) All perimeter gates at the entrances of domesticated elk handling facilities shall be
2283 locked, with consecutive or self-closing gates when animals are present.

2284 (5) Posts shall be:

2285 (a) (i) constructed of treated wood which is at least four inches in diameter; or

2286 (ii) constructed of a material with the strength equivalent of Subsection (5)(a)(i);

2287 (b) spaced no more than 30 feet apart if one stay is used, or 20 feet apart if no stays are
2288 used; and

2289 (c) at least eight feet above ground level and two feet below ground level.

2290 (6) Stays, between the posts, shall be:

- 2291 (a) constructed of treated wood or steel;
- 2292 (b) spaced no more than 15 feet from any post; and
- 2293 (c) at least eight feet above ground level, and two feet below ground level.
- 2294 (7) Corner posts and gate posts shall be braced wood or its strength equivalent.
- 2295 Section 60. Section **4-39-205** is amended to read:
- 2296 **4-39-205. License renewal.**
- 2297 (1) To renew a license, the licensee [~~must~~] shall submit to the department:
- 2298 (a) an inspection certificate showing that:
- 2299 (i) the domesticated elk, on the domesticated elk facility, have been inspected and
- 2300 certified by the department for health, proof of ownership, and genetic purity; and
- 2301 (ii) the facility has been properly maintained as provided in this chapter during the
- 2302 immediately preceding 60-day period; and
- 2303 (b) a record of each purchase of domesticated elk and transfer of domesticated elk into
- 2304 the facility, which [~~must~~] shall include the following information:
- 2305 (i) name, address, and health approval number of the source;
- 2306 (ii) date of transaction; and
- 2307 (iii) number and sex.
- 2308 (2) (a) If the application for renewal is not received on or before April 30, a late fee
- 2309 will be charged.
- 2310 (b) A license may not be renewed until the fee is paid.
- 2311 (3) If the application and fee for renewal are not received on or before July 1, the
- 2312 license may not be renewed, and a new license shall be required.
- 2313 Section 61. Section **4-39-206** is amended to read:
- 2314 **4-39-206. Records to be maintained.**
- 2315 (1) The following records and information [~~must~~] shall be maintained by a
- 2316 domesticated elk facility for a period of five years:
- 2317 (a) records of purchase, acquisition, distribution, and production histories of
- 2318 domesticated elk;
- 2319 (b) records documenting antler harvesting, production, and distribution; and
- 2320 (c) health certificates and genetic purity records.
- 2321 (2) For purposes of carrying out the provisions of this chapter and rules promulgated

2322 under this chapter and, at any reasonable time during regular business hours, the department
2323 shall have free and unimpeded access to inspect all records required to be kept.

2324 (3) The department may make copies of the records referred to in this section.

2325 Section 62. Section **4-39-302** is amended to read:

2326 **4-39-302. Acquisition of domesticated elk for use in domesticated elk facilities.**

2327 Domesticated elk intended for use in domesticated elk facilities [~~must~~] shall meet all
2328 health and genetic requirements of this chapter.

2329 Section 63. Section **4-39-304** is amended to read:

2330 **4-39-304. Marking domesticated elk.**

2331 (1) Each domesticated elk, not previously tattooed, [~~must~~] shall be marked by either a
2332 tattoo, as provided in Subsection (2), or by a microchip, as provided in Subsection (3):

2333 (a) within 30 days of a change of ownership; or

2334 (b) in the case of newborn calves, within 15 days after being weaned, but in any case,
2335 no later than September 15.

2336 (2) If a domesticated elk is identified with a tattoo, the tattoo shall:

2337 (a) be placed peri-anally or inside the right ear; and

2338 (b) consist of a four-digit herd number assigned by the department over a three-digit
2339 individual animal number assigned by the owner.

2340 (3) If a domesticated elk is identified with a microchip, it [~~must~~] shall be placed in the
2341 right ear.

2342 Section 64. Section **4-39-305** is amended to read:

2343 **4-39-305. Transportation of domesticated elk to or from domesticated elk**
2344 **facilities.**

2345 Any domesticated elk transferred to or from a domesticated elk facility within the state
2346 [~~must~~] shall be:

2347 (1) accompanied by a brand inspection certificate specifying the following:

2348 (a) the name, address, and facility license number of the source;

2349 (b) number, sex, and individual identification number; and

2350 (c) name, address, and facility license number of the destination;

2351 (2) accompanied by proof of genetic purity as provided in Section 4-39-301; and

2352 (3) inspected by the department as provided in Section 4-39-306.

2353 Section 65. Section **4-39-306** is amended to read:

2354 **4-39-306. Inspection prior to movement, sale, removal of antlers, or slaughter.**

2355 (1) Each domesticated elk facility licensee shall have the domesticated elk inspected by
2356 the department prior to any transportation, sale, removal of antlers, or slaughter.

2357 (2) Any person transporting or possessing domesticated elk or domesticated elk
2358 products [~~must~~] shall have the appropriate brand inspection certificate in his or her possession.

2359 Section 66. Section **6-1-3** is amended to read:

2360 **6-1-3. Assignment to be written -- Contents -- Recording.**

2361 Every such assignment shall be by an instrument in writing, setting forth the name of
2362 the assignor, his residence and business, the name of the assignee and his residence and
2363 business, and in a general way describing the property assigned with its location, and stating
2364 the purpose of the assignment. It shall be executed and acknowledged in the manner prescribed
2365 for the execution and acknowledgment of deeds, and recorded in the office of the recorder of
2366 the county where the property assigned is located. The assignor shall annex to such instrument
2367 an inventory, under oath, of his estate, real and personal, according to the best of his
2368 knowledge, and a list of his creditors and the amount of their respective demands; but such
2369 inventory [~~shall not be~~] is not conclusive as to the amount of the debtor's estate, and such
2370 assignment shall vest in the assignee the title to any other property belonging to the debtor at
2371 the time of making the assignment, except property exempt from execution and insurance upon
2372 the life of the assignor, unless the instrument mentions such exempt property and insurance and
2373 declares an intention of the assignor that they shall pass thereby. As soon as such instrument is
2374 recorded it shall be filed, with the inventory and list of creditors, in the office of the clerk of the
2375 district court of the county in which the property so assigned is located; as shall all subsequent
2376 papers connected with such proceedings.

2377 Section 67. Section **6-1-9** is amended to read:

2378 **6-1-9. Taxes to be paid.**

2379 In all assignments of property for the benefit of creditors, assessments and taxes levied
2380 thereon either under the laws of the state or ordinances of municipal corporations shall be
2381 entitled to priority, and paid in full by the assignee, and claims therefor need not be filed with
2382 him.

2383 Section 68. Section **6-1-15** is amended to read:

2384 **6-1-15. Debts not matured -- Delay in filing claims.**

2385 Any creditor may claim debts to become due as well as debts due, but on debts not due
2386 a reasonable rebate shall be made when the same are not drawing interest. Creditors who [~~shall~~
2387 ~~not~~] do not file their claims within three months from the publication of notice as aforesaid
2388 [~~shall not~~] may not participate in dividends until after payment in full of all claims presented
2389 within said time and allowed by the court, unless the court has extended the time for filing such
2390 claims.

2391 Section 69. Section **7-1-303** is amended to read:

2392 **7-1-303. Joint operations and information exchange by institutions.**

2393 The commissioner may authorize institutions subject to the jurisdiction of the
2394 department to engage in such joint and cooperative actions as the commissioner finds will be in
2395 the public interest, [~~such as, but not limited to~~] including:

- 2396 (1) mutual exchange of financial information as to depositors, borrowers, and other
2397 customers;
- 2398 (2) joint use of facilities;
- 2399 (3) joint operation of clearing houses and other facilities for payment of checks, drafts,
2400 or other instruments drawn on or issued by various classes of depository institutions;
- 2401 (4) joint participation in lending programs to promote the public welfare;
- 2402 (5) joint risk management services; and
- 2403 (6) joint ownership, operation, or furnishing of electronic funds transfer services.

2404 Section 70. Section **7-1-309** is amended to read:

2405 **7-1-309. Hearings by commissioner -- Discretion of commissioner -- Procedure --**
2406 **Judicial review.**

2407 The commissioner may conduct or cause to be conducted hearings relating to matters
2408 within his supervisory jurisdiction and shall establish rules for discovery and other procedures
2409 applicable to the hearings consistent with the provisions of the Utah Rules of Civil Procedure.
2410 The decision whether or not to hold a formal hearing on any matter coming before the
2411 commissioner under this title shall be solely within the discretion of the commissioner. His
2412 failure or refusal to hold a formal hearing [~~shall not be~~] is not a ground for reversal of any
2413 decision or order of the commissioner unless the reviewing court finds that such failure or
2414 refusal has deprived an interested party of due process of law, or that a formal hearing is

2415 required by the provisions of this title.

2416 Section 71. Section **7-1-607** is amended to read:

2417 **7-1-607. Lost or destroyed account book or certificate.**

2418 If the holder of record of an account as shown by the books of a depository institution,
2419 or his legal representative, files with the institution an affidavit to the effect that the account
2420 book or certificate has been lost or destroyed and has not been pledged or assigned in whole or
2421 in part, the institution shall issue a new account book or certificate in the name of the holder of
2422 record. The new account book or certificate shall state that it is issued in lieu of the one lost or
2423 destroyed. The institution [~~shall not be~~] is not liable thereafter on the original account book or
2424 certificate. However, the board of directors of the institution shall, if in its judgment it is
2425 necessary, require a bond in an amount it considers sufficient to indemnify the institution
2426 against any loss which might result from the issuance of the new account book or certificate.

2427 Section 72. Section **7-1-612** is amended to read:

2428 **7-1-612. Pledge or hypothecation of joint savings accounts.**

2429 The pledge or hypothecation to any depository institution of all or part of a savings
2430 account in joint tenancy signed by any tenant or tenants whether minor or adult, upon whose
2431 signature or signatures withdrawals may be made from the account shall, unless the terms of
2432 the savings account provide specifically to the contrary, be a valid pledge and transfer to the
2433 institution of that part of the account pledged or hypothecated, and [~~shall not~~] does not operate
2434 to sever or terminate the joint and survivorship ownership of all or any part of the account.

2435 Section 73. Section **7-1-806** is amended to read:

2436 **7-1-806. Money market funds arranging with bank to honor two-party**
2437 **instruments -- Discouraging payment of interest to two persons on funds in transit --**
2438 **Pyramiding and similar schemes as misdemeanors.**

2439 Nothing in this act shall be construed to prevent money market funds from making
2440 arrangements with banks to honor two party checks, drafts, or other instruments.

2441 The commissioner shall exert his influence to discourage banks, money market funds
2442 and other programs in Utah and throughout the United States from paying interest to two
2443 persons at the same time on funds in the process of transfer.

2444 The process or the practice referred to as pyramiding or any similar process or practice
2445 as defined by the commissioner, and such definition is approved by the governor, shall be

2446 prohibited within this state and persons found guilty of these schemes shall be found guilty of a
2447 class C misdemeanor. This [~~shall not~~] does not preclude more serious punishment under
2448 federal law.

2449 Money market funds, similar funds and bank regulated institutions shall cooperate with
2450 the commissioner to stop these practices.

2451 Section 74. Section **7-2-9** is amended to read:

2452 **7-2-9. Conservatorship, receivership, or liquidation of institution -- Appointment**
2453 **of receiver -- Review of actions.**

2454 (1) Upon taking possession of the institution, the commissioner may appoint a receiver
2455 to perform the duties of the commissioner. Subject to any limitations, conditions, or
2456 requirements specified by the commissioner and approved by the court, a receiver shall have all
2457 the powers and duties of the commissioner under this chapter and the laws of this state to act as
2458 a conservator, receiver, or liquidator of the institution. Actions of the commissioner in
2459 appointing a receiver shall be subject to review only as provided in Section 7-2-2.

2460 (2) (a) If the deposits of the institution are to any extent insured by a federal deposit
2461 insurance agency, the commissioner may appoint that agency as receiver. After receiving
2462 notice in writing of the acceptance of the appointment, the commissioner shall file a certificate
2463 of appointment in the commissioner's office and with the clerk of the district court. After the
2464 filing of the certificate, the possession of all assets, business, and property of the institution is
2465 considered transferred from the institution and the commissioner to the agency, and title to all
2466 assets, business, and property of the institution is vested in the agency without the execution of
2467 any instruments of conveyance, assignment, transfer, or endorsement.

2468 (b) If a federal deposit insurance agency accepts an appointment as receiver, it has all
2469 the powers and privileges provided by the laws of this state and the United States with respect
2470 to the conservatorship, receivership, or liquidation of an institution and the rights of its
2471 depositors, and other creditors, including authority to make an agreement for the purchase of
2472 assets and assumption of deposit and other liabilities by another depository institution or take
2473 other action authorized by Title 12 of the United States Code to maintain the stability of the
2474 banking system. Such action by a federal deposit insurance agency may be taken upon
2475 approval by the court, with or without prior notice. Such actions or agreements may be
2476 disapproved, amended, or rescinded only upon a finding by the court that the decisions or

2477 actions of the receiver are arbitrary, capricious, fraudulent, or contrary to law. In the event of
2478 any conflict between state and federal law, including provisions for adjudicating claims against
2479 the institution or receiver, the receiver shall comply with the federal law and any resulting
2480 violation of state law [~~shall not~~] does not by itself constitute grounds for the court to
2481 disapprove the actions of the receiver or impose any penalty for such violation.

2482 (c) The commissioner or any receiver appointed by him shall possess all the rights and
2483 claims of the institution against any person whose breach of fiduciary duty or violations of the
2484 laws of this state or the United States applicable to depository institutions may have caused or
2485 contributed to a condition which resulted in any loss incurred by the institution or to its assets
2486 in the possession of the commissioner or receiver. As used in this Subsection (2)(c), fiduciary
2487 duty includes those duties and standards applicable under statutes and laws of this state and the
2488 United States to a director, officer, or other party employed by or rendering professional
2489 services to a depository institution whose deposits are insured by a federal deposit insurance
2490 agency. Upon taking possession of an institution, no person other than the commissioner or
2491 receiver shall have standing to assert any such right or claim of the institution, including its
2492 depositors, creditors, or shareholders unless the right or claim has been abandoned by the
2493 commissioner or receiver with approval of the court. Any judgment based on the rights and
2494 claims of the commissioner or receiver shall have priority in payment from the assets of the
2495 judgment debtors.

2496 (d) For the purposes of this section, the term "federal deposit insurance agency" shall
2497 include the Federal Deposit Insurance Corporation, the National Credit Union Administration
2498 and any departments thereof or successors thereto, and any other federal agency authorized by
2499 federal law to act as a conservator, receiver, and liquidator of a federally insured depository
2500 institution, including the Resolution Trust Corporation and any department thereof or successor
2501 thereto.

2502 (3) The receiver may employ assistants, agents, accountants, and legal counsel. If the
2503 receiver is not a federal deposit insurance agency, the compensation to be paid such assistants,
2504 agents, accountants, and legal counsel shall be approved by the commissioner. All expenses
2505 incident to the receivership shall be paid out of the assets of the institution. If a receiver is not
2506 a federal deposit insurance agency, the receiver and any assistants and agents shall provide
2507 bond or other security specified by the commissioner and approved by the court for the faithful

2508 discharge of all duties and responsibilities in connection with the receivership including the
2509 accounting for money received and paid. The cost of the bond shall be paid from the assets of
2510 the institution. Suit may be maintained on the bond by the commissioner or by any person
2511 injured by a breach of the condition of the bond.

2512 (4) (a) Upon the appointment of a receiver for an institution in possession pursuant to
2513 this chapter, the commissioner and the department are exempt from liability or damages for any
2514 act or omission of any receiver appointed pursuant to this section.

2515 (b) This section does not limit the right of the commissioner to prescribe and enforce
2516 rules regulating a receiver in carrying out its duties with respect to an institution subject to the
2517 jurisdiction of the department.

2518 (c) Any act or omission of the commissioner or of any federal deposit insurance agency
2519 as a receiver appointed by him while acting pursuant to this chapter shall be deemed to be the
2520 exercise of a discretionary function within the meaning of Section 63G-7-301 of the laws of
2521 this state or Section 28 U.S.C. 2680(a) of the laws of the United States.

2522 (5) Actions, decisions, or agreements of a receiver under this chapter, other than
2523 allowance or disallowance of claims under Section 7-2-6, shall be subject to judicial review
2524 only as follows:

2525 (a) A petition for review shall be filed with the court having jurisdiction under Section
2526 7-2-2 not more than 90 days after the date the act, decision, or agreement became effective or
2527 its terms are filed with the court.

2528 (b) The petition shall state in simple, concise, and direct terms the facts and principles
2529 of law upon which the petitioner claims the act, decision, or agreement of the receiver was or
2530 would be arbitrary, capricious, fraudulent, or contrary to law and how the petitioner is or may
2531 be damaged thereby. The court shall dismiss any petition which fails to allege that the
2532 petitioner would be directly injured or damaged by the act, decision, or agreement which is the
2533 subject of the petition. Rule 11 of the Utah Rules of Civil Procedure shall apply to all parties
2534 with respect to the allegations set forth in a petition or response.

2535 (c) The receiver shall have 30 days after service of the petition within which to
2536 respond.

2537 (d) All further proceedings are to be conducted in accordance with the Utah Rules of
2538 Civil Procedure.

2539 (6) All notices required under this section shall be made in accordance with the Utah
2540 Rules of Civil Procedure and served upon the attorney general of the state of Utah, the
2541 commissioner of financial institutions, the receiver of the institution appointed under this
2542 chapter, and upon the designated representative of any party in interest who requests in writing
2543 such notice.

2544 Section 75. Section **7-2-10** is amended to read:

2545 **7-2-10. Inventory of assets -- Listings of claims -- Report of proceedings -- Filing**
2546 **-- Inspection.**

2547 As soon as is practical after taking possession of an institution the commissioner, or any
2548 receiver or liquidator appointed by him, shall make or cause to be made in duplicate an
2549 inventory of its assets, one copy to be filed in his office and one with the clerk of the district
2550 court. Upon the expiration of the time fixed for presentation of claims the commissioner, or
2551 any receiver or liquidator appointed by him, shall make in duplicate a full and complete list of
2552 the claims presented, including and specifying claims disallowed by him, of which one copy
2553 shall be filed in his office and one copy in the office of the clerk of the district court. The
2554 commissioner, or any receiver or liquidator appointed by him, shall in like manner make and
2555 file supplemental lists showing all claims presented after the filing of the first list. The
2556 supplemental lists shall be filed every six months and at least 15 days before the declaration of
2557 any dividend. At the time of the order for final distribution the commissioner, or any receiver
2558 or liquidator appointed by him, shall make a report in duplicate of the proceeding, showing the
2559 disposition of the assets and liabilities of the institution, one copy to be filed in his office and
2560 one with the clerk of the district court. The accounting, inventory, and lists of claims shall be
2561 open at all reasonable times for inspection. Any objection to any report or accounting [~~must~~
2562 shall] be filed with the clerk of the district court within 30 days after the report of accounting
2563 has been filed by the commissioner, or any receiver or liquidator appointed by him, and shall
2564 be subject to judicial review only as provided in Section 7-2-9.

2565 Section 76. Section **7-2-12** is amended to read:

2566 **7-2-12. Powers of commissioner in possession -- Sale of assets -- Postpossession**
2567 **financing -- New deposit instruments -- Executory contracts -- Transfer of property --**
2568 **Avoidance of transfers -- Avoidable preferences -- Setoff.**

2569 (1) Upon taking possession of the institution, the commissioner may do all things

2570 necessary to preserve its assets and business, and shall rehabilitate, reorganize, or liquidate the
2571 affairs of the institution in a manner he determines to be in the best interests of the institution's
2572 depositors and creditors. Any such determination by the commissioner may not be overruled
2573 by a reviewing court unless it is found to be arbitrary, capricious, fraudulent, or contrary to law.
2574 In the event of a liquidation, he shall collect all debts due and claims belonging to it, and may
2575 compromise all bad or doubtful debts. He may sell, upon terms he may determine, any or all of
2576 the property of the institution for cash or other consideration. The commissioner shall give
2577 such notice as the court may direct to the institution of the time and place of hearing upon an
2578 application to the court for approval of the sale. The commissioner shall execute and deliver to
2579 the purchaser of any property of the institution sold by him those deeds or instruments
2580 necessary to evidence the passing of title.

2581 (2) With approval of the court and upon terms and with priority determined by the
2582 court, the commissioner may borrow money and issue evidence of indebtedness. To secure
2583 repayment of the indebtedness, he may mortgage, pledge, transfer in trust, or hypothecate any
2584 or all of the property of the institution superior to any charge on the property for expenses of
2585 the proceeding as provided in Section 7-2-14. These loans may be obtained for the purpose of
2586 facilitating liquidation, protecting or preserving the assets in the charge of the commissioner,
2587 expediting the making of distributions to depositors and other claimants, aiding in the
2588 reopening or reorganization of the institution or its merger or consolidation with another
2589 institution, or the sale of all of its assets. Neither the commissioner nor any special deputy or
2590 other person lawfully in charge of the affairs of the institution is under any personal obligation
2591 to repay those loans. The commissioner may take any action necessary or proper to
2592 consummate the loan and to provide for its repayment and to give bond when required for the
2593 faithful performance of all undertakings in connection with it. The commissioner or special
2594 deputy shall make application to the court for approval of any loan proposed under this section.
2595 Notice of hearing upon the application shall be given as the court directs. At the hearing upon
2596 the application any stockholder or shareholder of the institution or any depositor or other
2597 creditor of the institution may appear and be heard on the application. Prior to the obtaining of
2598 a court order, the commissioner or special deputy in charge of the affairs of the institution may
2599 make application or negotiate for the loan or loans subject to the obtaining of the court order.

2600 (3) With the approval of the court pursuant to a plan of reorganization or liquidation

2601 under Section 7-2-18, the commissioner may provide for depositors to receive new deposit
2602 instruments from a depository institution that purchases or receives some or all of the assets of
2603 the institution in the possession of the commissioner. All new deposit instruments issued by
2604 the acquiring depository institution may, in accordance with the terms of the plan of
2605 reorganization or liquidation, be subject to different amounts, terms, and interest rates than the
2606 original deposit instruments of the institution in the possession of the commissioner. All
2607 deposit instruments issued by the acquiring institution shall be considered new deposit
2608 obligations of the acquiring institution. The original deposit instruments issued by the
2609 institution in the possession of the commissioner are not liabilities of the acquiring institution,
2610 unless assumed by the acquiring institution. Unpaid claims of depositors against the institution
2611 in the possession of the commissioner continue, and may be provided for in the plan of
2612 reorganization or liquidation.

2613 (4) The commissioner, after taking possession of any institution or other person subject
2614 to the jurisdiction of the department, may terminate any executory contract, including standby
2615 letters of credit, unexpired leases and unexpired employment contracts, to which the institution
2616 or other person is a party. If the termination of an executory contract or unexpired lease
2617 constitutes a breach of the contract or lease, the date of the breach is the date on which the
2618 commissioner took possession of the institution. Claims for damages for breach of an
2619 executory contract [~~must~~] shall be filed within 30 days of receipt of notice of the termination,
2620 and if allowed, shall be paid in the same manner as all other allowable claims of the same
2621 priority out of the assets of the institution available to pay claims.

2622 (5) With approval of the court and upon a showing by the commissioner that it is in the
2623 best interests of the depositors and creditors, the commissioner may transfer property on
2624 account of an indebtedness incurred by the institution prior to the date of the taking.

2625 (6) (a) The commissioner may avoid any transfer of any interest of the institution in
2626 property or any obligation incurred by the institution that is void or voidable by a creditor under
2627 Title 25, Chapter 6.

2628 (b) The commissioner may avoid any transfer of any interest in real property of the
2629 institution that is void as against or voidable by a subsequent purchaser in good faith and for a
2630 valuable consideration of the same real property or any portion thereof who has duly recorded
2631 his conveyance at the time possession of the institution is taken, whether or not such a

2632 purchaser exists.

2633 (c) The commissioner may avoid any transfer of any interest in property of the
2634 institution or any obligation incurred by the institution that is invalid or void as against, or is
2635 voidable by a creditor that extends credit to the institution at the time possession of the
2636 institution is taken by the commissioner, and that obtains, at such time and with respect to such
2637 credit, a judgment lien or a lien by attachment, levy, execution, garnishment, or other judicial
2638 lien on the property involved, whether or not such a creditor exists.

2639 (d) The right of the commissioner under Subsections (6)(b) and (c) to avoid any
2640 transfer of any interest in property of the institution shall be unaffected by and without regard
2641 to any knowledge of the commissioner or of any creditor of the institution.

2642 (e) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary
2643 or involuntary, or disposing of or parting with property or with an interest in property,
2644 including retention of title as a security interest.

2645 (f) The commissioner may avoid and recover any payment or other transfer of any
2646 interest in property of the institution to or for the benefit of a creditor, for or on account of an
2647 antecedent debt owed by the institution before the transfer was made if the creditor at the time
2648 of such transfer had reasonable cause to believe that the institution was insolvent, and if the
2649 payment or other transfer will allow the creditor to obtain a greater percentage of his debt than
2650 he would be entitled to under the provisions of Section 7-2-15. For the purposes of this
2651 subsection:

2652 (i) antecedent debt does not include earned wages and salaries and other operating
2653 expenses incurred and paid in the normal course of business;

2654 (ii) a transfer of any interest in real property is deemed to have been made or suffered
2655 when it became so far perfected that a subsequent good faith purchaser of the property from the
2656 institution for a valuable consideration could not acquire an interest superior to the transferee;
2657 and

2658 (iii) a transfer of property other than real property is deemed to have been made or
2659 suffered when it became so far perfected that a creditor on a simple contract could not acquire a
2660 lien by attachment, levy, execution, garnishment, or other judicial lien superior to the interest
2661 of the transferee.

2662 (g) For purposes of this section, "date of possession" means the earlier of the date the

2663 commissioner takes possession of a financial institution under Title 7, Chapter 2, or the date
2664 when the commissioner enters an order suspending payments to depositors and other creditors
2665 under Section 7-2-19.

2666 (7) (a) With or without the prior approval of the court, the commissioner or any federal
2667 deposit insurance agency appointed by him as receiver or liquidator of a depository institution
2668 closed by the commissioner under the provisions of this chapter may setoff against the deposits
2669 or other liabilities of the institution any debts or other obligations of the depositor or claimant
2670 due and owing to the institution. The amount of any setoff against the liabilities of the
2671 institution shall be no greater than the amount the depositor or claimant would receive pursuant
2672 to Section 7-2-15 after final liquidation of the institution. When the liquidation value of a
2673 depositor's or claimant's claim against the institution will or may be less than the full amount of
2674 the claim, setoff may be made prior to final liquidation if the commissioner or any receiver or
2675 liquidator appointed by him can reasonably estimate the liquidation value of the claim, and the
2676 court, after notice and opportunity for hearing, approves the estimate for purposes of making
2677 the setoff. If the right of setoff is exercised, the commissioner or any receiver or liquidator
2678 appointed by him shall give written notice to the depositor or claimant of the amount setoff.

2679 (b) The existence and amount of a debtor or creditor relationship or both, between the
2680 institution and its depositor or claimant and the right to the proceeds in a deposit account shall
2681 be determined solely by the books and records of the institution.

2682 (c) Any contract purporting to affect the right of setoff [~~must~~] shall be in writing and
2683 signed by the depositor-debtor and an authorized officer of the institution and be maintained as
2684 a part of the records of the institution.

2685 (d) Any claim that a deposit account is a special account not subject to setoff because it
2686 was maintained for a specific purpose or to satisfy a particular obligation other than satisfaction
2687 of or as security for an indebtedness to the institution or that the right to the deposit actually
2688 belongs to a third party [~~shall not~~] does not affect the right to setoff of the commissioner or any
2689 receiver or liquidator appointed by him unless the special nature of the account is clearly
2690 shown in the books and records of the institution.

2691 (e) In the absence of any other instrument in writing, the terms and provisions of the
2692 signature card applicable to a particular account in effect at the time the commissioner takes
2693 possession of the institution shall be determinative of the right of setoff by the commissioner or

2694 any receiver or liquidator appointed by him.

2695 (f) Knowledge of the institution or of any director, officer, or employee of the
2696 institution that the nature of the account is other than as shown in the books and records of the
2697 institution [~~shall not~~] does not affect the right of setoff by the commissioner or any receiver or
2698 liquidator appointed by him.

2699 (g) The liability of the commissioner or any receiver or liquidator appointed by him for
2700 exercising a right of setoff other than as authorized by this section shall be only to a person
2701 who establishes by the procedure set forth in Section 7-2-6 that his interest in the account is
2702 superior to that of the person whose debt to the institution was setoff against the account. The
2703 amount of any such liability shall be no greater than the amount of the setoff and neither the
2704 commissioner or any receiver or liquidator appointed by him shall be liable for any action taken
2705 under this section unless the action taken is determined by the court to be arbitrary or
2706 capricious.

2707 Section 77. Section 7-5-2 is amended to read:

2708 **7-5-2. Permit required to engage in trust business -- Exceptions.**

2709 (1) No trust company shall accept any appointment to act in any agency or fiduciary
2710 capacity, [~~such as but not limited to~~] including that of personal representative, executor,
2711 administrator, conservator, guardian, assignee, receiver, depository, or trustee under order or
2712 judgment of any court or by authority of any law of this state or as trustee for any purpose
2713 permitted by law or otherwise engage in the trust business in this state, unless and until it has
2714 obtained from the commissioner a permit to act under this chapter. This provision [~~shall not~~]
2715 does not apply to any bank or other corporation authorized to engage and lawfully engaged in
2716 the trust business in this state before July 1, 1981.

2717 (2) Nothing in this chapter prohibits:

2718 (a) any corporation organized under Title 16, Chapter 6a or 10a, from acting as trustee
2719 of any employee benefit trust established for the employees of the corporation or the employees
2720 of one or more other corporations affiliated with the corporation;

2721 (b) any corporation organized under Title 16, Chapter 6a, Utah Revised Nonprofit
2722 Corporation Act, and owned or controlled by a charitable, benevolent, eleemosynary, or
2723 religious organization from acting as a trustee for that organization or members of that
2724 organization but not offering trust services to the general public;

2725 (c) any corporation organized under Title 16, Chapter 6a or 10a, from holding in a
2726 fiduciary capacity the controlling shares of another corporation but not offering trust services to
2727 the general public; or

2728 (d) any depository institution from holding in an agency or fiduciary capacity individual
2729 retirement accounts or Keogh plan accounts established under Section 401(a) or 408(a) of Title
2730 26 of the United States Code.

2731 Section 78. Section **7-5-4** is amended to read:

2732 **7-5-4. Withdrawal from trust business.**

2733 Any trust company which desires to withdraw from and discontinue doing a trust
2734 business shall furnish to the commissioner satisfactory evidence of its release and discharge
2735 from all the obligations and trusts undertaken by it, and after the company has furnished that
2736 evidence the commissioner shall revoke his certificate of authority to do a trust business
2737 previously issued to that trust company, and thereafter that trust company [~~shall not~~] may not
2738 be permitted to use and [~~shall not~~] may not use the word "trust" in its corporate name or in
2739 connection with its business, nor undertake the administration of any trust business.

2740 Section 79. Section **7-5-7** is amended to read:

2741 **7-5-7. Management and investment of trust funds.**

2742 (1) Funds received or held by any trust company as agent or fiduciary, whether for
2743 investment or distribution, shall be invested or distributed as soon as practicable as authorized
2744 under the instrument creating the account and [~~shall not~~] may not be held uninvested any
2745 longer than is reasonably necessary.

2746 (2) If the instrument creating an agency or fiduciary account contains provisions
2747 authorizing the trust company, its officers, or its directors to exercise their discretion in the
2748 matter of investments, funds held in the trust account under that instrument may be invested
2749 only in those classes of securities which are approved by the directors of the trust company or a
2750 committee of directors appointed for that purpose. If a trust company acts in any agency or
2751 fiduciary capacity under appointment by a court of competent jurisdiction, it shall make and
2752 account for all investments according to the provisions of Title 75, Utah Uniform Probate
2753 Code, unless the underlying instrument provides otherwise.

2754 (3) (a) Funds received or held as agent or fiduciary by any trust company which is also
2755 a depository institution, whether for investment or distribution, may be deposited in the

2756 commercial department or savings department of that trust company to the credit of its trust
2757 department. Whenever the funds so deposited in a fiduciary or managing agency account
2758 exceed the amount of federal deposit insurance applicable to that account, the trust company
2759 shall deliver to the trust department or put under its control collateral security as outlined in
2760 Regulation 9.10 of the Comptroller of the Currency or in Regulation 550.8 of the Office of
2761 Thrift Supervision, as amended. However, if the instrument creating such a fiduciary or
2762 managing agency account expressly provides that funds may be deposited to the commercial or
2763 savings department of the trust company, then the funds may be so deposited without setting
2764 aside collateral securities as required under this section and the deposits in the event of
2765 insolvency of any such trust company shall be treated as other general deposits are treated. A
2766 trust company which deposits trust funds in its commercial or savings department shall be
2767 liable for interest on the deposits only at the rates, if any, paid by the trust company on deposits
2768 of like kind not made to the credit of its trust department.

2769 (b) Funds received or held as agent or fiduciary by a trust company, whether for
2770 investment or distribution, may be deposited in an affiliated depository institution. Whenever
2771 the funds so deposited in a fiduciary or managing agency account exceed the amount of federal
2772 deposit insurance applicable to that account, the depository institution shall deliver to the trust
2773 company or put under its control collateral security as outlined in Regulation 9.10 of the
2774 Comptroller of the Currency or in Regulation 550.8 of the Office of Thrift Supervision as
2775 amended. However, if the instrument creating the fiduciary or managing agency account
2776 expressly permits funds to be deposited in the affiliated depository institution, the funds may be
2777 so deposited without setting aside collateral securities as required under this section and
2778 deposits in the event of insolvency of the depository institution shall be treated as other general
2779 deposits are treated. A trust company which deposits trust funds in an affiliated depository
2780 institution is liable for interest on the deposits only at the rates, if any, paid by the depository
2781 institution on deposits of like kind.

2782 (4) In carrying out all aspects of its trust business, a trust company shall have all the
2783 powers, privileges, and duties as set forth in Sections 75-7-813 and 75-7-814 with respect to
2784 trustees, whether or not the trust company is acting as a trustee as defined in Title 75.

2785 (5) Nothing in this section may alter, amend, or limit the powers of a trust company
2786 acting in a fiduciary capacity as specified in the particular instrument or order creating the

2787 fiduciary relationship.

2788 Section 80. Section **7-5-8** is amended to read:

2789 **7-5-8. Segregation of trust assets -- Books and records required -- Examination --**
2790 **Trust property not subject to claims or debts against trust company.**

2791 A trust company exercising the powers to act as an agent or fiduciary under this chapter
2792 shall segregate all assets held in any agency or fiduciary capacity from the general assets of the
2793 company and shall keep a separate set of books and records showing in proper detail all
2794 transactions engaged in under authority of this chapter. These books and records shall be open
2795 to inspection by the commissioner and shall be examined by him or by examiners appointed by
2796 him as provided in Chapter 1 or examined by other appropriate regulating agencies or both.
2797 Property held in an agency or fiduciary capacity by a trust company [~~shall not be~~] is not subject
2798 to claims or debts against the trust company.

2799 Section 81. Section **7-5-11** is amended to read:

2800 **7-5-11. Self-dealing with trust property -- Own stock as trust property -- Policies**
2801 **for dealing with trust securities.**

2802 (1) Except as provided in Section 7-5-7, in Title 75, or as authorized under the
2803 instrument creating the relationship, a trust company [~~shall not~~] may not invest funds held as an
2804 agent or fiduciary in stock or obligations of, or with such funds acquire property from, the trust
2805 company or any of its directors, officers or employees, nor shall a trust company sell property
2806 held as an agent or fiduciary to the company or to any of its directors, officers, or employees.

2807 (2) A trust company may retain and vote stock of the trust company or of any of its
2808 affiliates received by it as assets of any trust account or in any other fiduciary relationship of
2809 which it is appointed agent or fiduciary, unless the instrument creating the relationship
2810 otherwise provides.

2811 (3) Every trust company shall adopt written policies and procedures regarding
2812 decisions or recommendations to purchase or sell any security to facilitate compliance with
2813 federal and state securities laws. These policies and procedures, in particular, shall prohibit the
2814 trust company from using material inside information in connection with any decision or
2815 recommendation to purchase or sell any security.

2816 Section 82. Section **7-7-2** is amended to read:

2817 **7-7-2. Definitions.**

2818 As used in this chapter:

2819 (1) "Association" means a mutual or capital stock savings association, a savings and
2820 loan association, a mutual or capital stock savings bank, or a building and loan association
2821 subject to the provisions of this chapter, including all out-of-state associations qualified to do
2822 business in this state.

2823 (2) "Federal association" means a savings association, a savings and loan association,
2824 or a savings bank, chartered by the Office of Thrift Supervision or successor federal agency.

2825 (3) "Impaired condition" means a condition in which the assets of an association in the
2826 aggregate do not have a fair value equal to the aggregate amount of liabilities of the association
2827 to its creditors, including the holders of its savings accounts and all other persons.

2828 (4) "Insured association" means an association the deposit accounts of which are
2829 insured by the Federal Deposit Insurance Corporation or any successor agency of the federal
2830 government.

2831 (5) "Liquid assets" means cash on hand and cash on deposit in federal home loan
2832 banks, federal reserve banks, state banks performing similar reserve functions, or in
2833 commercial banks, which cash is withdrawable upon not more than 30 days notice and which is
2834 not pledged as security for indebtedness. Any deposits in a financial institution under the
2835 control or in the possession of any supervisory authority [~~shall not~~] may not be considered as
2836 liquid assets. Liquid assets also means obligations of, or obligations that are fully guaranteed
2837 as to principal and interest by, the United States, the Federal National Mortgage Association,
2838 the Government National Mortgage Association, any federal home loan bank, or this state,
2839 which obligations will mature in five years or less, and any other assets readily convertible into
2840 cash.

2841 (6) "Out-of-state association" means an association whose home state is not Utah.

2842 (7) "Real estate loan" means any loan or other obligation secured by a lien on real
2843 estate in any state held in fee or in a leasehold, and any transaction out of which a lien or its
2844 equivalent is created against real estate, including the purchase of real estate in fee by an
2845 association and the concurrent or immediate sale of the real estate on installment contract.

2846 (8) "Savings liability" means the aggregate amount of savings accounts of depositors,
2847 including earnings credited to those accounts, less redemptions and withdrawals.

2848 (9) "Service organization" means an organization substantially all the activities of

2849 which consist of originating, purchasing, selling, or servicing loans and participating interests
2850 therein, or clerical, bookkeeping, accounting, statistical, or other similar functions or any
2851 combination thereof performed primarily for financial institutions, plus such other activities as
2852 the commissioner may approve.

2853 (10) "Supervisor" means the supervisor of savings and loan associations.

2854 (11) "Surplus" means the aggregate amount of the undistributed net income of an
2855 association held as undivided profits or unallocated reserves for general corporate purposes,
2856 and any paid-in surplus held by an association.

2857 (12) "Withdrawal value" means the amount credited to a savings account less lawful
2858 deductions, as shown by the records of the association.

2859 Section 83. Section 7-7-4 is amended to read:

2860 **7-7-4. Mutual association -- Chair of incorporators -- Surety bond or escrow --**
2861 **Capital requirements -- Expense fund -- Organization meeting.**

2862 (1) The incorporators of a mutual association shall appoint one of their number as chair
2863 of the incorporators. This chair shall procure from a surety company or other surety
2864 acceptable to the commissioner, a surety bond in an amount at least equal to the amount
2865 subscribed by the incorporators plus the expense fund described in Subsection (2). This bond
2866 shall name the commissioner as obligee and shall be delivered to him. It shall assure the
2867 safekeeping of the funds described, their delivery to the association after the issuance of the
2868 certificate of authority and after the bonding of the officers, and, in the event of the failure to
2869 complete organization, the return of the amounts collected to the respective subscribers or their
2870 assigns, less reasonable expense which shall be deducted from the expense fund. The required
2871 surety may be waived by the commissioner if the funds are held in escrow so as to provide
2872 similar assurance with regard to the funds. Before a certificate of authority is issued, the
2873 incorporators shall pay in cash, to the chairman, as subscriptions to the savings accounts of the
2874 proposed association, including that part of the original subscription paid by the chairman. The
2875 minimum required capital shall be prescribed by the commissioner by rule. These capital
2876 requirements may not be greater than those required by the Office of Thrift Supervision or
2877 successor agency for the formation of a federally chartered mutual association.

2878 (2) The incorporators, in addition to their subscriptions to savings accounts, shall
2879 create an expense fund in an amount not less than 25% of the minimum amount of savings

2880 account subscriptions required to be paid under this chapter. From this expense fund the
2881 expense of organizing the association and its operating expenses may be paid until such time as
2882 its net income is sufficient to pay such earnings as may be declared and paid or credited to its
2883 savings account holders from sources available for payment of earnings. The incorporators and
2884 others, before a certificate of authority is issued, shall deposit to the credit of the chairman of
2885 the incorporators in cash the amount of the expense fund. The amounts contributed to the
2886 expense fund by the incorporators and others ~~[shall not]~~ do not constitute a liability of the
2887 association except as provided by this chapter.

2888 (3) Contributions made by the incorporators and others to the expense fund may be
2889 repaid pro rata to the contributors from the net income of the association after provision for
2890 statutory reserves and declaration of earnings of not less than 2% on savings accounts. If an
2891 association is liquidated before contributions to the expense fund have been repaid, any
2892 contributions to the expense fund remaining unexpended, after the payment of expenses of
2893 liquidation, all creditors, and the withdrawal value of all savings accounts, shall be repaid to
2894 the contributors pro rata. The books of the association shall reflect the expense fund.
2895 Contributors to the expense fund shall at the times earnings regularly are distributed to savings
2896 account holders be paid earnings on the amounts paid in by them and for that purpose the
2897 contributions shall in all respects be considered as savings accounts of the association.

2898 (4) Within 90 days after the corporate existence of an association begins, the directors
2899 of the association shall hold an organization meeting and shall adopt bylaws and elect officers
2900 under this chapter. At the organization meeting the directors shall take such other action as is
2901 appropriate in connection with beginning the transaction of business by the association. The
2902 commissioner may extend by order the time within which the organization meeting shall be
2903 held.

2904 Section 84. Section ~~7-7-7~~ is amended to read:

2905 **7-7-7. Conversion of associations.**

2906 (1) Any state or federal mutual association and any federal capital stock association
2907 may convert to a state capital stock association, and any state or federal capital stock
2908 association and any federal mutual association may convert to a state mutual association upon
2909 an equitable basis subject to the laws and rules governing the converting association, the
2910 approval of the commissioner, the approval of the members or stockholders of the converting

2911 association, and any rules adopted by the commissioner under this subsection.

2912 (a) Upon receipt of the approval of a proposed conversion from the commissioner, a
2913 converting association may, under the supervision of the supervisor, carry out the plan of
2914 conversion. A record of all acts and proceedings taken by the board of directors of the
2915 converting association in carrying out the proposed conversion shall be filed with the
2916 supervisor.

2917 (b) Upon the issuance to an applicant of a certificate of conversion, the corporate
2918 existence of the converting applicant [~~shall not~~] does not terminate, but the applicant shall be a
2919 continuation of the entity so converted. All property of the converting applicant, including its
2920 rights, titles, and interests in and to all property of whatever kind, whether real, personal, or
2921 mixed, things in action, and every right, privilege, interest and asset of any conceivable value
2922 or benefit then existing, or pertaining to it, or which would inure to it, immediately, by
2923 operation of law and without any conveyance or transfer and without any further act or deed,
2924 shall vest in and remain the property of the converted applicant, and the same shall have, hold,
2925 and enjoy that property in its own right as fully and to the same extent as that property was
2926 possessed, held, and enjoyed by the converting applicant before the conversion, and the
2927 converted applicant, upon issuance of the certificate of the conversion, shall continue to have
2928 and succeed to all the rights, obligations, and relations of the converting applicant. Pending
2929 actions and other judicial proceedings to which the converting applicant is a party [~~shall not be~~]
2930 are not abated or discontinued by reason of the conversion, but may be prosecuted to final
2931 judgment, order, or decree in the same manner as if conversion had not occurred, and the
2932 converted applicant may continue the actions in its new corporate name. Any judgment, order,
2933 or decree may be rendered for or against it which might have been rendered for or against the
2934 converting applicant involved before the conversion in the proceedings.

2935 (c) A conversion carried out under this Subsection (1) is effective on the date that all
2936 provisions of this chapter and the rules adopted under it have been complied with and a
2937 certificate of conversion has been issued by the commissioner.

2938 (d) In adopting rules or issuing orders in connection with the conversion of an
2939 association, the commissioner shall ensure that:

2940 (i) accurate and adequate disclosure of the terms and effects of plans of conversion are
2941 provided to purchasers of capital stock in resulting associations, including account holders of

2942 converting mutual associations;

2943 (ii) adjustments are made in plans of conversion to be effected by way of merger or
2944 holding company acquisition necessary or appropriate to accomplish the purposes of this
2945 section;

2946 (iii) plans of conversion and proxy statements, offering circulars and related
2947 instruments and actions implementing those plans are subject to review and approval by the
2948 appropriate supervisory authorities;

2949 (iv) the capital stock issued as a part of conversion is fairly and independently valued
2950 and priced;

2951 (v) the capital stock is allocated and distributed fairly and without employment of
2952 manipulative or deceptive devices;

2953 (vi) appropriate provision is made regarding fractional share interest and minimum
2954 capital stock purchase requirements; and

2955 (vii) plans of conversion are adopted and implemented in such form and manner that
2956 stability and continuity of management are encouraged and that the stability, safety, and
2957 soundness of associations and other financial institutions are not impaired. In no event shall
2958 any rule or order issued by the commissioner regarding the conversion of an association make
2959 it more difficult for an association subject to those rules or orders to implement conversion
2960 than for an association subject only to federal laws and regulations.

2961 (e) A conversion proposed by a domestic association shall, after approval by the
2962 commissioner, be submitted to the members or stockholders at an annual meeting or at a
2963 special meeting called to consider that action. The conversion [~~must~~] shall have the approval
2964 of a majority of the total votes eligible to be cast by members or stockholders at the meeting.
2965 Notice shall be given of any meeting at which a conversion is to be considered. The notice
2966 shall expressly state that a proposed conversion will be submitted for approval or disapproval,
2967 include a full and accurate description of the plan of conversion and all other matters to be
2968 brought before the meeting, state that a proxy for the meeting given previously is revocable,
2969 and state the time, date, and place of the meeting. The notice shall be mailed at least 20 days
2970 prior to the date of the meeting to each voting member or stockholder of the converting
2971 association addressed to his address shown on the records of the association and to the
2972 supervisor or commissioner.

2973 (f) If the commissioner finds that a conversion proceeding has been completed in
2974 accordance with the requirements of this section and any other applicable law and rules, he
2975 shall issue to the applicant a certificate of conversion, attaching as a part of the certificate a
2976 copy of the charter, articles of incorporation, articles of association, or similar instrument. The
2977 commissioner shall also cause the same to be filed with the Division of Corporations and
2978 Commercial Code.

2979 (2) Any state mutual or state capital stock association eligible under federal law or
2980 regulations to become a federal association may convert to a federal association by following
2981 the procedure outlined in this Subsection (2).

2982 (a) At any regular meeting or at any special meeting of the members or stockholders of
2983 the association called to consider the action and held in accordance with the laws governing the
2984 association, the members or stockholders by majority vote of those present or voting by proxy
2985 may declare by resolution the determination to convert the association into a federal
2986 association.

2987 (b) A copy of the minutes of the meeting of the members or shareholders verified by
2988 the affidavit of the president or vice president and the secretary of the meeting shall be, within
2989 10 days after the meeting, filed with the commissioner. This verified copy of the minutes of
2990 the meeting, when so filed, shall be presumptive evidence of the holding of the meeting and of
2991 the action there taken by the members or stockholders.

2992 (c) Within a reasonable time and without any unnecessary delay after the adjournment
2993 of the meeting of shareholders, the association shall take such action as may be necessary under
2994 requirements of the Office of Thrift Supervision or other federal agency to make it a federal
2995 association, and within 10 days after receipt of the federal charter there shall be filed with the
2996 commissioner a copy of the charter or a certificate showing the organization of the association
2997 as a federal association, certified by or on behalf of the Office of Thrift Supervision or other
2998 federal agency. Upon the filing of these instruments the association shall cease to be a state
2999 association and shall thereafter be a federal association.

3000 (d) Upon completion of a conversion to a federal association, the corporate existence
3001 of the converting association [~~shall not~~] does not terminate, but the association shall be a
3002 continuation of the entity so converted. All property of the converting association, including its
3003 rights, titles, and interests in and to all property of whatever kind, whether real, personal, or

3004 mixed, things in action, and every right, privilege, interest, and asset of any conceivable value
3005 or benefit then existing, or pertaining to it, or which would inure to it, immediately, by
3006 operation of law and without any conveyance or transfer and without any further act or deed,
3007 shall vest in and remain the property of the converted association, and the same shall have,
3008 hold, and enjoy that property in its own right as fully and to the same extent as that property
3009 was possessed, held, and enjoyed by the converting association, and the converted association
3010 shall continue to have and succeed to all the rights, obligations, and relations of the converting
3011 association. All pending actions and other judicial proceedings to which the converting
3012 association is a party [~~shall not be~~] are not abated or discontinued by reason of the conversion,
3013 but may be prosecuted to final judgment, order, or decree in the same manner as if the
3014 conversion had not been made, and the converted association may continue the actions in its
3015 new corporate name. Any judgment, order, or decree may be rendered for or against it which
3016 might have been rendered for or against the converting association before the conversion
3017 involved in the proceedings.

3018 (e) Upon the completion of a conversion to a federal association, the converted
3019 association shall cease to be supervised by the commissioner or by this state except as a federal
3020 association.

3021 Section 85. Section **7-7-14** is amended to read:

3022 **7-7-14. Bonding of directors, officers, employees, and collection agents.**

3023 Each director, officer, and employee of an association shall, before entering upon the
3024 performance of any duty, execute an individual bond with adequate corporate surety payable to
3025 the association as an indemnity for any loss the association may sustain of money or other
3026 property by or through any fraud, dishonesty, forgery or alteration, larceny, theft,
3027 embezzlement, robbery, burglary, hold-up, wrongful or unlawful abstraction, misapplication,
3028 misplacement, destruction or misappropriation, or any other dishonest or criminal act or
3029 omission by the director, officer, employee, or agent. An association which employs collection
3030 agents, who for any reason are not covered by a bond as hereinabove required, shall provide for
3031 the bonding of each such agent in an amount equal to at least twice the average monthly
3032 collection of the agent. No bond coverage will be required of any agent which is a financial
3033 institution insured by the Federal Deposit Insurance Corporation or other federal deposit
3034 insurance agency. In lieu of individual bonds, a blanket bond, protecting the association from

3035 loss through any such act or acts on the part of any such director, officer, or employee, may be
3036 obtained. A true copy of every such indemnity bond shall be on file at all times with the
3037 supervisor. Each bond shall provide that a cancellation of the bond either by the surety or by
3038 the insured [~~shall not~~] does not become effective unless and until 10 days notice in writing first
3039 has been given to the supervisor, unless he has approved the cancellation earlier.

3040 Section 86. Section **7-7-15** is amended to read:

3041 **7-7-15. Fiduciary relationship of directors and officers to association --**
3042 **Disclosure requirements -- Prohibitions -- Violations as misdemeanors.**

3043 (1) (a) Directors and officers occupy fiduciary relationships to the association of which
3044 they are directors or officers. No director or officer may engage or participate, directly or
3045 indirectly, in any business or transaction conducted on behalf of or involving the association,
3046 which would result in a conflict of his own personal interests with those of the association
3047 which he serves, unless:

3048 (i) the business or transactions are conducted in good faith and are honest, fair, and
3049 reasonable to the association;

3050 (ii) a full disclosure of the business or transactions and the nature of the director's or
3051 officer's interest is made to the board of directors;

3052 (iii) the business or transactions are approved in good faith by the board of directors,
3053 any interested director abstaining; and

3054 (iv) the business or transactions do not represent a breach of the officer's or director's
3055 fiduciary duty and are not fraudulent, illegal, or ultra vires.

3056 (b) Without limitation by any of the specific provisions of this section, the supervisor
3057 may require the disclosure by directors, officers and employees of their personal interest, direct
3058 or indirect, in any business or transaction on behalf of or involving the association and of their
3059 control of or active participation in enterprises having activities related to the business of the
3060 association.

3061 (2) The following express restrictions governing the conduct of directors and officers
3062 of associations shall apply, but [~~shall not~~] may not be construed in any manner as excusing
3063 those persons from the observance of any other aspect of the general fiduciary duty owed by
3064 them to the association which they serve:

3065 (a) No officer or director of an association may, without the prior written approval of

3066 the commissioner, serve as a director or officer of another savings institution, the principal
3067 office of which is located in the same community as an office of the association, unless he
3068 served as director or officer of both institutions before the effective date of this act.

3069 (b) A director may not receive remuneration as a director, except reasonable fees for
3070 service as a director or for service as a member of a committee of directors. This subsection
3071 does not prohibit or in any way limit any right of a director who is also an officer, employee, or
3072 attorney for the association to receive compensation for service as an officer, employee, or
3073 attorney.

3074 (c) No director or officer may have any interest, directly or indirectly, in the proceeds
3075 of a loan or investment or of a purchase or sale made by the association, unless the loan,
3076 investment, purchase, or sale is authorized expressly by resolution of the board of directors,
3077 and unless the resolution is approved by vote of at least two-thirds of the directors authorized
3078 of the association, any interested director taking no part in the vote.

3079 (d) No director or officer may have any interest, direct or indirect, in the purchase at
3080 less than its face value of any evidence of a savings account, deposit or other indebtedness
3081 issued by the association.

3082 (e) An association or a director, officer, or employee of an association may not require,
3083 as a condition to the granting of any loan or the extension of any other service by the
3084 association, that the borrower or any other person undertake a contract of insurance or any
3085 other agreement or understanding with respect to the furnishing of any other goods or services,
3086 with any specific company, agency, or individual.

3087 (f) No officer or director acting as proxy for a member or stockholder of an association
3088 may exercise, transfer, or delegate the proxy vote or votes in consideration of a private benefit
3089 or advantage, direct or indirect, accruing to himself, nor may he surrender control or pass his
3090 office to any other for any consideration of a private benefit or advantage, direct or indirect.
3091 The voting rights of members and directors may not be the subject of sale, barter, exchange, or
3092 similar transaction, either directly or indirectly. Any officer or director who violates this
3093 subsection shall be held accountable to the association for any increment.

3094 (g) No director or officer may solicit, accept, or agree to accept, directly or indirectly,
3095 from any person other than the association any gratuity, compensation or other personal benefit
3096 for any action taken by the association or for endeavoring to procure any such action.

3097 (h) Any person violating any of the specific prohibitions set forth in Subsections (a)
3098 through (g) is guilty of a class C misdemeanor.

3099 Section 87. Section **7-7-17** is amended to read:

3100 **7-7-17. Indemnification of directors, officers, and employees.**

3101 A person who is made a party in or threatened by any action, suit or proceeding, judicial
3102 or administrative, civil or criminal, by reason of his or her being or having been a director,
3103 officer or employee of an association shall be indemnified or reimbursed by the association for
3104 reasonable expenses, including [~~but not limited to attorney's~~] attorney fees, actually incurred by
3105 him or her in connection with that action, suit or proceeding, instituted or threatened, except
3106 that no person need be so indemnified or reimbursed, and a person may be required to return
3107 any advancement or allowance for indemnification which may have been made by the
3108 association in advance of final disposition, in relation to such an action, suit or proceeding in
3109 which and to the extent that he finally is adjudicated to have been guilty of a breach of good
3110 faith, to have been negligent in the performance of his duties or to have committed an action or
3111 failed to perform a duty for which there is a common law or a statutory liability; though a
3112 person may be indemnified or reimbursed for: (1) amounts paid in compromise or settlement of
3113 any action, suit or proceeding, including reasonable expenses incurred in connection therewith,
3114 or (2) reasonable expenses including fines and penalties, incurred in connection with a criminal
3115 or civil action, suit or proceeding in which the person has been adjudicated guilty, negligent or
3116 liable, if it is determined by the board of directors that the person was acting in good faith and
3117 in what he believed to be the best interests of the association and without knowledge that the
3118 action was illegal, and if the indemnification or reimbursement is approved at an annual or
3119 special meeting of the members or stockholders by a majority of the votes eligible to be cast.
3120 Amounts paid to the association, whether pursuant to judgment or settlement, by any person
3121 within the meaning of this section [~~shall not~~] may not be indemnified or reimbursed in any
3122 case.

3123 Section 88. Section **7-7-19** is amended to read:

3124 **7-7-19. Record and accounting requirements -- Valuation of assets.**

3125 (1) Every association shall keep at the home office correct and complete books of
3126 accounts, membership or stockholder records, and minutes of the proceedings of members,
3127 stockholders, and directors. Complete records of all business transacted at the home office shall

3128 be maintained at the home office. Control records of all business transacted at each branch
3129 office or agency shall be maintained at the home office.

3130 (2) Each branch office shall keep detailed records of all transactions at that branch
3131 office and shall furnish full control records to the home office.

3132 (3) Each agent of an association shall prepare an original record of each business
3133 transaction of the association conducted by the agent and shall report promptly to the home
3134 office. Complete detailed permanent records of the transactions are not required to be
3135 maintained at the agency, but may be maintained at a branch or home office of the association.

3136 (4) Every association shall close its books at the close of business at least annually or
3137 more often if required for all associations by the commissioner.

3138 (5) No association by any system of accounting or any device of bookkeeping shall,
3139 either directly or indirectly, enter any of its assets upon its books in the name of any other
3140 person, partnership, association, or corporation or under any title or designation that is not
3141 fairly descriptive of the assets.

3142 (6) The commissioner, after a determination of value made in accordance with this
3143 chapter, may order that assets, individually or in the aggregate, to the extent that the assets are
3144 overvalued on an association's books, be charged off, or that a special reserve or reserves equal
3145 to the overvaluation be set up by transfers from undivided profits or reserves.

3146 (7) An association [~~shall not~~] may not carry any real estate on its books at a sum in
3147 excess of the total amount invested by the association on account of that real estate, including
3148 advances, costs, and improvements but excluding accrued but uncollected interest.

3149 (8) Every association shall have appraised each parcel of real estate acquired at the
3150 time of acquisition. The report of each such appraisal shall be submitted in writing to the board
3151 of directors and shall be kept in the records of the association.

3152 (9) Every association shall maintain complete loan and investment records in a manner
3153 satisfactory to the commissioner. Each record of a real estate loan or other secured loan or
3154 investment shall contain documentation to the satisfaction of the commissioner of the type,
3155 adequacy and complexion of the security.

3156 (10) Every mutual association shall maintain membership records, which shall show
3157 the name and address of the members, the status of each member as a savings account holder,
3158 or an obligor, or a savings account holder and obligor, and the date membership began. In the

3159 case of a member holding a savings account, the association shall obtain a savings account
3160 contract, which may be a signature card, containing the signature of each holder of the account
3161 or his duly authorized representative, and shall preserve the contract in the records of the
3162 association.

3163 (11) Every capital stock association shall maintain a register of investors and stock
3164 transfers which shows the name and address of the stockholder, the type of stock and voting
3165 status of the stockholder, and the date each share of stock was acquired.

3166 (12) Every association shall use such forms and keep such records, including without
3167 limitation, those of its members or stockholders, as the commissioner may from time to time
3168 require.

3169 Section 89. Section **7-7-21** is amended to read:

3170 **7-7-21. Powers of associations.**

3171 (1) Every association incorporated or operating under the provisions of this chapter
3172 shall have all the powers enumerated, authorized, and permitted by this chapter and such other
3173 rights, privileges, and powers as may be incidental to or reasonably necessary or appropriate for
3174 the accomplishment of the objects and purposes of the association.

3175 (2) Among others, and except as otherwise limited by the provisions of this chapter,
3176 every association shall have the following powers:

3177 (a) to have perpetual existence, to adopt and use a corporate seal, which may be affixed
3178 by imprint, facsimile, or otherwise; and to adopt and amend bylaws as provided in this chapter;

3179 (b) to sue, be sued, complain, and defend in any court;

3180 (c) (i) to acquire, hold, sell, dispose of, and convey real and personal estate consistent
3181 with the association's objects and powers;

3182 (ii) to mortgage, pledge, or lease any real or personal estate; and

3183 (iii) to take property by gift, devise, or bequest;

3184 (d) if and when an association is not a member of a federal home loan bank, to borrow
3185 from sources, individual or corporate, in addition to its savings liability and other accounts, not
3186 more than an aggregate amount equal to 25% of its assets on the date of borrowing. If and
3187 when an association is a member of a federal home loan bank, to borrow from sources,
3188 individual or corporate, in addition to its savings liability and other accounts, not more than an
3189 aggregate amount equal to 60% of its assets on the date of borrowing or a greater amount

3190 approved by the commissioner to insure parity between state chartered savings and loan
3191 associations and federal associations. It is not a violation of this section if the borrowing limits
3192 are exceeded because of a subsequent reduction in assets of an association. Any association
3193 may borrow such additional sums as the commissioner may approve in writing. All such loans
3194 and advances may be secured by property of the association, may be made with convertible
3195 features, and may be evidenced by such notes, bonds, debentures, commercial paper, bankers'
3196 acceptances, or other obligations or securities (except capital stock and capital certificates) as
3197 may be generally authorized by the commissioner, except that no authorization shall be
3198 required for securities guaranteed under Section 306(g) of the National Housing Act of 1934;

3199 (e) to issue and sell, directly or through underwriters, capital certificates containing a
3200 stated maturity date which represent nonwithdrawable capital contributions, and constitute part
3201 of the reserves and net worth of the association. These certificates shall have no voting rights,
3202 shall be subordinate to all savings accounts, debt obligations, and claims of creditors of the
3203 association and shall constitute a claim in liquidation against any reserves, surplus, and other
3204 net worth accounts remaining after the payment in full of all savings accounts, debt obligations,
3205 and claims of creditors. The capital certificates shall be entitled to the payment of earnings
3206 prior to the allocation of any income to surplus or other net worth accounts of the association
3207 and may be issued with a fixed rate of earnings or with a prior claim to distribution of a
3208 specified percentage of any net income remaining after required allocations to reserves, or a
3209 combination thereof. Losses shall be charged against capital certificates only after reserves,
3210 surplus, and other net worth accounts have been exhausted;

3211 (f) (i) to appoint and remove such officers, agents, and employees as its business shall
3212 require and to provide them suitable compensation;

3213 (ii) to enter into employment contracts not to exceed 10 years without the consent of
3214 the supervisor;

3215 (iii) to provide for life, health, and casualty insurance for officers and employees;

3216 (iv) to adopt and operate reasonable bonus and incentive plans and retirement benefits
3217 for those officers and employees; and

3218 (v) to provide for indemnification of its officers, employees, and directors as required
3219 or permitted in this chapter, whether by insurance or otherwise;

3220 (g) to obtain and maintain insurance of its deposits by the Federal Deposit Insurance

3221 Corporation or other federal deposit insurance agency;

3222 (h) to qualify as and become a member of any federal home loan bank;

3223 (i) (i) to act as fiscal agent of the United States, and, when so designated by the

3224 Secretary of the Treasury, to perform, under such regulations as the Secretary of the Treasury

3225 may prescribe, all such reasonable duties as fiscal agent of the United States as the Secretary of

3226 the Treasury may require; and

3227 (ii) to act as agent for any instrumentality of the United States; and when so designated

3228 by the state treasurer or other appropriate state officer, to act as agent of that state or any

3229 instrumentality of that state;

3230 (j) to become a member of, deal with, maintain reserves or deposits with, or make

3231 reasonable payments or contributions to any organization or instrumentality, government or

3232 private, to the extent that the organization or instrumentality assists in furthering or facilitating

3233 the association's purposes, powers, services, or community responsibilities, and to comply with

3234 any reasonable requirements or conditions of eligibility;

3235 (k) to act as depository for receipt of payments of federal or state taxes and loan funds,

3236 and satisfy any federal or state statutory or regulatory requirements in connection therewith,

3237 including:

3238 (i) pledging of assets as collateral;

3239 (ii) payment of earnings at prescribed rates; and

3240 (iii) notwithstanding any other provision of this chapter, issuing the account subject to

3241 rights of immediate withdrawal;

3242 (l) to sell or assign any loan, including any participating interest therein, at any time;

3243 (m) to service loans and investments for others;

3244 (n) to act and receive compensation as trustee of any trust created or organized in the

3245 United States and forming a part of a stock bonus, pension, or profit-sharing plan which

3246 qualifies or qualified for specific tax treatment under Section 401 of the Internal Revenue Code

3247 of 1986, and to act as trustee or custodian of an individual retirement account within the

3248 meaning of Section 408 of that code. All funds held in fiduciary capacity by any such

3249 association under the authority of this subsection may be commingled and consolidated for

3250 appropriate purposes of investment, so long as records reflecting each separate beneficial

3251 interest are maintained by the fiduciary, unless that responsibility is lawfully assumed by

3252 another appropriate party;

3253 (o) to act as assignee, agent, receiver, trustee, executor, administrator, conservator,
3254 guardian, custodian, personal representative, or in any other fiduciary capacity, and to execute
3255 trusts of every description not inconsistent with law, and to receive reasonable compensation
3256 therefor. An association exercising trust or other fiduciary powers under this subsection shall
3257 have all powers, privileges, and immunities granted in Chapter 5. Funds held by an association
3258 as fiduciary under this subsection may be commingled and consolidated for appropriate
3259 purposes of investment, provided that records reflecting the separate interest of each
3260 beneficiary shall be maintained by the fiduciary, unless that responsibility is lawfully assumed
3261 by another appropriate party. Trust funds available for investment shall be invested at the time
3262 and in the manner specified by the agreement, instrument, or order creating or defining the
3263 fiduciary estate, but may be invested in savings accounts of the associations, unless the
3264 instrument, agreement, or order prohibits such investment;

3265 (p) subject to Chapter 16a, Automated Teller Machine Act, to engage in financial
3266 transactions effected by electronic means;

3267 (q) to maintain and let safes, boxes, or other receptacles or premises for the
3268 safekeeping of personal property upon such terms and conditions as may be agreed upon;

3269 (r) to offer money orders, travel checks, and similar instruments for its own account or
3270 as agent for any organization empowered to sell such instruments through agents within this
3271 state;

3272 (s) to act as agent or escrowee for others;

3273 (t) to declare and pay dividends on capital stock in cash or property out of the
3274 unreserved and unrestricted earned surplus of the association, or in its own shares, from time to
3275 time, except when there is a deficiency in the reserves or net worth of the association under
3276 rules issued by the commissioner under Section 7-7-20, and except when the association is in
3277 an impaired condition or when the payment thereof would cause the association to be in an
3278 impaired condition. A split-up or division of the issued shares of capital stock into a greater
3279 number of shares without increasing the stated capital of the association is authorized, and
3280 ~~shall not~~ may not be construed to be a dividend within the meaning of this section;

3281 (u) to acquire deposits from any individual or entity and pay earnings thereon, to offer
3282 interest bearing or noninterest bearing accounts from which withdrawals may be made by

3283 negotiable or transferable instruments for the purpose of making transfers to third parties, and
3284 to lend, and commit to lend, extend credit, and invest its funds as provided for in this chapter;
3285 and

3286 (v) to engage in other activities, exercise other powers and to enjoy other rights,
3287 privileges, benefits, and immunities authorized by rules of the commissioner and, particularly,
3288 under the authority given to the commissioner in Subsection 7-1-301(3), which authority shall
3289 be exercised to prevent competitive disparities between associations chartered in this state and
3290 federal associations.

3291 Section 90. Section **7-7-26** is amended to read:

3292 **7-7-26. Redemption of savings accounts.**

3293 At any time funds are on hand for the purpose, the association may redeem by lot or
3294 otherwise, as the board of directors may determine, all or any part of any of its savings
3295 accounts on an earnings date by giving 30 days' notice by registered or certified mail addressed
3296 to each affected account holder at his last address as recorded on the books of the association.
3297 No association shall redeem any of its savings accounts when the association is in an impaired
3298 condition or when it has applications for withdrawal which have been on file more than 14
3299 days and have not been paid. The redemption price of savings accounts redeemed shall be the
3300 full value of the account redeemed, as determined by the board of directors, but in no event
3301 shall the redemption price be less than the withdrawal value. If the notice of redemption has
3302 been duly given and if on or before the redemption date the funds necessary for redemption
3303 have been set aside so as to be and continue to be available for redemption, earnings upon the
3304 accounts called for redemption shall cease to accrue from and after the earnings date specified
3305 as the redemption date, and all rights with respect to these accounts shall forthwith, after the
3306 redemption date, terminate, excepting only any right of the account holder of record to receive
3307 the redemption price without interest. All savings account books or certificates evidencing
3308 former savings accounts which have been validly called for redemption [~~must~~] shall be
3309 tendered for payment within seven years from the date of redemption designated in the
3310 redemption notice, otherwise they shall be cancelled and the funds set aside for those accounts
3311 presumed abandoned, and they shall be disposed of in accordance with the provisions of Title
3312 67, Chapter 4a, Unclaimed Property Act.

3313 Section 91. Section **7-7-29** is amended to read:

3314 **7-7-29. Investment in service organizations, business development credit**
3315 **corporations, and service corporations.**

3316 (1) An association may invest:

3317 (a) in capital stock, obligations, or other securities of service organizations, and of
3318 business development credit corporations incorporated in this state, provided that the aggregate
3319 of those investments [~~shall not~~] may not exceed 10% of its assets; or

3320 (b) in capital stock, obligations, or other securities of any service corporation, provided
3321 that the aggregate of those investments [~~shall not~~] may not exceed 10% of its assets.

3322 (2) The commissioner may, by regulation, allow investments in excess of those
3323 permitted by this section, if he finds that such investments promote the viability and stability of
3324 the associations of this state.

3325 Section 92. Section **7-7-30** is amended to read:

3326 **7-7-30. Investment in property used in conduct of business -- Investment in**
3327 **manner not prohibited by law.**

3328 (1) An association may invest in such real property or interest therein as the directors
3329 may deem necessary or convenient for the conduct of the business of the association, which for
3330 the purposes of this chapter may include the stock of a wholly owned subsidiary corporation
3331 having as its exclusive activity the ownership and management of such property or interests,
3332 but the amount so invested [~~shall not~~] may not exceed 10% of the assets of the association,
3333 except that the commissioner may authorize a greater amount to be so invested if he finds that
3334 the investments promote the viability and stability of the associations of this state. An
3335 association may invest a reasonable amount in property such as furniture, fixtures, and
3336 equipment for use in carrying on its own business.

3337 (2) Every association may invest its assets in a manner not expressly prohibited by law
3338 if the investments are made in the exercise of the judgment and care under the circumstances
3339 then prevailing which men of prudence, discretion, and intelligence exercise in the
3340 management of their own affairs not in regard to speculation but in regard to the permanent
3341 disposition of their funds, considering the probable income as well as the probable safety of
3342 their capital. The aggregate of investments held under this subsection and not permitted by any
3343 other section of this chapter may not exceed 5% of the assets of the association.

3344 Section 93. Section **7-7-32** is amended to read:

3345 **7-7-32. Agreements committing assets to lines of credit -- Stock ownership or**
3346 **affiliation with credit card companies.**

3347 An association may, subject to Section 7-7-33, commit its assets to lines of credit under
3348 credit agreements and credit card agreements with its credit card holders and with other credit
3349 card issuers, and pay and agree to pay obligations incurred in connection with those
3350 agreements, and become a member or stockholder of, or become otherwise affiliated with, any
3351 credit card corporation, association, or other issuer. The commissioner may, by rule, limit the
3352 percentage of assets that may be invested in such lines of credit, but the limitation [~~shall not~~
3353 may not be more restrictive than that of the Office of Thrift Supervision or successor federal
3354 agency for federally chartered associations.

3355 Section 94. Section **7-7-33** is amended to read:

3356 **7-7-33. Investments in loans -- Payments to protect real estate loans -- Requiring**
3357 **borrower to pay taxes, insurance, and other charges on real estate in advance.**

3358 (1) An association may invest in or otherwise acquire loans and interests in loans,
3359 secured or unsecured, of any type, amount, and for any purpose, including[~~but not limited to~~]:

3360 (a) loans evidenced by a participation certificate, mortgage-backed bond or note, or
3361 mortgage pass-through certificate;

3362 (b) personal loans evidenced by promissory notes;

3363 (c) loans containing variable, renegotiable, graduated payment, shared appreciation, or
3364 other alternative payment features or any combinations of those features;

3365 (d) loans secured by the pledge of policies of life insurance;

3366 (e) loans which are callable upon transfer of the security therefor;

3367 (f) loans to financial institutions, brokers and dealers, secured by loans, obligations or
3368 investments in which the association could invest directly or unsecured loans to subsidiary

3369 corporations whether or not those corporations are controlled by the association;

3370 (g) loans for the payment of expenses of college or applied technology education;

3371 (h) loans on the security of its savings accounts and loans specifically related to
3372 negotiable order-of-withdrawal accounts;

3373 (i) loans secured by deeds of trust, mortgages or real estate contracts on interests in real
3374 property whether for the acquisition or improvement of homes or of real property or for other
3375 purposes, subject only to the conditions specified in Subsections (2) and (3); and

3376 (j) commercial loans to partnerships, corporations, or trusts which are operated for
3377 profit.

3378 (2) No association shall make a loan to one person if the sum of (a) the amount of the
3379 loan and (b) the total balance of all outstanding loans owed to the association and its service
3380 corporation subsidiaries by that person exceeds an amount equal to 15% of the association's
3381 equity capital.

3382 (3) No association shall make any loan authorized by this section unless it first has
3383 determined that the type, amount, purpose, and repayment provisions of the loan in relation to
3384 the borrower's resources and credit standing support the reasonable belief that the loan will be
3385 financially sound and will be repaid according to its terms, and that the loan is not otherwise
3386 unlawful.

3387 (4) (a) An association may pay taxes, assessments, ground rents, insurance premiums,
3388 and other similar charges for the protection of its real estate loans.

3389 (b) All such payments shall be added to the unpaid balance of the loan and shall be
3390 equally secured by the first lien on the property as the original amounts advanced.

3391 (c) An association may require life insurance to be assigned as additional collateral
3392 upon any real estate loan, and if it does so require, the association shall obtain a first lien upon
3393 the policy and may advance premiums thereon, and the premium advances shall be added to the
3394 unpaid balance of the loan and shall be equally secured by the first lien on the property as the
3395 original amount advanced.

3396 (5) (a) An association may require, subject to the provisions of the Interest on
3397 Mortgage Loan Reserve Accounts Act, Sections 7-17-1 through 7-17-10, that a borrower pay
3398 monthly in advance, in addition to interest or interest and principal payments, the equivalent of
3399 1/12 of the estimated annual taxes, assessments, insurance premiums, ground rents, and other
3400 charges upon the real estate securing a loan, or any of those charges, so as to enable the
3401 association to pay the charges as they become due from the funds so received.

3402 (b) The amount of the monthly payments may be increased or decreased to provide
3403 reasonably for the payment of the estimated annual taxes, assessments, insurance premiums,
3404 and other charges.

3405 (c) If the association advances its own funds for the purposes stated, that amount shall
3406 be secured by the association's mortgage or trust deed, if any, with the same priority as the

3407 original amount advanced under the mortgage or trust deed.

3408 Section 95. Section **7-7-43** is amended to read:

3409 **7-7-43. Previously incorporated associations.**

3410 (1) The name, rights, powers, privileges, and immunities of every association
3411 incorporated in this state before the effective date of this act shall be governed, controlled,
3412 construed, extended, limited, and determined by the provisions of this chapter to the same
3413 extent and effect as if the association had been incorporated under this chapter. The articles of
3414 incorporation, certificate of incorporation, or charter, however entitled, bylaws and
3415 constitution, or other rules of every such association made or existing before the effective date
3416 of this act are hereby modified, altered, and amended to conform to the provisions of this
3417 chapter, with or without the issuance or approval by the commissioner of conformed copies of
3418 such documents, and are declared void to the extent that they are inconsistent with the
3419 provisions of this chapter; except, that the obligations of any such pre-existing association,
3420 whether between the association and its members or stockholders, or any of them, or any other
3421 person or persons, and any valid contracts between the members or stockholders of any such
3422 association, or between the association and any other person or persons, existing at the time
3423 this act takes effect, ~~shall not~~ may not in any way be impaired by the provisions of this
3424 chapter. With these exceptions, every association incorporated before the effective date of this
3425 act shall possess the rights, powers, privileges, and immunities and shall be subject to the
3426 duties, liabilities, disabilities, and restrictions conferred and imposed by this chapter
3427 notwithstanding anything to the contrary in its certificate of authority, certificate of
3428 incorporation, bylaws, constitution, or rules.

3429 (2) All obligations to any association incorporated before the effective date of this act
3430 contracted before the effective date of this act shall be enforceable by it and in its name, and
3431 demands, claims, and rights of action against the association may be enforced against it as fully
3432 and completely as they could have been enforced in the absence of this chapter.

3433 Section 96. Section **7-9-5** is amended to read:

3434 **7-9-5. Powers of credit unions.**

3435 In addition to the powers specified elsewhere in this chapter and subject to any
3436 limitations specified elsewhere in this chapter, a credit union may:

3437 (1) make contracts;

- 3438 (2) sue and be sued;
- 3439 (3) acquire, lease, or hold fixed assets, including real property, furniture, fixtures, and
- 3440 equipment as the directors consider necessary or incidental to the operation and business of the
- 3441 credit union, but the value of the real property may not exceed 7% of credit union assets, unless
- 3442 approved by the commissioner;
- 3443 (4) pledge, hypothecate, sell, or otherwise dispose of real or personal property, either in
- 3444 whole or in part, necessary or incidental to its operation;
- 3445 (5) incur and pay necessary and incidental operating expenses;
- 3446 (6) require an entrance or membership fee;
- 3447 (7) receive the funds of its members in payment for:
- 3448 (a) shares;
- 3449 (b) share certificates;
- 3450 (c) deposits;
- 3451 (d) deposit certificates;
- 3452 (e) share drafts;
- 3453 (f) NOW accounts; and
- 3454 (g) other instruments;
- 3455 (8) allow withdrawal of shares and deposits, as requested by a member orally to a third
- 3456 party with prior authorization in writing, including~~[-, but not limited to,]~~ drafts drawn on the
- 3457 credit union for payment to the member or any third party, in accordance with the procedures
- 3458 established by the board of directors, including~~[-, but not limited to,]~~ drafts, third-party
- 3459 instruments, and other transaction instruments, as provided in the bylaws;
- 3460 (9) charge fees for its services;
- 3461 (10) extend credit to its members, at rates established in accordance with the bylaws or
- 3462 by the board of directors;
- 3463 (11) extend credit secured by real estate;
- 3464 (12) (a) subject to Subsection (12)(b), make co-lending arrangements, including loan
- 3465 participation arrangements, in accordance with written policies of the board of directors with
- 3466 one or more:
- 3467 (i) other credit unions;
- 3468 (ii) credit union service organizations; or

- 3469 (iii) other financial organizations; and
- 3470 (b) make co-lending arrangements, including loan participation arrangements, in
- 3471 accordance with Subsection (12)(a) subject to the following:
- 3472 (i) the credit union or credit union service organization that originates a loan for which
- 3473 co-lending arrangements are made shall retain an interest of at least 10% of the loan;
- 3474 (ii) on or after May 5, 2003, the originating credit union or credit union service
- 3475 organization may sell to a credit union an interest in a co-lending arrangement that involves a
- 3476 member-business loan only if the person receiving the member-business loan is a member of
- 3477 the credit union to which the interest is sold;
- 3478 (iii) on or after May 5, 2003, the originating credit union or credit union service
- 3479 organization may sell to a credit union service organization an interest in a co-lending
- 3480 arrangement that involves a member-business loan only if the person receiving the
- 3481 member-business loan is a member of a credit union that holds an interest in the credit union
- 3482 service organization to which the interest is sold; and
- 3483 (iv) a nonexempt credit union may not originate, participate in, or obtain any interest in
- 3484 a co-lending arrangement, including a loan participation arrangement, in violation of Section
- 3485 7-9-58;
- 3486 (13) sell and pledge eligible obligations in accordance with written policies of the
- 3487 board of directors;
- 3488 (14) engage in activities and programs of the federal government or this state or any
- 3489 agency or political subdivision of the state, when approved by the board of directors and not
- 3490 inconsistent with this chapter;
- 3491 (15) act as fiscal agent for and receive payments on shares and deposits from the
- 3492 federal government, this state, or its agencies or political subdivisions not inconsistent with the
- 3493 laws of this state;
- 3494 (16) borrow money and issue evidence of indebtedness for a loan or loans for
- 3495 temporary purposes in the usual course of its operations;
- 3496 (17) discount and sell notes and obligations;
- 3497 (18) sell all or any portion of its assets to another credit union or purchase all or any
- 3498 portion of the assets of another credit union;
- 3499 (19) invest funds as provided in this title and in its bylaws;

3500 (20) maintain deposits in insured depository institutions as provided in this title and in
3501 its bylaws;

3502 (21) (a) hold membership in corporate credit unions organized under this chapter or
3503 under other state or federal statutes; and

3504 (b) hold membership or equity interest in associations and organizations of credit
3505 unions, including credit union service organizations;

3506 (22) declare and pay dividends on shares, contract for and pay interest on deposits, and
3507 pay refunds of interest on loans as provided in this title and in its bylaws;

3508 (23) collect, receive, and disburse funds in connection with the sale of negotiable or
3509 nonnegotiable instruments and for other purposes that provide benefits or convenience to its
3510 members, as provided in this title and in its bylaws;

3511 (24) make donations for the members' welfare or for civic, charitable, scientific, or
3512 educational purposes as authorized by the board of directors or provided in its bylaws;

3513 (25) act as trustee of funds permitted by federal law to be deposited in a credit union as
3514 a deferred compensation or tax deferred device, including~~[-but not limited to,]~~ individual
3515 retirement accounts as defined by Section 408, Internal Revenue Code;

3516 (26) purchase reasonable accident and health insurance, including accidental death
3517 benefits, for directors and committee members through insurance companies licensed in this
3518 state as provided in its bylaws;

3519 (27) provide reasonable protection through insurance or other means to protect board
3520 members, committee members, and employees from liability arising out of consumer
3521 legislation [~~such as, but not limited to,~~] including truth-in-lending and equal credit laws and as
3522 provided in its bylaws;

3523 (28) reimburse directors and committee members for reasonable and necessary
3524 expenses incurred in the performance of their duties;

3525 (29) participate in systems which allow the transfer, withdrawal, or deposit of funds of
3526 credit unions or credit union members by automated or electronic means and hold membership
3527 in entities established to promote and effectuate these systems, if:

3528 (a) the participation is not inconsistent with the law and rules of the department; and

3529 (b) any credit union participating in any system notifies the department as provided by
3530 law;

- 3531 (30) issue credit cards and debit cards to allow members to obtain access to their
3532 shares, deposits, and extensions of credit;
- 3533 (31) provide any act necessary to obtain and maintain membership in the credit union;
- 3534 (32) exercise incidental powers necessary to carry out the purpose for which a credit
3535 union is organized;
- 3536 (33) undertake other activities relating to its purpose as its bylaws may provide;
- 3537 (34) engage in other activities, exercise other powers, and enjoy other rights,
3538 privileges, benefits, and immunities authorized by rules of the commissioner;
- 3539 (35) act as trustee, custodian, or administrator for Keogh plans, individual retirement
3540 accounts, credit union employee pension plans, and other employee benefit programs; and
- 3541 (36) advertise to the general public the products and services offered by the credit
3542 union if the advertisement prominently discloses that to use the products or services of the
3543 credit union a person is required to:
- 3544 (a) be eligible for membership in the credit union; and
3545 (b) become a member of the credit union.

3546 Section 97. Section **7-9-19** is amended to read:

3547 **7-9-19. Payments to expelled members -- Liability of member not relieved by**
3548 **expulsion.**

- 3549 (1) Except in the case of liquidation or dissolution, the amount paid in on shares or
3550 deposited by members who have been expelled shall be paid to them with all accrued interest,
3551 in the order of expulsion.
- 3552 (2) Payment shall be made only as funds become available.
- 3553 (3) All amounts due the credit union by the expelled member shall be deducted by the
3554 credit union before any amounts are paid to the expelled member.
- 3555 (4) Expulsion [~~shall not~~] does not relieve a member from any liability to the credit
3556 union.

3557 Section 98. Section **7-9-32** is amended to read:

3558 **7-9-32. Joint accounts -- Accounts providing for payment to designated person on**
3559 **death of owner or owners.**

- 3560 (1) If a deposit or share account is opened in any credit union in the name of two or
3561 more persons, whether minor or adult, in such form that the money in the account is payable to

3562 the survivor or survivors, the account and all additions to it are considered held by these
3563 persons as joint tenants or owners.

3564 (2) The money in a joint account may be paid to or on the receipt or withdrawal order
3565 of any one of the joint owners during their lifetimes or to or on receipt of withdrawal order of
3566 any one of the survivors of them after the death of any one or more of them upon presentation
3567 of the pass or account book or other evidence of ownership as required by the bylaws of the
3568 credit union. The opening of the account in such form shall, in the absence of fraud, undue
3569 influence, or legal proof of other intent, be conclusive evidence in any action or proceedings
3570 concerning said account of the intention of the parties to the account to vest title to such
3571 account and the additions thereto in such survivor and survivors.

3572 (3) By written instructions given to the credit union by all parties to the account, the
3573 signature of more than one of such persons during their lifetime or of more than one of the
3574 survivors after the death of any one of them may be required on a receipt or withdrawal order,
3575 in which case the credit union shall pay the moneys in the account only in accordance with
3576 such instructions, but no such instructions shall limit the right of the survivor or survivors to
3577 receive the money in the account.

3578 (4) Payment of all or part of the money in a joint account as provided in Subsections
3579 (2) and (3) shall discharge the credit union from liability with respect to the money paid prior
3580 to receipt by the credit union of a written notice from any one of the joint owners directing the
3581 credit union not to permit withdrawals in accordance with the terms of the account or the
3582 instructions. After receipt of such notice a credit union may refuse, without incurring liability,
3583 to honor any receipt or withdrawal on the account pending determination of the rights of the
3584 parties. No credit union paying any survivor shall be liable for any estate, inheritance, or
3585 succession taxes.

3586 (5) The pledge to a credit union of all or part of a share account in joint tenancy or
3587 ownership signed by that person or those persons who are authorized in writing to make
3588 withdrawals from the account shall, unless the terms of the share account provide specifically
3589 to the contrary, be a valid pledge and transfer to the credit union of that part of the account
3590 pledged, and ~~shall not~~ does not operate to sever or terminate the joint and surviving
3591 ownership quality of all or any part of the account.

3592 (6) Any credit union may issue share or deposit accounts in the name of one or more

3593 persons with the provision that upon the death of the owner or owners thereof the proceeds
3594 shall be the property of the person or persons designated by the owner or owners and shown by
3595 the records of such credit union, but such proceeds shall be subject to the debts of the decedent
3596 and the payment of Utah inheritance tax, if any. However, upon the receipt of acquittance of
3597 the person so designated or six months having elapsed from the date of death and no claim on
3598 the account having been made for taxes, the credit union may make payment to the persons
3599 designated by the deceased owner or owners and having done so is discharged from further
3600 obligation and relieved from all further liability for payment made under this subsection.

3601 Section 99. Section **7-14-5** is amended to read:

3602 **7-14-5. Reciprocal exchange of information authorized.**

3603 One or more financial institutions may jointly agree with one or more other financial
3604 institutions for the reciprocal exchange of any information authorized to be reported by the
3605 provisions of this chapter. Such reciprocal exchange of information or the acts or refusals to act
3606 of one or more recipients because of such information [~~shall not~~] does not constitute a boycott
3607 or blacklist, [~~or~~] and is not otherwise [~~be~~] a basis for liability to any person on the part of any
3608 participant in the reciprocal exchange of information authorized by this chapter.

3609 Section 100. Section **7-17-4** is amended to read:

3610 **7-17-4. Options in lieu of reserve account -- Notice by lender -- Selection by**
3611 **borrower -- Noninterest-bearing reserve account -- Exemption.**

3612 (1) A lender not requiring the establishment and maintenance of a reserve account shall
3613 offer the borrower the following options:

3614 (a) the borrower may elect to maintain a noninterest-bearing reserve account to be
3615 serviced by the lender at no charge to the borrower; or

3616 (b) the borrower may manage the payment of insurance premiums, taxes and other
3617 charges for the borrower's own account.

3618 (2) (a) The lender shall give written notice of the options to the borrower:

3619 (i) with respect to real estate loans existing on July 1, 1979, by notice mailed not more
3620 than 30 days after July 1, 1979; or

3621 (ii) with respect to real estate loans made on or after July 1, 1979, by notice given at or
3622 prior to the closing of the loan.

3623 (b) The notice required by this Subsection (2) shall:

3624 (i) clearly describe the options; and

3625 (ii) state that:

3626 (A) a reserve account is not required by the lender;

3627 (B) the borrower is legally responsible for the payment of taxes, insurance premiums,
3628 and other charges; and

3629 (C) the notice is being given pursuant to this chapter.

3630 (c) For real estate loans in existence on July 1, 1979, the borrower [~~must~~] shall select
3631 one of the options prior to 60 days after July 1, 1979.

3632 (d) If no option is selected prior to 60 days after July 1, 1979, the borrower will be
3633 considered to have selected the option described in Subsection (1)(a), provided, however, that
3634 the borrower at a later time may select the option described in Subsection (1)(b).

3635 (e) For loans made on or after July 1, 1979, the borrower shall select one of the options
3636 at the closing.

3637 (f) If the borrower selects the option described in Subsection (1)(a), the lender may not
3638 be required to account for earnings, if any, on the account.

3639 (3) (a) Subject to Subsection (3)(b), if the borrower who selects the option described in
3640 Subsection (1)(b), or the borrower's successors or assigns, fails to pay the taxes, insurance
3641 premiums, or other charges pertaining to the property securing the loan prior to the delinquency
3642 date for such payments, the lender may require a reserve account without interest or other
3643 compensation for the use of the funds.

3644 (b) Notwithstanding Subsection (3)(a), the lender may not require a reserve account
3645 without interest or other compensation if:

3646 (i) the borrower pays any delinquency within 30 days; and

3647 (ii) the borrower has not previously been delinquent in payment of taxes, insurance
3648 premiums, or other charges.

3649 (4) This section does not apply to a loan made, renewed, or modified on or after May 6,
3650 2002.

3651 Section 101. Section **7-17-6** is amended to read:

3652 **7-17-6. Liability of lender for failure to pay taxes, insurance premiums, or other**
3653 **charges.**

3654 A lender administering a reserve account shall make timely payments of taxes,

3655 insurance premiums and other charges for which the account is established, if funds paid into
3656 the account by the borrower, his successors or assigns, are sufficient for the payments.
3657 Negligent failure to make the payments required for taxes, insurance premiums and other
3658 charges as they become due, from available funds in the reserve account, shall subject the
3659 lender to liability for all damages directly resulting from the failure; provided that this sentence
3660 [~~shall not~~] does not deprive the lender of the right to present any defense it may have in any
3661 action brought to enforce the liability. Failure of the borrower or his successors or assigns to
3662 deliver promptly to the lender all notices of tax assessments and insurance premiums or other
3663 charges, received by the borrower, his successors or assigns, shall relieve the lender from
3664 liability under this section.

3665 Section 102. Section 7-17-8 is amended to read:

3666 **7-17-8. Damages for lender's violation of act -- Limitations on recovery.**

3667 (1) Except as otherwise provided in this act, a lender who violates this act is liable to
3668 the borrower, his successors or assigns, for the actual damages suffered by the borrower, his
3669 assigns or successors, or \$100, whichever is greater. If an action is commenced, the prevailing
3670 party may be awarded reasonable attorney's fees as determined by the court.

3671 (2) A lender has no liability under this section if the court finds that written demand for
3672 payment of the claim of the borrower, his successors or assigns, was made on the lender not
3673 less than 30 days before commencement of the action and that the lender tendered to the
3674 borrower, his successors or assigns, prior to the commencement of the action, an amount not
3675 less than the damages awarded.

3676 (3) A lender may not be held liable under this section for a violation of this act if the
3677 lender shows that the violation was not intentional and resulted from a bona fide error
3678 notwithstanding the maintenance of procedures to avoid such errors.

3679 (4) A reserve account established or maintained in violation of this act is voidable, at
3680 the option of the borrower, his successors or assigns, at any time, but [~~shall not~~] does not
3681 otherwise affect the validity of the loan, the security interest in the real property or any other
3682 obligation of the borrower.

3683 (5) No action under this section may be brought more than one year after the date of
3684 the violation.

3685 Section 103. Section 7-17-9 is amended to read:

3686 **7-17-9. Actions on accounts established prior to 1979 -- Limitations on recovery.**

3687 (1) With respect to any reserve account established prior to July 1, 1979 and for which
3688 no legal action is pending as of January 1, 1979, no recovery shall be had in any action brought
3689 to require payment of interest on, or other compensation for, the use prior to July 1, 1979, of
3690 the funds in such account unless:

3691 (a) An agreement in writing expressly so providing was executed by the borrower and
3692 the lender; or

3693 (b) The borrower, or his successors or assigns, establishes by clear and convincing
3694 evidence an agreement between the parties that the lender would pay interest on or to otherwise
3695 compensate the borrower for the use of the funds in such account. Use in the loan documents of
3696 such words as "trust" or "pledge" alone [~~shall not~~] does not establish the intent of the parties;
3697 and

3698 (c) There is no federal law or regulation prohibiting the payment of interest on or
3699 otherwise compensating the borrower for the use of the funds in such an account.

3700 (2) No action seeking payment of interest on or other compensation for the use of the
3701 funds in any reserve account for any period prior to July 1, 1979, shall be brought after June 30,
3702 1981. Any recovery in any such action shall be limited to the four-year period immediately
3703 preceding the commencement of the action. No recovery shall be had in respect of any reserve
3704 account established prior to July 1, 1979 greater than if the provisions of Section 7-17-3 of this
3705 act were applicable to such accounts.

3706 (3) With respect to any reserve account established prior to July 1, 1979, an agreement
3707 in writing between the lender and the borrower, or his successors or assigns, that (a) the
3708 provisions of Section 7-17-3 of this act shall apply to all payments made subsequent to July 1,
3709 1979, or (b) the borrower may exercise, for the period subsequent to July 1, 1979, either of the
3710 options provided in Section 7-17-4 of this act, shall bar any recovery by the borrower, his
3711 successors or assigns, for interest on or other compensation for the use of the funds in such
3712 account for any period prior to July 1, 1979.

3713 Section 104. Section **7-18a-301** is amended to read:

3714 **7-18a-301. Powers of an agency, branch, or representative office of a foreign**
3715 **depository institution.**

3716 (1) Subject to the limitations set forth in Subsections (2) and (3), and notwithstanding

3717 any other law of this state, a foreign depository institution authorized by this state to transact
3718 business through an agency or branch shall transact business with the same rights, privileges,
3719 and powers as a Utah depository institution and shall be subject to all the same duties,
3720 restrictions, penalties, liabilities, conditions, and limitations that would apply under the laws of
3721 this state to a Utah depository institution.

3722 (2) The general rights, powers, and privileges of a foreign depository institution
3723 authorized by this state to transact business through an agency or branch set forth in Subsection
3724 (1) are limited to the following:

3725 (a) An agency may not accept any deposits from citizens or residents of the United
3726 States, other than credit balances that are incidental to or arise out of its exercise of other
3727 lawful powers, but it may accept deposits from persons who are neither citizens nor residents
3728 of the United States.

3729 (b) An agency may pay checks or loan money.

3730 (c) A branch operating in this state may not accept from citizens or residents of the
3731 United States deposits, other than credit balances that are incidental to or arise out of its
3732 exercise of other lawful powers, of less than \$100,000.

3733 (d) An agency or branch [~~shall not be~~] is not required to maintain federal deposit
3734 insurance.

3735 (e) After considering the applicable limitations on the retail deposit-taking powers and
3736 privileges of an agency or branch of a foreign depository institution, the commissioner may, by
3737 rule or order, modify the applicability to an agency or branch, of any law of this state that is
3738 generally applicable to insured depository institutions doing business in this state.

3739 (f) The commissioner may adopt such additional standards, conditions, or
3740 requirements, or modify the applicability of any existing standards, conditions, or
3741 requirements, by rule or order, as the commissioner may consider necessary to ensure the safety
3742 and soundness and the protection of creditors of the operations of an agency or branch of a
3743 foreign depository institution in this state.

3744 (3) A foreign depository institution authorized by this state to transact business through
3745 a representative office may only:

3746 (a) engage in loan production office activities authorized by Section 7-1-715;

3747 (b) solicit new business;

- 3748 (c) conduct research; or
- 3749 (d) perform administrative functions expressly permitted by rule or order.

3750 Section 105. Section **8-3-1** is amended to read:

3751 **8-3-1. Plats of cemeteries shall be recorded.**

3752 The executive officers of organizations and all individual owners in control of
3753 cemeteries, offering burial lots for sale in any county, shall file and cause to be recorded in the
3754 office of the county recorder of the county within which such cemeteries are situated an
3755 accurate plat thereof, which shall clearly show the sections of burial lots which have been
3756 disposed of and the names of the persons owning or holding the same, and the sections of
3757 burial lots held for disposal; and thereafter such executive officers or owners shall file
3758 additional plats of any additions to such cemeteries before offering for sale any burial lots
3759 therein. County recorders [~~shall not~~] may not collect any fees for filing and recording such
3760 original plats.

3761 Section 106. Section **9-3-407** is amended to read:

3762 **9-3-407. Authority -- Powers.**

3763 (1) (a) The authority shall create, operate, and maintain a center that shall promote the
3764 purposes described in Section 9-3-402.

3765 (b) The center shall:

3766 (i) have an extensive outreach program that serves all regions of the state; and

3767 (ii) collaborate and coordinate with education, arts, technology, and engineering
3768 entities, including schools and industries.

3769 (2) The authority has perpetual succession as a body politic and corporate and may:

3770 (a) adopt, amend, and repeal rules, policies, and procedures for the regulation of its
3771 affairs and the conduct of its business;

3772 (b) sue and be sued in its own name;

3773 (c) maintain an office at any place or places within this state it may designate;

3774 (d) adopt, amend, and repeal bylaws and rules, not inconsistent with this part, to carry
3775 into effect the powers and purposes of the authority and the conduct of its business;

3776 (e) purchase, lease, sell, and otherwise dispose of property and rights-of-way;

3777 (f) employ experts, advisory groups, and other professionals it considers necessary;

3778 (g) employ and retain independent legal counsel;

3779 (h) make and execute contracts and all other instruments necessary or convenient for
3780 the performance of its duties and the exercise of its duties under this part to create, operate, and
3781 maintain a Science Center in Utah;

3782 (i) procure insurance for liability and against any loss in connection with its property
3783 and other assets in amounts and from insurers it considers desirable;

3784 (j) borrow money, receive appropriation from the Legislature, and receive other public
3785 moneys and accept aid or contributions from any source of money, property, labor, or other
3786 things of value to be held, used, and applied to carry out the purposes of this part subject to the
3787 conditions upon which the grants and contributions are made, including[~~but not limited to~~];
3788 gifts or grants from any department, agency, or instrumentality of the United States or of this
3789 state for any purpose consistent with this part;

3790 (k) enter into agreements with any department, agency, or instrumentality or political
3791 subdivision of the United States or this state for the purpose of providing for the creation,
3792 operation, and maintenance of a Science Center in Utah; and

3793 (l) to do any act necessary or convenient to the exercise of the powers granted by this
3794 part.

3795 (3) All monies received by the authority under Subsection (2)(j) and from any other
3796 source shall be for the exclusive use of the authority to create, operate, maintain, improve, and
3797 provide for a Science Center in Utah. The monies received by the authority may not be used for
3798 any other purpose or by any other entity.

3799 Section 107. Section **9-4-301** is amended to read:

3800 **9-4-301. Legislative intent -- Purpose and policy.**

3801 (1) It is the intent of the Legislature to make available funds received by the state from
3802 federal mineral lease revenues under Section 59-21-2, bonus payments on federal oil shale
3803 lease tracts U-A and U-B, and all other bonus payments on federal mineral leases to be used for
3804 the alleviation of social, economic, and public finance impacts resulting from the development
3805 of natural resources in this state, subject to the limitations provided for in Section 35 of the
3806 Mineral Leasing Act of 1920 (41 Stat. 450, 30 U.S.C. Sec. 191).

3807 (2) The purpose of this part is to maximize the long term benefit of funds derived from
3808 these lease revenues and bonus payments by fostering funding mechanisms which will,
3809 consistent with sound financial practices, result in the greatest use of financial resources for the

3810 greatest number of citizens of this state, with priority given to those communities designated as
3811 impacted by the development of natural resources covered by the Mineral Leasing Act.

3812 (3) The policy of this state is to promote cooperation and coordination between the
3813 state and its agencies and political subdivisions with individuals, firms, and business
3814 organizations engaged in the development of the natural resources of this state. The purpose of
3815 such efforts [~~should~~] include private sector participation, financial and otherwise, in the
3816 alleviation of impacts associated with resources development activities.

3817 Section 108. Section **9-4-602** is amended to read:

3818 **9-4-602. Definitions.**

3819 As used in this part:

3820 (1) "Area of operation" means:

3821 (a) in the case of an authority of a city, the city, except that the area of operation of an
3822 authority of any city does not include any area that lies within the territorial boundaries of some
3823 other city; or

3824 (b) in the case of an authority of a county, all of the county for which it is created
3825 except, that a county authority may not undertake any project within the boundaries of any city
3826 unless a resolution has been adopted by the governing body of the city (and by any authority
3827 which shall have been theretofore established and authorized to exercise its powers in the city)
3828 declaring that there is need for the county authority to exercise its powers within that city.

3829 (2) "Blighted area" means any area where dwellings predominate that, by reason of
3830 dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light, or sanitary
3831 facilities or any combination of these factors, are detrimental to safety, health, and morals.

3832 (3) "Bonds" means any bonds, notes, interim certificates, debentures, or other
3833 obligations issued by an authority pursuant to this part.

3834 (4) "City" means any city or town in the state.

3835 (5) "Clerk" means the city clerk or the county clerk, or the officer charged with the
3836 duties customarily imposed on the clerk.

3837 (6) "County" means any county in the state.

3838 (7) "Elderly" means a person who meets the age, disability, or other conditions
3839 established by regulation of the authority.

3840 (8) "Federal government" includes the United States of America, the Department of

3841 Housing and Urban Development, or any other agency or instrumentality, corporate or
3842 otherwise, of the United States.

3843 (9) "Governing body" means, in the case of a city, the council or other body of the city
3844 in which is vested legislative authority customarily imposed on the city council, and in the case
3845 of a county, the board of county commissioners.

3846 (10) "Housing authority" or "authority" means any public body corporate and politic
3847 created by this part.

3848 (11) (a) "Housing project" or "project" means any work or undertaking, on contiguous
3849 or noncontiguous sites to:

3850 (i) demolish, clear, or remove buildings from any blighted area;

3851 (ii) provide or assist in providing decent, safe, and sanitary urban or rural dwellings,
3852 apartments, or other living accommodations for persons of medium and low income by any
3853 suitable methods, including [~~but not limited to~~] rental, sale of individual units in single or
3854 multifamily structures under conventional condominium, cooperative sales contract,
3855 lease-purchase agreement, loans, or subsidizing of rentals or charges; or

3856 (iii) accomplish a combination of the foregoing.

3857 (b) "Housing project" includes:

3858 (i) buildings, land, equipment, facilities, and other real or personal property for
3859 necessary, convenient, or desirable appurtenances;

3860 (ii) streets, sewers, water service, utilities, parks, site preparation and landscaping;

3861 (iii) facilities for administrative, community, health, recreational, welfare, or other
3862 purposes;

3863 (iv) the planning of the buildings and other improvements;

3864 (v) the acquisition of property or any interest therein;

3865 (vi) the demolition of existing structures;

3866 (vii) the construction, reconstruction, rehabilitation, alteration, or repair of the
3867 improvements and all other work in connection with them; and

3868 (viii) all other real and personal property and all tangible or intangible assets held or
3869 used in connection with the housing project.

3870 (12) "Major disaster" means any flood, drought, fire, hurricane, earthquake, storm, or
3871 other catastrophe which in the determination of the governing body is of sufficient severity and

3872 magnitude to warrant the use of available resources of the federal, state, and local governments
3873 to alleviate the damage, hardship, or suffering caused.

3874 (13) "Mayor" means the mayor of the city or the officer charged with the duties
3875 customarily imposed on the mayor or executive head of a city.

3876 (14) "Obligee of an authority" or "obligee" includes any bondholder, agent or trustee
3877 for any bondholder, any lessor demising to the authority used in connection with a project, any
3878 assignee or assignees of the lessor's interest in whole or in part, and the federal government
3879 when it is a party to any contract with the authority.

3880 (15) "Persons of medium and low income" mean persons or families who, as
3881 determined by the authority undertaking a project, cannot afford to pay the amounts at which
3882 private enterprise, unaided by appropriate assistance, is providing a substantial supply of
3883 decent, safe and sanitary housing.

3884 (16) "Person with a disability" means a person with any disability as defined by and
3885 covered under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102.

3886 (17) "Public body" means any city, county or municipal corporation, commission,
3887 district, authority, agency, subdivision, or other body of any of the foregoing.

3888 (18) "Real property" includes all lands, improvements, and fixtures on them, property
3889 of any nature appurtenant to them or used in connection with them, and every estate, interest,
3890 and right, legal or equitable, including terms for years.

3891 Section 109. Section **9-4-703** is amended to read:

3892 **9-4-703. Housing loan fund board -- Duties -- Expenses.**

3893 (1) There is created the Olene Walker Housing Loan Fund Board.

3894 (2) The board shall be composed of 11 voting members.

3895 (a) The governor shall appoint the following members to four-year terms:

3896 (i) two members from local governments;

3897 (ii) two members from the mortgage lending community;

3898 (iii) one member from real estate sales interests;

3899 (iv) one member from home builders interests;

3900 (v) one member from rental housing interests;

3901 (vi) one member from housing advocacy interests;

3902 (vii) one member of the manufactured housing interest; and

- 3903 (viii) two members of the general public.
- 3904 (b) The director or his designee shall serve as the secretary of the committee.
- 3905 (c) The members of the board shall annually elect a chair from among the voting
3906 membership of the board.
- 3907 (3) (a) Notwithstanding the requirements of Subsection (2), the governor shall, at the
3908 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
3909 board members are staggered so that approximately half of the board is appointed every two
3910 years.
- 3911 (b) When a vacancy occurs in the membership for any reason, the replacement shall be
3912 appointed for the unexpired term.
- 3913 (4) (a) The board shall:
- 3914 (i) meet regularly, at least quarterly, on dates fixed by the board;
- 3915 (ii) keep minutes of its meetings; and
- 3916 (iii) comply with the procedures and requirements of Title 52, Chapter 4, Open and
3917 Public Meetings Act.
- 3918 (b) Seven members of the board constitute a quorum, and the governor, the chair, or a
3919 majority of the board may call a meeting of the board.
- 3920 (5) The board shall:
- 3921 (a) review the housing needs in the state;
- 3922 (b) determine the relevant operational aspects of any grant, loan, or revenue collection
3923 program established under the authority of this chapter;
- 3924 (c) determine the means to implement the policies and goals of this chapter;
- 3925 (d) [~~determine~~] select specific projects [~~that the board considers should~~] to receive
3926 grant or loan moneys; and
- 3927 (e) determine how fund moneys shall be allocated and distributed.
- 3928 (6) (a) (i) Members who are not government employees shall receive no compensation
3929 or benefits for their services, but may receive per diem and expenses incurred in the
3930 performance of the member's official duties at the rates established by the Division of Finance
3931 under Sections 63A-3-106 and 63A-3-107.
- 3932 (ii) Members may decline to receive per diem and expenses for their service.
- 3933 (b) (i) State government employee members who do not receive salary, per diem, or

3934 expenses from their agency for their service may receive per diem and expenses incurred in the
3935 performance of their official duties from the board at the rates established by the Division of
3936 Finance under Sections 63A-3-106 and 63A-3-107.

3937 (ii) State government employee members may decline to receive per diem and
3938 expenses for their service.

3939 (c) (i) Local government members who do not receive salary, per diem, or expenses
3940 from the entity that they represent for their service may receive per diem and expenses incurred
3941 in the performance of their official duties at the rates established by the Division of Finance
3942 under Sections 63A-3-106 and 63A-3-107.

3943 (ii) Local government members may decline to receive per diem and expenses for their
3944 service.

3945 Section 110. Section **9-4-914** is amended to read:

3946 **9-4-914. Capital reserve funds -- Capital reserve fund requirement --**
3947 **Establishment of other funds.**

3948 (1) (a) (i) The corporation may create and establish one or more reserve funds, herein
3949 referred to as "capital reserve funds", from:

3950 (A) any proceeds of sale of notes or bonds, to the extent provided in the resolution or
3951 resolutions of the corporation authorizing the issuance thereof;

3952 (B) any monies appropriated and made available by the state for the purpose of the
3953 funds;

3954 (C) any monies directed by the corporation to be transferred to the funds; and

3955 (D) any other monies which may be made available to the corporation for the purpose
3956 of the funds from any other source or sources.

3957 (ii) All monies held in any capital reserve fund shall be used, as required, solely for the
3958 payment of the principal of bonds or of the sinking fund payments with respect to the bonds,
3959 the purchase or redemption of bonds, the payment of interest on bonds, or the payment of any
3960 redemption premium required to be paid when the bonds are redeemed prior to maturity.

3961 (b) (i) Monies in any capital reserve fund may not be withdrawn from the fund at any
3962 time in an amount as would reduce the level of monies in the fund to less than the capital
3963 reserve fund requirement, except for the purpose of paying principal and redemption price of
3964 and interest on bonds and the sinking fund payments, as the payments become due and for the

3965 payment of which other monies of the corporation are not available.

3966 (ii) Any income or interest earned by the investment of monies held in any fund may be
3967 transferred by the corporation to other funds or accounts of the corporation to the extent that
3968 the transfer does not reduce the amount of the fund to below the capital reserve fund
3969 requirement.

3970 (c) The corporation may provide by resolution or resolutions that it may not issue
3971 bonds under a resolution or resolutions at any time if upon issuance the amount in the capital
3972 reserve fund which will secure the bonds shall be less than the capital reserve fund
3973 requirement, unless the corporation at the time of issuance of the bonds shall deposit in the
3974 fund from the proceeds of the bonds to be so issued, or other sources, an amount which,
3975 together with the amount then in the fund, ~~[shall not]~~ may not be less than the capital reserve
3976 fund requirement.

3977 (d) In computing the amount of the capital reserve funds for the purpose of this part,
3978 securities in which all or a portion of the funds shall be invested shall be valued at par, cost, or
3979 by other method of valuation as the corporation may provide by resolution.

3980 (e) (i) "Capital reserve fund requirement" means, as of any particular date of
3981 computation, and with respect to any particular issue of bonds, an amount as the corporation
3982 may provide, or may have previously provided, by resolution, which amount may be in the
3983 form of a sum certain or a formula.

3984 (ii) In establishing reserves and setting capital reserve fund requirements, the
3985 corporation shall consider the following:

3986 (A) the qualifications for obtaining an investment grade rating from one or more
3987 nationally recognized bond rating agencies;

3988 (B) the economic feasibility and marketability of the bonds being issued, taking into
3989 account all security for the bonds, including the capital reserve fund; and

3990 (C) applicable requirements pertaining to reserve funds under federal and state income
3991 tax laws and regulations.

3992 (f) (i) To assure the continued operation and solvency of the corporation for carrying
3993 out of its corporate purposes, provision is made in Subsection (1)(b) for the accumulation in
3994 the capital reserve funds of an amount equal to the maximum capital reserve fund requirement.

3995 (ii) The president of the corporation shall annually, on or before December first, certify

3996 to the governor and to the director of finance the amount, if any, required to restore the capital
3997 reserve funds to the capital reserve fund requirement.

3998 (iii) The governor may request from the Legislature an appropriation of the certified
3999 amount to restore the capital reserve funds to the capital reserve fund requirement.

4000 (g) Amounts appropriated, if any, shall be repaid to the General Fund of the state, from
4001 any monies in excess of the amounts which the corporation determines will keep it
4002 self-supporting.

4003 (2) The corporation may create and establish any other funds as may be necessary or
4004 desirable for its corporate purposes.

4005 Section 111. Section **9-4-924** is amended to read:

4006 **9-4-924. Allocation of qualified mortgage bonds to counties, cities, and towns.**

4007 (1) (a) The corporation is authorized to allocate all or part of the amount to one or more
4008 counties, cities, and towns within the state or to any authority or agency of any such entities
4009 that is authorized to issue qualified mortgage bonds.

4010 (b) An allocation may not be made under this section unless the entity applies to the
4011 corporation for an allocation and the corporation finds that the proposed allocation would be in
4012 the best interest of the state.

4013 (c) The corporation shall take the following factors into consideration before making
4014 its finding:

4015 (i) the number of "low and moderate income persons," within the meaning of the Utah
4016 Housing Corporation Act, within a given area;

4017 (ii) the likelihood that the proposed issuing entity would use the allocation to issue
4018 qualified mortgage bonds in a timely manner;

4019 (iii) the cost to the proposed issuing entity to issue the bonds relative to the cost to the
4020 corporation to issue the bonds;

4021 (iv) any special costs or benefits which would result from the issuance of such bonds
4022 by the proposed issuing entity;

4023 (v) the capability of the proposed issuing entity to administer an issuance of qualified
4024 mortgage bonds;

4025 (vi) the needs of the proposed issuing entity relative to the needs of other counties,
4026 cities, and towns;

4027 (vii) the effects of the proposed allocation on counties, cities, and towns which are not
4028 served by the proposed issuing entity; and

4029 (viii) any other factors the corporation considers relevant to a determination of what is
4030 in the best interest of Utah with regard to single family housing.

4031 (2) (a) The corporation shall specify the time within which an issuing entity [~~must~~]
4032 shall use the allocation.

4033 (b) Any part of the allocation which is not used within the time prescribed
4034 automatically terminates.

4035 (c) The corporation may extend the time initially prescribed for use of the allocation.

4036 Section 112. Section **9-6-203** is amended to read:

4037 **9-6-203. Division powers relating to property.**

4038 (1) The division may:

4039 (a) take by purchase, grant, gift, devise, or bequest, any property, real or personal, for
4040 any purpose appropriate to its objects; and

4041 (b) convert property received by gift, grant, devise, or bequest and not suitable for its
4042 uses, into other property so available or into money.

4043 (2) The property received or converted under Subsection (1) shall be held, invested,
4044 and managed and its proceeds used by the division for the purposes and under the conditions
4045 prescribed in the grant or donation.

4046 (3) If by the terms of any grant, gift, devise, or bequest, conditions are imposed that are
4047 impracticable under the law, the grant or donation [~~shall not~~] does not fail but the conditions
4048 shall be rejected and the intent of the grantor or donor carried out as nearly as may be.

4049 (4) A grant, gift, devise, or bequest for the benefit of the division may not be defeated
4050 or prejudiced by any misnomer, misdescription, or informality if the intention of the grantor or
4051 donor can be shown or ascertained with reasonable certainty.

4052 Section 113. Section **9-6-405** is amended to read:

4053 **9-6-405. Procedures, guidelines, and rules.**

4054 (1) The division shall follow these guidelines in administering the program:

4055 (a) Works of art shall be acquired under the program for use only with respect to those
4056 buildings or facilities that the division determines have significant public use or access,
4057 especially where the design and technical construction of the building or facility lend

4058 themselves to works of art. All funds set aside and administered by the program from
4059 appropriations for any state building or facility of which any part is obtained from the issuance
4060 of bonds shall be used only to acquire works of art that will be placed in or at, and remain a
4061 part of, that building or facility, to the extent necessary to preserve the federal income tax
4062 exemption otherwise allowed for interest paid on the bonds.

4063 (b) The goal of the division in administering the program is to fairly distribute works of
4064 art throughout the various social, economic, and geographic communities of the state.

4065 (c) The division shall give first preference to Utah artists, and to artists from other
4066 states which have similar percent-for-art programs and demonstrate a reciprocal preference for
4067 Utah artists.

4068 (d) The division shall involve the director of the Division of Facilities Construction
4069 and Management, or the director's designee, and the project architect in the process of
4070 screening or selecting works of art or artists to create works of art for each project and shall
4071 involve in that process representatives from the project's principal user or contracting agency,
4072 the community in which the project is located, and the art profession. The project's principal
4073 user or contracting agency shall have representation at least equal to any other entity on the
4074 selection committee, as designated by the project's president or director. Any selection and
4075 placement of art shall be by a majority decision of the user agency representatives on the
4076 committee and a majority decision of the entire committee. The selection and placement
4077 ~~must~~ shall be approved by the president or director of the principal user.

4078 (e) Any relocation of art placed under this program shall be done with the participation
4079 from the division and the Division of Facilities Construction and Management and with
4080 approval from the president or director of the principal user.

4081 (f) The costs of administering the program and conserving and maintaining all works
4082 of art placed under the program are limited to 15% of the funds deposited in the Utah
4083 Percent-for-Art Account.

4084 (2) The division shall adopt procedures, guidelines, and rules as necessary to
4085 implement this chapter and administer the program.

4086 Section 114. Section **9-6-504** is amended to read:

4087 **9-6-504. Duties of board.**

4088 The board shall:

4089 (1) allocate moneys from the state fund to the endowment fund created by a qualifying
4090 organization under Section 9-6-503;

4091 (2) determine the eligibility of each qualifying organization to receive moneys from the
4092 state fund into the endowment fund of the qualifying organization and be the final arbiter of
4093 eligibility;

4094 (3) determine the matching amount each qualifying organization [~~must~~] shall raise in
4095 order to qualify to receive moneys from the state fund;

4096 (4) establish a date by which each qualifying organization [~~must~~] shall provide its
4097 matching funds;

4098 (5) verify that matching funds have been provided by each qualifying organization by
4099 the date determined in Subsection (4); and

4100 (6) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
4101 establish criteria by rule not otherwise prescribed in this chapter for determining the eligibility
4102 of qualifying organizations to receive moneys from the state fund.

4103 Section 115. Section **9-7-213** is amended to read:

4104 **9-7-213. Rulemaking.**

4105 The division may make rules in accordance with Title 63G, Chapter 3, Utah
4106 Administrative Rulemaking Act, necessary to implement and administer the provisions of this
4107 chapter including:

4108 (1) standards which [~~must~~] shall be met by libraries to obtain and retain a designation
4109 as a depository library;

4110 (2) the method by which grants are made to individual libraries, but not including
4111 appropriations made directly to any other agency or institution;

4112 (3) standards for the certification of public librarians; and

4113 (4) standards for the public library online access policy required in Section 9-7-215.

4114 Section 116. Section **9-7-504** is amended to read:

4115 **9-7-504. Library board duties -- Library fund deposits.**

4116 (1) The library board of directors shall, with the approval of the county executive and
4117 in accordance with county ordinances, policies, and procedures:

4118 (a) be responsible for:

4119 (i) the expenditure of the library fund;

- 4120 (ii) the construction, lease, or sale of library buildings and land; and
- 4121 (iii) the operation and care of the library; and
- 4122 (b) purchase, lease, or sell land, and purchase, lease, construct, or sell buildings, for the
- 4123 benefit of the library.

4124 (2) The board has those powers and duties as prescribed by county ordinance,
 4125 including~~[, but not limited to,]~~ establishing policies for collections and information resources
 4126 that are consistent with state and federal law.

4127 (3) (a) All tax moneys received for the library shall be deposited in the county treasury
 4128 to the credit of the library fund, and may not be used for any purpose except that of the county
 4129 library.

4130 (b) All moneys collected by the library shall be deposited to the credit of the library
 4131 fund.

4132 Section 117. Section **9-12-103** is amended to read:

4133 **9-12-103. Eligibility criteria.**

4134 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
 4135 department may make rules establishing eligibility criteria for recipients of assistance under
 4136 this chapter. A recipient of assistance under this chapter ~~[must]~~ shall demonstrate:

- 4137 (1) that the recipient's family, household, or individual income is 150% of the federal
- 4138 poverty level or less;
- 4139 (2) that the recipient is responsible for paying the recipient's home energy costs; and
- 4140 (3) compliance with any rules established by the department under this section.

4141 Section 118. Section **9-12-201** is amended to read:

4142 **9-12-201. Moratorium on involuntary termination for nonpayment of utility bills**
 4143 **-- Eligibility criteria -- Department to establish and certify.**

4144 (1) The department shall establish a program for a seasonal moratorium for involuntary
 4145 termination for nonpayment by residential customers of essential utility bills. An essential
 4146 utility is a utility regulated by the Public Service Commission under Title 54, which is in the
 4147 business of the retail distribution of electricity or natural gas. A residential customer is a
 4148 customer defined as in a residential class by the Public Service Commission.

4149 (2) A residential customer ~~[must]~~ shall meet the following criteria to qualify for the
 4150 program:

4151 (a) gross household income is less than 125% of the federal poverty level or the
4152 household has suffered a medical or other emergency, loss of employment, or is experiencing
4153 other circumstances which have resulted in a substantial loss of income;

4154 (b) the customer has made application to public and private energy assistance
4155 programs;

4156 (c) the customer is willing to make a good faith effort to pay these utility bills on a
4157 consistent basis; and

4158 (d) any additional information required by the department.

4159 (3) A residential customer may file with a local department office an affidavit attesting
4160 eligibility under the criteria in Subsection (2). The department shall certify that the customer
4161 has met the eligibility requirements and forward a copy of the affidavit to the effected utility.

4162 Section 119. Section **10-1-105** is amended to read:

4163 **10-1-105. No changes intended.**

4164 Unless otherwise specifically provided in this act, the provisions of this act [~~shall not~~
4165 may not operate in any way to affect the property or contract rights or other actions which may
4166 exist in favor of or against any municipality. Nor shall this act operate in any way to change or
4167 affect any ordinance, order or resolution in force in any municipality and such ordinances,
4168 orders and resolutions which are not repugnant to law, shall continue in full force and effect
4169 until repealed or amended.

4170 Section 120. Section **10-1-108** is amended to read:

4171 **10-1-108. Cumulative powers -- Powers not in derogation of state agencies.**

4172 The provisions of this act or any other act not expressly repealed by Section 10-1-114
4173 shall be considered as an alternative or additional power and not as a limitation on any other
4174 power granted to or possessed by municipalities. The provisions of this act [~~shall not~~] may not
4175 be considered as impairing, altering, modifying or repealing any of the jurisdiction or powers
4176 possessed by any department, division, commission, board, or office of state government.

4177 Section 121. Section **10-1-109** is amended to read:

4178 **10-1-109. Saving clause.**

4179 The repeal of the titles, chapters and sections specified in Section 10-1-114 [~~shall not~~]
4180 do not:

4181 (1) affect suits pending or rights existing immediately prior to the effective date of this

4182 act;

4183 (2) impair, avoid, or affect any grant or conveyance made or right acquired or cause of
4184 action now existing under any repealed act or amendment thereto; or

4185 (3) affect or impair the validity of any bonds or other obligation issued or sold prior to
4186 the effective date of this act.

4187 The repeal of any validating act or part thereof [~~shall not~~] does not avoid the effect of
4188 the validation. No act repealed by Section 10-1-114 shall repeal any act or part thereof which
4189 embraces the same or similar subject matter as the act repealed.

4190 Section 122. Section **10-1-112** is amended to read:

4191 **10-1-112. Headings do not limit sections.**

4192 Title, chapter, part, or section headings contained herein [~~shall not~~] may not be deemed
4193 to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions
4194 of any title, chapter, part or section of this act.

4195 Section 123. Section **10-1-113** is amended to read:

4196 **10-1-113. Severability clause.**

4197 If any chapter, part, section, paragraph or subsection of this act, or the application
4198 thereof is held to be invalid, the remainder of this act [~~shall not be~~] is not affected thereby.

4199 Section 124. Section **10-2-109** is amended to read:

4200 **10-2-109. Incorporation petition -- Requirements and form.**

4201 (1) At any time within 18 months of the completion of the public hearings required
4202 under Subsection 10-2-108(1), a petition for incorporation of the area proposed to be
4203 incorporated as a city may be filed in the office of the clerk of the county in which the area is
4204 located.

4205 (2) Each petition under Subsection (1) shall:

4206 (a) be signed by the owners of private real property that:

4207 (i) is located within the area proposed to be incorporated;

4208 (ii) covers at least 1/3 of the total private land area within the area; and

4209 (iii) is equal in value to at least 1/3 of the value of all private real property within the

4210 area;

4211 (b) indicate the typed or printed name and current residence address of each owner

4212 signing the petition;

4213 (c) describe the area proposed to be incorporated as a city, as described in the
4214 feasibility study request or modified request that meets the requirements of Subsection (3);

4215 (d) state the proposed name for the proposed city;

4216 (e) designate five signers of the petition as petition sponsors, one of whom shall be
4217 designated as the contact sponsor, with the mailing address and telephone number of each;

4218 (f) state that the signers of the petition appoint the sponsors, if the incorporation
4219 measure passes, to represent the signers in the process of:

4220 (i) selecting the number of commission or council members the new city [~~should~~] will
4221 have; and

4222 (ii) drawing district boundaries for the election of commission or council members, if
4223 the voters decide to elect commission or council members by district;

4224 (g) be accompanied by and circulated with an accurate plat or map, prepared by a
4225 licensed surveyor, showing the boundaries of the proposed city; and

4226 (h) substantially comply with and be circulated in the following form:

4227 PETITION FOR INCORPORATION OF (insert the proposed name of the proposed
4228 city)

4229 To the Honorable County Legislative Body of (insert the name of the county in which
4230 the proposed city is located) County, Utah:

4231 We, the undersigned owners of real property within the area described in this petition,
4232 respectfully petition the county legislative body to submit to the registered voters residing
4233 within the area described in this petition, at a special election held for that purpose, the
4234 question of whether the area should incorporate as a city. Each of the undersigned affirms that
4235 each has personally signed this petition and is an owner of real property within the described
4236 area, and that the current residence address of each is correctly written after the signer's name.
4237 The area proposed to be incorporated as a city is described as follows: (insert an accurate
4238 description of the area proposed to be incorporated).

4239 (3) A petition for incorporation of a city under Subsection (1) may not be filed unless
4240 the results of the feasibility study or supplemental feasibility study show that the average
4241 annual amount of revenue under Subsection 10-2-106(4)(a)(ix) does not exceed the average
4242 annual amount of cost under Subsection 10-2-106(4)(a)(viii) by more than 5%.

4243 (4) A signature on a request under Section 10-2-103 or a modified request under

4244 Section 10-2-107 may be used toward fulfilling the signature requirement of Subsection (2)(a):

4245 (a) if the request under Section 10-2-103 or modified request under Section 10-2-107
4246 notified the signer in conspicuous language that the signature, unless withdrawn, would also be
4247 used for purposes of a petition for incorporation under this section; and

4248 (b) unless the signer files with the county clerk a written withdrawal of the signature
4249 before the petition under this section is filed with the clerk.

4250 Section 125. Section **10-2-303** is amended to read:

4251 **10-2-303. Effect of change in class.**

4252 (1) If a municipality changes from one class to another:

4253 (a) all property, property rights, and other rights that belonged to or were vested in the
4254 municipality at the time of the change shall belong to and be vested in it after the change;

4255 (b) no contract, claim, or right of the municipality or demand or liability against it shall
4256 be altered or affected in any way by the change;

4257 (c) each ordinance, order, and resolution in force in the municipality when it changes
4258 classes shall, to the extent that it is not inconsistent with law, not be affected by the change and
4259 shall remain in effect until repealed or amended;

4260 (d) the change [~~shall not~~] may not affect the identity of the municipality;

4261 (e) each municipal officer in office at the time of the change shall continue as an
4262 officer until that officer's term expires and a successor is duly elected and qualified; and

4263 (f) the municipality maintains after the change in class the same form of government
4264 that it had immediately before the change.

4265 (2) (a) A change in class does not affect an action at law, prosecution, business, or
4266 work of the municipality changing classes, and proceedings shall continue and may be
4267 conducted and proceed as if no change in class had occurred.

4268 (b) Notwithstanding Subsection (2)(a), if the law applicable to a municipality under the
4269 new class provides the municipality a different remedy with respect to a right that it possessed
4270 at the time of the change, the remedy shall be cumulative to the remedy applicable before the
4271 change in class.

4272 Section 126. Section **10-2-403** is amended to read:

4273 **10-2-403. Annexation petition -- Requirements -- Notice required before filing.**

4274 (1) Except as provided in Section 10-2-418, the process to annex an unincorporated

4275 area to a municipality is initiated by a petition as provided in this section.

4276 (2) (a) (i) Before filing a petition under Subsection (1) with respect to the proposed
4277 annexation of an area located in a county of the first class, the person or persons intending to
4278 file a petition shall:

4279 (A) file with the city recorder or town clerk of the proposed annexing municipality a
4280 notice of intent to file a petition; and

4281 (B) send a copy of the notice of intent to each affected entity.

4282 (ii) Each notice of intent under Subsection (2)(a)(i) shall include an accurate map of the
4283 area that is proposed to be annexed.

4284 (b) (i) Subject to Subsection (2)(b)(ii), the county in which the area proposed to be
4285 annexed is located shall:

4286 (A) mail the notice described in Subsection (2)(b)(iii) to:

4287 (I) each owner of real property located within the area proposed to be annexed; and

4288 (II) each owner of real property located within 300 feet of the area proposed to be
4289 annexed; and

4290 (B) send to the proposed annexing municipality a copy of the notice and a certificate
4291 indicating that the notice has been mailed as required under Subsection (2)(b)(i)(A).

4292 (ii) The county shall mail the notice required under Subsection (2)(b)(i)(A) within 20
4293 days after receiving from the person or persons who filed the notice of intent:

4294 (A) a written request to mail the required notice; and

4295 (B) payment of an amount equal to the county's expected actual cost of mailing the
4296 notice.

4297 (iii) Each notice required under Subsection (2)(b)(i)(A) shall:

4298 (A) be in writing;

4299 (B) state, in bold and conspicuous terms, substantially the following:

4300 "Attention: Your property may be affected by a proposed annexation.

4301 Records show that you own property within an area that is intended to be included in a
4302 proposed annexation to (state the name of the proposed annexing municipality) or that is within
4303 300 feet of that area. If your property is within the area proposed for annexation, you may be
4304 asked to sign a petition supporting the annexation. You may choose whether or not to sign the
4305 petition. By signing the petition, you indicate your support of the proposed annexation. If you

4306 sign the petition but later change your mind about supporting the annexation, you may
4307 withdraw your signature by submitting a signed, written withdrawal with the recorder or clerk
4308 of (state the name of the proposed annexing municipality) within 30 days after (state the name
4309 of the proposed annexing municipality) receives notice that the petition has been certified.

4310 There will be no public election on the proposed annexation because Utah law does not
4311 provide for an annexation to be approved by voters at a public election. Signing or not signing
4312 the annexation petition is the method under Utah law for the owners of property within the area
4313 proposed for annexation to demonstrate their support of or opposition to the proposed
4314 annexation.

4315 You may obtain more information on the proposed annexation by contacting (state the
4316 name, mailing address, telephone number, and email address of the official or employee of the
4317 proposed annexing municipality designated to respond to questions about the proposed
4318 annexation), (state the name, mailing address, telephone number, and email address of the
4319 county official or employee designated to respond to questions about the proposed annexation),
4320 or (state the name, mailing address, telephone number, and email address of the person who
4321 filed the notice of intent under Subsection (2)(a)(i)(A), or, if more than one person filed the
4322 notice of intent, one of those persons). Once filed, the annexation petition will be available for
4323 inspection and copying at the office of (state the name of the proposed annexing municipality)
4324 located at (state the address of the municipal offices of the proposed annexing municipality).";
4325 and

4326 (C) be accompanied by an accurate map identifying the area proposed for annexation.

4327 (iv) A county may not mail with the notice required under Subsection (2)(b)(i)(A) any
4328 other information or materials related or unrelated to the proposed annexation.

4329 (c) (i) After receiving the certificate from the county as provided in Subsection
4330 (2)(b)(i)(B), the proposed annexing municipality shall, upon request from the person or persons
4331 who filed the notice of intent under Subsection (2)(a)(i)(A), provide an annexation petition for
4332 the annexation proposed in the notice of intent.

4333 (ii) An annexation petition provided by the proposed annexing municipality may be
4334 duplicated for circulation for signatures.

4335 (3) Each petition under Subsection (1) shall:

4336 (a) be filed with the city recorder or town clerk, as the case may be, of the proposed

4337 annexing municipality;

4338 (b) contain the signatures of:

4339 (i) the owners of private real property that:

4340 (A) is located within the area proposed for annexation;

4341 (B) (I) subject to Subsection (3)(b)(i)(B)(II), covers a majority of the private land area

4342 within the area proposed for annexation; and

4343 (II) covers 100% of the private land area within the area proposed for annexation, if the

4344 area is within:

4345 (Aa) an agriculture protection area created under Title 17, Chapter 41, Agriculture and

4346 Industrial Protection Areas; or

4347 (Bb) a migratory bird production area created under Title 23, Chapter 28, Migratory

4348 Bird Production Area; and

4349 (C) is equal in value to at least 1/3 of the value of all private real property within the

4350 area proposed for annexation; or

4351 (ii) if all the real property within the area proposed for annexation is owned by a public

4352 entity other than the federal government, the owner of all the publicly owned real property;

4353 (c) if the petition proposes the annexation of an area located within a township, explain

4354 that if the annexation petition is granted, the area will also be withdrawn from the township;

4355 (d) be accompanied by:

4356 (i) an accurate and recordable map, prepared by a licensed surveyor, of the area

4357 proposed for annexation; and

4358 (ii) a copy of the notice sent to affected entities as required under Subsection

4359 (2)(a)(i)(B) and a list of the affected entities to which notice was sent;

4360 (e) if the area proposed to be annexed is located in a county of the first class, contain

4361 on each signature page a notice in bold and conspicuous terms that states substantially the

4362 following:

4363 "Notice:

4364 • There will be no public election on the annexation proposed by this petition because

4365 Utah law does not provide for an annexation to be approved by voters at a public election.

4366 • If you sign this petition and later decide that you do not support the petition, you may

4367 withdraw your signature by submitting a signed, written withdrawal with the recorder or clerk

4368 of (state the name of the proposed annexing municipality). If you choose to withdraw your
4369 signature, you [~~must~~] shall do so no later than 30 days after (state the name of the proposed
4370 annexing municipality) receives notice that the petition has been certified.";

4371 (f) if the petition proposes the annexation of an area located in a county that is not the
4372 county in which the proposed annexing municipality is located, be accompanied by a copy of
4373 the resolution, required under Subsection 10-2-402(6), of the legislative body of the county in
4374 which the area is located; and

4375 (g) designate up to five of the signers of the petition as sponsors, one of whom shall be
4376 designated as the contact sponsor, and indicate the mailing address of each sponsor.

4377 (4) A petition under Subsection (1) may not propose the annexation of all or part of an
4378 area proposed for annexation to a municipality in a previously filed petition that has not been
4379 denied, rejected, or granted.

4380 (5) A petition under Subsection (1) proposing the annexation of an area located in a
4381 county of the first class may not propose the annexation of an area that includes some or all of
4382 an area proposed to be incorporated in a request for a feasibility study under Section 10-2-103
4383 or a petition under Section 10-2-125 if:

4384 (a) the request or petition was filed before the filing of the annexation petition; and

4385 (b) the request, a petition under Section 10-2-109 based on that request, or a petition
4386 under Section 10-2-125 is still pending on the date the annexation petition is filed.

4387 (6) If practicable and feasible, the boundaries of an area proposed for annexation shall
4388 be drawn:

4389 (a) along the boundaries of existing local districts and special service districts for
4390 sewer, water, and other services, along the boundaries of school districts whose boundaries
4391 follow city boundaries or school districts adjacent to school districts whose boundaries follow
4392 city boundaries, and along the boundaries of other taxing entities;

4393 (b) to eliminate islands and peninsulas of territory that is not receiving municipal-type
4394 services;

4395 (c) to facilitate the consolidation of overlapping functions of local government;

4396 (d) to promote the efficient delivery of services; and

4397 (e) to encourage the equitable distribution of community resources and obligations.

4398 (7) On the date of filing, the petition sponsors shall deliver or mail a copy of the

4399 petition to:

4400 (a) the clerk of the county in which the area proposed for annexation is located; and

4401 (b) if any of the area proposed for annexation is within a township:

4402 (i) the legislative body of the county in which the township is located; and

4403 (ii) the chair of the township planning commission.

4404 (8) A property owner who signs an annexation petition proposing to annex an area
4405 located in a county of the first class may withdraw the owner's signature by filing a written
4406 withdrawal, signed by the property owner, with the city recorder or town clerk no later than 30
4407 days after the municipal legislative body's receipt of the notice of certification under
4408 Subsection 10-2-405(2)(c)(i).

4409 Section 127. Section **10-2-510** is amended to read:

4410 **10-2-510. Boundary adjustment procedure not affected.**

4411 This part [~~shall not~~] may not be construed to abrogate, modify, or replace the boundary
4412 adjustment procedure provided in Section 10-2-419.

4413 Section 128. Section **10-2-614** is amended to read:

4414 **10-2-614. Ordinances, resolutions, and orders.**

4415 All ordinances, resolutions and orders, in force in any of the municipalities when it is
4416 consolidated, shall remain in full force and effect within the respective areas of the
4417 municipalities which existed prior to consolidation insofar as the ordinances, resolutions and
4418 orders are not repugnant to law, until repealed or amended, but [~~shall not~~] may not in any case
4419 exceed three years. The governing body of the new municipality shall as soon as possible adopt
4420 new ordinances, resolutions and orders for the uniform governance of the new municipality.

4421 Section 129. Section **10-3-508** is amended to read:

4422 **10-3-508. Reconsideration.**

4423 Any action taken by the governing body [~~shall not~~] may not be reconsidered or
4424 rescinded at any special meeting unless the number of members of the governing body present
4425 at the special meeting is equal to or greater than the number of members present at the meeting
4426 when the action was approved.

4427 Section 130. Section **10-3-608** is amended to read:

4428 **10-3-608. Rules of conduct for the public.**

4429 The governing body on a two-thirds vote may expel any person who is disorderly

4430 during the meeting of the governing body. This section or any action taken by the governing
4431 body pursuant hereto [~~shall not~~] does not preclude prosecution under any other provision of
4432 law.

4433 Section 131. Section **10-3-702** is amended to read:

4434 **10-3-702. Extent of power exercised by ordinance.**

4435 The governing body may pass any ordinance to regulate, require, prohibit, govern,
4436 control or supervise any activity, business, conduct or condition authorized by this act or any
4437 other provision of law. An officer of the municipality [~~shall not~~] may not be convicted of a
4438 criminal offense where he relied on or enforced an ordinance he reasonably believed to be a
4439 valid ordinance. It shall be a defense to any action for punitive damages that the official acted
4440 in good faith in enforcing an ordinance or that he enforced an ordinance on advice of legal
4441 counsel.

4442 Section 132. Section **10-3-704** is amended to read:

4443 **10-3-704. Form of ordinance.**

4444 Any ordinance passed by the governing body, after the effective date of this act, shall
4445 contain and be in substantially the following order and form:

- 4446 (1) a number;
- 4447 (2) a title which indicates the nature of the subject matter of the ordinance;
- 4448 (3) a preamble which states the need or reason for the ordinance;
- 4449 (4) an ordaining clause which states "Be it ordained by the ____ (name of the
4450 governing body and municipality):";
- 4451 (5) the body or subject of the ordinance;
- 4452 (6) when applicable, a statement indicating the penalty for violation of the ordinance or
4453 a reference that the punishment is covered by an ordinance which prescribes the fines and
4454 terms of imprisonment for the violation of a municipal ordinance; or, the penalty may establish
4455 a classification of penalties and refer to such ordinance in which the penalty for such violation
4456 is established;
- 4457 (7) a statement indicating the effective date of the ordinance or the date when the
4458 ordinance shall become effective after publication or posting as required by this chapter;
- 4459 (8) a line for the signature of the mayor or acting mayor to sign the ordinance;
- 4460 (9) a place for the municipal recorder to attest the ordinance and fix the seal of the

4461 municipality; and

4462 (10) in municipalities where the mayor may disapprove an ordinance passed by the
4463 legislative body, the ordinance [~~must~~] shall show, that it was passed with the mayor's approval
4464 or that if the mayor disapproved the ordinance, that it was passed over his disapproval. If the
4465 mayor neither approves, or disapproves an ordinance, the ordinance [~~should~~] shall show that it
4466 became effective without the approval or disapproval of the mayor.

4467 Section 133. Section **10-3-717** is amended to read:

4468 **10-3-717. Purpose of resolutions.**

4469 Unless otherwise required by law, the governing body may exercise all administrative
4470 powers by resolution including[~~, but not limited to~~]: (1) establishing water and sewer rates; (2)
4471 charges for garbage collection and fees charged for municipal services; (3) establishing
4472 personnel policies and guidelines; and (4) regulating the use and operation of municipal
4473 property. Punishment, fines or forfeitures may not be imposed by resolution.

4474 Section 134. Section **10-3-905** is amended to read:

4475 **10-3-905. Fees to be paid in advance.**

4476 The city engineer [~~shall not~~] may not record any drawings or instruments, or file any
4477 papers or notices, or furnish any copies, or render any service connected with his office, until
4478 the fees for the same are paid or tendered as prescribed by law or ordinance.

4479 Section 135. Section **10-3-907** is amended to read:

4480 **10-3-907. Recordation not to interfere with other recordation.**

4481 The recording or filing of any drawing or instrument in the city engineer's office [~~shall~~
4482 ~~not~~] may not interfere or conflict in any way with the recording or filing of the same in other
4483 offices of record.

4484 Section 136. Section **10-3-912** is amended to read:

4485 **10-3-912. Chief of department may suspend subordinates.**

4486 (1) The chief of each department may at any time suspend any subordinate officers,
4487 members, employees, or agents employed therein when in his judgment the good of the service
4488 demands it, and during the time of suspension, the person suspended [~~shall not be~~] is not
4489 entitled to any salary or compensation whatsoever.

4490 (2) Any suspension of employees in the classified civil service which exceeds three
4491 days or 24 working hours is subject to an appeal to the civil service commission as provided in

4492 Section 10-3-1012.

4493 Section 137. Section **10-3-1004** is amended to read:

4494 **10-3-1004. Qualifications of commissioners -- Salary -- Removal.**

4495 Not more than two members of the civil service commission shall at any one time be of
4496 the same political party. No member of the civil service commission shall during his tenure of
4497 office hold any other public office, or be a candidate for any other public office. Each member
4498 shall receive \$25 for each meeting of the commission which he shall attend, but ~~shall not~~ may
4499 not receive more than \$100 in any one month. In case of misconduct, inability or willful
4500 neglect in the performance of the duties of the office by any member, the member may be
4501 removed from office by the board of city commissioners by a majority vote of the entire
4502 membership, but the member shall, if he so desires, have opportunity to be heard in defense.

4503 Section 138. Section **10-3-1011** is amended to read:

4504 **10-3-1011. Temporary employees.**

4505 The head of each department, with the advice and consent of the board of city
4506 commissioners, may employ any person for temporary work only, without making the
4507 appointment from the certified list, but the appointment ~~shall not~~ may not be longer than one
4508 month in the same calendar year, and under no circumstances shall the temporary employee be
4509 appointed to a permanent position unless he shall have been duly certified by the civil service
4510 commission as in other cases.

4511 Section 139. Section **10-3-1012.5** is amended to read:

4512 **10-3-1012.5. Appeal to Court of Appeals -- Scope of review.**

4513 Any final action or order of the commission may be appealed to the Court of Appeals
4514 for review. The notice of appeal ~~must~~ shall be filed within 30 days of the issuance of the
4515 final action or order of the commission. The review by Court of Appeals shall be on the record
4516 of the commission and shall be for the purpose of determining if the commission has abused its
4517 discretion or exceeded its authority.

4518 Section 140. Section **10-3-1306** is amended to read:

4519 **10-3-1306. Interest in business entity regulated by municipality -- Disclosure**
4520 **statement required.**

4521 (1) Every appointed or elected officer or municipal employee who is an officer,
4522 director, agent, or employee or the owner of a substantial interest in any business entity which

4523 is subject to the regulation of the municipality in which he is an elected or appointed officer or
4524 municipal employee shall disclose the position held and the nature and value of his interest
4525 upon first becoming appointed, elected, or employed by the municipality, and again at any
4526 time thereafter if the elected or appointed officer's or municipal employee's position in the
4527 business entity has changed significantly or if the value of his interest in the entity has
4528 increased significantly since the last disclosure.

4529 (2) The disclosure shall be made in a sworn statement filed with the mayor. The mayor
4530 shall report the substance of all such disclosure statements to the members of the governing
4531 body, or may provide to the members of the governing body copies of the disclosure statement
4532 within 30 days after the statement is received by him.

4533 (3) This section does not apply to instances where the value of the interest does not
4534 exceed \$2,000. Life insurance policies and annuities [~~shall not~~] may not be considered in
4535 determining the value of any such interest.

4536 Section 141. Section **10-5-103** is amended to read:

4537 **10-5-103. Withholding state money of town failing to file budget.**

4538 The state auditor is authorized to withhold state money allocated to a town if that town
4539 fails to file a copy of a formally adopted budget or fails to comply with the annual financial
4540 reporting and independent auditing requirements of this chapter. Such money [~~shall not~~] may
4541 not be withheld if the town substantially complies with the requirements of this chapter.

4542 Section 142. Section **10-5-107** is amended to read:

4543 **10-5-107. Tentative budgets required for public inspection -- Contents --**
4544 **Adoption of tentative budget.**

4545 (1) (a) On or before the first regularly scheduled town council meeting of May, the
4546 mayor shall:

4547 (i) prepare for the ensuing year, on forms provided by the state auditor, a tentative
4548 budget for each fund for which a budget is required;

4549 (ii) make the tentative budget available for public inspection; and

4550 (iii) submit the tentative budget to the town council.

4551 (b) The tentative budget of each fund shall set forth in tabular form:

4552 (i) actual revenues and expenditures in the last completed fiscal year;

4553 (ii) estimated total revenues and expenditures for the current fiscal year; and

4554 (iii) the mayor's estimates of revenues and expenditures for the budget year.
4555 (2) (a) The mayor shall:
4556 (i) estimate the amount of revenue available to serve the needs of each fund;
4557 (ii) estimate the portion to be derived from all sources other than general property
4558 taxes; and
4559 (iii) estimate the portion that [~~must~~] shall be derived from general property taxes.
4560 (b) From the estimates required by Subsection (2)(a), the mayor shall compute and
4561 disclose in the budget the lowest rate of property tax levy that will raise the required amount of
4562 revenue, calculating the levy on the latest taxable value.
4563 (3) (a) Before the public hearing required under Section 10-5-108, the town council:
4564 (i) shall review, consider, and tentatively adopt the tentative budget in any regular
4565 meeting or special meeting called for that purpose; and
4566 (ii) may amend or revise the tentative budget.
4567 (b) At the meeting at which the town council adopts the tentative budget, the council
4568 shall establish the time and place of the public hearing required under Section 10-5-108.
4569 (4) (a) If within any enterprise utility fund, allocations or transfers that are not
4570 reasonable allocations of costs between funds are included in a tentative budget, a written
4571 notice of the date, time, place, and purpose of the hearing shall be mailed to utility fund
4572 customers at least seven days before the hearing.
4573 (b) The purpose portion of the notice shall identify:
4574 (i) the enterprise utility fund from which money is being transferred;
4575 (ii) the amount being transferred; and
4576 (iii) the fund to which the money is being transferred.
4577 Section 143. Section **10-5-114** is amended to read:
4578 **10-5-114. Appropriations limited to estimated revenue.**
4579 The council [~~shall not~~] may not make any appropriation in the final budget of any fund
4580 in excess of the estimated expendable revenue for the budget year of such fund.
4581 Section 144. Section **10-5-115** is amended to read:
4582 **10-5-115. Expenditures limited to appropriations -- Obligations in excess invalid**
4583 **-- Processing claims required.**
4584 Town officers [~~shall not~~] may not make or incur expenditures or encumbrances in

4585 excess of total appropriations for any department in the budget as adopted or as subsequently
4586 amended. Any obligation contracted by any such officer [~~shall not~~] may not be or become
4587 valid or enforceable against the town. No check or warrant to cover any claim against any
4588 appropriation shall be drawn until the claim has been processed as provided by this chapter.

4589 Section 145. Section **10-6-111** is amended to read:

4590 **10-6-111. Tentative budget to be prepared -- Contents -- Estimate of expenditures**
4591 **-- Budget message -- Review by governing body.**

4592 (1) (a) On or before the first regularly scheduled meeting of the governing body in the
4593 last May of the current period, the budget officer shall prepare for the ensuing fiscal period, on
4594 forms provided by the state auditor, and file with the governing body, a tentative budget for
4595 each fund for which a budget is required.

4596 (b) The tentative budget of each fund shall set forth in tabular form:

4597 (i) the actual revenues and expenditures in the last completed fiscal period;

4598 (ii) the budget estimates for the current fiscal period;

4599 (iii) the actual revenues and expenditures for a period of 6 to 21 months, as
4600 appropriate, of the current fiscal period;

4601 (iv) the estimated total revenues and expenditures for the current fiscal period;

4602 (v) the budget officer's estimates of revenues and expenditures for the budget period,
4603 computed as provided in Subsection (1)(c); and

4604 (vi) if the governing body elects, the actual performance experience to the extent
4605 established by Section 10-6-154 and available in work units, unit costs, man hours, or man
4606 years for each budgeted fund on an actual basis for the last completed fiscal period, and
4607 estimated for the current fiscal period and for the ensuing budget period.

4608 (c) (i) In making estimates of revenues and expenditures under Subsection (1)(b)(v),
4609 the budget officer shall estimate:

4610 (A) on the basis of demonstrated need, the expenditures for the budget period, after:

4611 (I) hearing each department head; and

4612 (II) reviewing the budget requests and estimates of the department heads; and

4613 (B) (I) the amount of revenue available to serve the needs of each fund;

4614 (II) the portion of revenue to be derived from all sources other than general property
4615 taxes; and

4616 (III) the portion of revenue that [~~must~~] shall be derived from general property taxes.

4617 (ii) The budget officer may revise any department's estimate under Subsection
4618 (1)(c)(i)(A)(II) that the officer considers advisable for the purpose of presenting the budget to
4619 the governing body.

4620 (iii) From the estimate made under Subsection (1)(c)(i)(B)(III), the budget officer shall
4621 compute and disclose in the budget the lowest rate of property tax levy that will raise the
4622 required amount of revenue, calculating the levy upon the latest taxable value.

4623 (2) (a) Each tentative budget, when filed by the budget officer with the governing body,
4624 shall contain the estimates of expenditures submitted by department heads, together with
4625 specific work programs and such other supporting data as this chapter requires or the governing
4626 body may request. Each city of the first or second class shall, and a city of the third, fourth, or
4627 fifth class may, submit a supplementary estimate of all capital projects which each department
4628 head believes should be undertaken within the next three succeeding years.

4629 (b) Each tentative budget submitted by the budget officer to the governing body shall
4630 be accompanied by a budget message, which shall explain the budget, contain an outline of the
4631 proposed financial policies of the city for the budget period, and shall describe the important
4632 features of the budgetary plan. It shall set forth the reasons for salient changes from the
4633 previous fiscal period in appropriation and revenue items and shall explain any major changes
4634 in financial policy.

4635 (3) Each tentative budget shall be reviewed, considered, and tentatively adopted by the
4636 governing body in any regular meeting or special meeting called for the purpose and may be
4637 amended or revised in such manner as is considered advisable prior to public hearings, except
4638 that no appropriation required for debt retirement and interest or reduction of any existing
4639 deficits pursuant to Section 10-6-117, or otherwise required by law or ordinance, may be
4640 reduced below the minimums so required.

4641 (4) (a) If the municipality is acting pursuant to Section 10-2-120, the tentative budget
4642 shall:

4643 (i) be submitted to the governing body-elect as soon as practicable; and

4644 (ii) cover each fund for which a budget is required from the date of incorporation to the
4645 end of the fiscal year.

4646 (b) The governing body shall substantially comply with all other provisions of this

4647 chapter, and the budget shall be passed upon incorporation.

4648 Section 146. Section **10-6-116** is amended to read:

4649 **10-6-116. Accumulated fund balances -- Limitations -- Excess balances --**
4650 **Unanticipated excess of revenues -- Reserves for capital improvements.**

4651 (1) Cities are permitted to accumulate retained earnings or fund balances, as
4652 appropriate, in any fund. With respect to the General Fund only, any accumulated fund balance
4653 is restricted to the following purposes:

4654 (a) to provide working capital to finance expenditures from the beginning of the budget
4655 period until general property taxes, sales taxes, or other applicable revenues are collected,
4656 thereby reducing the amount which the city must borrow during the period, but this Subsection
4657 (1)(a) does not permit the appropriation of any fund balance for budgeting purposes except as
4658 provided in Subsection (4);

4659 (b) to provide a resource to meet emergency expenditures under Section 10-6-129; and

4660 (c) to cover a pending year-end excess of expenditures over revenues from an
4661 unavoidable shortfall in revenues. This provision does not permit the appropriation of any
4662 fund balance to avoid an operating deficit during any budget period except as provided under
4663 Subsection (4), or for emergency purposes under Section 10-6-129.

4664 (2) The accumulation of a fund balance in the General Fund [~~shall not~~] may not exceed
4665 18% of the total estimated revenue of the General Fund.

4666 (3) If the fund balance at the close of any fiscal period exceeds the amount permitted
4667 under Subsection (2), the excess shall be appropriated in the manner provided in Section
4668 10-6-117.

4669 (4) Any fund balance in excess of 5% of the total revenues of the General Fund may be
4670 utilized for budget purposes.

4671 (5) (a) Within a capital improvements fund the governing body may, in any budget
4672 period, appropriate from estimated revenue or fund balance to a reserve for capital
4673 improvements for the purpose of financing future specific capital improvements, under a
4674 formal long-range capital plan adopted by the governing body.

4675 (b) The reserves may accumulate from fiscal period to fiscal period until the
4676 accumulated total is sufficient to permit economical expenditure for the specified purposes.

4677 (c) Disbursements from these reserves shall be made only by transfer to a revenue or

4678 transfer account within the capital improvements fund, under a budget appropriation in a
4679 budget for the fund adopted in the manner provided by this chapter.

4680 (d) Expenditures from the above appropriation budget accounts shall conform to all
4681 requirements of this chapter relating to execution and control of budgets.

4682 Section 147. Section **10-6-123** is amended to read:

4683 **10-6-123. Expenditures or encumbrances in excess of appropriations prohibited**
4684 **-- Processing claims.**

4685 City officers [~~shall not~~] may not make or incur expenditures or encumbrances in excess
4686 of total appropriations for any department in the budget as adopted or as subsequently
4687 amended. Any obligation contracted by any such officer [~~shall not~~] may not be or become valid
4688 or enforceable against the city. No check or warrant to cover any claim against any
4689 appropriation shall be drawn until the claim has been processed as provided by this chapter.

4690 Section 148. Section **10-6-159** is amended to read:

4691 **10-6-159. Financial administration ordinance -- Provisions.**

4692 The financial administration ordinances adopted pursuant to Section 10-6-158 shall
4693 provide for the following:

4694 (1) a maximum sum over which all purchases may not be made without the approval of
4695 the mayor in the council-mayor optional form of government or the governing body in other
4696 cities; however, this section [~~shall not~~] does not prevent the mayor in the council-mayor
4697 optional form of government or the governing body in other cities from approving all or part of
4698 a list of verified claims, including a specific claim in an amount in excess of the stated
4699 maximum, where certified by the appropriate financial officer or officers of the city;

4700 (2) that the financial officer be bonded for a reasonable amount; and

4701 (3) such other provisions as the governing body may deem advisable.

4702 Section 149. Section **10-7-4** is amended to read:

4703 **10-7-4. Water supply -- Acquisition -- Condemnation -- Protest -- Special election**
4704 **-- Determination of just compensation.**

4705 (1) The board of commissioners, city council or board of trustees of any city or town
4706 may acquire, purchase or lease all or any part of any water, waterworks system, water supply or
4707 property connected therewith, and whenever the governing body of a city or town shall deem it
4708 necessary for the public good such city or town may bring condemnation proceedings to

4709 acquire the same; provided, that if within 30 days after the passage and publication of a
4710 resolution or ordinance for the purchase or lease or condemnation herein provided for one-third
4711 of the resident taxpayers of the city or town, as shown by the assessment roll, shall protest
4712 against the purchase, lease or condemnation proceedings contemplated, such proposed
4713 purchase, lease or condemnation shall be referred to a special election, and if confirmed by a
4714 majority vote thereat, shall take effect; otherwise it shall be void.

4715 (2) In all condemnation proceedings the value of land affected by the taking [~~must~~]
4716 shall be considered in connection with the water or water rights taken for the purpose of
4717 supplying the city or town or the inhabitants thereof with water.

4718 (3) In determining just compensation in a condemnation proceeding under this section
4719 in a municipality located in a county of the first class where a determination of market value of
4720 what is proposed to be taken is impractical because there is no meaningful market for what is
4721 proposed to be taken, the value shall be:

4722 (a) presumed to be the amount the owner paid to acquire ownership of what is
4723 proposed to be taken, as adjusted by a change in value due to post-acquisition deterioration and
4724 any other factor reasonably and equitably bearing on the value of what is proposed to be taken;
4725 and

4726 (b) determined by applying equitable considerations including:

4727 (i) whether the owner will be unjustly enriched;

4728 (ii) whether the owner acquired the property by exaction or similar method; and

4729 (iii) the extent to which the consideration the owner provided in acquiring the property
4730 consists of an obligation to maintain the property and whether that obligation will be assumed
4731 by the municipality because of the condemnation.

4732 (4) This section may not be construed to provide the basis for a municipality's
4733 condemnation of a political subdivision of the state or of the political subdivision's property or
4734 holdings.

4735 Section 150. Section **10-7-5** is amended to read:

4736 **10-7-5. Limitations on lease or purchase.**

4737 It [~~shall not be~~] is not lawful for any city or town to lease or purchase any part of such
4738 waterworks less than the whole, or to lease the same, unless the contract therefor shall provide
4739 that the city or town shall have control thereof and that the net revenues therefrom shall be

4740 divided proportionately to the interests of the parties thereto; said contract shall also provide a
4741 list of water rates to be enforced during the term of such contract.

4742 Section 151. Section **10-7-18** is amended to read:

4743 **10-7-18. Disposition of money received.**

4744 (1) All money received from the sale of property under Sections 10-7-15 through
4745 10-7-17 shall be kept in a separate fund, and ~~shall not~~ may not be expended, or mixed with
4746 other funds of the city or town, until all bonds and other indebtedness issued for the purchase
4747 or construction of the plant or works, together with accumulated interest thereon, have first
4748 been paid.

4749 (2) If the property sold brings an amount in excess of the outstanding bonds and other
4750 indebtedness issued for the purchase or construction of the property sold, the excess shall be
4751 deposited in a bank in this state under direction of the municipal legislative body, and may not
4752 thereafter be expended except for some municipal purpose by authority given by the registered
4753 voters of the city or town at a general or special election called and conducted in the manner set
4754 forth in Sections 10-7-7 and 10-7-8.

4755 Section 152. Section **10-7-32** is amended to read:

4756 **10-7-32. Actions to recover taxes.**

4757 It shall also be competent for any municipality to bring a civil action against any party
4758 owning or operating any such railway liable to pay such taxes to recover the amount thereof, or
4759 any part thereof, delinquent and unpaid, in any court having jurisdiction of the amount, and
4760 obtain judgment and have execution therefor, and no property, real or personal, shall be exempt
4761 from any such execution; provided, that real estate ~~shall not~~ may not be levied upon by
4762 execution except by execution out of the district court on judgment therein, or transcript of
4763 judgment filed therein, as is now or hereafter may be provided by law. No defense shall be
4764 allowed in any such civil action except such as goes to the groundwork, equity and justice of
4765 the tax, and the burden of proof shall rest upon the party assailing the tax. In case part of such
4766 special tax shall be shown to be invalid, unjust or inequitable, judgment shall be rendered for
4767 such amount as is just and equitable.

4768 Section 153. Section **10-7-71** is amended to read:

4769 **10-7-71. Corporate violation -- Summons -- Time and manner of service.**

4770 The summons and copy of complaint ~~must~~ shall be served at least 24 hours before the

4771 hour of appearance fixed therein by delivering to and leaving a copy thereof with the president
4772 or other head of the corporation, or the secretary, the cashier, or the managing or process agent
4773 thereof, and by showing to him the original summons.

4774 Section 154. Section **10-7-72** is amended to read:

4775 **10-7-72. Appearance by agent of corporation -- Bench warrant for default.**

4776 At the time appointed in the summons, the corporation [~~must~~] shall appear by agent or
4777 attorney and plead thereto the same as a natural person. In case no appearance is made on or
4778 before the hour appointed, the court may issue a bench warrant for the person served as the
4779 officer or agent of the corporation, requiring him to be brought forthwith before the court to
4780 plead on its behalf.

4781 Section 155. Section **10-7-73** is amended to read:

4782 **10-7-73. Corporate violation -- Hearing -- Penalty imposed to be a fine.**

4783 After the plea of the corporation is entered the court [~~must~~] shall fix a time for the
4784 hearing of the cause, and thereafter the proceedings therein shall be the same as in the cases of
4785 natural persons charged with violating a city or town ordinance, except that in cases of
4786 conviction the penalty imposed in all instances shall be by way of fine.

4787 Section 156. Section **10-7-85** is amended to read:

4788 **10-7-85. Support of the arts.**

4789 The governing body of any municipality may provide for and appropriate funds for the
4790 support of the arts, including [~~but not limited to~~] music, dance, theatre, crafts and visual, folk
4791 and literary art, for the purpose of enriching the lives of its residents and may establish
4792 guidelines for the support of the arts.

4793 Section 157. Section **10-8-15** is amended to read:

4794 **10-8-15. Waterworks -- Construction -- Extraterritorial jurisdiction.**

4795 They may construct or authorize the construction of waterworks within or without the
4796 city limits, and for the purpose of maintaining and protecting the same from injury and the
4797 water from pollution their jurisdiction shall extend over the territory occupied by such works,
4798 and over all reservoirs, streams, canals, ditches, pipes and drains used in and necessary for the
4799 construction, maintenance and operation of the same, and over the stream or source from which
4800 the water is taken, for 15 miles above the point from which it is taken and for a distance of 300
4801 feet on each side of such stream and over highways along such stream or watercourse within

4802 said 15 miles and said 300 feet; provided, that the jurisdiction of cities of the first class shall be
4803 over the entire watershed, except that livestock shall be permitted to graze beyond one
4804 thousand feet from any such stream or source; and provided further, that each city of the first
4805 class shall provide a highway in and through its corporate limits, and so far as its jurisdiction
4806 extends, which [~~shall not~~] may not be closed to cattle, horses, sheep or hogs driven through any
4807 such city, or through any territory adjacent thereto over which such city has jurisdiction, but the
4808 board of commissioners of such city may enact ordinances placing under police regulations the
4809 manner of driving such cattle, sheep, horses and hogs through such city, or any territory
4810 adjacent thereto over which it has jurisdiction. They may enact all ordinances and regulations
4811 necessary to carry the power herein conferred into effect, and are authorized and empowered to
4812 enact ordinances preventing pollution or contamination of the streams or watercourses from
4813 which the inhabitants of cities derive their water supply, in whole or in part, for domestic and
4814 culinary purposes, and may enact ordinances prohibiting or regulating the construction or
4815 maintenance of any closet, privy, outhouse or urinal within the area over which the city has
4816 jurisdiction, and provide for permits for the construction and maintenance of the same. In
4817 granting such permits they may annex thereto such reasonable conditions and requirements for
4818 the protection of the public health as they deem proper, and may, if deemed advisable, require
4819 that all closets, privies and urinals along such streams shall be provided with effective septic
4820 tanks or other germ-destroying instrumentalities.

4821 Section 158. Section **10-8-16** is amended to read:

4822 **10-8-16. Watercourses leading to and within city -- Mill privileges.**

4823 They may control the water and watercourses leading to the city and regulate and
4824 control the watercourses and mill privileges within the city; provided, that the control [~~shall~~
4825 ~~not~~] may not be exercised to the injury of any right already acquired by actual owners.

4826 Section 159. Section **10-8-17** is amended to read:

4827 **10-8-17. City may act as distributing agent -- Collection of operating costs from**
4828 **users.**

4829 When the governing body of a city is acting as distributing agent of water, not the
4830 property of the corporation, outside of or within its corporate limits, the governing body may
4831 annually prior to the commencement of the irrigation season determine and fix the sum deemed
4832 necessary to meet the expense of the current year for the purpose of controlling, regulating and

4833 distributing such water and constructing and keeping in repair the necessary means for
4834 diverting, conveying and distributing the same, and they may collect such sum from the
4835 persons entitled to the use of such water, pro rata according to acreage, whether the acreage is
4836 situate within or without the corporate boundary of the city; provided, that the funds so derived
4837 [~~shall not~~] may not be appropriated or used for any other purpose, and in the event that a
4838 greater sum is collected in any one year than is necessary for said purpose, the excess thereof
4839 shall be carried to the account of the year next following and applied to the purpose for which
4840 it was collected. Such sum shall be fixed and collected as provided by ordinance, and until
4841 collected the same shall be a lien on such water rights and the land irrigated thereby.

4842 Section 160. Section **10-8-33** is amended to read:

4843 **10-8-33. Railroads -- Tracks and franchises.**

4844 They may permit, regulate or prohibit the locating, constructing or laying of the tracks
4845 of any railroad, or tramway in any street, alley or public place; and may by ordinance grant
4846 franchises to railroad and street railroad companies, and to union railroad depot companies, to
4847 lay, maintain and operate in any street or part or parts of streets or other public places tracks
4848 therefor, but such permission [~~shall not~~] may not be exclusive or for a longer time than one
4849 hundred years.

4850 Section 161. Section **10-8-36** is amended to read:

4851 **10-8-36. Flagmen -- Grade crossings -- Drains along tracks.**

4852 They may require railroad companies to keep flagmen at railroad crossings of streets, or
4853 otherwise provide protection against injury to persons or property; may compel railroad and
4854 street railroad companies to raise or lower their tracks to conform to any grade which at any
4855 time may be established by the city, so that such tracks may be crossed at any place on any
4856 street, alley or highway; may compel railway companies to make and keep open, and keep in
4857 repair, ditches, drains, sewers and culverts along and under their tracks, so that the natural or
4858 artificial drainage of adjacent property [~~shall not~~] may not be impaired.

4859 Section 162. Section **10-8-58.5** is amended to read:

4860 **10-8-58.5. Contracting for management, maintenance, operation, or construction**
4861 **of jails.**

4862 (1) (a) The governing body of a city or town may contract with private contractors for
4863 management, maintenance, operation, and construction of city jails.

4864 (b) The governing body may include a provision in the contract that requires that any
4865 jail facility meet any federal, state, or local standards for the construction of jails.

4866 (2) If the governing body contracts only for the management, maintenance, or
4867 operation of a jail, the governing body shall include provisions in the contract that:

4868 (a) require the private contractor to post a performance bond in the amount set by the
4869 governing body;

4870 (b) establish training standards that [~~must~~] shall be met by jail personnel;

4871 (c) require the private contractor to provide and fund training for jail personnel so that
4872 the personnel meet the standards established in the contract and any other federal, state, or local
4873 standards for the operation of jails and the treatment of jail prisoners;

4874 (d) require the private contractor to indemnify the city or town for errors, omissions,
4875 defalcations, and other activities committed by the private contractor that result in liability to
4876 the city or town;

4877 (e) require the private contractor to show evidence of liability insurance protecting the
4878 city or town and its officers, employees, and agents from liability arising from the construction,
4879 operation, or maintenance of the jail, in an amount not less than those specified in Title 63G,
4880 Chapter 7, Governmental Immunity Act of Utah;

4881 (f) require the private contractor to:

4882 (i) receive all prisoners committed to the jail by competent authority; and

4883 (ii) provide them with necessary food, clothing, and bedding in the manner prescribed
4884 by the governing body; and

4885 (g) prohibit the use of inmates by the private contractor for private business purposes
4886 of any kind.

4887 (3) A contractual provision requiring the private contractor to maintain liability
4888 insurance in an amount not less than the liability limits established by Title 63G, Chapter 7,
4889 Governmental Immunity Act of Utah, may not be construed as waiving the limitation on
4890 damages recoverable from a governmental entity or its employees established by that chapter.

4891 Section 163. Section **10-9a-403** is amended to read:

4892 **10-9a-403. Plan preparation.**

4893 (1) (a) The planning commission shall provide notice, as provided in Section
4894 10-9a-203, of its intent to make a recommendation to the municipal legislative body for a

4895 general plan or a comprehensive general plan amendment when the planning commission
4896 initiates the process of preparing its recommendation.

4897 (b) The planning commission shall make and recommend to the legislative body a
4898 proposed general plan for the area within the municipality.

4899 (c) The plan may include areas outside the boundaries of the municipality if, in the
4900 planning commission's judgment, those areas are related to the planning of the municipality's
4901 territory.

4902 (d) Except as otherwise provided by law or with respect to a municipality's power of
4903 eminent domain, when the plan of a municipality involves territory outside the boundaries of
4904 the municipality, the municipality may not take action affecting that territory without the
4905 concurrence of the county or other municipalities affected.

4906 (2) (a) At a minimum, the proposed general plan, with the accompanying maps, charts,
4907 and descriptive and explanatory matter, shall include the planning commission's
4908 recommendations for the following plan elements:

4909 (i) a land use element that:

4910 (A) designates the long-term goals and the proposed extent, general distribution, and
4911 location of land for housing, business, industry, agriculture, recreation, education, public
4912 buildings and grounds, open space, and other categories of public and private uses of land as
4913 appropriate; and

4914 (B) may include a statement of the projections for and standards of population density
4915 and building intensity recommended for the various land use categories covered by the plan;

4916 (ii) a transportation and traffic circulation element consisting of the general location
4917 and extent of existing and proposed freeways, arterial and collector streets, mass transit, and
4918 any other modes of transportation that the planning commission considers appropriate, all
4919 correlated with the population projections and the proposed land use element of the general
4920 plan; and

4921 (iii) for cities, an estimate of the need for the development of additional moderate
4922 income housing within the city, and a plan to provide a realistic opportunity to meet estimated
4923 needs for additional moderate income housing if long-term projections for land use and
4924 development occur.

4925 (b) In drafting the moderate income housing element, the planning commission:

4926 (i) shall consider the Legislature's determination that cities [~~should~~] shall facilitate a
4927 reasonable opportunity for a variety of housing, including moderate income housing:

4928 (A) to meet the needs of people desiring to live there; and

4929 (B) to allow persons with moderate incomes to benefit from and fully participate in all
4930 aspects of neighborhood and community life; and

4931 (ii) may include an analysis of why the recommended means, techniques, or
4932 combination of means and techniques provide a realistic opportunity for the development of
4933 moderate income housing within the planning horizon, which means or techniques may include
4934 a recommendation to:

4935 (A) rezone for densities necessary to assure the production of moderate income
4936 housing;

4937 (B) facilitate the rehabilitation or expansion of infrastructure that will encourage the
4938 construction of moderate income housing;

4939 (C) encourage the rehabilitation of existing uninhabitable housing stock into moderate
4940 income housing;

4941 (D) consider general fund subsidies to waive construction related fees that are
4942 otherwise generally imposed by the city;

4943 (E) consider utilization of state or federal funds or tax incentives to promote the
4944 construction of moderate income housing;

4945 (F) consider utilization of programs offered by the Utah Housing Corporation within
4946 that agency's funding capacity; and

4947 (G) consider utilization of affordable housing programs administered by the
4948 Department of Community and Culture.

4949 (c) In drafting the land use element, the planning commission shall:

4950 (i) identify and consider each agriculture protection area within the municipality; and

4951 (ii) avoid proposing a use of land within an agriculture protection area that is
4952 inconsistent with or detrimental to the use of the land for agriculture.

4953 (3) The proposed general plan may include:

4954 (a) an environmental element that addresses:

4955 (i) the protection, conservation, development, and use of natural resources, including
4956 the quality of air, forests, soils, rivers and other waters, harbors, fisheries, wildlife, minerals,

4957 and other natural resources; and

4958 (ii) the reclamation of land, flood control, prevention and control of the pollution of
4959 streams and other waters, regulation of the use of land on hillsides, stream channels and other
4960 environmentally sensitive areas, the prevention, control, and correction of the erosion of soils,
4961 protection of watersheds and wetlands, and the mapping of known geologic hazards;

4962 (b) a public services and facilities element showing general plans for sewage, water,
4963 waste disposal, drainage, public utilities, rights-of-way, easements, and facilities for them,
4964 police and fire protection, and other public services;

4965 (c) a rehabilitation, redevelopment, and conservation element consisting of plans and
4966 programs for:

4967 (i) historic preservation;

4968 (ii) the diminution or elimination of blight; and

4969 (iii) redevelopment of land, including housing sites, business and industrial sites, and
4970 public building sites;

4971 (d) an economic element composed of appropriate studies and forecasts, as well as an
4972 economic development plan, which may include review of existing and projected municipal
4973 revenue and expenditures, revenue sources, identification of basic and secondary industry,
4974 primary and secondary market areas, employment, and retail sales activity;

4975 (e) recommendations for implementing all or any portion of the general plan, including
4976 the use of land use ordinances, capital improvement plans, community development and
4977 promotion, and any other appropriate action;

4978 (f) provisions addressing any of the matters listed in Subsection 10-9a-401(2); and

4979 (g) any other element the municipality considers appropriate.

4980 Section 164. Section **10-9a-509.5** is amended to read:

4981 **10-9a-509.5. Review for application completeness -- Substantive application**
4982 **review -- Reasonable diligence required for determination of whether improvements or**
4983 **warranty work meets standards -- Money damages claim prohibited.**

4984 (1) (a) Each municipality shall, in a timely manner, determine whether an application is
4985 complete for the purposes of subsequent, substantive land use authority review.

4986 (b) After a reasonable period of time to allow the municipality diligently to evaluate
4987 whether all objective ordinance-based application criteria have been met, if application fees

4988 have been paid, the applicant may in writing request that the municipality provide a written
4989 determination either that the application is:

4990 (i) complete for the purposes of allowing subsequent, substantive land use authority
4991 review; or

4992 (ii) deficient with respect to a specific, objective, ordinance-based application
4993 requirement.

4994 (c) Within 30 days of receipt of an applicant's request under this section, the
4995 municipality shall either:

4996 (i) mail a written notice to the applicant advising that the application is deficient with
4997 respect to a specified, objective, ordinance-based criterion, and stating that the application
4998 ~~must~~ shall be supplemented by specific additional information identified in the notice; or

4999 (ii) accept the application as complete for the purposes of further substantive
5000 processing by the land use authority.

5001 (d) If the notice required by Subsection (1)(c)(i) is not timely mailed, the application
5002 shall be considered complete, for purposes of further substantive land use authority review.

5003 (e) (i) The applicant may raise and resolve in a single appeal any determination made
5004 under this Subsection (1) to the appeal authority, including an allegation that a reasonable
5005 period of time has elapsed under Subsection (1)(a).

5006 (ii) The appeal authority shall issue a written decision for any appeal requested under
5007 this Subsection (1)(e).

5008 (f) (i) The applicant may appeal to district court the decision of the appeal authority
5009 made under Subsection (1)(e).

5010 (ii) Each appeal under Subsection (1)(f)(i) shall be made within 30 days of the date of
5011 the written decision.

5012 (2) (a) Each land use authority shall substantively review a complete application and an
5013 application considered complete under Subsection (1)(d), and shall approve or deny each
5014 application with reasonable diligence.

5015 (b) After a reasonable period of time to allow the land use authority to consider an
5016 application, the applicant may in writing request that the land use authority take final action
5017 within 45 days from date of service of the written request.

5018 (c) The land use authority shall take final action, approving or denying the application

5019 within 45 days of the written request.

5020 (d) If the land use authority denies an application processed under the mandates of
5021 Subsection (2)(b), or if the applicant has requested a written decision in the application, the
5022 land use authority shall include its reasons for denial in writing, on the record, which may
5023 include the official minutes of the meeting in which the decision was rendered.

5024 (e) If the land use authority fails to comply with Subsection (2)(c), the applicant may
5025 appeal this failure to district court within 30 days of the date on which the land use authority
5026 [~~should have taken~~] is required to take final action under Subsection (2)(c).

5027 (3) (a) With reasonable diligence, each land use authority shall determine whether the
5028 installation of required subdivision improvements or the performance of warranty work meets
5029 the municipality's adopted standards.

5030 (b) (i) An applicant may in writing request the land use authority to accept or reject the
5031 applicant's installation of required subdivision improvements or performance of warranty work.

5032 (ii) The land use authority shall accept or reject subdivision improvements within 15
5033 days after receiving an applicant's written request under Subsection (3)(b)(i), or as soon as
5034 practicable after that 15-day period if inspection of the subdivision improvements is impeded
5035 by winter weather conditions.

5036 (iii) The land use authority shall accept or reject the performance of warranty work
5037 within 45 days after receiving an applicant's written request under Subsection (3)(b)(i), or as
5038 soon as practicable after that 45-day period if inspection of the warranty work is impeded by
5039 winter weather conditions.

5040 (c) If a land use authority determines that the installation of required subdivision
5041 improvements or the performance of warranty work does not meet the municipality's adopted
5042 standards, the land use authority shall comprehensively and with specificity list the reasons for
5043 its determination.

5044 (4) Subject to Section 10-9a-509, nothing in this section and no action or inaction of
5045 the land use authority relieves an applicant's duty to comply with all applicable substantive
5046 ordinances and regulations.

5047 (5) There shall be no money damages remedy arising from a claim under this section.
5048 Section 165. Section **10-9a-514** is amended to read:

5049 **10-9a-514. Manufactured homes.**

5050 (1) For purposes of this section, a manufactured home is the same as defined in Section
5051 58-56-3, except that the manufactured home [~~must~~] shall be attached to a permanent
5052 foundation in accordance with plans providing for vertical loads, uplift, and lateral forces and
5053 frost protection in compliance with the applicable building code. All appendages, including
5054 carports, garages, storage buildings, additions, or alterations [~~must~~] shall be built in compliance
5055 with the applicable building code.

5056 (2) A manufactured home may not be excluded from any land use zone or area in
5057 which a single-family residence would be permitted, provided the manufactured home
5058 complies with all local land use ordinances, building codes, and any restrictive covenants,
5059 applicable to a single family residence within that zone or area.

5060 (3) A municipality may not:

5061 (a) adopt or enforce an ordinance or regulation that treats a proposed development that
5062 includes manufactured homes differently than one that does not include manufactured homes;
5063 or

5064 (b) reject a development plan based on the fact that the development is expected to
5065 contain manufactured homes.

5066 Section 166. Section **10-9a-519** is amended to read:

5067 **10-9a-519. Elderly residential facilities in areas zoned exclusively for**
5068 **single-family dwellings.**

5069 (1) For purposes of this section:

5070 (a) no person who is being treated for alcoholism or drug abuse may be placed in a
5071 residential facility for elderly persons; and

5072 (b) placement in a residential facility for elderly persons shall be on a strictly voluntary
5073 basis and may not be a part of, or in lieu of, confinement, rehabilitation, or treatment in a
5074 correctional institution.

5075 (2) Subject to the granting of a conditional use permit, a residential facility for elderly
5076 persons shall be allowed in any zone that is regulated to permit exclusively single-family
5077 dwelling use, if that facility:

5078 (a) conforms to all applicable health, safety, land use, and building codes;

5079 (b) is capable of use as a residential facility for elderly persons without structural or
5080 landscaping alterations that would change the structure's residential character; and

5081 (c) conforms to the municipality's criteria, adopted by ordinance, governing the
5082 location of residential facilities for elderly persons in areas zoned to permit exclusively
5083 single-family dwellings.

5084 (3) A municipality may, by ordinance, provide that no residential facility for elderly
5085 persons be established within three-quarters mile of another existing residential facility for
5086 elderly persons or residential facility for persons with a disability.

5087 (4) The use granted and permitted by this section is nontransferable and terminates if
5088 the structure is devoted to a use other than as a residential facility for elderly persons or if the
5089 structure fails to comply with applicable health, safety, and building codes.

5090 (5) (a) Municipal ordinances shall prohibit discrimination against elderly persons and
5091 against residential facilities for elderly persons.

5092 (b) The decision of a municipality regarding the application for a permit by a
5093 residential facility for elderly persons [~~must~~] shall be based on legitimate land use criteria and
5094 may not be based on the age of the facility's residents.

5095 (6) The requirements of this section that a residential facility for elderly persons obtain
5096 a conditional use permit or other permit do not apply if the facility meets the requirements of
5097 existing land use ordinances that allow a specified number of unrelated persons to live
5098 together.

5099 Section 167. Section **10-11-2** is amended to read:

5100 **10-11-2. Notice to property owners.**

5101 It shall be the duty of such city inspector to make careful examination and investigation,
5102 as may be provided by ordinance, of the growth and spread of such injurious and noxious
5103 weeds, and of garbage, refuse or unsightly or deleterious objects or structures; and it shall be
5104 his duty to ascertain the names of the owners and descriptions of the premises where such
5105 weeds, garbage, refuse, objects or structures exist, and to serve notice in writing upon the
5106 owner or occupant of such land, either personally or by mailing notice, postage prepaid,
5107 addressed to the owner or occupant at the last known post-office address as disclosed by the
5108 records of the county assessor, requiring such owner or occupant, as the case may be, to
5109 eradicate, or destroy and remove, the same within such time as the inspector may designate,
5110 which [~~shall not~~] may not be less than 10 days from the date of service of such notice. One
5111 notice shall be deemed sufficient on any lot or parcel of property for the entire season of weed

5112 growth during that year. The inspector shall make proof of service of such notice under oath,
5113 and file the same in the office of the county treasurer.

5114 Section 168. Section **10-15-4** is amended to read:

5115 **10-15-4. Powers of legislative body of municipality.**

5116 The legislative body of the municipalities of this state shall have the power:

5117 (1) to establish pedestrian malls;

5118 (2) to prohibit, in whole or in part, vehicular traffic on a pedestrian mall;

5119 (3) to pay from the general funds of the municipality, or from other available money, or
5120 from the proceeds of assessments levied on land benefited by the establishment of a pedestrian
5121 mall, the damages, if any, allowed or awarded to any property owner by reason of the
5122 establishment of the pedestrian mall;

5123 (4) to acquire, construct, and maintain on the municipality's streets which are
5124 established as a pedestrian mall, improvements of any kind or nature necessary or convenient
5125 to the operation of such streets as a pedestrian mall, [~~included but not limited to~~] including
5126 paving, sidewalks, curbs, gutters, sewers, drainage works, lighting facilities, fire protection
5127 facilities, flood protection facilities, water distribution facilities, vehicular parking areas,
5128 retaining walls, landscaping, tree planting, statuaries, fountains, decorative structures, benches,
5129 rest rooms, child care facilities, display facilities, information booths, public assembly
5130 facilities, and other structures, works or improvements necessary or convenient to serve
5131 members of the public using such pedestrian malls, including the reconstruction or relocation
5132 of existing municipally owned works, improvements, or facilities on such municipal streets;
5133 which foregoing changes or any portions thereof, are referred to in this act as "improvements";

5134 (5) to pay from the general funds of the municipality or other available moneys, or
5135 from the proceeds of assessments levied on property benefited by any such improvements, or
5136 from the proceeds of special improvement warrants or bonds, the whole or any portion of the
5137 costs of acquisition, construction, and maintenance of such improvements in accordance with
5138 the provisions of Title 11, Chapter 42, Assessment Area Act, relating to special improvement
5139 assessments; and

5140 (6) to do any and all other acts or things necessary or convenient for the
5141 accomplishment of the purposes of this chapter.

5142 Section 169. Section **11-8-1** is amended to read:

5143 **11-8-1. Contracts for joint use, operation, and ownership of sewage lines and**
5144 **sewage treatment and disposal systems.**

5145 Any county, incorporated municipality, improvement district, taxing district or other
5146 political subdivision of the state of Utah which now or hereafter owns and operates sanitary
5147 sewer facilities (each of which is hereinafter referred to as a "public owner") is hereby granted
5148 authority:

5149 (a) To enter into long-term contracts with any other public owner or public owners
5150 pursuant to which sewage lines, sewage treatment and sewage disposal facilities, or any part
5151 thereof, of one or more public owners shall be available for collection, treatment and disposal,
5152 or any part thereof, of the sewage collected by one or more other public owners, or of sewage
5153 collected jointly, pursuant to such terms and conditions and for such consideration as may be
5154 provided in such contracts. Annual payments due by any such public owner for services
5155 received under any such contract [~~shall not~~ may not be construed to be an indebtedness of such
5156 public owner within the meaning of any constitutional or statutory restriction, and no election
5157 shall be necessary for the authorization of such contract. Any public owner or owners so
5158 contracting to make available sewage collection, sewage treatment and disposal facilities, or
5159 any part thereof, may in any such contract agree to make available to such other public owner
5160 or owners a specified part of its facilities, without regard to its future need of such specified
5161 part for its own use, and may in such contract agree to increase the capacity of its facilities
5162 from time to time in the future if necessary in order to take care of its own needs and to
5163 perform its obligations to the other parties to such contract.

5164 (b) To construct or otherwise acquire joint interests in, and to own jointly, sewer lines,
5165 sewage treatment and disposal facilities, or any part thereof for their common use. To such end,
5166 any public owner may sell to any other public owner or owners a partial interest or interests in
5167 any of its sewer lines, sewage treatment and disposal facilities. Any public owner may issue its
5168 bonds for the purpose of acquiring such joint interest in sewer lines, sewage treatment and
5169 disposal facilities, or any part thereof, whether such joint interest is to be acquired through the
5170 construction of new facilities or the purchase of such interest in existing facilities, which bonds
5171 may be issued under the provisions and in the manner provided in any available law
5172 authorizing the issuance of bonds for the acquisition of sanitary sewer facilities by such public
5173 owner.

5174 (c) To operate jointly with any other public owner or owners, sewer lines, sewage
5175 treatment and disposal facilities, or any part thereof, which they may own jointly.

5176 Section 170. Section **11-13-309** is amended to read:

5177 **11-13-309. Venue for civil action -- No trial de novo.**

5178 (1) Any civil action seeking to challenge, enforce, or otherwise have reviewed, any
5179 order of the board, or any alleviation contract, shall be brought only in the district court for the
5180 county within which is located the candidate to which the order or contract pertains. If the
5181 candidate is the state of Utah, the action shall be brought in the district court for Salt Lake
5182 County. Any action brought in any judicial district shall be ordered transferred to the court
5183 where venue is proper under this section.

5184 (2) In any civil action seeking to challenge, enforce, or otherwise review, any order of
5185 the board, a trial de novo [~~shall not~~] may not be held. The matter shall be considered on the
5186 record compiled before the board, and the findings of fact made by the board [~~shall not~~] may
5187 not be set aside by the district court unless the board clearly abused its discretion.

5188 Section 171. Section **11-13-311** is amended to read:

5189 **11-13-311. Credit for impact alleviation payments against in lieu of ad valorem**
5190 **property taxes -- Federal or state assistance.**

5191 (1) In consideration of the impact alleviation payments and means provided by the
5192 project entity or other public agency pursuant to the contracts and determination orders, the
5193 project entity or other public agency, as the case may be, shall be entitled to a credit against the
5194 fees paid in lieu of ad valorem property taxes as provided by Section 11-13-302, ad valorem
5195 property or other taxation by, or other payments in lieu of ad valorem property taxation or other
5196 form of tax equivalent payments required by any candidate which is a party to an impact
5197 alleviation contract or board order.

5198 (2) Each candidate may make application to any federal or state governmental authority
5199 for any assistance that may be available from that authority to alleviate the impacts to the
5200 candidate. To the extent that the impact was attributable to the project or to the facilities
5201 providing additional project capacity, any assistance received from that authority shall be
5202 credited to the alleviation obligation with respect to the project or the facilities providing
5203 additional project capacity, as the case may be, in proportion to the percentage of impact
5204 attributable to the project or facilities providing additional project capacity, but in no event

5205 shall the candidate realize less revenues than would have been realized without receipt of any
5206 assistance.

5207 (3) With respect to school districts the fee in lieu of ad valorem property tax for the
5208 state minimum school program required to be paid by the project entity or other public agency
5209 under Subsection 11-13-302(2)(b)(i) shall be treated as a separate fee and [~~shall not~~] does not
5210 affect any credits for alleviation payments received by the school districts under Subsection
5211 11-13-302(2)(b)(i), or Sections 11-13-305 and 11-13-306.

5212 Section 172. Section **11-14-302** is amended to read:

5213 **11-14-302. Resolution -- Negotiability -- Registration -- Maturity -- Interest --**
5214 **Payment -- Redemption -- Combining issues -- Sale -- Financing plan.**

5215 (1) Bonds issued under this chapter shall be authorized by resolution of the governing
5216 body, shall be fully negotiable for all purposes, may be made registrable as to principal alone or
5217 as to principal and interest, shall mature at such time or times not more than 40 years from their
5218 date, shall bear interest at such rate or rates, if any, shall be payable at such place or places,
5219 shall be in such form, shall be executed in such manner, may be made redeemable prior to
5220 maturity at such times and on such terms, shall be sold in such manner and at such prices,
5221 either at, in excess of, or below face value, and generally shall be issued in such manner and
5222 with such details as may be provided by resolution; it being the express intention of the
5223 legislature that interest rate limitations elsewhere appearing in the laws of Utah [~~shall not~~] do
5224 not apply to nor limit the rate of interest on bonds issued under this chapter. The resolution
5225 shall specify either the rate or rates of interest, if any, on the bonds or specify the method by
5226 which the interest rate or rates on the bonds may be determined while the bonds are
5227 outstanding. If the resolution specifies a method by which interest on the bonds may be
5228 determined, the resolution shall also specify the maximum rate of interest the bonds may bear.
5229 Bonds voted for different purposes by separate propositions at the same or different bond
5230 elections may in the discretion of the governing body be combined and offered for sale as one
5231 issue of bonds. The resolution providing for this combination and the printed bonds for the
5232 combined issue shall separately set forth the amount being issued for each of the purposes
5233 provided for in each proposition submitted to the electors. If the local political subdivision has
5234 retained a fiscal agent to assist and advise it with respect to the bonds and the fiscal agent has
5235 received or is to receive a fee for such services, the bonds may be sold to the fiscal agent but

5236 only if the sale is made pursuant to a sealed bid submitted by the fiscal agent at an advertised
5237 public sale.

5238 (2) (a) All bonds shall be paid by the treasurer of the local political subdivision or the
5239 treasurer's duly authorized agent on their respective maturity dates or on the dates fixed for the
5240 bonds redemption. All bond coupons, other than coupons cancelled because of the redemption
5241 of the bonds to which they apply, shall similarly be paid on their respective dates or as soon
5242 thereafter as the bonds or coupons are surrendered.

5243 (b) Upon payment of a bond or coupon, the treasurer of the local political subdivision
5244 or the treasurer's duly authorized agent, shall perforate the bond or coupon with a device
5245 suitable to indicate payment.

5246 (c) Any bonds or coupons which have been paid or cancelled may be destroyed by the
5247 treasurer of the local political subdivision or by the treasurer's duly authorized agent.

5248 (3) Bonds, bond anticipation notes, or tax anticipation notes with maturity dates of one
5249 year or less may be authorized by a local political subdivision from time to time pursuant to a
5250 plan of financing adopted by the governing body. The plan of financing shall specify the terms
5251 and conditions under which the bonds or notes may be issued, sold, and delivered, the officers
5252 of the local political subdivision authorized to issue the bonds or notes, the maximum amount
5253 of bonds or notes which may be outstanding at any one time, the source or sources of payment
5254 of the bonds or notes, and all other details necessary for issuance of the bonds or notes.
5255 Subject to the Constitution, the governing body of the local political subdivision may include
5256 in the plan of financing the terms and conditions of agreements which may be entered into by
5257 the local political subdivision with banking institutions for letters of credit or for standby letters
5258 of credit to secure the bonds or notes, including payment from any legally available source of
5259 fees, charges, or other amounts coming due under the agreements entered into by the local
5260 political subdivision.

5261 Section 173. Section **11-14-308** is amended to read:

5262 **11-14-308. Special service district bonds secured by federal mineral lease**
5263 **payments -- Use of bond proceeds -- Bond resolution -- Nonimpairment of appropriation**
5264 **formula -- Issuance of bonds.**

5265 (1) Special service districts may:

5266 (a) issue bonds payable, in whole or in part, from federal mineral lease payments which

5267 are to be deposited into the Mineral Lease Account under Section 59-21-1 and distributed to
5268 special service districts under Subsection 59-21-2(2)(h); or

5269 (b) pledge all or any part of the mineral lease payments referred to in Subsection (1)(a)
5270 as an additional source of payment for their general obligation bonds.

5271 (2) The proceeds of these bonds may be used:

5272 (a) to construct, repair, and maintain streets and roads;

5273 (b) to fund any reserves and costs incidental to the issuance of the bonds and pay any
5274 associated administrative costs; and

5275 (c) for capital projects of the special service district.

5276 (3) (a) The special service district board shall enact a resolution authorizing the
5277 issuance of bonds which, until the bonds have been paid in full:

5278 (i) shall be irrevocable; and

5279 (ii) may not be amended in any manner that would:

5280 (A) impair the rights of the bond holders; or

5281 (B) jeopardize the timely payment of principal or interest when due.

5282 (b) Notwithstanding any other provision of this chapter, the resolution may contain
5283 covenants with the bond holder regarding:

5284 (i) mineral lease payments, or their disposition;

5285 (ii) the issuance of future bonds; or

5286 (iii) other pertinent matters considered necessary by the governing body to:

5287 (A) assure the marketability of the bonds; or

5288 (B) insure the enforcement, collection, and proper application of mineral lease
5289 payments.

5290 (4) (a) Except as provided in Subsection (4)(b), the state may not alter, impair, or limit
5291 the statutory appropriation formula provided in Subsection 59-21-2(2)(h), in a manner that
5292 reduces the amounts to be distributed to the special service district until the bonds and the
5293 interest on the bonds are fully met and discharged. Each special service district may include
5294 this pledge and undertaking of the state in these bonds.

5295 (b) Nothing in this section:

5296 (i) may preclude the alteration, impairment, or limitation of these bonds if adequate
5297 provision is made by law for the protection of the bond holders; or

5298 (ii) shall be construed:

5299 (A) as a pledge guaranteeing the actual dollar amount ultimately received by individual
5300 special service districts;

5301 (B) to require the Department of Transportation to allocate the mineral lease payments
5302 in a manner contrary to the general allocation method described in Subsection 59-21-2(2)(h); or

5303 (C) to limit the Department of Transportation in making rules or procedures allocating
5304 mineral lease payments pursuant to Subsection 59-21-2(2)(h).

5305 (5) (a) The average annual installments of principal and interest on bonds to which
5306 mineral lease payments have been pledged as the sole source of payment may not at any one
5307 time exceed:

5308 (i) 80% of the total mineral lease payments received by the issuing entity during the
5309 fiscal year of the issuing entity immediately preceding the fiscal year in which the resolution
5310 authorizing the issuance of bonds is adopted; or

5311 (ii) if the bonds are issued during the first fiscal year the issuing entity is eligible to
5312 receive funds, 60% of the amount estimated by the Department of Transportation to be
5313 appropriated to the issuing entity in that fiscal year.

5314 (b) The Department of Transportation [~~shall not be~~] is not liable for any loss or damage
5315 resulting from reliance on the estimates.

5316 (6) The final maturity date of the bonds may not exceed 15 years from the date of their
5317 issuance.

5318 (7) Bonds may not be issued under this section after December 31, 2010.

5319 (8) Bonds which are payable solely from a special fund into which mineral lease
5320 payments are deposited constitute a borrowing based solely upon the credit of the mineral lease
5321 payments received or to be received by the special service district and do not constitute an
5322 indebtedness or pledge of the general credit of the special service district or the state.

5323 Section 174. Section **11-14-313** is amended to read:

5324 **11-14-313. Issuance of negotiable notes or bonds authorized -- Limitation on**
5325 **amount of tax anticipation notes or bonds -- Procedure.**

5326 (1) (a) For the purpose of meeting the current expenses of the local political
5327 subdivision and for any other purpose for which funds of the local political subdivision may be
5328 expended, a local political subdivision may, if authorized by a resolution of its governing body,

5329 borrow money by issuing its negotiable notes or bonds in an initial principal amount:

5330 (i) not in excess of 90% of the taxes and other revenues of the local political
5331 subdivision for the current fiscal year, if the notes or bonds are issued after the annual tax levy
5332 for taxes falling due during the fiscal year in which the notes or bonds are issued;

5333 (ii) not in excess of 75% of the taxes and other revenues of the local political
5334 subdivision for the preceding fiscal year, if the notes or bonds are issued prior to the annual tax
5335 levy for taxes falling due during the fiscal year in which the bonds or notes are issued; or

5336 (iii) not in excess of 75% of the taxes and other revenues that the governing body of
5337 the local political subdivision estimates that the local political subdivision will receive for the
5338 current fiscal year, if the notes or bonds are issued within 24 months following the creation of
5339 the local political subdivision.

5340 (b) The proceeds of the notes or bonds shall be applied only in payment of current and
5341 necessary expenses and other purposes for which funds of the local political subdivision may
5342 be expended.

5343 (c) There shall be included in the annual levy a tax and there shall be provision made
5344 for the imposition and collection of sufficient revenues other than taxes sufficient to pay the
5345 notes or bonds at maturity.

5346 (d) If the taxes and other revenues in any one year are insufficient through delinquency
5347 or uncollectibility of taxes or other cause to pay when due all the lawful debts of the local
5348 political subdivision which have been or may hereafter be contracted, the governing body of
5349 the local political subdivision is authorized and directed to levy and collect in the next
5350 succeeding year a sufficient tax and to provide for the imposition and collection of sufficient
5351 revenues other than taxes to pay all of such lawfully contracted indebtedness, and may borrow
5352 as provided in this section in anticipation of such tax and other revenues to pay any such
5353 lawfully contracted indebtedness.

5354 (e) Each resolution authorizing the issuance of tax anticipation notes or bonds shall:

5355 (i) describe the taxes or revenues in anticipation of which the notes or bonds are to be
5356 issued; and

5357 (ii) specify the principal amount of the notes or bonds, any interest rates, including a
5358 variable interest rate, the notes or bonds shall bear, and the maturity dates of the notes or
5359 bonds, which dates ~~shall not~~ may not extend beyond the last day of the issuing local political

5360 subdivision's fiscal year.

5361 (2) Tax anticipation notes or bonds shall be issued and sold in such manner and at such
5362 prices, whether at, below, or above face value, as the governing body shall by resolution
5363 determine. Tax anticipation notes or bonds shall be in bearer form, except that the governing
5364 body may provide for the registration of the notes or bonds in the name of the owner, either as
5365 to principal alone, or as to principal and interest. Tax anticipation notes or bonds may be made
5366 redeemable prior to maturity at the option of the governing body in the manner and upon the
5367 terms fixed by the resolution authorizing their issuance. Tax anticipation notes or bonds shall
5368 be executed and shall be in such form and have such details and terms as shall be provided in
5369 the authorizing resolution.

5370 (3) The provisions of Sections 11-14-303, 11-14-304, 11-14-305, 11-14-313,
5371 11-14-315, 11-14-316, 11-14-401, 11-14-403, and 11-14-404 shall apply to all tax anticipation
5372 notes or bonds issued under this section. In applying these sections to tax anticipation notes,
5373 "bond" or "bonds" as used in these sections shall be deemed to include tax anticipation notes.

5374 Section 175. Section **11-14-315** is amended to read:

5375 **11-14-315. Nature and validity of bonds issued -- Applicability of other statutory**
5376 **provisions -- Budget provision required -- Applicable procedures for issuance.**

5377 Bonds issued under this chapter shall have all the qualities of negotiable paper, shall be
5378 incontestable in the hands of bona fide purchasers or holders for value and [~~shall not be~~] are
5379 not invalid for any irregularity or defect in the proceedings for their issuance and sale. This
5380 chapter is intended to afford an alternative method for the issuance of bonds by local political
5381 subdivisions and [~~shall not~~] may not be so construed as to deprive any local political
5382 subdivision of the right to issue its bonds under authority of any other statute, but nevertheless
5383 this chapter shall constitute full authority for the issue and sale of bonds by local political
5384 subdivisions. The provisions of Section 11-1-1, Utah Code Annotated 1953, [~~shall not be~~] are
5385 not applicable to bonds issued under this chapter. Any local political subdivision subject to the
5386 provisions of any budget law shall in its annual budget make proper provision for the payment
5387 of principal and interest currently falling due on bonds issued hereunder, but no provision need
5388 be made in any such budget prior to the issuance of the bonds for the issuance thereof or for the
5389 expenditure of the proceeds thereof. No ordinance, resolution or proceeding in respect to the
5390 issuance of bonds hereunder shall be necessary except as herein specifically required, nor shall

5391 the publication of any resolution, proceeding or notice relating to the issuance of the bonds be
5392 necessary except as herein required. Any publication made hereunder may be made in any
5393 newspaper conforming to the terms hereof in which legal notices may be published under the
5394 laws of Utah, without regard to the designation thereof as the official journal or newspaper of
5395 the local political subdivision, and as required in Section 45-1-101. No resolution adopted or
5396 proceeding taken hereunder shall be subject to referendum petition or to an election other than
5397 as herein required. All proceedings adopted hereunder may be adopted on a single reading at
5398 any legally convened meeting of the governing body.

5399 Section 176. Section **11-17-1.5** is amended to read:

5400 **11-17-1.5. Purpose of chapter.**

5401 (1) (a) The purposes of this chapter are to stimulate the economic growth of the state,
5402 to promote employment and achieve greater industrial development in the state, to maintain or
5403 enlarge domestic or foreign markets for Utah industrial products, to authorize municipalities
5404 and counties in the state to facilitate capital formation, finance, acquire, own, lease, or sell
5405 projects for the purpose of reducing, abating, or preventing pollution and to protect and
5406 promote the health, welfare, and safety of the citizens of the state and to improve local health
5407 and the general welfare by inducing corporations, persons, or entities engaged in health care
5408 services, including hospitals, nursing homes, extended care facilities, facilities for the care of
5409 persons with a physical or mental disability, and administrative and support facilities, to locate,
5410 relocate, modernize, or expand in this state and to assist in the formation of investment capital
5411 with respect thereto.

5412 (b) The Legislature declares that the acquisition or financing, or both, of projects under
5413 the Utah Industrial Facilities and Development Act and the issuance of bonds under it
5414 constitutes a proper public purpose.

5415 (2) (a) It is declared that the policy of the state is to encourage the development of free
5416 enterprise and entrepreneurship for the purpose of the expansion of employment opportunities
5417 and economic development.

5418 (b) It is declared that there exists in the state an inadequate amount of locally managed,
5419 pooled venture capital in the private sector available to invest in early stage businesses having
5420 high growth potential and that can provide jobs for Utah citizens.

5421 (c) It is found that venture capital is required for healthy economic development of

5422 sectors of the economy having high growth and employment potential.

5423 (d) It is further found that the public economic development purposes of the state and
5424 its counties and municipalities can be fostered by the sale of industrial revenue bonds for the
5425 purpose of providing funding for locally managed, pooled new venture and economic
5426 development funds in accordance with the provisions of this chapter.

5427 (e) It is declared that in order to assure adequate investment of private capital for these
5428 uses, cooperation between private enterprise and state and local government is necessary and in
5429 the public interest and that the facilitation of capital accumulation is the appropriate activity of
5430 the counties and municipalities of this state and also of the Governor's Office of Economic
5431 Development.

5432 (f) It is found that venture capital funds historically, because of the more intensive
5433 nature of their relationship with companies in which they invest, tend to concentrate their
5434 investments within a relatively close geographical area to their headquarters location.

5435 (g) It is found and declared that investors in economic development or new venture
5436 investment funds require for the overall security of their investments reasonable diversification
5437 of investment portfolios and that, in the course of this diversification, investments are often
5438 syndicated or jointly made among several financial institutions or funds. It is expressly found
5439 and declared that an economic development or new venture investment fund [~~must~~] shall from
5440 time to time for its optimal profitability and efficiency (which are important for the security and
5441 profit of bond purchasers providing funds therefor) cooperate with others who may be located
5442 outside of Utah or the county or municipality where the fund is headquartered in the making of
5443 investments and that the fund [~~must~~] shall be free in the interests of reciprocal relationships
5444 with other financial institutions and diversification of risks to invest from time to time in
5445 enterprises that are located outside of Utah or the counties or municipalities. It is specifically
5446 found that such activity by a locally managed fund, funded in whole or in part with the
5447 proceeds of bonds sold under this chapter, is within the public purposes of the state and any
5448 county or municipality offering the bonds, provided that the fund locates within Utah or the
5449 county or municipality its headquarters where its actual investment decisions and management
5450 functions occur and limits the aggregate amount of its investments in companies located
5451 outside of Utah to an amount that in the aggregate does not exceed the aggregate amount of
5452 investments made by institutions and funds located outside of Utah in Utah companies, that the

5453 locally managed fund has sponsored or in which it has invested and that it has brought to the
5454 attention of investors outside of Utah.

5455 Section 177. Section **11-17-2** is amended to read:

5456 **11-17-2. Definitions.**

5457 As used in this chapter:

5458 (1) "Bonds" means bonds, notes, or other evidences of indebtedness.

5459 (2) "Finance" or "financing" includes the issuing of bonds by a municipality, county, or
5460 state university for the purpose of using a portion, or all or substantially all of the proceeds to
5461 pay for or to reimburse the user or its designee for the costs of the acquisition of facilities of a
5462 project, or to create funds for the project itself where appropriate, whether these costs are
5463 incurred by the municipality, the county, the state university, the user, or a designee of the user.
5464 If title to or in these facilities at all times remains in the user, the bonds of the municipality or
5465 county shall be secured by a pledge of one or more notes, debentures, bonds, other secured or
5466 unsecured debt obligations of the user, or such sinking fund or other arrangement as in the
5467 judgment of the governing body is appropriate for the purpose of assuring repayment of the
5468 bond obligations to investors in accordance with their terms.

5469 (3) "Governing body" means:

5470 (a) for a county, city, or town, the legislative body of the county, city, or town;

5471 (b) for the military installation development authority created in Section 63H-1-201,
5472 the authority board, as defined in Section 63H-1-102;

5473 (c) for the University of Utah and Utah State University, the board or body having the
5474 control and supervision of the University of Utah and Utah State University; and

5475 (d) for a nonprofit corporation or foundation created by and operating under the
5476 auspices of a state university, the board of directors or board of trustees of that corporation or
5477 foundation.

5478 (4) "Industrial park" means land, including all necessary rights, appurtenances,
5479 easements, and franchises relating to it, acquired and developed by any municipality, county, or
5480 state university for the establishment and location of a series of sites for plants and other
5481 buildings for industrial, distribution, and wholesale use. There may be included as part of the
5482 development of the land for any industrial park under this chapter the acquisition and provision
5483 of water, sewerage, drainage, street, road, sidewalk, curb, gutter, street lighting, electrical

5484 distribution, railroad, or docking facilities, or any combination of them, but only to the extent
5485 that these facilities are incidental to the use of the land as an industrial park.

5486 (5) "Mortgage" means a mortgage, trust deed, or other security device.

5487 (6) "Municipality" means any incorporated city or town in the state, including cities or
5488 towns operating under home rule charters.

5489 (7) "Pollution" means any form of environmental pollution including~~[-but not limited~~
5490 ~~to;]~~ water pollution, air pollution, pollution caused by solid waste disposal, thermal pollution,
5491 radiation contamination, or noise pollution.

5492 (8) "Project" means:

5493 (a) any industrial park, land, interest in land, building, structure, facility, system,
5494 fixture, improvement, appurtenance, machinery, equipment, or any combination of them,
5495 whether or not in existence or under construction:

5496 (i) that is suitable for industrial, manufacturing, warehousing, research, business, and
5497 professional office building facilities, commercial, shopping services, food, lodging, low
5498 income rental housing, recreational, or any other business purposes;

5499 (ii) that is suitable to provide services to the general public;

5500 (iii) that is suitable for use by any corporation, person, or entity engaged in health care
5501 services, including hospitals, nursing homes, extended care facilities, facilities for the care of
5502 persons with a physical or mental disability, and administrative and support facilities; or

5503 (iv) that is suitable for use by a state university for the purpose of aiding in the
5504 accomplishment of its authorized academic, scientific, engineering, technical, and economic
5505 development functions, but "project" does not include any property, real, personal, or mixed,
5506 for the purpose of the construction, reconstruction, improvement, or maintenance of a public
5507 utility as defined in Section 54-2-1, and except as provided in Subsection (8)(b);

5508 (b) any land, interest in land, building, structure, facility, system, fixture, improvement,
5509 appurtenance, machinery, equipment, or any combination of them, used by any individual,
5510 partnership, firm, company, corporation, public utility, association, trust, estate, political
5511 subdivision, state agency, or any other legal entity, or its legal representative, agent, or assigns,
5512 for the reduction, abatement, or prevention of pollution, including~~[-but not limited to;]~~ the
5513 removal or treatment of any substance in process material, if that material would cause
5514 pollution if used without the removal or treatment;

5515 (c) facilities, machinery, or equipment, the manufacturing and financing of which will
5516 maintain or enlarge domestic or foreign markets for Utah industrial products; or

5517 (d) any economic development or new venture investment fund to be raised other than
5518 from:

5519 (i) municipal or county general fund moneys;

5520 (ii) moneys raised under the taxing power of any county or municipality; or

5521 (iii) moneys raised against the general credit of any county or municipality.

5522 (9) "State university" means the University of Utah and Utah State University and
5523 includes any nonprofit corporation or foundation created by and operating under their authority.

5524 (10) "User" means the person, whether natural or corporate, who will occupy, operate,
5525 maintain, and employ the facilities of, or manage and administer a project after the financing,
5526 acquisition, or construction of it, whether as owner, manager, purchaser, lessee, or otherwise.

5527 Section 178. Section **11-17-4** is amended to read:

5528 **11-17-4. Bonds -- Limitations -- Form and provisions -- Sale -- Negotiability.**

5529 (1) All bonds issued by a municipality or county under this chapter shall be limited
5530 obligations of the municipality or county. Bonds and interest coupons issued under this chapter
5531 ~~shall not~~ may not constitute nor give rise to a general obligation or liability of the
5532 municipality or county or a charge against its general credit or taxing powers. Such limitation
5533 shall be plainly stated upon the face of such bonds.

5534 (2) The bonds referred to in Subsection (1) may be authorized by resolution of the
5535 governing body, and may:

5536 (a) be executed and delivered at any time and from time to time;

5537 (b) be in such form and denominations;

5538 (c) be of such tenor;

5539 (d) be in registered or bearer form either as to principal or interest or both;

5540 (e) be payable in such installments and at such time or times as the governing body
5541 may deem advisable;

5542 (f) be payable at such place or places either within or without the state of Utah;

5543 (g) bear interest at such rate or rates, payable at such place or places, and evidenced in
5544 such manner;

5545 (h) be redeemable prior to maturity, with or without premium;

5546 (i) be convertible into equity positions in any asset or assets acquired or developed with
5547 the proceeds of the sale of the bonds; and

5548 (j) contain such other provisions not inconsistent with this chapter as shall be deemed
5549 for the best interests of the municipality or county and provided for in the proceedings of the
5550 governing body under which the bonds shall be authorized to be issued.

5551 (3) Any bonds issued under this chapter may be sold at public or private sale in such
5552 manner and at such time or times as may be determined by the governing body to be most
5553 advantageous. The municipality or county may pay all expenses, premiums, and commissions
5554 which the governing body may deem necessary or advantageous in connection with the
5555 authorization, sale, and issuance of such bonds from the proceeds of the sale of such bonds or
5556 from the revenues of the project or projects.

5557 (4) All bonds issued under this chapter and all interest coupons applicable thereto shall
5558 be construed to be negotiable instruments, despite the fact that they are payable solely from a
5559 specified source.

5560 Section 179. Section **11-17-5** is amended to read:

5561 **11-17-5. Security for bonds -- Provisions in security agreements -- Limitations --**
5562 **Liens.**

5563 (1) The principal of and interest on any bonds issued under this chapter:

5564 (a) shall be secured by a pledge and assignment of the revenues out of which the bonds
5565 are made payable or by such other sinking fund or security provision as shall in the judgment of
5566 the governing body be reasonably designed to assure payment of the obligations to the
5567 purchasers thereof; however, the bond purchasers [~~shall not~~] may not in any event have
5568 recourse against the general funds or general credit of the governmental offeror;

5569 (b) may be secured by a mortgage covering all or any part of the project; and

5570 (c) may be secured by any other security device deemed most advantageous by the
5571 governing body issuing the bonds.

5572 (2) The proceedings under which the bonds are authorized to be issued under this
5573 chapter and any mortgage given to secure them may contain any agreements and provisions
5574 customarily contained in instruments securing bonds, including, without limiting the generality
5575 of the foregoing, provisions respecting:

5576 (a) the fixing and collection of revenues for any project covered by the proceedings or

5577 mortgage;

5578 (b) the terms to be incorporated in the lease, installment purchase agreement, rental
5579 agreement, mortgage, trust indenture, loan agreement, financing agreement, or other agreement
5580 for the project;

5581 (c) the maintenance and insurance of the project;

5582 (d) the creation and maintenance of special funds from the revenues of projects; and

5583 (e) the rights and remedies available in the event of a default to the bondholders or to
5584 the trustee under a mortgage, all as the governing body deems advisable and which is not in
5585 conflict with this chapter, except that in making any agreements or provisions a municipality or
5586 county may not obligate itself except with respect to the project and the application of the
5587 revenues from it and may not incur a general obligation or liability or a charge upon its general
5588 credit or against its taxing powers.

5589 (3) The proceedings authorizing any bonds under this chapter and any mortgage
5590 securing bonds may provide that, in the event of a default in the payment of the principal of or
5591 the interest on the bonds or in the performance of any agreement contained in the proceedings
5592 or mortgage, payment and performance may be enforced by the appointment of a receiver with
5593 power to charge and collect the revenues from the project and to apply the revenues from the
5594 project in accordance with the proceedings or the provisions of the mortgage.

5595 (4) Any mortgage made under this chapter to secure bonds issued under it may also
5596 provide that, in the event of a default in payment or the violation of any agreement contained in
5597 the mortgage, the mortgage may be foreclosed or otherwise realized on in any manner
5598 permitted by law. The mortgage may also provide that any trustee under the mortgage or the
5599 holder of any of the bonds secured by the mortgage may become the purchaser at any
5600 foreclosure sale if the highest bidder. No breach of any agreement imposes any general
5601 obligation or liability upon a municipality or county or any charge upon their general credit or
5602 against their taxing powers.

5603 (5) The revenues pledged and received are immediately subject to the lien of the pledge
5604 without any physical delivery of any lease, purchase agreement, financing agreement, loan
5605 agreement, note, debenture, bond, or other obligation under which the revenues are payable, or
5606 any other act, except that the proceedings or agreement by which the pledge is created shall be
5607 recorded in the records of the municipality, county, or state university. The proceedings or

5608 agreement by which the pledge is created, or a financing statement, need not be filed or
5609 recorded under the Uniform Commercial Code, or otherwise, except in the records of the
5610 municipality, county, or state university as provided in this Subsection (5). The lien of any
5611 pledge is valid and binding and has priority as against all parties having claims of any kind in
5612 tort, contract, or otherwise against the municipality, county, or state university, irrespective of
5613 whether the parties have notice of the lien. Each pledge and agreement made for the benefit or
5614 security of any of the revenue bonds issued under this chapter shall continue effective until the
5615 principal, interest, and premium, if any, on the revenue bonds have been fully paid or provision
5616 for payment has been made.

5617 Section 180. Section **11-17-7** is amended to read:

5618 **11-17-7. Disposition of proceeds of bonds.**

5619 The proceeds from the sale of any bonds issued under this act shall be applied only for
5620 the purposes for which the bonds were issued; but any accrued interest and premium received
5621 upon any such sale shall be applied to the payment of the principal of or the interest on the
5622 bonds sold, and if for any reason any portion of such proceeds [~~shall not be~~] are not needed for
5623 the purposes for which the bonds were issued, then such unneeded portion of such proceeds
5624 shall be applied to the payment of the principal of or the interest on such bonds or in
5625 accordance with such other plan or device for the furtherance of the project and the protection
5626 of the bondholder as the governing body shall deem appropriate under the circumstances.

5627 Section 181. Section **11-17-10** is amended to read:

5628 **11-17-10. Tax exemption for property and bonds -- Exception.**

5629 All property acquired or held by the county or municipality under this chapter is
5630 declared to be public property used for essential public and governmental purposes; and all
5631 such property and bonds issued under this chapter and the income from them are exempt from
5632 all taxes imposed by the state, any county, any municipality, or any other political subdivision
5633 of the state, except for the corporate franchise tax. This exemption [~~shall not~~] does not extend
5634 to the interests of any private person, firm, association, partnership, corporation, or other
5635 private business entity in such property or in any other property such business entity may place
5636 upon or use in connection with any project, all of which shall be subject to the provisions of
5637 Section 59-4-101 and all other applicable laws nor to any income of such private business
5638 entity, which, except as provided in this section for such bonds and the income from them,

5639 shall be subject to all applicable laws, regarding the taxing of such income.

5640 Section 182. Section **11-25-9** is amended to read:

5641 **11-25-9. Bonds payable solely from revenues -- Cities, towns, and counties not**
5642 **obligated.**

5643 Revenues shall be the sole source of funds pledged by the agency for repayment of its
5644 bonds. Bonds issued under the provisions of this part [~~shall not~~] may not be deemed to
5645 constitute a debt or liability of the agency or a pledge of the faith and credit of the agency but
5646 shall be payable solely from revenues. The issuance of bonds [~~shall not~~] may not directly,
5647 indirectly, or contingently obligate a city, town or county, or a city or town and county which
5648 has designated its governing body as an agency to levy or pledge any form of taxation or to
5649 make any appropriation for payment of bonds issued by an agency.

5650 Section 183. Section **11-25-11** is amended to read:

5651 **11-25-11. Comprehensive financing program ordinance -- Contents.**

5652 Prior to the issuance of any bonds or bond anticipation notes of the agency for
5653 residential rehabilitation, the agency shall by ordinance adopt a comprehensive residential
5654 rehabilitation financing program, including:

5655 (1) Criteria for selection of residential rehabilitation areas by the agency including
5656 findings by the agency that:

5657 (a) There are a substantial number of deteriorating structures in the area which do not
5658 conform to community standards for decent, safe, sanitary housing.

5659 (b) Financial assistance from the agency for residential rehabilitation is necessary to
5660 arrest the deterioration of the area.

5661 (c) Financing of residential rehabilitation in the area is economically feasible. These
5662 findings are not required, however, when the residential rehabilitation area is located within the
5663 boundaries of a project area covered by an urban renewal project area plan adopted in
5664 accordance with Section 17C-2-107.

5665 (2) Procedures for selection of residential rehabilitation areas by the agency including:

5666 (a) Provisions for citizen participation in selection of residential rehabilitation areas.

5667 (b) Provisions for a public hearing by the agency prior to selection of any particular
5668 residential rehabilitation area.

5669 (3) A commitment that rehabilitation standards will be enforced on each residence for

5670 which financing is provided.

5671 (4) Guidelines for financing residential rehabilitation which shall be subject to the
5672 following limitations:

5673 (a) Outstanding loans on the property to be rehabilitated including the amount of the
5674 loans for rehabilitation, [~~shall not~~] may not exceed 80% of the anticipated after-rehabilitation
5675 value of the property to be rehabilitated, except that the agency may authorize loans of up to
5676 95% of the anticipated after-rehabilitation value of the property if loans are made for the
5677 purpose of rehabilitating the property for residential purposes, there is demonstrated need for
5678 such higher limit, and there is a high probability that the value of the property will not be
5679 impaired during the term of the loan.

5680 (b) The maximum repayment period for residential rehabilitation loans shall be 20
5681 years or 3/4 of the economic life of the property, whichever is less.

5682 (c) The maximum amount loan for rehabilitation for each dwelling unit and for each
5683 commercial unit which is, or is part of a "residence" as defined in this chapter, shall be
5684 established by resolution of the agency.

5685 Section 184. Section **11-27-5** is amended to read:

5686 **11-27-5. Negotiability of bonds -- Intent and construction of chapter -- Budget for**
5687 **payment of bonds -- Proceedings limited to those required by chapter -- No election**
5688 **required -- Application of chapter.**

5689 (1) Refunding bonds shall have all the qualities of negotiable paper, shall be
5690 incontestable in the hands of bona fide purchasers or holders for value, and [~~shall not be~~] are
5691 not invalid for any irregularity or defect in the proceedings for their issuance and sale. This
5692 chapter is intended to afford an alternative method for the issuance of refunding bonds by
5693 public bodies and [~~shall not~~] may not be [~~so~~] construed [~~as~~] to deprive any public body of the
5694 right to issue bonds for refunding purposes under authority of any other statute, but this
5695 chapter, nevertheless, shall constitute full authority for the issue and sale of refunding bonds by
5696 public bodies. Section 11-1-1, however, [~~shall not be~~] is not applicable to refunding bonds.

5697 (2) Any public body subject to any budget law shall in its annual budget make proper
5698 provision for the payment of principal and interest currently falling due on refunding bonds,
5699 but no provision need be made in the budget prior to the issuance of the refunding bonds for
5700 their issuance or for the expenditure of the proceeds from them.

5701 (3) (a) No ordinance, resolution, or proceeding concerning the issuance of refunding
 5702 bonds nor the publication of any resolution, proceeding, or notice relating to the issuance of the
 5703 refunding bonds shall be necessary except as specifically required by this chapter.

5704 (b) A publication made under this chapter may be made:

5705 (i) in any newspaper in which legal notices may be published under the laws of Utah,
 5706 without regard to its designation as the official journal or newspaper of the public body; and

5707 (ii) as required in Section 45-1-101.

5708 (4) No resolution adopted or proceeding taken under this chapter shall be subject to any
 5709 referendum petition or to an election other than as required by this chapter. All proceedings
 5710 adopted under this chapter may be adopted on a single reading at any legally-convened meeting
 5711 of the governing body. This chapter shall apply to all bonds issued and outstanding at the time
 5712 this chapter takes effect as well as to bonds issued after this chapter takes effect.

5713 Section 185. Section **11-30-2** is amended to read:

5714 **11-30-2. Definitions.**

5715 As used in this chapter:

5716 (1) "Attorney general" means the attorney general of the state or one of his assistants.

5717 (2) "Bonds" means any evidence or contract of indebtedness that is issued or
 5718 authorized by a public body, including, without limitation, bonds, refunding bonds, advance
 5719 refunding bonds, bond anticipation notes, tax anticipation notes, notes, certificates of
 5720 indebtedness, warrants, commercial paper, contracts, and leases, whether they are general
 5721 obligations of the issuing public body or are payable solely from a specified source, including[;
 5722 ~~but not limited to;~~] annual appropriations by the public body.

5723 (3) "County attorney" means the county attorney of a county or one of his assistants.

5724 (4) "Lease" means any lease agreement, lease purchase agreement, and installment
 5725 purchase agreement, and any certificate of interest or participation in any of the foregoing.
 5726 Reference in this chapter to issuance of bonds includes execution and delivery of leases.

5727 (5) "Person" means any person, association, corporation, or other entity.

5728 (6) "Public body" means the state or any agency, authority, instrumentality, or
 5729 institution of the state, or any county, municipality, quasi-municipal corporation, school
 5730 district, local district, special service district, political subdivision, or other governmental entity
 5731 existing under the laws of the state, whether or not possessed of any taxing power. With

5732 respect to leases, public body, as used in this chapter, refers to the public body which is the
5733 lessee, or is otherwise the obligor with respect to payment under any such leases.

5734 (7) "Refunding bonds" means any bonds that are issued to refund outstanding bonds,
5735 including both refunding bonds and advance refunding bonds.

5736 (8) "State" means the state of Utah.

5737 (9) "Validity" means any matter relating to the legality and validity of the bonds and
5738 the security therefor, including, without limitation, the legality and validity of:

5739 (a) a public body's authority to issue and deliver the bonds;

5740 (b) any ordinance, resolution, or statute granting the public body authority to issue and
5741 deliver the bonds;

5742 (c) all proceedings, elections, if any, and any other actions taken or to be taken in
5743 connection with the issuance, sale, or delivery of the bonds;

5744 (d) the purpose, location, or manner of the expenditure of funds;

5745 (e) the organization or boundaries of the public body;

5746 (f) any assessments, taxes, rates, rentals, fees, charges, or tolls levied or that may be
5747 levied in connection with the bonds;

5748 (g) any lien, proceeding, or other remedy for the collection of those assessments, taxes,
5749 rates, rentals, fees, charges, or tolls;

5750 (h) any contract or lease executed or to be executed in connection with the bonds;

5751 (i) the pledge of any taxes, revenues, receipts, rentals, or property, or encumbrance
5752 thereon or security interest therein to secure the bonds; and

5753 (j) any covenants or provisions contained in or to be contained in the bonds. If any
5754 deed, will, statute, resolution, ordinance, lease, indenture, contract, franchise, or other
5755 instrument may have an effect on any of the aforementioned, validity also means a declaration
5756 of the validity and legality thereof and of rights, status, or other legal relations arising
5757 therefrom.

5758 Section 186. Section **11-31-2** is amended to read:

5759 **11-31-2. Definitions.**

5760 As used in this chapter:

5761 (1) "Bonds" means any evidence or contract of indebtedness that is issued or
5762 authorized by a public body, including, without limitation, bonds, refunding bonds, advance

5763 refunding bonds, bond anticipation notes, tax anticipation notes, notes, certificates of
5764 indebtedness, warrants, commercial paper, contracts, and leases, whether they are general
5765 obligations of the issuing public body or are payable solely from a specified source, including[;
5766 ~~but not limited to;~~] annual appropriations by the public body.

5767 (2) "Legislative body" means, with respect to any action to be taken by a public body
5768 with respect to bonds, the board, commission, council, agency, or other similar body authorized
5769 by law to take legislative action on behalf of the public body, and in the case of the state, the
5770 Legislature, the state treasurer, the commission created under Section 63B-1-201, and any other
5771 entities the Legislature designates.

5772 (3) "Public body" means the state and any public department, public agency, or other
5773 public entity existing under the laws of the state, including, without limitation, any agency,
5774 authority, instrumentality, or institution of the state, and any county, city, town, municipal
5775 corporation, quasi-municipal corporation, state university or college, school district, special
5776 service district, local district, separate legal or administrative entity created under the Interlocal
5777 Cooperation Act or other joint agreement entity, community development and renewal agency,
5778 and any other political subdivision, public authority, public agency, or public trust existing
5779 under the laws of the state.

5780 Section 187. Section **11-32-7** is amended to read:

5781 **11-32-7. Bond principal and interest -- Security agreements -- Trustee.**

5782 (1) The principal of and interest on any bonds issued under this chapter:

5783 (a) shall be secured by a pledge and assignment of the revenues received by the
5784 financing authority under the assignment agreement with respect to the delinquent tax
5785 receivables purchased with the proceeds of the sale of these bonds;

5786 (b) may be secured by a pledge and security interest in the assignment agreement; and

5787 (c) may be secured by amounts held in reserve funds, letters of credit, bond insurance,
5788 surety bonds, or by such other security devices with respect to the delinquent tax receivables
5789 deemed most advantageous by the authority.

5790 (2) The proceedings under which the bonds are authorized to be issued under this
5791 chapter and any security agreement given to secure the bonds may contain any agreements and
5792 provisions customarily contained in instruments securing bonds, including[~~, but not limited to;~~]
5793 provisions respecting:

5794 (a) the collection of the delinquent taxes covered by these proceedings or any security
5795 agreement;

5796 (b) the terms to be incorporated in the assignment agreement with respect to the
5797 delinquent tax receivables;

5798 (c) the creation and maintenance of reserve funds from the proceeds of sale of bonds or
5799 from the collection of the delinquent taxes;

5800 (d) the rights and remedies available to the holders of bonds or to the trustee in the
5801 event of a default, as the board of trustees of the authority may determine in accordance with
5802 this chapter.

5803 (3) The security agreements, trust indentures, or other security devices shall provide
5804 that following the exhaustion of all legal means of collection of the delinquent tax receivables
5805 no judgment may be entered against the authority or the county or any participant members or
5806 the state of Utah or any of its political subdivisions.

5807 (4) The proceedings authorizing bonds under this chapter, and any security agreement
5808 securing these bonds, may provide that upon default in the payment of the principal of or
5809 interest on the bonds or in the performance of any covenant or agreement contained in the
5810 proceedings or security agreement, the payment or performance may be enforced by the
5811 appointment of a receiver for the delinquent tax receivables with power to compel the county to
5812 use the statutory means it has to collect the delinquent tax receivables and apply the revenues in
5813 accordance with these proceedings or the security agreement.

5814 (5) No breach of a security agreement, covenant, or other agreement may impose any
5815 general obligation or liability upon, nor a charge against, the county or any participant member,
5816 nor the general credit or taxing power of this state or any of its political subdivisions.

5817 (6) The proceedings authorizing the issuance of bonds may provide for the
5818 appointment of a trustee, which may be a trust company or bank having trust powers located in
5819 or outside of this state.

5820 Section 188. Section **11-34-1** is amended to read:

5821 **11-34-1. Definitions.**

5822 As used in this chapter:

5823 (1) "Bonds" means any evidence or contract of indebtedness that is issued or
5824 authorized by a public body, including, without limitation, bonds, refunding bonds, advance

5825 refunding bonds, bond anticipation notes, tax anticipation notes, notes, certificates of
5826 indebtedness, warrants, commercial paper, contracts, and leases, whether they are general
5827 obligations of the issuing public body or are payable solely from a specified source, including[;
5828 ~~but not limited to;~~] annual appropriations by the public body.

5829 (2) "Public body" means the state and any public department, public agency, or other
5830 public entity existing under the laws of the state, including, without limitation, any agency,
5831 authority, instrumentality, or institution of the state, and any county, city, town, municipal
5832 corporation, quasi-municipal corporation, state university or college, school district, special
5833 service district, local district, separate legal or administrative entity created under the Interlocal
5834 Cooperation Act or other joint agreement entity, community development and renewal agency,
5835 and any other political subdivision, public authority, public agency, or public trust existing
5836 under the laws of this state.

5837 Section 189. Section **11-34-2** is amended to read:

5838 **11-34-2. Bonds issued in foreign denominations -- Required conditions and**
5839 **agreements.**

5840 Any bonds issued by a public body may be denominated in a foreign currency, but only
5841 if, at the time of the issuance of the bonds, the public body which issues them enters into one or
5842 more foreign exchange agreements, forward exchange agreements, foreign currency exchange
5843 agreements, or other similar agreements with a bank or other financial institution, foreign or
5844 domestic, the senior unsecured long-term debt obligations of which are rated in one of the
5845 highest two rating categories by Moody's Investors Service, Inc. or Standard & Poor's
5846 Corporation or another similar nationally recognized securities rating agency, to protect the
5847 public body against the risk of a decline in the value of the United States dollar in relation to
5848 the foreign currency in which the bonds are denominated. Such agreements [~~must protect~~]
5849 shall contain a provision that protects against [~~such~~] the risk of a decline in the value of the
5850 United States dollar with respect to the interest on the bonds and the principal of the bonds to
5851 the maturity or redemption thereof. The costs of such agreements, including without limitation
5852 periodic fees and other amounts due to the other party or parties to such agreements, may be
5853 paid by the public body from the proceeds of the bonds and other revenues of the public body.

5854 Section 190. Section **11-36-401** is amended to read:

5855 **11-36-401. Impact fees -- Challenges -- Appeals.**

5856 (1) Any person or entity residing in or owning property within a service area, and any
5857 organization, association, or corporation representing the interests of persons or entities owning
5858 property within a service area, may file a declaratory judgment action challenging the validity
5859 of the fee.

5860 (2) (a) Any person or entity required to pay an impact fee who believes the fee does not
5861 meet the requirements of law may file a written request for information with the local political
5862 subdivision who established the fee.

5863 (b) Within two weeks after the receipt of the request for information, the local political
5864 subdivision shall provide the person or entity with the written analysis required by Section
5865 11-36-201, the capital facilities plan, and with any other relevant information relating to the
5866 impact fee.

5867 (3) (a) Any local political subdivision may establish, by ordinance or resolution, an
5868 administrative appeals procedure to consider and decide challenges to impact fees.

5869 (b) If the local political subdivision establishes an administrative appeals procedure,
5870 the local political subdivision shall ensure that the procedure includes a requirement that the
5871 local political subdivision make its decision no later than 30 days after the date the challenge to
5872 the impact fee is filed.

5873 (4) (a) In addition to the method of challenging an impact fee under Subsection (1), a
5874 person or entity that has paid an impact fee that was imposed by a local political subdivision
5875 may challenge:

5876 (i) if the impact fee enactment was adopted on or after July 1, 2000:

5877 (A) whether the local political subdivision complied with the notice requirements of
5878 this chapter with respect to the imposition of the impact fee; and

5879 (B) whether the local political subdivision complied with other procedural
5880 requirements of this chapter for imposing the impact fee; and

5881 (ii) except as limited by Subsection (4)(a)(i), the impact fee.

5882 (b) A challenge under Subsection (4)(a) may not be initiated unless it is initiated
5883 within:

5884 (i) for a challenge under Subsection (4)(a)(i)(A), 30 days after the person or entity pays
5885 the impact fee;

5886 (ii) for a challenge under Subsection (4)(a)(i)(B), 180 days after the person or entity

5887 pays the impact fee; or

5888 (iii) for a challenge under Subsection (4)(a)(ii), one year after the person or entity pays
5889 the impact fee.

5890 (c) A challenge under Subsection (4)(a) is initiated by filing:

5891 (i) if the local political subdivision has established an administrative appeals procedure
5892 under Subsection (3), the necessary document, under the administrative appeals procedure, for
5893 initiating the administrative appeal;

5894 (ii) a request for arbitration as provided in Subsection 11-36-402(1); or

5895 (iii) an action in district court.

5896 (d) (i) The sole remedy for a challenge under Subsection (4)(a)(i)(A) is the equitable
5897 remedy of requiring the local political subdivision to correct the defective notice and repeat the
5898 process.

5899 (ii) The sole remedy for a challenge under Subsection (4)(a)(i)(B) is the equitable
5900 remedy of requiring the local political subdivision to correct the defective process.

5901 (iii) The sole remedy for a challenge under Subsection (4)(a)(ii) is a refund of the
5902 difference between what the person or entity paid as an impact fee and the [~~amount the impact~~
5903 ~~fee should have been if it had been correctly calculated~~] correct impact fee amount.

5904 (e) Nothing in this Subsection (4) may be construed as requiring a person or entity to
5905 exhaust administrative remedies with the local political subdivision before filing an action in
5906 district court under this Subsection (4).

5907 (f) The protections given to a municipality under Section 10-9a-801 and to a county
5908 under Section 17-27a-801 do not apply in a challenge under Subsection (4)(a)(i)(A).

5909 (5) The judge may award reasonable attorneys' fees and costs to the prevailing party in
5910 any action brought under this section.

5911 (6) Nothing in this chapter may be construed as restricting or limiting any rights to
5912 challenge impact fees that were paid before the effective date of this chapter.

5913 Section 191. Section **13-1-1** is amended to read:

5914 **13-1-1. Legislative findings and declarations.**

5915 The Legislature finds that many businesses and occupations in the state have a
5916 pronounced physical and economic impact on the health, safety, and welfare of the citizens of
5917 the state. The Legislature further finds that while the overall impact is generally beneficial to

5918 the public, the potential for harm and injury frequently warrants intervention by state
5919 government.

5920 The Legislature declares that it is appropriate and necessary for state government to
5921 protect its citizens from harmful and injurious acts by persons offering or providing essential or
5922 necessary goods and services to the general public. The Legislature further declares that
5923 business regulation should not be unfairly discriminatory. However, the general public interest
5924 [~~must~~] shall be recognized and regarded as the primary purpose of all regulation by state
5925 government.

5926 Section 192. Section **13-1a-6** is amended to read:

5927 **13-1a-6. Powers of Division of Corporations and Commercial Code -- Document**
5928 **retention.**

5929 (1) The Division of Corporations and Commercial Code shall have the power and
5930 authority reasonably necessary to enable it to efficiently administer the laws and rules for
5931 which it is responsible and to perform the duties imposed upon it by law.

5932 (2) The division has authority under Title 63G, Chapter 3, Utah Administrative
5933 Rulemaking Act, to make rules and procedures for the processing, retention, and disposal of
5934 filed documents to efficiently utilize electronic and computerized document image storage and
5935 retrieval.

5936 (3) Notwithstanding the provisions of Section 63A-12-105, original documents filed in
5937 the division offices [~~shall not~~] may not be considered property of the state if electronic image
5938 reproductions thereof which comply with the provisions of Title 63G, Chapter 2, Government
5939 Records Access and Management Act, are retained by the division.

5940 Section 193. Section **13-2-6** is amended to read:

5941 **13-2-6. Enforcement powers.**

5942 (1) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the
5943 division shall have authority to convene administrative hearings, issue cease and desist orders,
5944 and impose fines under all the chapters identified in Section 13-2-1.

5945 (2) Any person who intentionally violates a final cease and desist order entered by the
5946 division of which the person has notice is guilty of a third degree felony.

5947 (3) If the division has reasonable cause to believe that any person is engaged in
5948 violating any chapter listed in Section 13-2-1, the division may promptly issue the alleged

5949 violator a citation signed by the division's director or the director's designee.

5950 (a) Each citation shall be in writing and shall:

5951 (i) set forth with particularity the nature of the violation, including a reference to the
5952 statutory or administrative rule provision being violated;

5953 (ii) state that any request for review of the citation [~~must~~] shall be made in writing and
5954 be received by the division no more than 10 days following issuance;

5955 (iii) state the consequences of failing to make a timely request for review; and

5956 (iv) state all other information required by Subsection 63G-4-201(2).

5957 (b) In computing any time period prescribed by this section, the following days may
5958 not be included:

5959 (i) the day a citation is issued by the division;

5960 (ii) the day the division received a request for review of a citation;

5961 (iii) Saturdays and Sundays; and

5962 (iv) a legal holiday set forth in Subsection 63G-1-301(1)(a).

5963 (c) If the recipient of a citation makes a timely request for review, within 10 days of
5964 receiving the request, the division shall convene an adjudicative proceeding in accordance with
5965 Title 63G, Chapter 4, Administrative Procedures Act.

5966 (d) (i) If the presiding officer finds that there is not substantial evidence that the
5967 recipient violated a chapter listed in Section 13-2-1 at the time the citation was issued, the
5968 citation may not become final, and the division shall immediately vacate the citation and
5969 promptly notify the recipient in writing.

5970 (ii) If the presiding officer finds there is substantial evidence that the recipient violated
5971 a chapter listed in Section 13-2-1 at the time the citation was issued, the citation shall become
5972 final and the division may enter a cease and desist order against the recipient.

5973 (e) A citation issued under this chapter may be personally served upon any person upon
5974 whom a summons may be served in accordance with the Utah Rules of Civil Procedure. A
5975 citation also may be served by first-class mail, postage prepaid.

5976 (f) If the recipient fails to make a timely request for review, the citation shall become
5977 the final order of the division. The period to contest the citation may be extended by the
5978 director for good cause shown.

5979 (g) If the chapter violated allows for an administrative fine, after a citation becomes

5980 final, the director may impose the administrative fine.

5981 (4) (a) A person violating a chapter identified in Section 13-2-1 is subject to the
5982 division's jurisdiction if:

5983 (i) the violation or attempted violation is committed either wholly or partly within the
5984 state;

5985 (ii) conduct committed outside the state constitutes an attempt to commit a violation
5986 within the state; or

5987 (iii) transactional resources located within the state are used by the offender to directly
5988 or indirectly facilitate a violation or attempted violation.

5989 (b) As used in this section, "transactional resources" means:

5990 (i) any mail drop or mail box, whether or not located on the premises of a United States
5991 Post Office;

5992 (ii) any telephone or facsimile transmission device;

5993 (iii) any internet connection by a resident or inhabitant of this state with either a
5994 resident or nonresident maintained internet site;

5995 (iv) any business office or private residence used for a business-related purpose;

5996 (v) any account with or services of a financial institution;

5997 (vi) the services of a common or private carrier; or

5998 (vii) the use of any city, county, or state asset or facility, including any road or
5999 highway.

6000 (5) The director or the director's designee, for the purposes outlined in any chapter
6001 administered by the division, may administer oaths, issue subpoenas, compel the attendance of
6002 witnesses, and compel the production of papers, books, accounts, documents, and evidence.

6003 Section 194. Section **13-5-3** is amended to read:

6004 **13-5-3. Unlawful discriminations -- Burden of proof -- Taking or offering**
6005 **commissions -- Payments for benefit of customers -- Discrimination among purchasers --**
6006 **Inducing discriminations.**

6007 (1) (a) It is unlawful for any person engaged in commerce, in the course of such
6008 commerce, either directly or indirectly, to discriminate in price between different purchasers of
6009 commodities of like grade and quality, where either or any of the purchasers involved in such
6010 discrimination are in commerce, where such commodities are sold for use, consumption, or

6011 resale within the state and where the effect of such discrimination may be substantially to
6012 lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy,
6013 or prevent competition with any person who either grants or knowingly receives the benefit of
6014 such discrimination, or with customers of either of them.

6015 (b) Nothing in this chapter [~~shall prevent~~] prevents:

6016 (i) differentials which make only due allowance for differences in the cost of
6017 manufacture, sale, or delivery resulting from the different methods or quantities in which such
6018 commodities are to such purchasers sold or delivered;

6019 (ii) persons engaged in selling goods, wares, or merchandise in commerce from
6020 selecting their own customers in bona fide transactions and not in restraint of trade; and

6021 (iii) price changes from time to time in response to changing conditions affecting the
6022 market for or the marketability of the goods concerned, [~~such as, but not limited to,~~] including
6023 actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress
6024 sales under court process, or sales in good faith in discontinuance of business in the goods
6025 concerned.

6026 (2) Upon proof being made, at any suit on a complaint under this section, that there has
6027 been discrimination in price or services or facilities furnished or in payment for services or
6028 facilities to be rendered, the burden of rebutting the prima-facie case thus made by showing
6029 justification shall be upon the person charged with a violation of this section. However nothing
6030 in this chapter shall prevent a seller rebutting the prima-facie case thus made by showing that
6031 his lower price or the furnishing of services or facilities to any purchaser or purchasers was
6032 made in good faith to meet an equally low price of a competitor, or the services or facilities
6033 furnished by a competitor.

6034 (3) It is unlawful for any person engaged in commerce in the course of such commerce,
6035 to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other
6036 compensation, or any allowance or discount in lieu thereof, except for and not exceeding the
6037 actual cost of such services rendered in connection with the sale or purchase of goods, wares,
6038 or merchandise.

6039 (4) It is unlawful for any person engaged in commerce to pay or contract for the
6040 payment of anything of value to or for the benefit of a customer of such person in the course of
6041 such commerce as compensation or in consideration for any services or facilities furnished by

6042 or through such customer in connection with the processing, handling, sale, or offering for sale
6043 of any products, or commodities manufactured, sold, or offered for sale by such person, unless
6044 such payment or consideration is available on proportionally equal terms to all other customers
6045 competing in the distribution of such products or commodities.

6046 (5) It is unlawful for any person to discriminate in favor of one purchaser against
6047 another purchaser or purchasers of a commodity bought for resale with or without processing,
6048 by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or
6049 facilities connected with the processing, handling, sale, or offering for sale of such commodity
6050 so purchased upon terms not accorded to all purchasers on proportionally equal terms.

6051 (6) It is unlawful for any person engaged in commerce, in the course of such
6052 commerce, knowingly to induce or receive a discrimination in price which is prohibited by this
6053 section.

6054 Section 195. Section **13-5-12** is amended to read:

6055 **13-5-12. Sales exempt from chapter.**

6056 (1) The provisions of this chapter [~~shall not~~] do not apply to any sale made:

6057 (a) in closing out in good faith the owner's stock or any part thereof for the purpose of
6058 discontinuing his trade in any such stock or commodity, and in the case of the sale of seasonal
6059 goods, or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or
6060 depreciation; provided, prior notice is given to the public thereof;

6061 (b) when the goods are damaged or deteriorated in quality, and prior notice is given to
6062 the public thereof;

6063 (c) by an officer acting under the orders of any court;

6064 (d) in an endeavor made in good faith to meet the legal prices of a competitor as herein
6065 defined selling the same article, product or commodity in the same locality or trade area;

6066 (e) by manufacturers, producers, brokers or wholesale distributors meeting in good
6067 faith prices established by interstate competition regardless of cost; provided, such prices are
6068 available to all persons buying on like terms and conditions in the same locality and vicinity.

6069 (2) Any person, who performs work upon, renovates, alters or improves any personal
6070 property belonging to another person, except necessary repairs due to damage in transit, shall
6071 be construed to be a vendor within the meaning of this chapter.

6072 Section 196. Section **13-5-16** is amended to read:

6073 **13-5-16. Separability clause.**

6074 If any section, sentence, clause or phrase of this act is for any reason held to be
6075 unconstitutional, such decision [~~shall not~~] does not affect the validity of the remaining portions
6076 of the act. The Legislature hereby declares that it would have passed this act, and each section,
6077 sentence, clause or phrase thereof, irrespective of the fact that any one or more other sections,
6078 sentences, clauses or phrases be declared unconstitutional.

6079 Section 197. Section **13-7-1** is amended to read:

6080 **13-7-1. Policy and purposes of act.**

6081 It is hereby declared that the practice of discrimination on the basis of race, color, sex,
6082 religion, ancestry, or national origin in business establishments or places of public
6083 accommodation or in enterprises regulated by the state endangers the health, safety, and general
6084 welfare of this state and its inhabitants; and that such discrimination in business establishments
6085 or places of public accommodation or in enterprises regulated by the state, violates the public
6086 policy of this state. It is the purpose of this act to assure all citizens full and equal availability
6087 of all goods, services and facilities offered by business establishments and places of public
6088 accommodation and enterprises regulated by the state without discrimination because of race,
6089 color, sex, religion, ancestry, or national origin. The rules of common law that statutes in
6090 derogation thereof shall be strictly construed has no application to this act. This act shall be
6091 liberally construed with a view to promote the policy and purposes of the act and to promote
6092 justice. The remedies provided herein [~~shall not be~~] are not exclusive but [~~shall be~~] are in
6093 addition to any other remedies available at law or equity.

6094 Section 198. Section **13-7-2** is amended to read:

6095 **13-7-2. Definitions.**

6096 (1) The term "place of public accommodation" includes every place, establishment, or
6097 facility of whatever kind, nature, or class that caters or offers its services, facilities, or goods to
6098 the general public for a fee or charge, except, any establishment located within a building
6099 which contains not more than five rooms for rent or hire and which is actually occupied by the
6100 proprietor of such establishment as his residence; provided that any place, establishment, or
6101 facility that caters or offers its services, facilities, or goods to the general public gratuitously
6102 shall be within the definition of this term if it receives any substantial governmental subsidy or
6103 support; but the term [~~shall not~~] does not apply to any institution, church, any apartment house,

6104 club, or place of accommodation which is in its nature distinctly private except to the extent
6105 that it is open to the public.

6106 (2) The term "person" includes one or more individuals, partnerships, associations,
6107 organizations, corporations, labor unions, legal representatives, trustees, trustees in bankruptcy,
6108 receivers, and other organized groups of persons.

6109 (3) "Enterprises regulated by the state" means:

6110 (a) all institutions subject to regulation under Title 70C, Utah Consumer Credit Code;

6111 (b) all places of business which sell beer to consumers or house a state liquor store, as
6112 permitted by Title 32A, Alcoholic Beverage Control Act;

6113 (c) all insurers regulated by Title 31A, Insurance Code; and

6114 (d) all public utilities subject to regulation under Title 54, Public Utilities Act.

6115 Section 199. Section **13-11-6** is amended to read:

6116 **13-11-6. Service of process.**

6117 In addition to any other method provided by rule or statute, personal jurisdiction over a
6118 supplier may be acquired in a civil action or proceeding instituted in the district court by the
6119 service of process in the following manner. If a supplier engages in any act or practice in this
6120 state governed by this act, or engages in a consumer transaction subject to this act, he may
6121 designate an agent upon whom service of process may be made in this state. The agent [~~must~~]
6122 shall be a resident of or a corporation authorized to do business in this state. The designation
6123 [~~must~~] shall be in writing and filed with the Division of Corporations and Commercial Code.
6124 If no designation is made and filed, or if process cannot be served in this state upon the
6125 designated agent, whether or not the supplier is a resident of this state or is authorized to do
6126 business in this state, process may be served upon the director of the Division of Corporations
6127 and Commercial Code, but service upon him is not effective unless the plaintiff promptly mails
6128 a copy of the process and pleadings by registered or certified mail to the defendant at his last
6129 reasonably ascertainable address. An affidavit of compliance with this section [~~must~~] shall be
6130 filed with the clerk of the court on or before the return day of the process, if any, or within any
6131 future time the court allows.

6132 Section 200. Section **13-11-19** is amended to read:

6133 **13-11-19. Actions by consumer.**

6134 (1) Whether he seeks or is entitled to damages or otherwise has an adequate remedy at

6135 law, a consumer may bring an action to:

6136 (a) obtain a declaratory judgment that an act or practice violates this chapter; and

6137 (b) enjoin, in accordance with the principles of equity, a supplier who has violated, is
6138 violating, or is likely to violate this chapter.

6139 (2) A consumer who suffers loss as a result of a violation of this chapter may recover,
6140 but not in a class action, actual damages or \$2,000, whichever is greater, plus court costs.

6141 (3) Whether a consumer seeks or is entitled to recover damages or has an adequate
6142 remedy at law, he may bring a class action for declaratory judgment, an injunction, and
6143 appropriate ancillary relief against an act or practice that violates this chapter.

6144 (4) (a) A consumer who suffers loss as a result of a violation of this chapter may bring
6145 a class action for the actual damages caused by an act or practice specified as violating this
6146 chapter by a rule adopted by the enforcing authority under Subsection 13-11-8(2) before the
6147 consumer transactions on which the action is based, or declared to violate Section 13-11-4 or
6148 13-11-5 by a final judgment of the appropriate court or courts of general jurisdiction and
6149 appellate courts of this state that was either officially reported or made available for public
6150 dissemination under Subsection 13-11-7(1)(c) by the enforcing authority 10 days before the
6151 consumer transactions on which the action is based, or with respect to a supplier who agreed to
6152 it, was prohibited specifically by the terms of a consent judgment which became final before
6153 the consumer transactions on which the action is based.

6154 (b) If an act or practice that violates this chapter unjustly enriches a supplier and the
6155 damages can be computed with reasonable certainty, damages recoverable on behalf of
6156 consumers who cannot be located with due diligence shall be transferred to the state treasurer
6157 pursuant to Title 67, Chapter 4a, Unclaimed Property Act.

6158 (c) If a supplier shows by a preponderance of the evidence that a violation of this
6159 chapter resulted from a bona fide error notwithstanding the maintenance of procedures
6160 reasonably adapted to avoid the error, recovery under this section is limited to the amount, if
6161 any, in which the supplier was unjustly enriched by the violation.

6162 (5) Except for services performed by the enforcing authority, the court may award to
6163 the prevailing party a reasonable attorney's fee limited to the work reasonably performed if:

6164 (a) the consumer complaining of the act or practice that violates this chapter has
6165 brought or maintained an action he knew to be groundless; or a supplier has committed an act

6166 or practice that violates this chapter; and

6167 (b) an action under this section has been terminated by a judgment or required by the
6168 court to be settled under Subsection 13-11-21(1)(a).

6169 (6) Except for consent judgment entered before testimony is taken, a final judgment in
6170 favor of the enforcing authority under Section 13-11-17 is admissible as prima facie evidence
6171 of the facts on which it is based in later proceedings under this section against the same person
6172 or a person in privity with him.

6173 (7) When a judgment under this section becomes final, the prevailing party shall mail a
6174 copy to the enforcing authority for inclusion in the public file maintained under Subsection
6175 13-11-7(1)(e).

6176 (8) An action under this section [~~must~~] shall be brought within two years after
6177 occurrence of a violation of this chapter, or within one year after the termination of proceedings
6178 by the enforcing authority with respect to a violation of this chapter, whichever is later. When a
6179 supplier sues a consumer, he may assert as a counterclaim any claim under this chapter arising
6180 out of the transaction on which suit is brought.

6181 Section 201. Section **13-11-20** is amended to read:

6182 **13-11-20. Class actions.**

6183 (1) An action may be maintained as a class action under this act only if:

6184 (a) the class is so numerous that joinder of all members is impracticable;

6185 (b) there are questions of law or fact common to the class;

6186 (c) the claims or defenses of the representative parties are typical of the claims or
6187 defenses of the class;

6188 (d) the representative parties will fairly and adequately protect the interests of the class;

6189 and

6190 (e) either:

6191 (i) the prosecution of separate actions by or against individual members of the class
6192 would create a risk of:

6193 (A) inconsistent or varying adjudications with respect to individual members of the
6194 class which would establish incompatible standards of conduct for the party opposing the class;

6195 or

6196 (B) adjudications with respect to individual members of the class that would as a

6197 practical matter dispose of the interests of the other members not parties to the adjudications or
6198 substantially impair or impede their ability to protect their interests; or

6199 (ii) the party opposing the class has acted or refused to act on grounds generally
6200 applicable to the class, thereby making appropriate final injunctive relief or corresponding
6201 declaratory relief with respect to the class as a whole; or

6202 (iii) the court finds that the questions of law or fact common to the members of the
6203 class predominate over any questions affecting only individual members, and that a class action
6204 is superior to other available methods for the fair and efficient adjudication of the controversy.

6205 (2) The matters pertinent to the findings under Subsection (1)(e)(iii) include:

6206 (a) the interest of members of the class in individually controlling the prosecution or
6207 defense of separate actions;

6208 (b) the extent and nature of any litigation concerning the controversy already
6209 commenced by or against members of the class;

6210 (c) the desirability or undesirability of concentrating the litigation of the claims in the
6211 particular forum; and

6212 (d) the difficulties likely to be encountered in the management of a class action.

6213 (3) As soon as practicable after the commencement of an action brought as a class
6214 action, the court shall determine by order whether it is to be so maintained. An order under this
6215 subsection may be conditional, and it may be amended before decision on the merits.

6216 (4) In a class action maintained under Subsection (1)(e) the court may direct to the
6217 members of the class the best notice practicable under the circumstances, including individual
6218 notice to each member who can be identified through reasonable effort. The notice shall advise
6219 each member that:

6220 (a) the court will exclude him from the class, unless he requests inclusion, by a
6221 specified date;

6222 (b) the judgment, whether favorable or not, will include all members who request
6223 inclusion; and

6224 (c) a member who requests inclusion may, if he desires, enter an appearance through
6225 his counsel.

6226 (5) When appropriate, an action may be brought or maintained as a class action with
6227 respect to particular issues, or a class may be divided into subclasses and each subclass treated

6228 as a class.

6229 (6) In the conduct of a class action the court may make appropriate orders:

6230 (a) determining the course of proceedings or prescribing measures to prevent undue
6231 repetition or complication in the presentation of evidence or argument;

6232 (b) requiring, for the protection of the members of the class or otherwise for the fair
6233 conduct of the action, that notice be given in the manner the court directs to some or all of the
6234 members or to the enforcing authority of any step in the action, or of the proposed extent of the
6235 judgment, or of the opportunity of members to signify whether they consider the representation
6236 fair and adequate, to intervene and present claims or defenses, or otherwise to come into the
6237 action;

6238 (c) imposing conditions on the representative parties or on intervenors;

6239 (d) requiring that the pleadings be amended to eliminate allegations as to representation
6240 of absent persons, and that the action proceed accordingly; or

6241 (e) dealing with similar procedural matters.

6242 (7) A class action [~~shall not~~] may not be dismissed or compromised without approval
6243 of the court. Notice of the proposed dismissal or compromise shall be given to all members of
6244 the class as the court directs.

6245 (8) The judgment in an action maintained as a class action under Subsection (1)(e)(i) or
6246 (ii), whether or not favorable to the class, shall describe those whom the court finds to be
6247 members of the class. The judgment in a class action under Subsection (1)(e)(iii), whether or
6248 not favorable to the class, shall specify or describe those to whom the notice provided in
6249 Subsection (4) was directed, and who have requested inclusion, and whom the court finds to be
6250 members of the class.

6251 Section 202. Section **13-11a-3** is amended to read:

6252 **13-11a-3. Deceptive trade practices enumerated -- Records to be kept -- Defenses.**

6253 (1) Deceptive trade practices occur when, in the course of a person's business,
6254 vocation, or occupation that person:

6255 (a) passes off goods or services as those of another;

6256 (b) causes likelihood of confusion or of misunderstanding as to the source,
6257 sponsorship, approval, or certification of goods or services;

6258 (c) causes likelihood of confusion or of misunderstanding as to affiliation, connection,

6259 association with, or certification by another;

6260 (d) uses deceptive representations or designations of geographic origin in connection
6261 with goods or services;

6262 (e) represents that goods or services have sponsorship, approval, characteristics,
6263 ingredients, uses, benefits, or qualities that they do not have or that a person has a sponsorship,
6264 approval, status, affiliation, or connection that the person does not have;

6265 (f) represents that goods are original or new if they are deteriorated, altered,
6266 reconditioned, reclaimed, used, or second-hand;

6267 (g) represents that goods or services are of a particular standard, quality, or grade, or
6268 that goods are of a particular style or model, if they are of another;

6269 (h) disparages the goods, services, or business of another by false or misleading
6270 representation of fact;

6271 (i) advertises goods or services or the price of goods and services with intent not to sell
6272 them as advertised;

6273 (j) advertises goods or services with intent not to supply a reasonable expectable public
6274 demand, unless:

6275 (i) the advertisement clearly and conspicuously discloses a limitation of quantity; or

6276 (ii) the person issues rainchecks for the advertised goods or services;

6277 (k) makes false or misleading statements of fact concerning the reasons for, existence
6278 of, or amounts of price reductions;

6279 (l) makes a comparison between the person's own sale or discount price and a
6280 competitor's nondiscounted price without clearly and conspicuously disclosing that fact;

6281 (m) without clearly and conspicuously disclosing the date of the price assessment
6282 makes a price comparison with the goods of another based upon a price assessment performed
6283 more than seven days prior to the date of the advertisement or uses in an advertisement the
6284 results of a price assessment performed more than seven days prior to the date of the
6285 advertisement without disclosing, in a print ad, the date of the price assessment, or in a radio or
6286 television ad, the time frame of the price assessment;

6287 (n) advertises or uses in a price assessment or comparison a price that is not that
6288 person's own unless this fact is:

6289 (i) clearly and conspicuously disclosed; and

6290 (ii) the representation of the price is accurate;

6291 (o) represents as independent an audit, accounting, price assessment, or comparison of
6292 prices of goods or services, when the audit, accounting, price assessment, or comparison is not
6293 independent;

6294 (p) represents, in an advertisement of a reduction from the supplier's own prices, that
6295 the reduction is from a regular price, when the former price is not a regular price as defined in
6296 Subsection 13-11a-2(14);

6297 (q) advertises a price comparison or the result of a price assessment or comparison that
6298 uses, in any way, an identified competitor's price without clearly and conspicuously disclosing
6299 the identity of the price assessor and any relationship between the price assessor and the
6300 supplier;

6301 (r) makes a price comparison between a category of the supplier's goods and the same
6302 category of the goods of another, without randomly selecting the individual goods or services
6303 upon whose prices the comparison is based;

6304 (s) makes a comparison between similar but nonidentical goods or services unless the
6305 nonidentical goods or services are of essentially similar quality to the advertised goods or
6306 services or the dissimilar aspects are clearly and conspicuously disclosed in the advertisements;
6307 or

6308 (t) engages in any other conduct which similarly creates a likelihood of confusion or of
6309 misunderstanding.

6310 (2) (a) For purposes of Subsection (1)(i), if a specific advertised price will be in effect
6311 for less than one week from the advertisement date, the advertisement [~~must~~] shall clearly and
6312 conspicuously disclose the specific time period during which the price will be in effect.

6313 (b) For purposes of Subsection (1)(n), with respect to the price of a competitor, the
6314 price [~~must~~] shall be one at which the competitor offered the goods or services for sale in the
6315 product area at the time of the price assessment, and [~~must not~~] may not be an isolated price.

6316 (c) For purposes of Subsection (1)(o), an audit, accounting, price assessment, or
6317 comparison shall be independent if the price assessor randomly selects the goods to be
6318 compared, and the time and place of the comparison, and no agreement or understanding exists
6319 between the supplier and the price assessor that could cause the results of the assessment to be
6320 fraudulent or deceptive. The independence of an audit, accounting, or price comparison is not

6321 invalidated merely because the advertiser pays a fee for the audit, accounting, or price
6322 comparison, but is invalidated if the audit, accounting, or price comparison is done by a full or
6323 part-time employee of the advertiser.

6324 (d) Examples of a disclosure that complies with Subsection (1)(q) are:

6325 (i) "Price assessment performed by Store Z";

6326 (ii) "Price assessment performed by a certified public accounting firm"; or

6327 (iii) "Price assessment performed by employee of Store Y".

6328 (e) For the purposes of Subsection (1)(r), goods or services are randomly selected when
6329 the supplier has no advance knowledge of what goods and services will be surveyed by the
6330 price assessor, and when the supplier certifies its lack of advance knowledge by an affidavit to
6331 be retained in the supplier's records for one year.

6332 (f) (i) It is prima facie evidence of compliance with Subsection (1)(s) if:

6333 (A) the goods compared are substantially the same size; and

6334 (B) the goods compared are of substantially the same quality, which may include
6335 similar models of competing brands of goods, or goods made of substantially the same
6336 materials and made with substantially the same workmanship.

6337 (ii) It is prima facie evidence of a deceptive comparison under this section when the
6338 prices of brand name goods and generic goods are compared.

6339 (3) Any supplier who makes a comparison with a competitor's price in advertising shall
6340 maintain for a period of one year records that disclose the factual basis for such price
6341 comparisons and from which the validity of such claim can be established.

6342 (4) It is a defense to any claim of false or deceptive price representations under this
6343 chapter that a person:

6344 (a) has no knowledge that the represented price is not genuine; and

6345 (b) has made reasonable efforts to determine whether the represented price is genuine.

6346 (5) Subsections (1)(m) and (q) do not apply to price comparisons made in catalogs in
6347 which a supplier compares the price of a single item of its goods or services with those of
6348 another.

6349 (6) To prevail in an action under this chapter, a complainant need not prove
6350 competition between the parties or actual confusion or misunderstanding.

6351 (7) This chapter does not affect unfair trade practices otherwise actionable at common

6352 law or under other statutes of this state.

6353 Section 203. Section **13-12-3** is amended to read:

6354 **13-12-3. Refiners or distributors -- Unlawful practices -- Marketing agreements**
6355 **with dealers.**

6356 No refiner or distributor, directly or indirectly or through any office, agent, or
6357 employee, shall engage in any of the following practices:

6358 (1) requiring a dealer, at the time of entering into a marketing agreement, to agree to a
6359 release, assignment, novation, waiver or estoppel which would relieve any person from any
6360 provision of this act;

6361 (2) prohibiting, directly or indirectly, the right of free association among dealers for
6362 any lawful purpose;

6363 (3) requiring a dealer to keep his retail outlet open for business for any specified
6364 number of hours per day, or days per week, unless those requirements are set forth in writing at
6365 the time of entering into the marketing agreement;

6366 (4) fixing or maintaining the price at which the dealer must sell products, or attempting
6367 to fix or maintain those prices, through any form of coercion whatsoever; provided, that
6368 nothing herein shall be construed to prohibit a distributor or refiner from suggesting prices or
6369 counseling with dealers concerning those prices;

6370 (5) requiring a dealer to use or utilize any promotion, premium, coupon, give-away,
6371 sales promotion or rebate in the operation of the business; provided that nothing herein shall be
6372 construed to prohibit a dealer from participating financially in a promotion, premium, coupon,
6373 give-away, sales promotion or rebate sponsored by the distributor or refiner if agreed to
6374 voluntarily by the parties;

6375 (6) terminating, canceling or failing to renew any marketing agreement without having
6376 first given written notice setting forth all the reasons for such termination, cancellation, or
6377 intent not to renew the dealer at least 90 days in advance of such termination, cancellation, or
6378 failure to renew, except:

6379 (a) where the alleged grounds are voluntary abandonment by the dealer of the
6380 marketing agreement relationship in which event the aforementioned written notice [~~must~~]
6381 shall be given five business days in advance of such termination, cancellation, or failure to
6382 renew; and

6383 (b) where the alleged grounds are caused by the conviction of the dealer or distributor
6384 in a court of competent jurisdiction of a criminal offense directly related to the business
6385 conducted pursuant to the marketing agreement, or the bankruptcy of the dealer or distributor,
6386 in which event the aforementioned termination, cancellation, or failure to renew may be
6387 effective immediately following such conviction or bankruptcy;

6388 (c) where the alleged grounds are:

6389 (i) failure of the dealer to substantially comply with the requirements of the marketing
6390 agreement;

6391 (ii) action of the dealer fraudulently advising members of the motoring public of the
6392 necessity for unneeded automotive repairs, parts or accessories;

6393 (iii) action of the dealer fraudulently representing either expressly or impliedly the
6394 trade mark or brand of product being sold by the dealer;

6395 (iv) failure of the dealer to maintain the premises in a sufficiently clean and healthful
6396 manner to avoid constituting a nuisance to members of the motoring public or adjoining
6397 property owners as determined by the local board of health authority;

6398 in which event the distributor shall provide the dealer with written notice of his intent to
6399 terminate, cancel or fail to renew, following which the dealer shall be allowed 10 days in which
6400 to comply, correct or respond to said allegations before further action can be taken by the
6401 distributor.

6402 Section 204. Section **13-12-4** is amended to read:

6403 **13-12-4. Cancellation provisions -- Dealer or distributor -- Time limit to exercise.**

6404 (1) Every dealer or distributor shall have the right, which may not be waived, to cancel
6405 his marketing agreement until midnight of the seventh business day after the day on which the
6406 buyer signs the marketing agreement or, if that agreement is oral, after the day on which the
6407 buyer agrees thereto.

6408 (2) Notice of cancellation shall be deemed to have been given when it is addressed to
6409 the distributor's or refiner's last known address, postage prepaid, and certified with a return
6410 receipt requested.

6411 (3) Unless within 10 days after delivery of that notice of cancellation the dealer returns
6412 to the distributor or refiner any money, equipment or merchandise loaned, sold or delivered to
6413 the dealer and delivers up full possession of the business location to the distributor or refiner,

6414 that notice of cancellation shall be null and void ab initio.

6415 (4) (a) Except as provided in this subsection, within 10 days after notice of cancellation
6416 is delivered to him, the distributor or refiner [~~must~~] shall tender to the buyer any payments
6417 made by the buyer and any note or other evidence of indebtedness.

6418 (b) If the down payment includes goods traded in, the goods [~~must~~] shall be tendered in
6419 substantially as good condition as when received by the distributor or refiner. If the distributor
6420 or refiner fails to tender the goods as provided by this subsection, the dealer may elect to
6421 recover an amount equal to the allowance established by their agreement.

6422 (c) Notwithstanding the provisions of Subsection (3) until the distributor or refiner has
6423 complied with the obligations imposed by this subsection, the dealer may retain possession of
6424 goods delivered to him by the distributor or refiner and has a lien on the goods in his
6425 possession or control for any recovery to which he is entitled.

6426 Section 205. Section **13-12-7** is amended to read:

6427 **13-12-7. District court's jurisdiction over violations -- Equitable relief --**

6428 **Attorney's fees and costs -- Action for failure to renew -- Damages limited.**

6429 The district courts for the district wherein the dealer resides or wherein the dealership
6430 was to be established shall have jurisdiction over any action involving a violation of this act. In
6431 addition to such relief as may be available at common law, the courts may grant such equitable
6432 relief, both interim and final, as may be necessary to remedy those violations including[~~, but~~
6433 ~~not limited to,~~] declaratory judgments, injunctive relief, and punitive damages as well as actual
6434 damages. The prevailing party may, in the court's sole discretion, be awarded attorney's fees
6435 and expert witness fees in addition to such other relief as the court may deem equitable. In any
6436 action for failure to renew an agreement, damages shall be limited to actual damages, including
6437 the value of the dealer's equity in the dealership, together with reasonable attorney's fees and
6438 costs.

6439 Section 206. Section **13-13-4** is amended to read:

6440 **13-13-4. Payment of percentage of receipts.**

6441 If an exhibitor is required by a license agreement to make any payment to the distributor
6442 that is based on a percentage of the theatre box office receipts the license agreement [~~shall not~~]
6443 may not require a guarantee of a minimum payment to the distributor or require the exhibitor to
6444 charge any per capita amount for ticket sales.

6445 Section 207. Section **13-14b-103** is amended to read:

6446 **13-14b-103. Warranty claims.**

6447 (1) An equipment dealer may submit a warranty claim to a supplier if a warranty defect
6448 is identified and documented prior to the expiration of a supplier's warranty:

6449 (a) while a dealer agreement is in effect; or

6450 (b) after the termination of a dealer agreement if the claim is for work performed while
6451 the dealer agreement was in effect.

6452 (2) (a) A supplier shall accept or reject a warranty claim submitted under Subsection

6453 (1) within 30 days of the date the supplier received the claim.

6454 (b) A warranty claim not rejected within 30 days of the date the supplier received the
6455 claim is considered to be accepted by the supplier.

6456 (3) No later than 30 days after the date a warranty claim is accepted or rejected under
6457 Subsection (2), the supplier shall:

6458 (a) pay an accepted warranty claim; or

6459 (b) send the dealer written notice of the reason the warranty claim was rejected.

6460 (4) (a) (i) A supplier shall compensate the dealer for the warranty claim as follows:

6461 (A) the dealer's established customer hourly retail labor rate multiplied by the
6462 reasonable and customary amount of time required to complete such work, including diagnostic
6463 time, expressed in hours and fractions of an hour;

6464 (B) the dealer's current net price plus 20% for parts to reimburse the dealer for
6465 reasonable costs of doing business in performing the warranty service on the supplier's behalf;
6466 and

6467 (C) extraordinary freight and handling costs.

6468 (ii) For purposes of Subsection (4)(a)(i)(C), "extraordinary freight and handling costs"
6469 mean costs that are above and beyond the normal reimbursement policy of the supplier for
6470 warranty repair work.

6471 (b) (i) The supplier [~~must~~] shall give due consideration to any extraordinary expenses
6472 incurred by the dealer in performing necessary warranty repairs.

6473 (ii) If the repair work is for safety or mandatory modifications ordered by the supplier,
6474 the supplier shall reimburse the dealer for transportation costs incurred by the dealer.

6475 (5) After payment of a warranty claim, a supplier may not charge back, off-set, or

6476 otherwise attempt to recover from the dealer all or part of the amount of the claim unless:

6477 (a) the warranty claim was fraudulent;

6478 (b) the services for which the warranty claim was made were not properly performed or
6479 were unnecessary to comply with the warranty; or

6480 (c) the dealer did not substantiate the warranty claim according to the written
6481 requirements of the supplier that were in effect when the equipment was delivered to the dealer
6482 by the customer for warranty repairs.

6483 (6) If a supplier denies a warranty claim due to a particular item or part of the claim,
6484 the denial shall only affect the items or parts in question and not the complete warranty claim.

6485 (7) A supplier may not pass the cost of covering warranty claims under this chapter on
6486 to a dealer through any means including:

6487 (a) surcharges;

6488 (b) reduction of discounts; or

6489 (c) certification standards.

6490 (8) (a) The provisions of this chapter do not apply to a supplier or dealer where a
6491 written dealer agreement provides for compensation to a dealer for warranty labor and parts
6492 costs either as part of the pricing of the equipment to the dealer or in the form of a lump-sum
6493 payment.

6494 (b) The lump-sum payment under Subsection (8)(a) [~~must~~] shall be at least 5% of the
6495 suggested retail price of the equipment.

6496 Section 208. Section **13-15-4** is amended to read:

6497 **13-15-4. Information to be filed by seller -- Representations.**

6498 (1) Any seller of an assisted marketing plan shall file the following information with
6499 the division:

6500 (a) the name, address, and principal place of business of the seller, and the name,
6501 address, and principal place of business of the parent or holding company of the seller, if any,
6502 who is responsible for statements made by the seller;

6503 (b) all trademarks, trade names, service marks, or advertising or other commercial
6504 symbols that identify the products, equipment, supplies, or services to be offered, sold, or
6505 distributed by the prospective purchaser;

6506 (c) an individual detailed statement covering the past five years of the business

6507 experience of each of the seller's current directors and executive officers and an individual
6508 statement covering the same period for the seller and the seller's parent company, if any,
6509 including the length of time each:

6510 (i) has conducted a business of the type advertised or solicited for operation by a
6511 prospective purchaser;

6512 (ii) has offered or sold the assisted marketing plan; and

6513 (iii) has offered for sale or sold assisted marketing plans in other lines of business,
6514 together with a description of the other lines of business;

6515 (d) a statement of the total amount that [~~must~~] shall be paid by the purchaser to obtain
6516 or commence the business opportunity such as initial fees, deposits, down payments, prepaid
6517 rent, and equipment and inventory purchases; provided, that if all or part of these fees or
6518 deposits are returnable, the conditions under which they are returnable shall also be disclosed;

6519 (e) a complete statement of the actual services the seller will perform for the purchaser;

6520 (f) a complete statement of all oral, written, or visual representations that will be made
6521 to prospective purchasers about specific levels of potential sales, income, gross and net profits,
6522 or any other representations that suggest a specific level;

6523 (g) a complete description of the type and length of any training promised to
6524 prospective purchasers;

6525 (h) a complete description of any services promised to be performed by the seller in
6526 connection with the placement of the equipment, products, or supplies at any location from
6527 which they will be sold or used; and a complete description of those services together with any
6528 agreements that will be made by the seller with the owner or manager of the location where the
6529 purchaser's equipment, products, or supplies will be placed;

6530 (i) a statement that discloses any person identified in Subsection (1)(a) who:

6531 (i) has been convicted of a felony or misdemeanor or pleaded nolo contendere to a
6532 felony or misdemeanor charge if the felony or misdemeanor involved fraud, embezzlement,
6533 fraudulent conversion, or misappropriation of property;

6534 (ii) has been held liable or consented to the entry of a stipulated judgment in any civil
6535 action based upon fraud, embezzlement, fraudulent conversion, misappropriation of property,
6536 or the use of untrue or misleading representations in the sale or attempted sale of any real or
6537 personal property, or upon the use of any unfair, unlawful or deceptive business practice; or

6538 (iii) is subject to an injunction or restrictive order relating to business activity as the
6539 result of an action brought by a public agency;

6540 (j) a financial statement of the seller signed by one of the seller's officers, directors,
6541 trustees, or general or limited partners, under a declaration that certifies that to the signatory's
6542 knowledge and belief the information in the financial statement is true and accurate; a financial
6543 statement that is more than 13 months old is unacceptable;

6544 (k) a copy of the entire marketing plan contract;

6545 (l) the number of marketing plans sold to date, and the number of plans under
6546 negotiation;

6547 (m) geographical information including all states in which the seller's assisted
6548 marketing plans have been sold, and the number of plans in each such state;

6549 (n) the total number of marketing plans that were cancelled by the seller in the past 12
6550 months; and

6551 (o) the number of marketing plans that were voluntarily terminated by purchasers
6552 within the past 12 months and the total number of such voluntary terminations to date.

6553 (2) The seller of an assisted marketing plan filing information under Subsection (1)
6554 shall pay a fee as determined by the department in accordance with Section 63J-1-504.

6555 (3) Before commencing business in this state, the seller of an assisted marketing plan
6556 shall file the information required under Subsection (1) and receive from the division proof of
6557 receipt of the filing.

6558 (4) A seller of an assisted marketing plan claiming an exemption from filing under this
6559 chapter shall file a notice of claim of exemption from filing with the division. A seller
6560 claiming an exemption from filing bears the burden of proving the exemption. The division
6561 shall collect a fee for filing a notice of claim of exemption, as determined by the department in
6562 accordance with Section 63J-1-504.

6563 (5) A representation described in Subsection (1)(f) shall be relevant to the geographic
6564 market in which the business opportunity is to be located. When the statements or
6565 representations are made, a warning after the representation in not less than 12 point upper and
6566 lower case boldface type shall appear as follows:

6567 **CAUTION**

6568 No guarantee of earnings or ranges of earnings can be made. The number of purchasers

6569 who have earned through this business an amount in excess of the amount of their initial
6570 payment is at least _____ which represents _____% of the total number of purchasers of this
6571 business opportunity.

6572 Section 209. Section **13-15-5** is amended to read:

6573 **13-15-5. Disclosure statement furnished to buyer -- Contents.**

6574 All the information required under Section 13-15-4 shall be contained in a single
6575 disclosure statement or prospectus which shall be provided to any prospective purchaser at
6576 least 10 business days prior to the earlier of:

6577 (1) the execution by prospective purchaser of any agreement imposing a binding legal
6578 obligation on such prospective purchaser by which the seller knows or should know, in
6579 connection with the sale or proposed sale of the "assisted marketing plan"; or

6580 (2) the payment by a prospective purchaser, by which the seller knows or should know
6581 of any consideration in connection with the sale or proposed sale of the "assisted market plan."
6582 The disclosure statement or prospectus [~~shall not~~] may not contain any material or information
6583 other than that required under Section 13-15-4. However, the seller may give prospective
6584 purchasers nondeceptive information other than that contained in the disclosure statement or
6585 prospectus if it does not contradict the information required to appear in the disclosure
6586 statement or prospectus. A cover sheet attached to the disclosure statement or prospectus shall
6587 conspicuously state the name of the seller, the date of issuance of the disclosure statement or
6588 prospectus, and a notice printed in not less than 12 point upper and lower case boldface type as
6589 follows:

6590 **INFORMATION FOR PURCHASE OF A MARKETING PLAN:**

6591 To protect you, the State Division of Consumer Protection has required your seller to
6592 give you this information. The State Division of Consumer Protection has not verified this
6593 information as to its accuracy. The notice may contain additional precautions deemed necessary
6594 and pertinent. The seller, in lieu of the information requested by Section 13-15-4, may file
6595 with the commission and provide to prospective purchasers certified disclosure documents
6596 authorized for use by the Federal Trade Commission pursuant to Title 16, Chapter I,
6597 Subchapter d, Trade Regulation Rules, Part 436, "Disclosure Requirements and Prohibitions
6598 Concerning Franchising and Business Opportunity Ventures."

6599 Section 210. Section **13-32-103** is amended to read:

6600 **13-32-103. Prohibited sales.**

6601 A vendor who is not a manufacturer's or distributor's representative [~~shall not~~] may not
6602 sell or offer for sale or exchange at a swap meet or flea market any:

- 6603 (1) food product which is manufactured and packaged specifically for consumption by
6604 a child under two years of age;
- 6605 (2) nonprescription or over-the-counter drug or medication other than herbal products,
6606 dietary supplements, botanical extracts, or vitamins; or
- 6607 (3) cosmetic or personal care product which has an expiration date.

6608 Section 211. Section **13-32-104** is amended to read:

6609 **13-32-104. Receipts and transaction records -- Retention of receipts and**
6610 **transaction records.**

6611 (1) Every vendor shall maintain receipts or a permanent record book for the acquisition
6612 of new and unused property which [~~must~~] shall contain:

- 6613 (a) the date of the transaction on which the property was acquired;
- 6614 (b) the name and address of the person from whom the property was acquired;
- 6615 (c) an identification and description of the property acquired;
- 6616 (d) the price paid for such property; and
- 6617 (e) the signatures of the person selling the property and the vendor.

6618 (2) The receipt or record for each transaction required by Subsection (1) shall be
6619 maintained by the vendor for a period of not less than one year following the date of the
6620 transaction.

6621 Section 212. Section **13-32-107** is amended to read:

6622 **13-32-107. Exemptions.**

6623 The provisions of this chapter [~~shall not~~] do not apply to:

- 6624 (1) the sale of a motor vehicle or trailer that is required to be registered or is subject to
6625 the certificate of title laws of this state;
- 6626 (2) the sale of agricultural products, forestry products, livestock, or food products other
6627 than those which are manufactured and packaged specifically for consumption by a child under
6628 two years of age;
- 6629 (3) business conducted at any industry or association trade show;
- 6630 (4) the sale of arts or crafts by the person who produced such arts and crafts; and

6631 (5) anyone who displays only samples, catalogs, or brochures and sells property for
6632 future delivery.

6633 Section 213. Section **13-32a-109.8** is amended to read:

6634 **13-32a-109.8. Pawned or sold property subject to law enforcement investigation.**

6635 (1) If the article pawned or sold under Section 13-32a-109 is subject to an investigation
6636 and a criminal prosecution results, the prosecuting agency shall, prior to disposition of the case:

6637 (a) request restitution to the pawn or secondhand business for the crimes perpetrated
6638 against the pawn or secondhand business as a victim of theft by deception; and

6639 (b) request restitution for the original victim.

6640 (2) If the original victim of the theft of the property files a police report and the
6641 property is subsequently located at a pawn or secondhand business, the victim [~~must~~] shall
6642 fully cooperate with the prosecution of the crimes perpetrated against the pawn or secondhand
6643 business as a victim of theft by deception, in order to qualify for restitution regarding the
6644 property.

6645 (3) If the original victim does not pursue criminal charges or does not cooperate in the
6646 prosecution of the property theft crimes charged against the defendant and the theft by
6647 deception charges committed against the pawn or secondhand business, then the original victim
6648 [~~must~~] shall pay to the pawn or secondhand business the amount of money financed or paid by
6649 the pawn or secondhand business to the defendant in order to obtain the property.

6650 (4) (a) The victim's cooperation in the prosecution of the property crimes and in the
6651 prosecution of the theft by deception offense committed against the pawn or secondhand
6652 business suspends the requirements of Subsections (2) and (3).

6653 (b) If the victim cooperates in the prosecution under Subsection (4)(a) and the
6654 defendants are convicted, the prosecuting agency shall direct the pawn or secondhand business
6655 to turn over the property to the victim.

6656 (c) Upon receipt of notice from the prosecuting agency that the property must be turned
6657 over to the victim, the pawn or secondhand business shall return the property to the victim as
6658 soon as reasonably possible.

6659 (5) A pawn or secondhand business [~~must~~] shall fully cooperate in the prosecution of
6660 the property crimes committed against the original victim and the property crime of theft by
6661 deception committed against the pawn or secondhand business in order to participate in any

6662 court-ordered restitution.

6663 (6) At all times during the course of a criminal investigation and subsequent
6664 prosecution, the article subject to a law enforcement hold shall be kept secure by the pawn or
6665 secondhand business subject to the hold unless a pawned or sold article has been seized by the
6666 law enforcement agency pursuant to Section 13-32a-109.5.

6667 Section 214. Section **13-34-104** is amended to read:

6668 **13-34-104. Prohibited acts -- Exceptions -- Responsibilities of proprietary schools.**

6669 (1) Except as provided in this chapter, a proprietary school may not offer, sell, or
6670 award a degree or any other type of educational credential unless the student has enrolled in
6671 and successfully completed a prescribed program of study as outlined in the proprietary
6672 school's catalogue.

6673 (2) The prohibition described in Subsection (1) does not apply to:

6674 (a) honorary credentials clearly designated as such on the front side of a diploma; or

6675 (b) certificates and awards by a proprietary school that offers other educational
6676 credentials requiring enrollment in and successful completion of a prescribed program of study
6677 in compliance with the requirements of this chapter.

6678 (3) A proprietary school [~~must~~] shall provide bona fide instruction through
6679 student-faculty interaction.

6680 (4) A proprietary school may not enroll a student in a program unless the proprietary
6681 school has made a good-faith determination that the student has the ability to benefit from the
6682 program.

6683 (5) A proprietary school may not make or cause to be made any oral, written, or visual
6684 statement or representation that an institution described in Subsection 13-34-107(2)(a)(ii)
6685 knows or should know to be:

6686 (a) false;

6687 (b) deceptive;

6688 (c) substantially inaccurate; or

6689 (d) misleading.

6690 (6) The division shall establish standards and criteria by rule made in accordance with
6691 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the following:

6692 (a) the awarding of educational credentials;

- 6693 (b) bona fide instruction through student-faculty interaction; and
- 6694 (c) determination of the ability of a student to benefit from a program.

6695 Section 215. Section **13-34-105** is amended to read:

6696 **13-34-105. Exempted institutions.**

6697 (1) This chapter does not apply to the following institutions:

6698 (a) a Utah institution directly supported, to a substantial degree, with funds provided

6699 by:

6700 (i) the state;

6701 (ii) a local school district; or

6702 (iii) other Utah governmental subdivision;

6703 (b) an institution that offers instruction exclusively at or below the 12th grade level;

6704 (c) a lawful enterprise that offers only professional review programs, such as C.P.A.

6705 and bar examination review and preparation courses;

6706 (d) a private, postsecondary educational institution that is owned, controlled, operated,

6707 or maintained by a bona fide church or religious denomination, which is exempted from

6708 property taxation under the laws of this state;

6709 (e) subject to Subsection (3), a school or institution that is accredited by a regional or
6710 national accrediting agency recognized by the United States Department of Education;

6711 (f) subject to Subsection (4), a business organization, trade or professional association,
6712 fraternal society, or labor union that:

6713 (i) sponsors or conducts courses of instruction or study predominantly for bona fide
6714 employees or members; and

6715 (ii) does not, in advertising, describe itself as a school;

6716 (g) an institution that exclusively offers general education courses or instruction solely
6717 remedial, avocational, nonvocational, or recreational in nature, that does not:

6718 (i) advertise occupation objectives; or

6719 (ii) grant educational credentials;

6720 (h) an institution that offers only workshops or seminars:

6721 (i) lasting no longer than three calendar days; and

6722 (ii) for which academic credit is not awarded;

6723 (i) an institution that offers programs:

6724 (i) in barbering, cosmetology, real estate, or insurance; and
6725 (ii) that are regulated and approved by a state or federal governmental agency;
6726 (j) an education provider certified by the Division of Real Estate under Section
6727 61-2c-204.1;
6728 (k) an institution that offers aviation training if the institution:
6729 (i) (A) is approved under Part 141, Federal Aviation Regulations, 14 C.F.R. Chapter
6730 141; or
6731 (B) provides aviation training under Part 61, Federal Aviation Regulations, 14 C.F.R.
6732 Chapter 61; and
6733 (ii) exclusively offers aviation training that a student fully receives within 24 hours
6734 after the student pays any tuition, fee, or other charge for the aviation training; and
6735 (l) an institution that provides emergency medical services training if all of the
6736 institution's instructors, course coordinators, and courses are approved by the Department of
6737 Health.
6738 (2) (a) If available evidence suggests that an exempt institution under this section is not
6739 in compliance with the standards of registration under this chapter and applicable division
6740 rules, the division shall contact the institution and, if appropriate, the state or federal
6741 government agency to request corrective action.
6742 (b) Subsection (2)(a) does not apply to an institution exempted under Subsection (1)(e).
6743 (3) An institution, branch, extension, or facility operating within the state that is
6744 affiliated with an institution operating in another state [~~must~~] shall be separately approved by
6745 the affiliate's regional or national accrediting agency to qualify for the exemption described in
6746 Subsection (1)(e).
6747 (4) For purposes of Subsection (1)(f), a business organization, trade or professional
6748 association, fraternal society, or labor union is considered to be conducting the course
6749 predominantly for bona fide employees or members if it hires a majority of the persons who:
6750 (a) successfully complete its course of instruction or study with a reasonable degree of
6751 proficiency; and
6752 (b) apply for employment with that same entity.
6753 Section 216. Section **13-34-107** is amended to read:
6754 **13-34-107. Advertising, recruiting, or operating a proprietary school -- Required**

6755 **registration statement or exemption -- Certificate of registration -- Registration does not**
6756 **constitute endorsement.**

6757 (1) (a) Unless an institution complies with Subsection (1)(b), the institution may not do
6758 any of the following in this state:

- 6759 (i) advertise a proprietary school;
- 6760 (ii) recruit students for a proprietary school; or
- 6761 (iii) operate a proprietary school.

6762 (b) An institution may not engage in an activity described in Subsection (1)(a) unless
6763 the institution:

6764 (i) (A) files with the division a registration statement relating to the proprietary school
6765 that is in compliance with:

- 6766 (I) applicable rules made by the division; and
- 6767 (II) the requirements set forth in this chapter; and
- 6768 (B) obtains a certificate of registration; or
- 6769 (ii) establishes an exemption with the division.

6770 (2) (a) The registration statement or exemption described in Subsection (1) shall be:

6771 (i) verified by the oath or affirmation of the owner or a responsible officer of the
6772 proprietary school filing the registration statement or exemption; and

6773 (ii) include a certification as to whether any of the following has violated laws, federal
6774 regulations, or state rules as determined in a criminal, civil, or administrative proceeding:

- 6775 (A) the proprietary school; or
- 6776 (B) any of the following with respect to the proprietary school:
 - 6777 (I) an owner;
 - 6778 (II) an officer;
 - 6779 (III) a director;
 - 6780 (IV) an administrator;
 - 6781 (V) a faculty member;
 - 6782 (VI) a staff member; or
 - 6783 (VII) an agent.

6784 (b) The proprietary school shall:

6785 (i) make available, upon request, a copy of the registration statement, showing the date

6786 upon which it was filed; and

6787 (ii) display the certificate of registration obtained from the division in a conspicuous
6788 place on the proprietary school's premises.

6789 (3) (a) A registration statement and the accompanying certificate of registration are not
6790 transferable.

6791 (b) In the event of a change in ownership or in the governing body of the proprietary
6792 school, the new owner or governing body, within 30 days after the change, shall file a new
6793 registration statement.

6794 (4) Except as provided in Subsection (3)(b), a registration statement or a renewal
6795 statement and the accompanying certificate of registration are effective for a period of two
6796 years after the date of filing and issuance.

6797 (5) (a) The division shall establish a graduated fee structure for the filing of registration
6798 statements by various classifications of institutions pursuant to Section 63J-1-504.

6799 (b) Fees are not refundable.

6800 (c) Fees shall be deposited in the Commerce Service Fund pursuant to Section 13-1-2.

6801 (6) (a) Each proprietary school shall:

6802 (i) demonstrate fiscal responsibility at the time the proprietary school files its
6803 registration statement as prescribed by rules of the division; and

6804 (ii) provide evidence to the division that the proprietary school:

6805 (A) is financially sound; and

6806 (B) can reasonably fulfill commitments to and obligations the proprietary school has
6807 incurred with students and creditors.

6808 (b) A proprietary school applying for an initial certificate of registration to operate
6809 shall prepare and submit financial statements and supporting documentation as requested by
6810 the division.

6811 (c) A proprietary school applying for renewal of a certificate of registration to operate
6812 or renewal under new ownership [~~must~~] shall provide audited financial statements.

6813 (d) The division may require evidence of financial status at other times when it is in the
6814 best interest of students to require such information.

6815 (7) (a) A proprietary school applying for an initial certificate of registration or seeking
6816 renewal shall provide in a form approved by the division:

- 6817 (i) a surety bond;
- 6818 (ii) a certificate of deposit; or
- 6819 (iii) an irrevocable letter of credit.
- 6820 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 6821 division may make rules providing for:
- 6822 (i) the amount of the bond, certificate, or letter of credit required under Subsection
- 6823 (7)(a), not to exceed in amount the anticipated tuition and fees to be received by the proprietary
- 6824 school during a school year;
- 6825 (ii) the execution of the bond, certificate, or letter of credit;
- 6826 (iii) cancellation of the bond, certificate, or letter of credit during or at the end of the
- 6827 registration term; and
- 6828 (iv) any other matters related to providing the bond, certificate, or letter of credit
- 6829 required under Subsection (7)(a).
- 6830 (c) The bond, certificate, or letter of credit shall be used as a protection against loss of
- 6831 advanced tuition, book fees, supply fees, or equipment fees:
- 6832 (i) collected by the proprietary school from a student or a student's parent, guardian, or
- 6833 sponsor prior to the completion of the program or courses for which it was collected; or
- 6834 (ii) for which the student is liable.
- 6835 (8) (a) Except as provided in Section 13-34-113, the division may not refuse
- 6836 acceptance of a registration statement that is:
- 6837 (i) tendered for filing and, based on a preliminary review, appears to be in compliance
- 6838 with Subsections (1), (2), and (6); and
- 6839 (ii) accompanied by:
- 6840 (A) the required fee; and
- 6841 (B) one of the following required by Subsection (7):
- 6842 (I) surety bond;
- 6843 (II) certificate of deposit; or
- 6844 (III) irrevocable letter of credit.
- 6845 (b) A certificate of registration is effective upon the date of issuance.
- 6846 (c) The responsibility of compliance is upon the proprietary school and not upon the
- 6847 division.

6848 (d) (i) If it appears to the division that a registration statement on file may not be in
6849 compliance with this chapter, the division may advise the proprietary school as to the apparent
6850 deficiencies.

6851 (ii) After a proprietary school has been notified of a deficiency under Subsection
6852 (8)(d)(i), a new or amended statement may be presented for filing by the proprietary school,
6853 accompanied by:

6854 (A) the required fee; and

6855 (B) one of the following required by Subsection (7):

6856 (I) surety bond;

6857 (II) certificate of deposit; or

6858 (III) irrevocable letter of credit.

6859 (9) The following does not constitute and may not be represented by any person to
6860 constitute, an endorsement or approval of the proprietary school by either the division or the
6861 state:

6862 (a) an acceptance of:

6863 (i) a registration statement;

6864 (ii) a renewal statement; or

6865 (iii) an amended registration statement; and

6866 (b) issuance of a certificate of registration.

6867 Section 217. Section **13-41-102** is amended to read:

6868 **13-41-102. Definitions.**

6869 For purposes of this chapter:

6870 (1) "Consumer" means a person who acquires a good or service for consumption.

6871 (2) "Division" means the Division of Consumer Protection.

6872 (3) (a) "Emergency territory" means the geographical area:

6873 (i) for which there has been a state of emergency declared; and

6874 (ii) that is directly affected by the events giving rise to a state of emergency.

6875 (b) "Emergency territory" does not include a geographical area that is affected by the
6876 events giving rise to a state of emergency only by economic market forces.

6877 (4) "Excessive price" means a price for a good or service that exceeds by more than
6878 10% the average price charged by that person for that good or service in the 30-day period

6879 immediately preceding the day on which the state of emergency is declared.

6880 (5) "Good" means any personal property displayed, held, or offered for sale by a
6881 merchant that is necessary for consumption or use as a direct result of events giving rise to a
6882 state of emergency.

6883 (6) "Retail" means the level of distribution where a good or service is typically sold
6884 directly, or otherwise provided, to a member of the public who is an end-user and does not
6885 resell the good or service.

6886 (7) "Service" means any activity that is performed in whole or in part for the purpose of
6887 financial gain including[~~-,but not limited to,~~] personal service, professional service, rental,
6888 leasing, or licensing for use that is necessary for consumption or use as a direct result of events
6889 giving rise to a state of emergency.

6890 (8) "State of emergency" means a declaration of:

- 6891 (a) an emergency or major disaster by the President of the United States of America; or
6892 (b) a state of emergency by the governor under Section 63K-4-203.

6893 Section 218. Section **13-42-105** is amended to read:

6894 **13-42-105. Application for registration -- Form, fee, and accompanying**
6895 **documents.**

6896 (1) An application for registration as a provider [~~must~~] shall be in a form prescribed by
6897 the administrator.

6898 (2) Subject to adjustment of dollar amounts pursuant to Subsection 13-42-132(6), an
6899 application for registration as a provider [~~must~~] shall be accompanied by:

6900 (a) the fee established by the administrator in accordance with Section 63J-1-504;

6901 (b) the bond required by Section 13-42-113;

6902 (c) identification of all trust accounts required by Section 13-42-122 and an irrevocable
6903 consent authorizing the administrator to review and examine the trust accounts;

6904 (d) evidence of insurance in the amount of \$250,000:

6905 (i) against the risks of dishonesty, fraud, theft, and other misconduct on the part of the
6906 applicant or a director, employee, or agent of the applicant;

6907 (ii) issued by an insurance company authorized to do business in this state and rated at
6908 least A or equivalent by a nationally recognized rating organization approved by the
6909 administrator;

- 6910 (iii) with a deductible not exceeding \$5,000;
- 6911 (iv) payable for the benefit of the applicant, this state, and individuals who are
- 6912 residents of this state, as their interests may appear; and
- 6913 (v) not subject to cancellation by the applicant or the insurer until 60 days after written
- 6914 notice has been given to the administrator;
- 6915 (e) a record consenting to the jurisdiction of this state containing:
- 6916 (i) the name, business address, and other contact information of its registered agent in
- 6917 this state for purposes of service of process; or
- 6918 (ii) the appointment of the administrator as agent of the provider for purposes of
- 6919 service of process; and
- 6920 (f) if the applicant is organized as a not-for-profit entity or is exempt from taxation,
- 6921 evidence of not-for-profit and tax-exempt status applicable to the applicant under the Internal
- 6922 Revenue Code, 26 U.S.C. Section 501.

6923 (3) (a) The administrator may waive or reduce the insurance requirement in Subsection

6924 13-42-105(2)(d) if the provider does not:

- 6925 (i) maintain control of a trust account or receive money paid by an individual pursuant
- 6926 to a plan for distribution to creditors;
- 6927 (ii) make payments to creditors on behalf of individuals;
- 6928 (iii) collect fees by means of automatic payment from individuals; and
- 6929 (iv) execute any powers of attorney that may be utilized by the provider to collect fees
- 6930 from or expend funds on behalf of an individual.
- 6931 (b) A waiver or reduction in insurance requirements allowed by the administrator under
- 6932 Subsection (3)(a) shall balance the reduction in risk posed by a provider meeting the stated
- 6933 requirements against any continued need for insurance against employee and director
- 6934 dishonesty.

6935 Section 219. Section **13-42-106** is amended to read:

6936 **13-42-106. Application for registration -- Required information.**

6937 An application for registration [~~must~~] shall be signed under penalty of perjury and

6938 include:

- 6939 (1) the applicant's name, principal business address and telephone number, and all
- 6940 other business addresses in this state, electronic-mail addresses, and Internet website addresses;

- 6941 (2) all names under which the applicant conducts business;
- 6942 (3) the address of each location in this state at which the applicant will provide
- 6943 debt-management services or a statement that the applicant will have no such location;
- 6944 (4) the name and home address of each officer and director of the applicant and each
- 6945 person that owns at least 10% of the applicant;
- 6946 (5) identification of every jurisdiction in which, during the five years immediately
- 6947 preceding the application:
 - 6948 (a) the applicant or any of its officers or directors has been licensed or registered to
 - 6949 provide debt-management services; or
 - 6950 (b) individuals have resided when they received debt-management services from the
 - 6951 applicant;
- 6952 (6) a statement describing, to the extent it is known or should be known by the
- 6953 applicant, any material civil or criminal judgment or litigation and any material administrative
- 6954 or enforcement action by a governmental agency in any jurisdiction against the applicant, any
- 6955 of its officers, directors, owners, or agents, or any person who is authorized to have access to
- 6956 the trust account required by Section 13-42-122;
- 6957 (7) the applicant's financial statements, audited by an accountant licensed to conduct
- 6958 audits, for each of the two years immediately preceding the application or, if it has not been in
- 6959 operation for the two years preceding the application, for the period of its existence;
- 6960 (8) evidence of accreditation by an independent accrediting organization approved by
- 6961 the administrator;
- 6962 (9) evidence that, within 12 months after initial employment, each of the applicant's
- 6963 counselors becomes certified as a certified counselor;
- 6964 (10) a description of the three most commonly used educational programs that the
- 6965 applicant provides or intends to provide to individuals who reside in this state and a copy of
- 6966 any materials used or to be used in those programs;
- 6967 (11) a description of the applicant's financial analysis and initial budget plan, including
- 6968 any form or electronic model, used to evaluate the financial condition of individuals;
- 6969 (12) a copy of each form of agreement that the applicant will use with individuals who
- 6970 reside in this state;
- 6971 (13) the schedule of fees and charges that the applicant will use with individuals who

6972 reside in this state;

6973 (14) at the applicant's expense, the results of a criminal records check, including
6974 fingerprints, conducted within the immediately preceding 12 months, covering every officer of
6975 the applicant and every employee or agent of the applicant who is authorized to have access to
6976 the trust account required by Section 13-42-122;

6977 (15) the names and addresses of all employers of each director during the 10 years
6978 immediately preceding the application;

6979 (16) a description of any ownership interest of at least 10% by a director, owner, or
6980 employee of the applicant in:

6981 (a) any affiliate of the applicant; or

6982 (b) any entity that provides products or services to the applicant or any individual
6983 relating to the applicant's debt-management services;

6984 (17) a statement of the amount of compensation of the applicant's five most highly
6985 compensated employees for each of the three years immediately preceding the application or, if
6986 it has not been in operation for the three years preceding the application, for the period of its
6987 existence;

6988 (18) the identity of each director who is an affiliate, as defined in Subsection
6989 13-42-102(2)(a) or (2)(b)(i), (ii), (iv), (v), (vi), or (vii), of the applicant; and

6990 (19) any other information that the administrator reasonably requires to perform the
6991 administrator's duties under Section 13-42-109.

6992 Section 220. Section **13-42-111** is amended to read:

6993 **13-42-111. Renewal of registration.**

6994 (1) A provider [~~must~~] shall obtain a renewal of its registration annually.

6995 (2) An application for renewal of registration as a provider [~~must~~] shall be in a form
6996 prescribed by the administrator, signed under penalty of perjury, and:

6997 (a) be filed no fewer than 30 and no more than 60 days before the registration expires;

6998 (b) be accompanied by the fee established by the administrator in accordance with
6999 Section 63J-1-504 and the bond required by Section 13-42-113;

7000 (c) contain the matter required for initial registration as a provider by Subsections
7001 13-42-106(8) and (9) and a financial statement, audited by an accountant licensed to conduct
7002 audits, for the applicant's fiscal year immediately preceding the application;

7003 (d) disclose any changes in the information contained in the applicant's application for
7004 registration or its immediately previous application for renewal, as applicable;

7005 (e) supply evidence of insurance in an amount equal to the larger of \$250,000 or the
7006 highest daily balance in the trust account required by Section 13-42-122 during the six-month
7007 period immediately preceding the application:

7008 (i) against risks of dishonesty, fraud, theft, and other misconduct on the part of the
7009 applicant or a director, employee, or agent of the applicant;

7010 (ii) issued by an insurance company authorized to do business in this state and rated at
7011 least A or equivalent by a nationally recognized rating organization approved by the
7012 administrator;

7013 (iii) with a deductible not exceeding \$5,000;

7014 (iv) payable for the benefit of the applicant, this state, and individuals who are
7015 residents of this state, as their interests may appear; and

7016 (v) not subject to cancellation by the applicant or the insurer until 60 days after written
7017 notice has been given to the administrator;

7018 (f) disclose the total amount of money received by the applicant pursuant to plans
7019 during the preceding 12 months from or on behalf of individuals who reside in this state and
7020 the total amount of money distributed to creditors of those individuals during that period;

7021 (g) disclose, to the best of the applicant's knowledge, the gross amount of money
7022 accumulated during the preceding 12 months pursuant to plans by or on behalf of individuals
7023 who reside in this state and with whom the applicant has agreements; and

7024 (h) provide any other information that the administrator reasonably requires to perform
7025 the administrator's duties under this section.

7026 (3) Except for the information required by Subsections 13-42-106(7), (14), and (17)
7027 and the addresses required by Subsection 13-42-106(4), the administrator shall make the
7028 information in an application for renewal of registration as a provider available to the public.

7029 (4) If a registered provider files a timely and complete application for renewal of
7030 registration, the registration remains effective until the administrator, in a record, notifies the
7031 applicant of a denial and states the reasons for the denial.

7032 (5) If the administrator denies an application for renewal of registration as a provider,
7033 the applicant, within 30 days after receiving notice of the denial, may appeal and request a

7034 hearing pursuant to Title 63G, Chapter 4, Administrative Procedures Act. Subject to Section
7035 13-42-134, while the appeal is pending the applicant shall continue to provide
7036 debt-management services to individuals with whom it has agreements. If the denial is
7037 affirmed, subject to the administrator's order and Section 13-42-134, the applicant shall
7038 continue to provide debt-management services to individuals with whom it has agreements
7039 until, with the approval of the administrator, it transfers the agreements to another registered
7040 provider or returns to the individuals all unexpended money that is under the applicant's
7041 control.

7042 (6) (a) The administrator may waive or reduce the insurance requirement in Subsection
7043 13-42-111(1)(e) if the provider does not:

7044 (i) maintain control of a trust account or receive money paid by an individual pursuant
7045 to a plan for distribution to creditors;

7046 (ii) make payments to creditors on behalf of individuals;

7047 (iii) collect fees by means of automatic payment from individuals; and

7048 (iv) execute any powers of attorney that may be utilized by the provider to collect fees
7049 from or expend funds on behalf of an individual.

7050 (b) A waiver or reduction in insurance requirements allowed by the administrator under
7051 Subsection (6)(a) shall balance the reduction in risk posed by a provider meeting the stated
7052 requirements against any continued need for insurance against employee and director
7053 dishonesty.

7054 Section 221. Section **13-42-113** is amended to read:

7055 **13-42-113. Bond required.**

7056 (1) Except as otherwise provided in Section 13-42-114, a provider that is required to be
7057 registered under this chapter shall file a surety bond with the administrator, which [~~must~~] shall:

7058 (a) be in effect during the period of registration and for two years after the provider
7059 ceases providing debt-management services to individuals in this state; and

7060 (b) run to this state for the benefit of this state and of individuals who reside in this
7061 state when they agree to receive debt-management services from the provider, as their interests
7062 may appear.

7063 (2) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), a
7064 surety bond filed pursuant to Subsection (1) [~~must~~] shall:

7065 (a) be in the amount of \$100,000;

7066 (b) be issued by a bonding, surety, or insurance company authorized to do business in
7067 this state and rated at least A by a nationally recognized rating organization; and

7068 (c) have payment conditioned upon noncompliance of the provider or its agent with
7069 this chapter.

7070 (3) If the principal amount of a surety bond is reduced by payment of a claim or a
7071 judgment, the provider shall immediately notify the administrator and, within 30 days after
7072 notice by the administrator, file a new or additional surety bond in an amount to comply with
7073 the \$100,000 requirement. If for any reason a surety terminates a bond, the provider shall
7074 immediately file a new surety bond in the amount of \$100,000.

7075 (4) The administrator or an individual may obtain satisfaction out of the surety bond
7076 procured pursuant to this section if:

7077 (a) the administrator assesses expenses under Subsection 13-42-132(2)(a), issues a
7078 final order under Subsection 13-42-133(1)(b), or recovers a final judgment under Subsection
7079 13-42-133(1)(d) or (e) or Subsection 13-42-133(4); or

7080 (b) an individual recovers a final judgment pursuant to Subsection 13-42-135(1),
7081 Subsection 13-42-135(2), or Subsection 13-42-135(3)(a), (b), or (d).

7082 (5) If claims against a surety bond exceed or are reasonably expected to exceed the
7083 amount of the bond, the administrator, on the initiative of the administrator or on petition of the
7084 surety, shall, unless the proceeds are adequate to pay all costs, judgments, and claims,
7085 distribute the proceeds in the following order:

7086 (a) to satisfaction of a final order or judgment under Subsection 13-42-133(1)(a), (d),
7087 or (e) or Subsection 13-42-133(4);

7088 (b) to final judgments recovered by individuals pursuant to Subsection 13-42-135(1),
7089 Subsection 13-42-135(2), or Subsection 13-42-135(3)(a), (b) or (d), pro rata;

7090 (c) to claims of individuals established to the satisfaction of the administrator, pro rata;
7091 and

7092 (d) if a final order or judgment is issued under Subsection 13-42-133(1), to the
7093 expenses charged pursuant to Subsection 13-42-132(2)(a).

7094 Section 222. Section **13-42-117** is amended to read:

7095 **13-42-117. Prerequisites for providing debt-management services.**

7096 (1) Before providing debt-management services, a registered provider shall give the
7097 individual an itemized list of goods and services and the charges for each. The list [~~must~~] shall
7098 be clear and conspicuous, be in a record the individual may keep whether or not the individual
7099 assents to an agreement, and describe the goods and services the provider offers:

7100 (a) free of additional charge if the individual enters into an agreement;

7101 (b) for a charge if the individual does not enter into an agreement; and

7102 (c) for a charge if the individual enters into an agreement, using the following
7103 terminology, as applicable, and format:

7104 Set-up fee _____
7105 dollar amount of fee

7106 Monthly service fee _____
7107 dollar amount of fee or method of determining amount

7108 Settlement fee _____
7109 dollar amount of fee or method of determining amount

7110 Goods and services in addition to those provided in connection with a plan:

7111 _____
7112 (item) dollar amount or method of determining amount

7113 _____
7114 (item) dollar amount or method of determining amount.

7115 (2) A provider may not furnish debt-management services unless the provider, through
7116 the services of a certified counselor:

7117 (a) provides the individual with reasonable education about the management of
7118 personal finance;

7119 (b) has prepared a financial analysis; and

7120 (c) if the individual is to make regular, periodic payments to a creditor or a provider:

7121 (i) has prepared a plan for the individual;

7122 (ii) has made a determination, based on the provider's analysis of the information
7123 provided by the individual and otherwise available to it, that the plan is suitable for the
7124 individual and the individual will be able to meet the payment obligations under the plan; and

7125 (iii) believes that each creditor of the individual listed as a participating creditor in the
7126 plan will accept payment of the individual's debts as provided in the plan.

7127 (3) Before an individual assents to an agreement to engage in a plan, a provider shall:

7128 (a) provide the individual with a copy of the analysis and plan required by Subsection
7129 (2) in a record that identifies the provider and that the individual may keep whether or not the
7130 individual assents to the agreement;

7131 (b) inform the individual of the availability, at the individual's option, of assistance by
7132 a toll-free communication system or in person to discuss the financial analysis and plan
7133 required by Subsection (2); and

7134 (c) with respect to all creditors identified by the individual or otherwise known by the
7135 provider to be creditors of the individual, provide the individual with a list of:

7136 (i) creditors that the provider expects to participate in the plan and grant concessions;

7137 (ii) creditors that the provider expects to participate in the plan but not grant
7138 concessions;

7139 (iii) creditors that the provider expects not to participate in the plan; and

7140 (iv) all other creditors.

7141 (4) Before an individual assents to an agreement, the provider shall inform the
7142 individual, in a record that contains nothing else, that is given separately, and that the
7143 individual may keep whether or not the individual assents to the agreement:

7144 (a) of the name and business address of the provider;

7145 (b) that plans are not suitable for all individuals and the individual may ask the
7146 provider about other ways, including bankruptcy, to deal with indebtedness;

7147 (c) that establishment of a plan may adversely affect the individual's credit rating or
7148 credit scores;

7149 (d) that nonpayment of debt may lead creditors to increase finance and other charges or
7150 undertake collection activity, including litigation;

7151 (e) unless it is not true, that the provider may receive compensation from the creditors
7152 of the individual; and

7153 (f) that, unless the individual is insolvent, if a creditor settles for less than the full
7154 amount of the debt, the plan may result in the creation of taxable income to the individual, even
7155 though the individual does not receive any money.

7156 (5) If a provider may receive payments from an individual's creditors and the plan
7157 contemplates that the individual's creditors will reduce finance charges or fees for late payment,

7158 default, or delinquency, the provider may comply with Subsection (4) by providing the
7159 following disclosure, surrounded by black lines:

7160 **IMPORTANT INFORMATION FOR YOU TO CONSIDER**

- 7161 (1) Debt-management plans are not right for all individuals, and you may ask us to
7162 provide information about other ways, including bankruptcy, to deal with your debts.
- 7163 (2) Using a debt-management plan may make it harder for you to obtain credit.
- 7164 (3) We may receive compensation for our services from your creditors.

7165 _____
7166 Name and business address of provider

7167 (6) If a provider will not receive payments from an individual's creditors and the plan
7168 contemplates that the individual's creditors will reduce finance charges or fees for late payment,
7169 default, or delinquency, a provider may comply with Subsection (4) by providing the following
7170 disclosure, surrounded by black lines:

7171 **IMPORTANT INFORMATION FOR YOU TO CONSIDER**

- 7172 (1) Debt-management plans are not right for all individuals, and you may ask us to
7173 provide information about other ways, including bankruptcy, to deal with your debts.
- 7174 (2) Using a debt-management plan may make it harder for you to obtain credit.

7175 _____
7176 Name and business address of provider

7177 (7) If an agreement contemplates that creditors will settle debts for less than the full
7178 principal amount of debt owed, a provider may comply with Subsection (4) by providing the
7179 following disclosure, surrounded by black lines:

7180 **IMPORTANT INFORMATION FOR YOU TO CONSIDER**

- 7181 (1) Our program is not right for all individuals, and you may ask us to provide
7182 information about bankruptcy and other ways to deal with your debts.
- 7183 (2) Nonpayment of your debts under our program may
7184 hurt your credit rating or credit scores;
7185 lead your creditors to increase finance and other charges; and
7186 lead your creditors to undertake activity, including lawsuits, to collect the debts.
- 7187 (3) Reduction of debt under our program may result in taxable income to you, even
7188 though you will not actually receive any money.

7189

7190

Name and business address of provider

7191

Section 223. Section **13-42-118** is amended to read:

7192

13-42-118. Communication by electronic or other means.

7193

(1) In this section:

7194

(a) "Consumer" means an individual who seeks or obtains goods or services that are used primarily for personal, family, or household purposes.

7195

7196

(b) "Federal act" means the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq.

7198

(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.

7201

(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.

7204

(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:

7207

(a) contain no other information; and

7208

(b) the individual [~~must~~] is able to see before proceeding to assent to formation of an agreement.

7210

(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).

7214

(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

7219

7220 completed or terminated, the provider shall send within a reasonable time a written copy of the
7221 materials requested.

7222 (7) A provider that maintains an Internet website shall disclose on the home page of its
7223 website or on a page that is clearly and conspicuously connected to the home page by a link
7224 that clearly reveals its contents:

7225 (a) its name and all names under which it does business;

7226 (b) its principal business address, telephone number, and electronic-mail address, if
7227 any; and

7228 (c) the names of its principal officers.

7229 (8) Subject to Subsection (9), if a consumer who has consented to electronic
7230 communication in the manner provided by Section 101 of the federal act withdraws consent as
7231 provided in the federal act, a provider may terminate its agreement with the consumer.

7232 (9) If a provider wishes to terminate an agreement with a consumer pursuant to
7233 Subsection (8), it shall notify the consumer that it will terminate the agreement unless the
7234 consumer, within 30 days after receiving the notification, consents to electronic communication
7235 in the manner provided in Section 101(c) of the federal act. If the consumer consents, the
7236 provider may terminate the agreement only as permitted by Subsection 13-42-119(1)(f)(vii).

7237 Section 224. Section **13-42-119** is amended to read:

7238 **13-42-119. Form and contents of agreement.**

7239 (1) An agreement [~~must~~] shall:

7240 (a) be in a record;

7241 (b) be dated and signed by the provider and the individual;

7242 (c) include the name of the individual and the address where the individual resides;

7243 (d) include the name, business address, and telephone number of the provider;

7244 (e) be delivered to the individual immediately upon formation of the agreement; and

7245 (f) disclose:

7246 (i) the services to be provided;

7247 (ii) the amount, or method of determining the amount, of all fees, individually
7248 itemized, to be paid by the individual;

7249 (iii) the schedule of payments to be made by or on behalf of the individual, including
7250 the amount of each payment, the date on which each payment is due, and an estimate of the

7251 date of the final payment;

7252 (iv) if a plan provides for regular periodic payments to creditors:

7253 (A) each creditor of the individual to which payment will be made, the amount owed to
7254 each creditor, and any concessions the provider reasonably believes each creditor will offer;

7255 and

7256 (B) the schedule of expected payments to each creditor, including the amount of each
7257 payment and the date on which it will be made;

7258 (v) each creditor that the provider believes will not participate in the plan and to which
7259 the provider will not direct payment;

7260 (vi) how the provider will comply with its obligations under Subsection 13-42-127(1);

7261 (vii) that the provider may terminate the agreement for good cause, upon return of
7262 unexpended money of the individual;

7263 (viii) that the individual may cancel the agreement as provided in Section 13-42-120;

7264 (ix) that the individual may contact the administrator with any questions or complaints
7265 regarding the provider; and

7266 (x) the address, telephone number, and Internet address or website of the administrator.

7267 (2) For purposes of Subsection (1)(e), delivery of an electronic record occurs when it is
7268 made available in a format in which the individual may retrieve, save, and print it and the
7269 individual is notified that it is available.

7270 (3) If the administrator supplies the provider with any information required under
7271 Subsection (1)(f)(x), the provider may comply with that requirement only by disclosing the
7272 information supplied by the administrator.

7273 (4) An agreement [~~must~~] shall provide that:

7274 (a) the individual has a right to terminate the agreement at any time, without penalty or
7275 obligation, by giving the provider written or electronic notice, in which event:

7276 (i) the provider will refund all unexpended money that the provider or its agent has
7277 received from or on behalf of the individual for the reduction or satisfaction of the individual's
7278 debt;

7279 (ii) with respect to an agreement that contemplates that creditors will settle debts for
7280 less than the principal amount of debt, the provider will refund 65% of any portion of the
7281 set-up fee that has not been credited against the settlement fee; and

7282 (iii) all powers of attorney granted by the individual to the provider are revoked and
7283 ineffective;

7284 (b) the individual authorizes any bank in which the provider or its agent has established
7285 a trust account to disclose to the administrator any financial records relating to the trust
7286 account; and

7287 (c) the provider will notify the individual within five days after learning of a creditor's
7288 final decision to reject or withdraw from a plan and that this notice will include:

7289 (i) the identity of the creditor; and

7290 (ii) the right of the individual to modify or terminate the agreement.

7291 (5) An agreement may confer on a provider a power of attorney to settle the
7292 individual's debt for no more than 50% of the principal amount of the debt. An agreement may
7293 not confer a power of attorney to settle a debt for more than 50% of that amount, but may
7294 confer a power of attorney to negotiate with creditors of the individual on behalf of the
7295 individual. An agreement [~~must~~] shall provide that the provider will obtain the assent of the
7296 individual after a creditor has assented to a settlement for more than 50% of the principal
7297 amount of the debt.

7298 (6) An agreement may not:

7299 (a) provide for application of the law of any jurisdiction other than the United States
7300 and this state;

7301 (b) except as permitted by Section 2 of the Federal Arbitration Act, 9 U.S.C. Section 2,
7302 or Title 78B, Chapter 11, Utah Uniform Arbitration Act, contain a provision that modifies or
7303 limits otherwise available forums or procedural rights, including the right to trial by jury, that
7304 are generally available to the individual under law other than this chapter;

7305 (c) contain a provision that restricts the individual's remedies under this chapter or law
7306 other than this chapter; or

7307 (d) contain a provision that:

7308 (i) limits or releases the liability of any person for not performing the agreement or for
7309 violating this chapter; or

7310 (ii) indemnifies any person for liability arising under the agreement or this chapter.

7311 (7) All rights and obligations specified in Subsection (4) and Section 13-42-120 exist
7312 even if not provided in the agreement. A provision in an agreement which violates Subsection

7313 (4), (5), or (6) is void.

7314 Section 225. Section **13-42-120** is amended to read:

7315 **13-42-120. Cancellation of agreement -- Waiver.**

7316 (1) An individual may cancel an agreement before midnight of the third business day
7317 after the individual assents to it, unless the agreement does not comply with Subsection (2) or
7318 Section 13-42-119 or Section 13-42-128, in which event the individual may cancel the
7319 agreement within 30 days after the individual assents to it. To exercise the right to cancel, the
7320 individual [~~must~~] shall give notice in a record to the provider. Notice by mail is given when
7321 mailed.

7322 (2) An agreement [~~must~~] shall be accompanied by a form that contains in bold-face
7323 type, surrounded by bold black lines:

7324 Notice of Right to Cancel

7325 You may cancel this agreement, without any penalty or obligation, at any time before
7326 midnight of the third business day that begins the day after you agree to it by electronic
7327 communication or by signing it.

7328 To cancel this agreement during this period, send an e-mail to
7329 _____ or mail or deliver a signed, dated copy of this
7330 E-mail address of provider
7331 notice, or any other written notice to _____

7332 Name of provider
7333 at _____ before midnight on _____.
7334 Address of provider Date

7335 If you cancel this agreement within the 3-day period, we will refund all money you
7336 already have paid us.

7337 You also may terminate this agreement at any later time, but we may not be required to
7338 refund fees you have paid us.

7339 I cancel this agreement,
7340 _____

7341 Print your name

7342 _____
7343 Signature

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Date

(3) 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]~~ shall 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

7375 (ii) if a plan provides for regular periodic payments to creditors, the disbursement
7376 [~~must~~] shall comply with the due dates established by each creditor; and

7377 (c) promptly correct any payments that are not made or that are misdirected as a result
7378 of an error by the provider or other person in control of the trust account and reimburse the
7379 individual for any costs or fees imposed by a creditor as a result of the failure to pay or
7380 misdirection.

7381 (4) A provider may not commingle money in a trust account established for the benefit
7382 of individuals to whom the provider is furnishing debt-management services with money of
7383 other persons.

7384 (5) A trust account [~~must~~] shall at all times have a cash balance equal to the sum of the
7385 balances of each individual's account.

7386 (6) If a provider has established a trust account pursuant to Subsection (1), the provider
7387 shall reconcile the trust account at least once a month. The reconciliation [~~must~~] shall compare
7388 the cash balance in the trust account with the sum of the balances in each individual's account.
7389 If the provider or its designee has more than one trust account, each trust account [~~must~~] shall
7390 be individually reconciled.

7391 (7) If a provider discovers, or has a reasonable suspicion of, embezzlement or other
7392 unlawful appropriation of money held in trust, the provider immediately shall notify the
7393 administrator by a method approved by the administrator. Unless the administrator by rule
7394 provides otherwise, within five days thereafter, the provider shall give notice to the
7395 administrator describing the remedial action taken or to be taken.

7396 (8) If an individual terminates an agreement or it becomes reasonably apparent to a
7397 provider that a plan has failed, the provider shall promptly refund to the individual all money
7398 paid by or on behalf of the individual which has not been paid to creditors, less fees that are
7399 payable to the provider under Section 13-42-123.

7400 (9) Before relocating a trust account from one bank to another, a provider shall inform
7401 the administrator of the name, business address, and telephone number of the new bank. As
7402 soon as practicable, the provider shall inform the administrator of the account number of the
7403 trust account at the new bank.

7404 Section 228. Section **13-42-132** is amended to read:

7405 **13-42-132. Powers of administrator.**

7406 (1) The administrator may act on its own initiative or in response to complaints and
7407 may receive complaints, take action to obtain voluntary compliance with this chapter, refer
7408 cases to the attorney general, and seek or provide remedies as provided in this chapter.

7409 (2) The administrator may investigate and examine, in this state or elsewhere, by
7410 subpoena or otherwise, the activities, books, accounts, and records of a person that provides or
7411 offers to provide debt-management services, or a person to which a provider has delegated its
7412 obligations under an agreement or this chapter, to determine compliance with this chapter.

7413 Information that identifies individuals who have agreements with the provider [~~shall not~~] may
7414 not be disclosed to the public. In connection with the investigation, the administrator may:

7415 (a) charge the person the reasonable expenses necessarily incurred to conduct the
7416 examination;

7417 (b) require or permit a person to file a statement under oath as to all the facts and
7418 circumstances of a matter to be investigated; and

7419 (c) seek a court order authorizing seizure from a bank at which the person maintains a
7420 trust account required by Section 13-42-122, any or all money, books, records, accounts, and
7421 other property of the provider that is in the control of the bank and relates to individuals who
7422 reside in this state.

7423 (3) The administrator may adopt rules to implement the provisions of this chapter in
7424 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

7425 (4) The administrator may enter into cooperative arrangements with any other federal
7426 or state agency having authority over providers and may exchange with any of those agencies
7427 information about a provider, including information obtained during an examination of the
7428 provider.

7429 (5) The administrator shall establish fees in accordance with Section 63J-1-504 to be
7430 paid by providers for the expense of administering this chapter.

7431 (6) The administrator, by rule, shall adopt dollar amounts instead of those specified in
7432 Sections 13-42-102, 13-42-105, 13-42-109, 13-42-113, 13-42-123, 13-42-133, and 13-42-135
7433 to reflect inflation, as measured by the United States Bureau of Labor Statistics Consumer
7434 Price Index for All Urban Consumers or, if that index is not available, another index adopted
7435 by rule by the administrator. The administrator shall adopt a base year and adjust the dollar
7436 amounts, effective on July 1 of each year, if the change in the index from the base year, as of

7437 December 31 of the preceding year, is at least 10%. The dollar amount [must] shall be rounded
7438 to the nearest \$100, except that the amounts in Section 13-42-123 [must] shall be rounded to
7439 the nearest dollar.

7440 (7) The administrator shall notify registered providers of any change in dollar amounts
7441 made pursuant to Subsection (6) and make that information available to the public.

7442 Section 229. Section **13-42-137** is amended to read:

7443 **13-42-137. Statute of limitations.**

7444 (1) An action or proceeding brought pursuant to Subsection 13-42-133(1), (2), or (3)
7445 [must] shall be commenced within four years after the conduct that is the basis of the
7446 administrator's complaint.

7447 (2) An action brought pursuant to Section 13-42-135 [must] shall be commenced
7448 within two years after the latest of:

7449 (a) the individual's last transmission of money to a provider;

7450 (b) the individual's last transmission of money to a creditor at the direction of the
7451 provider;

7452 (c) the provider's last disbursement to a creditor of the individual;

7453 (d) the provider's last accounting to the individual pursuant to Subsection
7454 13-42-127(1);

7455 (e) the date on which the individual discovered or reasonably should have discovered
7456 the facts giving rise to the individual's claim; or

7457 (f) termination of actions or proceedings by the administrator with respect to a
7458 violation of the chapter.

7459 (3) The period prescribed in Subsection (2)(e) is tolled during any period during which
7460 the provider or, if different, the defendant has materially and willfully misrepresented
7461 information required by this chapter to be disclosed to the individual, if the information so
7462 misrepresented is material to the establishment of the liability of the defendant under this
7463 chapter.

7464 Section 230. Section **13-42-138** is amended to read:

7465 **13-42-138. Uniformity of application and construction.**

7466 In applying and construing this uniform act, consideration [must] shall be given to the
7467 need to promote uniformity of the law with respect to its subject matter among states that enact

7468 it.

7469 Section 231. Section **14-1-20** is amended to read:

7470 **14-1-20. Preliminary notice requirement.**

7471 (1) Any person furnishing labor, service, equipment, or material for which a payment
7472 bond claim may be made under this chapter shall provide preliminary notice to the designated
7473 agent as prescribed by Section 38-1-32, except that this section does not apply:

7474 (a) to a person performing labor for wages; or

7475 (b) if a notice of commencement is not filed as prescribed in Section 38-1-31 for the
7476 project or improvement for which labor, service, equipment, or material is furnished.

7477 (2) Any person who fails to provide the preliminary notice required by Subsection (1)
7478 may not make a payment bond claim under this chapter.

7479 (3) The preliminary notice required by Subsection (1) [~~must~~] shall be provided prior to
7480 commencement of any action on the payment bond.

7481 Section 232. Section **14-2-5** is amended to read:

7482 **14-2-5. Preliminary notice requirement.**

7483 (1) Any person furnishing labor, service, equipment, or material for which a payment
7484 bond claim may be made under this chapter shall provide preliminary notice to the designated
7485 agent as prescribed by Section 38-1-32, except that this section does not apply:

7486 (a) to a person performing labor for wages; or

7487 (b) if a notice of commencement is not filed as prescribed in Section 38-1-31 for the
7488 project or improvement for which labor, service, equipment, or material is furnished.

7489 (2) Any person who fails to provide the preliminary notice required by Subsection (1)
7490 may not make a payment bond claim under this chapter.

7491 (3) The preliminary notice required by Subsection (1) [~~must~~] shall be provided prior to
7492 commencement of any action on the payment bond.

7493 Section 233. Section **15-2-5** is amended to read:

7494 **15-2-5. Blood donation by minor.**

7495 Notwithstanding any other provision of the law, any minor who has reached the age of
7496 18 years may give consent to the donation of his blood and to the necessary medical procedures
7497 to accomplish such donation. Consent [~~shall not~~] may not be subject to disaffirmance because
7498 of minority. The consent of the parent or parents of a minor [~~shall not be~~] is not necessary in

7499 order to authorize the donation of blood and such medical procedures.

7500 Section 234. Section **15-3-4** is amended to read:

7501 **15-3-4. Effective date of chapter.**

7502 This chapter [~~shall not~~] does not apply to conveyances, releases, sales or contracts made
7503 prior to July 1, 1929.

7504 Section 235. Section **15-4-2** is amended to read:

7505 **15-4-2. Discharge of co-obligors by judgment.**

7506 A judgment against one or more of several obligors, or against one or more of joint or
7507 of joint and several obligors, [~~shall not~~] may not discharge a co-obligor who was not a party to
7508 the proceeding wherein the judgment was rendered.

7509 Section 236. Section **15-4-4** is amended to read:

7510 **15-4-4. Release of co-obligor -- Reservation of rights.**

7511 Subject to the provisions of Section 15-4-3, the obligee's release or discharge of one or
7512 more of several obligors, or of one or more of joint or of joint and several obligors, [~~shall not~~]
7513 does not discharge co-obligors against whom the obligee in writing and as part of the same
7514 transaction as the release or discharge expressly reserves his rights; and in the absence of such
7515 a reservation of rights shall discharge co-obligors only to the extent provided in Section 15-4-5.

7516 Section 237. Section **15-4-7** is amended to read:

7517 **15-4-7. Effective date of chapter.**

7518 This chapter [~~shall not~~] does not apply to obligations arising prior to July 1, 1929.

7519 Section 238. Section **15-9-105** is amended to read:

7520 **15-9-105. Registration as an athlete agent -- Form -- Requirements.**

7521 (1) An applicant for registration shall submit an application for registration to the
7522 division in a form prescribed by the division. An application filed under this section is a public
7523 record under Title 63G, Chapter 2, Government Records Access and Management Act. The
7524 application [~~must~~] shall be in the name of an individual and, except as otherwise provided in
7525 Subsection (2), signed or otherwise authenticated by the applicant under penalty of perjury and
7526 state or contain:

7527 (a) the name of the applicant and the address of the applicant's principal place of
7528 business;

7529 (b) the name of the applicant's business or employer, if applicable;

- 7530 (c) any business or occupation engaged in by the applicant for the five years
7531 immediately preceding the date of submission of the application;
- 7532 (d) a description of the applicant's:
- 7533 (i) formal training as an athlete agent;
- 7534 (ii) practical experience as an athlete agent; and
- 7535 (iii) educational background relating to the applicant's activities as an athlete agent;
- 7536 (e) the names and addresses of three individuals not related to the applicant who are
7537 willing to serve as references;
- 7538 (f) the name, sport, and last-known team for each individual for whom the applicant
7539 acted as an athlete agent during the five years next preceding the date of submission of the
7540 application;
- 7541 (g) the names and addresses of all persons who are:
- 7542 (i) with respect to the athlete agent's business if it is not a corporation, the partners,
7543 members, officers, managers, associates, or profit-sharers of the business; and
- 7544 (ii) with respect to a corporation employing the athlete agent, the officers, directors,
7545 and any shareholder of the corporation having an interest of 5% or greater;
- 7546 (h) whether the applicant or any person named pursuant to Subsection (1)(g) has been
7547 convicted of a crime that, if committed in this state, would be a crime involving moral
7548 turpitude or a felony, and identify the crime;
- 7549 (i) whether there has been any administrative or judicial determination that the
7550 applicant or any person named pursuant to Subsection (1)(g) has made a false, misleading,
7551 deceptive, or fraudulent representation;
- 7552 (j) any instance in which the conduct of the applicant or any person named pursuant to
7553 Subsection (1)(g) resulted in the imposition of a sanction, suspension, or declaration of
7554 ineligibility to participate in an interscholastic or intercollegiate athletic event on a
7555 student-athlete or educational institution;
- 7556 (k) any sanction, suspension, or disciplinary action taken against the applicant or any
7557 person named pursuant to Subsection (1)(g) arising out of occupational or professional
7558 conduct; and
- 7559 (l) whether there has been any denial of an application for, suspension or revocation of,
7560 or refusal to renew, the registration or licensure of the applicant or any person named pursuant

7561 to Subsection (1)(g) as an athlete agent in any state.

7562 (2) An individual who has submitted an application for, and holds a certificate of,
7563 registration or licensure as an athlete agent in another state, may submit a copy of the
7564 application and certificate in lieu of submitting an application in the form prescribed pursuant
7565 to Subsection (1). The division shall accept the application and the certificate from the other
7566 state as an application for registration in this state if the application to the other state:

7567 (a) was submitted in the other state within six months immediately preceding the
7568 submission of the application in this state and the applicant certifies that the information
7569 contained in the application is current;

7570 (b) contains information substantially similar to or more comprehensive than that
7571 required in an application submitted in this state; and

7572 (c) was signed by the applicant under penalty of perjury.

7573 Section 239. Section **15-9-106** is amended to read:

7574 **15-9-106. Certificate of registration -- Issuance or denial -- Renewal.**

7575 (1) Except as otherwise provided in Subsection (2), the division shall issue a certificate
7576 of registration to an individual who complies with Subsection 15-9-105(1) or whose
7577 application has been accepted under Subsection 15-9-105(2).

7578 (2) The division may refuse to issue a certificate of registration if the division
7579 determines that the applicant has engaged in conduct that has a significant adverse effect on the
7580 applicant's fitness to act as an athlete agent. In making the determination, the division may
7581 consider whether the applicant has:

7582 (a) been convicted of a crime that, if committed in this state, would be a crime
7583 involving moral turpitude or a felony;

7584 (b) made a materially false, misleading, deceptive, or fraudulent representation in the
7585 application or as an athlete agent;

7586 (c) engaged in conduct that would disqualify the applicant from serving in a fiduciary
7587 capacity;

7588 (d) engaged in conduct prohibited by Section 15-9-114;

7589 (e) had a registration or licensure as an athlete agent suspended, revoked, or denied or
7590 been refused renewal of registration or licensure as an athlete agent in any state;

7591 (f) engaged in conduct the consequence of which was that a sanction, suspension, or

7592 declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event
7593 was imposed on a student-athlete or educational institution; or

7594 (g) engaged in conduct that significantly, adversely reflects on the applicant's
7595 credibility, honesty, or integrity.

7596 (3) In making a determination under Subsection (2), the division shall consider:

7597 (a) how recently the conduct occurred;

7598 (b) the nature of the conduct and the context in which it occurred; and

7599 (c) any other relevant conduct of the applicant.

7600 (4) An athlete agent may apply to renew a registration by submitting an application for
7601 renewal in a form prescribed by the division. An application filed under this section is a public

7602 record under Title 63G, Chapter 2, Government Records Access and Management Act. The

7603 application for renewal [~~must~~] shall be signed by the applicant under penalty of perjury and

7604 [~~must~~] shall contain current information on all matters required in an original registration.

7605 (5) An individual who has submitted an application for renewal of registration or
7606 licensure in another state, in lieu of submitting an application for renewal in the form

7607 prescribed pursuant to Subsection (4), may file a copy of the application for renewal and a valid
7608 certificate of registration or licensure from the other state. The division shall accept the

7609 application for renewal from the other state as an application for renewal in this state if the
7610 application to the other state:

7611 (a) was submitted in the other state within six months immediately preceding the filing
7612 in this state and the applicant certifies the information contained in the application for renewal
7613 is current;

7614 (b) contains information substantially similar to or more comprehensive than that
7615 required in an application for renewal submitted in this state; and

7616 (c) was signed by the applicant under penalty of perjury.

7617 (6) A certificate of registration or a renewal of a registration is valid for two years.

7618 Section 240. Section **15-9-109** is amended to read:

7619 **15-9-109. Registration and renewal fees.**

7620 (1) An application for registration or renewal of registration [~~must~~] shall be
7621 accompanied by a fee in an amount determined by the division in accordance with Section
7622 63J-1-504.

- 7623 (2) The division shall establish fees for:
7624 (a) an initial application for registration;
7625 (b) an application for registration based upon a certificate of registration or licensure
7626 issued by another state;
7627 (c) an application for renewal of registration; and
7628 (d) an application for renewal of registration based upon an application for renewal of
7629 registration or licensure submitted in another state.

7630 Section 241. Section **15-9-110** is amended to read:

7631 **15-9-110. Required form of contract.**

7632 (1) An agency contract [~~must~~] shall be in a record, signed or otherwise authenticated by
7633 the parties.

7634 (2) An agency contract [~~must~~] shall state or contain:

7635 (a) the amount and method of calculating the consideration to be paid by the
7636 student-athlete for services to be provided by the athlete agent under the contract and any other
7637 consideration the athlete agent has received or will receive from any other source for entering
7638 into the contract or for providing the services;

7639 (b) the name of any person not listed in the application for registration or renewal of
7640 registration who will be compensated because the student-athlete signed the agency contract;

7641 (c) a description of any expenses that the student-athlete agrees to reimburse;

7642 (d) a description of the services to be provided to the student-athlete;

7643 (e) the duration of the contract; and

7644 (f) the date of execution.

7645 (3) An agency contract [~~must~~] shall contain, in close proximity to the signature of the
7646 student-athlete, a conspicuous notice in boldface type in capital letters stating:

7647 **WARNING TO STUDENT-ATHLETE**

7648 **IF YOU SIGN THIS CONTRACT:**

7649 (1) **YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A**
7650 **STUDENT-ATHLETE IN YOUR SPORT;**

7651 (2) **IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER**
7652 **ENTERING INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT**
7653 **[~~MUST~~] SHALL NOTIFY YOUR ATHLETIC DIRECTOR; AND**

7654 (3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING
7655 IT. CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR
7656 ELIGIBILITY.

7657 (4) An agency contract that does not conform to this section is voidable by the
7658 student-athlete. If a student-athlete voids an agency contract, the student-athlete is not required
7659 to pay any consideration under the contract or to return any consideration received from the
7660 athlete agent to induce the student-athlete to enter into the contract.

7661 (5) The athlete agent shall give a record of the signed or otherwise authenticated
7662 agency contract to the student-athlete at the time of execution.

7663 Section 242. Section **15-9-118** is amended to read:

7664 **15-9-118. Uniformity of application and construction.**

7665 In applying and construing this uniform act, consideration [~~must~~] shall be given to the
7666 need to promote uniformity of the law with respect to its subject matter among states that enact
7667 it.

7668 Section 243. Section **16-6a-709** is amended to read:

7669 **16-6a-709. Action by written ballot.**

7670 (1) Unless otherwise provided by the bylaws, any action that may be taken at any
7671 annual, regular, or special meeting of members may be taken without a meeting if the nonprofit
7672 corporation delivers a written ballot to every member entitled to vote on the matter.

7673 (2) A written ballot described in Subsection (1) shall:

7674 (a) set forth each proposed action; and

7675 (b) provide an opportunity to vote for or against each proposed action.

7676 (3) (a) Approval by written ballot pursuant to this section shall be valid only when:

7677 (i) the time, as determined under Subsection (8), by which all ballots must be received
7678 by the nonprofit corporation has passed so that a quorum can be determined; and

7679 (ii) the number of approvals equals or exceeds the number of votes that would be
7680 required to approve the matter at a meeting at which the total number of votes cast was the
7681 same as the number of votes cast by ballot.

7682 (b) Unless otherwise provided in this chapter or in accordance with Section 16-6a-716,
7683 for purposes of taking action by written ballot the number of votes cast by written ballot
7684 pursuant to this section constitute a quorum for action on the matter.

- 7685 (4) All solicitations for votes by written ballot shall:
- 7686 (a) indicate the number of responses needed to meet the quorum requirements;
- 7687 (b) state the percentage of approvals necessary to approve each matter other than
7688 election of directors;
- 7689 (c) specify the time by which a ballot must be received by the nonprofit corporation in
7690 order to be counted; and
- 7691 (d) be accompanied by written information sufficient to permit each person casting the
7692 ballot to reach an informed decision on the matter.
- 7693 (5) Unless otherwise provided by the bylaws, a written ballot may not be revoked.
- 7694 (6) Action taken under this section has the same effect as action taken at a meeting of
7695 members and may be described as such in any document.
- 7696 (7) Unless otherwise provided by the bylaws, a written ballot delivered to every
7697 member entitled to vote on the matter or matters therein, as described in this section, may also
7698 be used in connection with any annual, regular, or special meeting of members, thereby
7699 allowing members the choice of either voting in person or by written ballot delivered by a
7700 member to the nonprofit corporation in lieu of attendance at such meeting. Any written ballot
7701 shall comply with the requirements of Subsection (2) and shall be counted equally with the
7702 votes of members in attendance at any meeting for every purpose, including satisfaction of a
7703 quorum requirement.
- 7704 (8) (a) Members [~~must~~] shall be provided a fair and reasonable amount of time before
7705 the day on which the nonprofit corporation must receive ballots.
- 7706 (b) An amount of time is considered to be fair and reasonable if:
- 7707 (i) members are given at least 15 days from the day on which the notice is mailed, if
7708 the notice is mailed by first-class or registered mail;
- 7709 (ii) members are given at least 30 days from the day on which the notice is mailed, if
7710 the notice is mailed by other than first-class or registered mail; or
- 7711 (iii) considering all the circumstances, the amount of time is otherwise reasonable.
- 7712 Section 244. Section **16-6a-808** is amended to read:
- 7713 **16-6a-808. Removal of directors.**
- 7714 (1) Directors elected by voting members or directors may be removed as provided in
7715 Subsections (1)(a) through (g).

- 7716 (a) The voting members may remove one or more directors elected by them with or
7717 without cause unless the bylaws provide that directors may be removed only for cause.
- 7718 (b) If a director is elected by a voting group, only that voting group may participate in
7719 the vote to remove that director.
- 7720 (c) A director may be removed only if the number of votes cast to remove the director
7721 would be sufficient to elect the director at a meeting to elect directors.
- 7722 (d) A director elected by voting members may be removed by the voting members
7723 only:
- 7724 (i) at a meeting called for the purpose of removing that director; and
7725 (ii) if the meeting notice states that the purpose, or one of the purposes, of the meeting
7726 is removal of the director.
- 7727 (e) An entire board of directors may be removed under Subsections (1)(a) through (d).
- 7728 (f) (i) Except as provided in Subsection (1)(f)(ii), a director elected by the board of
7729 directors may be removed with or without cause by the vote of a majority of the directors then
7730 in office or such greater number as is set forth in the bylaws.
- 7731 (ii) A director elected by the board of directors to fill the vacancy of a director elected
7732 by the voting members may be removed without cause by the voting members but not the
7733 board of directors.
- 7734 (g) Notwithstanding Subsections (1)(a) through (f), if provided in the bylaws, any
7735 director no longer qualified to serve, under standards set forth in the bylaws, may be removed
7736 by a vote of a majority of the directors then in office or such greater number as set forth in the
7737 bylaws.
- 7738 (h) A director who is removed pursuant to this section may deliver to the division for
7739 filing a statement to that effect pursuant to Section 16-6a-1608.
- 7740 (2) Unless otherwise provided in the bylaws:
- 7741 (a) an appointed director may be removed without cause by the person appointing the
7742 director;
- 7743 (b) the person described in Subsection (2)(a) shall remove the director by giving
7744 written notice of the removal to:
- 7745 (i) the director; and
7746 (ii) the nonprofit corporation; and

7747 (c) unless the written notice described in Subsection (2)(b) specifies a future effective
7748 date, a removal is effective when the notice is received by both:

- 7749 (i) the director to be removed; and
7750 (ii) the nonprofit corporation.

7751 (3) A designated director, as provided in Subsection 16-6a-804(5), may be removed by
7752 an amendment to the bylaws deleting or changing the designation.

7753 (4) Removal of a director under this section [~~shall not be~~] is not affected by Subsection
7754 16-6a-805(5).

7755 Section 245. Section **16-6a-1419** is amended to read:

7756 **16-6a-1419. Deposit with state treasurer.**

7757 Assets of a dissolved nonprofit corporation that [~~should~~] are to be transferred to a
7758 creditor, claimant, or member of the nonprofit corporation shall be reduced to cash and
7759 deposited with the state treasurer in accordance with Title 67, Chapter 4a, Unclaimed Property
7760 Act, if the creditor, claimant, or member:

- 7761 (1) cannot be found; or
7762 (2) is not legally competent to receive the assets.

7763 Section 246. Section **16-7-10** is amended to read:

7764 **16-7-10. Death of bishop, trustee, not incorporated -- Succession to property.**

7765 In case of the death, resignation or removal of any such archbishop, bishop, president,
7766 trustee in trust, president of stake, president of congregation, overseer, presiding elder or
7767 clergyman who at the time of his death, resignation or removal was holding the title to trust
7768 property for the use or benefit of any church or religious society, and was not incorporated as a
7769 corporation sole, the title to any and all such property held by him, of every nature and kind,
7770 [~~shall not~~] does not revert to the grantor nor vest in the heirs of such deceased person, but shall
7771 be deemed to be in abeyance after such death, resignation or removal until his successor is duly
7772 appointed to fill such vacancy, and upon the appointment of such successor the title to all the
7773 property held by his predecessor shall at once, without any other act or deed, vest in the person
7774 appointed to fill such vacancy.

7775 Section 247. Section **16-10a-103** is amended to read:

7776 **16-10a-103. Notice.**

7777 (1) (a) Notice given under this chapter [~~must~~] shall be in writing unless oral notice is

7778 reasonable under the circumstances.

7779 (b) Notice by electronic transmission is written notice.

7780 (2) (a) Subject to compliance with any requirement that notice be in writing, notice
7781 may be communicated in person, by telephone, by any form of electronic transmission, or by
7782 mail or private carrier.

7783 (b) If the forms of personal notice listed in Subsection (2)(a) are impracticable, notice
7784 may be communicated:

7785 (i) (A) by a newspaper of general circulation in the county, or similar subdivision, in
7786 which the corporation's principal office is located; and

7787 (B) by publication in accordance with Section 45-1-101;

7788 (ii) by radio, television, or other form of public broadcast communication in the county
7789 or subdivision; or

7790 (iii) if the corporation has no office in this state, in the manner allowed by Subsection
7791 (2)(b)(i) or (ii) but in Salt Lake County.

7792 (3) (a) Written notice by a domestic or foreign corporation to its shareholders or
7793 directors, if in a comprehensible form, is effective as to each shareholder or director:

7794 (i) when mailed, if addressed to the shareholder's or director's address shown in the
7795 corporation's current record of the shareholder or director; or

7796 (ii) when electronically transmitted to the shareholder or director, in a manner and to
7797 an address provided by the shareholder or director in an unrevoked consent.

7798 (b) Consent under Subsection (3)(a)(ii) is considered revoked if:

7799 (i) the corporation is unable to deliver by electronic transmission two consecutive
7800 notices transmitted by the corporation based on that consent; and

7801 (ii) the corporation's inability to deliver notice by electronic transmission under
7802 Subsection (3)(b)(i) is known by the:

7803 (A) corporation's secretary;

7804 (B) an assistant secretary or transfer agent of the corporation; or

7805 (C) any other person responsible for providing notice.

7806 (c) Notwithstanding Subsection (3)(b), a corporation's failure to treat consent under
7807 Subsection (3)(a) as revoked does not invalidate any meeting or other act.

7808 (d) Delivery of a notice to shareholders may be excused in accordance with Subsection

7809 16-10a-705(5).

7810 (4) Written notice to a domestic or foreign corporation authorized to transact business
7811 in this state may be addressed to the corporation's:

7812 (a) registered agent; or

7813 (b) secretary at its principal office.

7814 (5) Except as provided in Subsection (3), written notice, if in a comprehensible form, is
7815 effective at the earliest of the following:

7816 (a) when received;

7817 (b) five days after it is mailed; or

7818 (c) on the date shown on the return receipt if sent by registered or certified mail, return
7819 receipt requested, and the receipt is signed by or on behalf of the addressee.

7820 (6) Oral notice is effective when communicated if communicated in a comprehensible
7821 manner.

7822 (7) Notice by publication is effective on the date of first publication.

7823 (8) (a) If this chapter prescribes notice requirements for particular circumstances, those
7824 requirements govern.

7825 (b) If articles of incorporation or bylaws prescribe notice requirements, not inconsistent
7826 with this section or other provisions of this chapter, those requirements govern.

7827 Section 248. Section **16-10a-120** is amended to read:

7828 **16-10a-120. Filing requirements.**

7829 (1) A document [~~must~~] shall satisfy the requirements of this section, and of any other
7830 section of this chapter that adds to or varies these requirements, to be entitled to filing by the
7831 division.

7832 (2) This chapter must require or permit filing the document with the division.

7833 (3) (a) The document [~~must~~] shall contain the information required by this chapter.

7834 (b) A document may contain information in addition to that required in Subsection

7835 (3)(a).

7836 (4) The document [~~must~~] shall be typewritten or machine printed.

7837 (5) (a) The document [~~must~~] shall be in the English language.

7838 (b) A corporate name need not be in English if written in English letters, Arabic or
7839 Roman numerals.

7840 (c) The certificate of existence required of foreign corporations need not be in English
7841 if accompanied by a reasonably authenticated English translation.

7842 (6) The document [~~must~~] shall be executed, or [~~must~~] shall be a true copy made by
7843 photographic, xerographic, electronic, or other process that provides similar copy accuracy of a
7844 document that has been executed:

7845 (a) by the chairman of the board of directors of a domestic or foreign corporation, by
7846 all of its directors, or by one of its officers;

7847 (b) if directors have not been selected or the corporation has not been formed, by an
7848 incorporator;

7849 (c) if the corporation is in the hands of a receiver, trustee, or other court-appointed
7850 fiduciary, by that fiduciary;

7851 (d) if the document is that of a registered agent, by the registered agent, if the person is
7852 an individual, or by a person authorized by the registered agent to execute the document, if the
7853 registered agent is an entity; or

7854 (e) by an attorney in fact if the corporation retains the power of attorney with the
7855 corporation's records.

7856 (7) The document shall state beneath or opposite the signature of the person executing
7857 the document the signer's name and the capacity in which the document is signed.

7858 (8) The document may, but need not, contain:

7859 (a) the corporate seal;

7860 (b) an attestation by the secretary or an assistant secretary; or

7861 (c) an acknowledgment, verification, or proof.

7862 (9) The signature of each person signing the document, whether or not the document
7863 contains an acknowledgment, verification, or proof permitted by Subsection (8), constitutes the
7864 affirmation or acknowledgment of the person, under penalties of perjury, that the document is
7865 the person's act and deed or the act and deed of the entity on behalf of which the document is
7866 executed, and that the facts stated in the document are true.

7867 (10) If the division has prescribed a mandatory form or cover sheet for the document
7868 under Section 16-10a-121, the document [~~must~~] shall be in or on the prescribed form or [~~must~~]
7869 shall have the required cover sheet.

7870 (11) The document [~~must~~] shall be delivered to the division for filing and [~~must~~] shall

7871 be accompanied by one exact or conformed copy, except as provided in Section 16-10a-1510,
7872 the correct filing fee, and any franchise tax, license fee, or penalty required by this chapter or
7873 other law.

7874 (12) Except with respect to a filing pursuant to Section 16-10a-1510, the document
7875 [~~must~~] shall state, or be accompanied by a writing stating, the address to which the division
7876 may send a copy upon completion of the filing.

7877 Section 249. Section **16-10a-201** is amended to read:

7878 **16-10a-201. Incorporators.**

7879 One or more persons may act as incorporators of a corporation by delivering to the
7880 division for filing articles meeting the requirements of Section 16-10a-202. An incorporator
7881 who is a natural person [~~must~~] shall be at least 18 years old.

7882 Section 250. Section **16-10a-202** is amended to read:

7883 **16-10a-202. Articles of incorporation.**

7884 (1) The articles of incorporation shall set forth:

7885 (a) the purpose or purposes for which the corporation is organized;

7886 (b) a corporate name for the corporation that satisfies the requirements of Section
7887 16-10a-401;

7888 (c) the number of shares the corporation is authorized to issue;

7889 (d) the information required by Section 16-10a-601 with respect to each class of shares
7890 the corporation is authorized to issue;

7891 (e) the information required by Subsection 16-17-203(1); and

7892 (f) the name and address of each incorporator.

7893 (2) The articles of incorporation may set forth:

7894 (a) the names and addresses of the individuals who are to serve as the initial directors;

7895 (b) provisions not inconsistent with law regarding:

7896 (i) managing the business and regulating the affairs of the corporation;

7897 (ii) defining, limiting, and regulating the powers of the corporation, its board of
7898 directors, and its shareholders;

7899 (iii) a par value for authorized shares or classes of shares; and

7900 (iv) the imposition of personal liability on shareholders for the debts of the corporation
7901 to a specified extent and upon specified conditions; and

7902 (c) any provision that under this chapter is permitted to be in the articles of
7903 incorporation or required or permitted to be set forth in the bylaws including elective
7904 provisions which, to be effective, [~~must~~] shall be included in the articles of incorporation, as
7905 provided in this chapter.

7906 (3) It shall be sufficient under Subsection (1)(a) to state, either alone or with other
7907 purposes, that the purpose of the corporation is to engage in any lawful act or activity for which
7908 corporations may be organized under the Utah Revised Business Corporation Act, and by such
7909 statement all lawful acts and activities shall be within the purposes of the corporation, except
7910 for express limitations, if any.

7911 (4) The articles of incorporation need not set forth any of the corporate powers
7912 enumerated in this chapter.

7913 (5) The articles of incorporation shall be signed by each incorporator and meet the
7914 filing requirements of Section 16-10a-120.

7915 (6) The appointment of the registered agent shall be signed by the registered agent on
7916 the articles of incorporation or on an attached acknowledgement.

7917 (7) If this chapter conditions any matter upon the presence of a provision in the bylaws,
7918 the condition is satisfied if the provision is present either in the articles of incorporation or the
7919 bylaws. If this chapter conditions any matter upon the absence of a provision in the bylaws, the
7920 condition is satisfied only if the provision is absent from both the articles of incorporation and
7921 the bylaws.

7922 Section 251. Section **16-10a-401** is amended to read:

7923 **16-10a-401. Corporate name.**

7924 (1) The name of a corporation:

7925 (a) except for the name of a depository institution as defined in Section 7-1-103, [~~must~~]
7926 shall contain:

7927 (i) the word:

7928 (A) "corporation";

7929 (B) "incorporated"; or

7930 (C) "company";

7931 (ii) the abbreviation:

7932 (A) "corp.";

- 7933 (B) "inc."; or
7934 (C) "co."; or
7935 (iii) words or abbreviations of like import to the words or abbreviations listed in
7936 Subsections (1)(a)(i) and (ii) in another language;
7937 (b) may not contain language stating or implying that the corporation is organized for a
7938 purpose other than that permitted by:
7939 (i) Section 16-10a-301; and
7940 (ii) the corporation's articles of incorporation;
7941 (c) without the written consent of the United States Olympic Committee, may not
7942 contain the words:
7943 (i) "Olympic";
7944 (ii) "Olympiad"; or
7945 (iii) "Citius Altius Fortius"; and
7946 (d) without the written consent of the Division of Consumer Protection issued in
7947 accordance with Section 13-34-114, may not contain the words:
7948 (i) "university";
7949 (ii) "college"; or
7950 (iii) "institute."
7951 (2) Except as authorized by Subsections (3) and (4), the name of a corporation [~~must~~
7952 shall be distinguishable, as defined in Subsection (5), upon the records of the division from:
7953 (a) the name of any domestic corporation incorporated in or foreign corporation
7954 authorized to transact business in this state;
7955 (b) the name of any domestic or foreign nonprofit corporation incorporated or
7956 authorized to transact business in this state;
7957 (c) the name of any domestic or foreign limited liability company formed or authorized
7958 to transact business in this state;
7959 (d) the name of any limited partnership formed or authorized to transact business in
7960 this state;
7961 (e) any name reserved or registered with the division for a corporation, limited liability
7962 company, or general or limited partnership, under the laws of this state; and
7963 (f) any business name, fictitious name, assumed name, trademark, or service mark

7964 registered by the division.

7965 (3) (a) A corporation may apply to the division for authorization to file its articles of
7966 incorporation under, or to register or reserve, a name that is not distinguishable upon its records
7967 from one or more of the names described in Subsection (2).

7968 (b) The division shall approve the application filed under Subsection (3)(a) if:

7969 (i) the other person whose name is not distinguishable from the name under which the
7970 applicant desires to file, or which the applicant desires to register or reserve:

7971 (A) consents to the filing, registration, or reservation in writing; and

7972 (B) submits an undertaking in a form satisfactory to the division to change its name to
7973 a name that is distinguishable from the name of the applicant; or

7974 (ii) the applicant delivers to the division a certified copy of the final judgment of a
7975 court of competent jurisdiction establishing the applicant's right to make the requested filing in
7976 this state under the name applied for.

7977 (4) A corporation may make a filing under the name, including the fictitious name, of
7978 another domestic or foreign corporation that is used or registered in this state if:

7979 (a) the other corporation is incorporated or authorized to transact business in this state;
7980 and

7981 (b) the filing corporation:

7982 (i) has merged with the other corporation; or

7983 (ii) has been formed by reorganization of the other corporation.

7984 (5) (a) A name is distinguishable from other names, trademarks, and service marks on
7985 the records of the division if it:

7986 (i) contains one or more different letters or numerals; or

7987 (ii) has a different sequence of letters or numerals from the other names on the
7988 division's records.

7989 (b) Differences which are not distinguishing are:

7990 (i) the words or abbreviations of the words:

7991 (A) "corporation";

7992 (B) "company";

7993 (C) "incorporated";

7994 (D) "limited partnership";

- 7995 (E) "L.P.";
- 7996 (F) "limited";
- 7997 (G) "Ltd.";
- 7998 (H) "limited liability company";
- 7999 (I) "limited company";
- 8000 (J) "L.C."; or
- 8001 (K) "L.L.C.";
- 8002 (ii) the presence or absence of the words or symbols of the words "the," "and," or "a";
- 8003 (iii) differences in punctuation and special characters;
- 8004 (iv) differences in capitalization;
- 8005 (v) differences between singular and plural forms of words for a corporation:
- 8006 (A) incorporated in or authorized to do business in this state on or after May 4, 1998;
- 8007 or
- 8008 (B) that changes its name on or after May 4, 1998;
- 8009 (vi) differences in whether the letters or numbers immediately follow each other or are
- 8010 separated by one or more spaces if:
- 8011 (A) the sequence of letters or numbers is identical; and
- 8012 (B) the corporation:
- 8013 (I) is incorporated in or authorized to do business in this state on or after May 3, 1999;
- 8014 or
- 8015 (II) changes its name on or after May 3, 1999; or
- 8016 (vii) differences in abbreviations, for a corporation:
- 8017 (A) incorporated in or authorized to do business in this state on or after May 1, 2000;
- 8018 or
- 8019 (B) that changes its name on or after May 1, 2000.
- 8020 (c) The director of the division has the power and authority reasonably necessary to
- 8021 interpret and efficiently administer this section and to perform the duties imposed on the
- 8022 division by this section.
- 8023 (6) A name that implies that the corporation is an agency of this state or of any of its
- 8024 political subdivisions, if it is not actually such a legally established agency or subdivision, may
- 8025 not be approved for filing by the division.

8026 (7) (a) The requirements of Subsection (1)(d) do not apply to a corporation
8027 incorporated in or authorized to do business in this state on or before May 4, 1998, until
8028 December 31, 1998.

8029 (b) On or after January 1, 1999, any corporation incorporated in or authorized to do
8030 business in this state shall comply with the requirements of Subsection (1)(d).

8031 Section 252. Section **16-10a-601** is amended to read:

8032 **16-10a-601. Authorized shares.**

8033 (1) The articles of incorporation [~~must~~] shall prescribe the classes of shares and the
8034 number of shares of each class that the corporation is authorized to issue. If more than one
8035 class of shares is authorized, the articles of incorporation [~~must~~] shall prescribe a
8036 distinguishing designation for each class, and prior to the issuance of shares of a class the
8037 preferences, limitations, and relative rights of that class [~~must~~] shall be described in the articles
8038 of incorporation. All shares of a class [~~must~~] shall have preferences, limitations, and relative
8039 rights identical with those of other shares of the same class except to the extent otherwise
8040 permitted by this section and Section 16-10a-602.

8041 (2) The articles of incorporation [~~must~~] shall authorize:

8042 (a) one or more classes of shares that together have unlimited voting rights; and

8043 (b) one or more classes of shares, which may be the same class or classes as those with
8044 voting rights, that together are entitled to receive the net assets of the corporation upon
8045 dissolution.

8046 (3) The articles of incorporation may authorize one or more classes of shares and one
8047 or more series of shares within any class that:

8048 (a) have special, conditional, or limited voting rights, or no right to vote, except to the
8049 extent prohibited by this chapter;

8050 (b) are redeemable or convertible as specified in the articles of incorporation:

8051 (i) at the option of the corporation, the shareholder, or another person or upon the
8052 occurrence of a designated event;

8053 (ii) for money, indebtedness, securities, or other property; or

8054 (iii) in a designated amount or in an amount determined in accordance with a
8055 designated formula or by reference to extrinsic data or events;

8056 (c) entitle the holders to distributions calculated in any manner, including dividends

8057 that may be cumulative, noncumulative, or partially cumulative; or

8058 (d) have preference over any other class or series of shares with respect to distributions,
8059 including dividends and distributions upon the dissolution of the corporation.

8060 (4) The description of the designations, preferences, limitations, and relative rights of
8061 share classes or series of shares in Subsection (3) is not exhaustive.

8062 Section 253. Section **16-10a-602** is amended to read:

8063 **16-10a-602. Terms of class or series determined by board of directors.**

8064 (1) If the articles of incorporation so provide, the board of directors, without
8065 shareholder action but subject to any limitations and restrictions stated in the articles of
8066 incorporation, may amend the corporation's articles of incorporation pursuant to the authority
8067 granted to the board of directors by Subsection 16-10a-1002(1)(e) to do any of the following:

8068 (a) designate in whole or in part, the preferences, limitations, and relative rights, within
8069 the limits set forth in Section 16-10a-601, of any class of shares before the issuance of any
8070 shares of that class;

8071 (b) create one or more series within a class of shares, fix the number of shares of each
8072 such series, and designate, in whole or part, the preferences, limitations, and relative rights of
8073 the series, within the limits set forth in Section 16-10a-601, all before the issuance of any
8074 shares of that series;

8075 (c) alter or revoke the preferences, limitations, and relative rights granted to or imposed
8076 upon any wholly unissued class of shares or any wholly unissued series of any class of shares;
8077 or

8078 (d) increase or decrease the number of shares constituting any series, the number of
8079 shares of which was originally fixed by the board of directors, either before or after the
8080 issuance of shares of the series, provided that the number may not be decreased below the
8081 number of shares of the series then outstanding, or increased above the total number of
8082 authorized shares of the applicable class of shares available for designation as a part of the
8083 series.

8084 (2) Each series of a class [~~must~~] shall be given a distinguishing designation.

8085 (3) All shares of a series [~~must~~] shall have preferences, limitations, and relative rights
8086 identical with those of other shares of the same series and, except to the extent otherwise
8087 provided in the description of the series, with those of other series of the same class.

8088 (4) Before issuing any shares of a class or series created under this section, or having
8089 preferences, limitations, or relative rights designated by the board of directors as provided in
8090 this section, and before any amendment to articles of incorporation contemplated by Subsection
8091 (1) shall be effective, the corporation [~~must~~] shall deliver to the division for filing, in
8092 accordance with the procedure set forth in Section 16-10a-1006, articles of amendment that set
8093 forth:

8094 (a) the name of the corporation;

8095 (b) the text of the amendment adopted by the board of directors pursuant to Subsection
8096 (1);

8097 (c) the date the amendment was adopted by the board of directors;

8098 (d) a statement that the amendment was duly adopted by the board of directors without
8099 shareholder action and that shareholder action was not required; and

8100 (e) if the amendment alters or revokes the preferences, limitations, or relative rights
8101 granted to or imposed upon any wholly unissued class of shares or any wholly unissued series
8102 of any class of shares, a statement that none of the shares of any class or series of shares so
8103 affected has been issued.

8104 Section 254. Section **16-10a-603** is amended to read:

8105 **16-10a-603. Issued and outstanding shares.**

8106 (1) A corporation may issue the number of shares of each class or series authorized by
8107 the articles of incorporation. Shares that are issued are outstanding shares until they are
8108 reacquired, redeemed, converted, or cancelled.

8109 (2) The reacquisition, redemption, or conversion of outstanding shares is subject to the
8110 limitations of Subsection (3) and to Section 16-10a-640.

8111 (3) At all times that shares of the corporation are outstanding, one or more shares that
8112 together have unlimited voting rights and one or more shares that together are entitled to
8113 receive the net assets of the corporation upon dissolution [~~must~~] shall be outstanding.

8114 Section 255. Section **16-10a-604** is amended to read:

8115 **16-10a-604. Fractional shares.**

8116 (1) A corporation may:

8117 (a) issue fractions of a share or pay in money the value of fractions of a share;

8118 (b) arrange for disposition of fractional shares by the shareholders; or

8119 (c) issue scrip in registered or bearer form entitling the holder to receive a full share
8120 upon surrendering enough scrip to equal a full share.

8121 (2) Each certificate representing scrip [~~must~~] shall be conspicuously labeled "scrip" and
8122 [~~must~~] shall contain the information required to be included on a share certificate by
8123 Subsections 16-10a-625(2) and (3) and Section 16-10a-627.

8124 (3) The holder of a fractional share is entitled to exercise the rights of a shareholder,
8125 including the right to vote, to receive dividends, and to participate in the assets of the
8126 corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless
8127 the scrip provides for them.

8128 (4) The board of directors may authorize the issuance of scrip subject to any condition
8129 considered desirable, including:

8130 (a) that the scrip will become void if not exchanged for full shares before a specified
8131 date; and

8132 (b) that the shares for which the scrip is exchangeable may be sold and the proceeds
8133 paid to the scripholders.

8134 Section 256. Section **16-10a-620** is amended to read:

8135 **16-10a-620. Subscriptions for shares.**

8136 (1) A subscription for shares entered into before incorporation is irrevocable for six
8137 months unless the subscription agreement provides a longer or shorter period or all the
8138 subscribers agree or the corporation consents to revocation of the subscription and provided the
8139 subscription is not considered revocable under the federal securities laws.

8140 (2) The acceptance by the corporation of a subscription entered into before
8141 incorporation and the authorization of the issuance of shares pursuant thereto are subject to
8142 Section 16-10a-621.

8143 (3) The board of directors may determine the payment terms of subscriptions for shares
8144 that were entered into before incorporation, unless the subscription agreement specifies them.
8145 A call for payment by the board of directors [~~must~~] shall be uniform so far as practicable as to
8146 all shares of the same class or series, unless the subscription agreement specifies otherwise.

8147 (4) Shares issued pursuant to subscriptions entered into before incorporation are fully
8148 paid and nonassessable when the corporation receives the consideration specified in the
8149 subscription agreement.

8150 (5) If a subscriber defaults in payment of money or property under a subscription
8151 agreement entered into before incorporation, the corporation may collect the amount owed as
8152 any other debt. Alternatively, unless the subscription agreement provides otherwise, the
8153 corporation may rescind the agreement and may sell the shares if the debt remains unpaid more
8154 than 20 days after the corporation sends written demand for payment to the subscriber.

8155 (6) A subscription agreement entered into after incorporation is a contract between the
8156 subscriber and the corporation subject to Section 16-10a-621.

8157 Section 257. Section **16-10a-621** is amended to read:

8158 **16-10a-621. Issuance of shares.**

8159 (1) The powers granted in this section to the board of directors may be reserved to the
8160 shareholders by the articles of incorporation.

8161 (2) The board of directors may authorize the issuance of shares for consideration
8162 consisting of any tangible or intangible property or benefit to the corporation, including cash,
8163 promissory notes, services performed, contracts or arrangements for services to be performed,
8164 or other securities of the corporation. The terms and conditions of any tangible or intangible
8165 property or benefit to be provided in the future to the corporation, including contracts or
8166 arrangements for services to be performed, shall be set forth in writing. However, the failure to
8167 set forth the terms and conditions in writing does not affect the validity of the issuance of any
8168 shares issued for any consideration, or their status as fully paid and nonassessable shares.

8169 (3) Before the corporation issues shares, the board of directors [~~must~~] shall determine
8170 that the consideration received or to be received for the shares to be issued is adequate. The
8171 board of directors' determination regarding the adequacy of consideration for the issuance of
8172 shares is conclusive for the purpose of determining whether the shares are validly issued, fully
8173 paid, and nonassessable.

8174 (4) When the corporation receives the consideration for which the board of directors
8175 authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

8176 (5) The corporation may place in escrow shares issued in consideration for contracts or
8177 arrangements for future services or benefits or in consideration for a promissory note, or make
8178 other arrangements to restrict the transfer of the shares issued for any such consideration, and
8179 may credit distributions in respect of the shares against their purchase price, until the services
8180 are performed, the note is paid, or the benefits are received. If specified future services are not

8181 performed, the note is not paid, or the benefits are not received, the shares escrowed or
8182 restricted and the distributions credited may be cancelled in whole or part.

8183 (6) The board of directors may authorize a committee of the board of directors, or an
8184 officer of the corporation, to authorize or approve the issuance or sale, or contract for sale of
8185 shares, within limits specifically prescribed by the board of directors.

8186 Section 258. Section **16-10a-625** is amended to read:

8187 **16-10a-625. Form and content of certificates.**

8188 (1) Shares may but need not be represented by certificates. Unless this chapter or
8189 another applicable statute expressly provides otherwise, the rights and obligations of
8190 shareholders are not affected by whether or not their shares are represented by certificates.

8191 (2) Each share certificate [~~must~~] shall state on its face:

8192 (a) the name of the issuing corporation and that it is organized under the laws of this
8193 state;

8194 (b) the name of the person to whom the certificate is issued; and

8195 (c) the number and class of shares and the designation of the series, if any, the
8196 certificate represents.

8197 (3) If the issuing corporation is authorized to issue different classes of shares or
8198 different series within a class, the designations, preferences, limitations, and relative rights
8199 applicable to each class, the variations in preferences, limitations, and relative rights
8200 determined for each series, and the authority of the board of directors to determine variations
8201 for any existing or future class or series, [~~must~~] shall be summarized on the front or back of
8202 each share certificate. Alternatively, each certificate may state conspicuously on its front or
8203 back that the corporation will furnish the shareholder this information on request in writing and
8204 without charge.

8205 (4) Each share certificate:

8206 (a) [~~must~~] shall be signed by two officers designated in the bylaws or by the board of
8207 directors;

8208 (b) may bear the corporate seal or its facsimile; and

8209 (c) may contain any other information as the corporation considers necessary or
8210 appropriate.

8211 (5) The signatures of the officers upon a certificate may be facsimiles if the certificate

8212 is countersigned by a transfer agent, or registered by a registrar, other than the corporation itself
8213 or an employee of the corporation.

8214 (6) In case any officer who has signed or whose facsimile signature has been placed
8215 upon a certificate ceases to be an officer before the certificate is issued, the certificate may be
8216 issued by the corporation with the same effect as if the person were an officer at the date of its
8217 issue.

8218 Section 259. Section **16-10a-704** is amended to read:

8219 **16-10a-704. Action without meeting.**

8220 (1) Unless otherwise provided in the articles of incorporation and Subsection (5), and
8221 subject to the limitations of Subsection 16-10a-1704(4), any action which may be taken at any
8222 annual or special meeting of shareholders may be taken without a meeting and without prior
8223 notice, if one or more consents in writing, setting forth the action so taken, shall be signed by
8224 the holders of outstanding shares having not less than the minimum number of votes that would
8225 be necessary to authorize or take the action at a meeting at which all shares entitled to vote
8226 thereon were present and voted.

8227 (2) (a) Unless the written consents of all shareholders entitled to vote have been
8228 obtained, notice of any shareholder approval without a meeting shall be given at least 10 days
8229 before the consummation of the transaction, action, or event authorized by the shareholder
8230 action to:

- 8231 (i) those shareholders entitled to vote who have not consented in writing; and
- 8232 (ii) those shareholders not entitled to vote and to whom this chapter requires that notice
8233 of the proposed action be given.

8234 (b) The notice [~~must~~] shall contain or be accompanied by the same material that, under
8235 this chapter, would have been required to be sent in a notice of meeting at which the proposed
8236 action would have been submitted to the shareholders for action.

8237 (3) Any shareholder giving a written consent, or the shareholder's proxyholder, or a
8238 transferee of the shares or a personal representative of the shareholder or their respective
8239 proxyholder, may revoke the consent by a signed writing describing the action and stating that
8240 the shareholder's prior consent is revoked, if the writing is received by the corporation prior to
8241 the effectiveness of the action.

8242 (4) A shareholder action taken pursuant to this section is not effective unless all written

8243 consents on which the corporation relies for the taking of an action pursuant to Subsection (1)
8244 are received by the corporation within a 60-day period and not revoked pursuant to Subsection
8245 (3). Action taken by the shareholders pursuant to this section is effective as of the date the last
8246 written consent necessary to effect the action is received by the corporation, unless all of the
8247 written consents necessary to effect the action specify a later date as the effective date of the
8248 action, in which case the later date shall be the effective date of the action. If the corporation
8249 has received written consents as contemplated by Subsection (1) signed by all shareholders
8250 entitled to vote with respect to the action, the effective date of the shareholder action may be
8251 any date that is specified in all the written consents as the effective date of the shareholder
8252 action. Unless otherwise provided by the bylaws, the writing may be received by the
8253 corporation by electronically transmitted facsimile or other form of communication providing
8254 the corporation with a complete copy thereof, including a copy of the signature thereto.

8255 (5) Notwithstanding Subsection (1), directors may not be elected by written consent
8256 except by unanimous written consent of all shares entitled to vote for the election of directors.

8257 (6) If not otherwise determined under Sections 16-10a-703 or 16-10a-707, the record
8258 date for determining shareholders entitled to take action without a meeting or entitled to be
8259 given notice under Subsection (2) of action so taken is the date the first shareholder delivers to
8260 the corporation a writing upon which the action is taken pursuant to Subsection (1).

8261 (7) Action taken under this section has the same effect as action taken at a meeting of
8262 shareholders and may be so described in any document.

8263 Section 260. Section **16-10a-705** is amended to read:

8264 **16-10a-705. Notice of meeting.**

8265 (1) A corporation shall give notice to shareholders of the date, time, and place of each
8266 annual and special shareholders' meeting no fewer than 10 nor more than 60 days before the
8267 meeting date. Unless this chapter or the articles of incorporation require otherwise, the
8268 corporation is required to give notice only to shareholders entitled to vote at the meeting.

8269 (2) Unless this chapter or the articles of incorporation require otherwise, notice of an
8270 annual meeting need not include a description of the purpose or purposes for which the meeting
8271 is called.

8272 (3) Notice of a special meeting [~~must~~] shall include a description of the purpose or
8273 purposes for which the meeting is called.

8274 (4) (a) Subject to Subsection (b), unless the bylaws require otherwise, if an annual or
8275 special shareholders' meeting is adjourned to a different date, time, or place, notice need not be
8276 given of the new date, time, or place if the new date, time, or place is announced at the meeting
8277 before adjournment.

8278 (b) If the adjournment is for more than 30 days, or if after the adjournment a new
8279 record date for the adjourned meeting is or ~~[must]~~ shall be fixed under Section 16-10a-707,
8280 notice of the adjourned meeting ~~[must]~~ shall be given pursuant to the requirements of this
8281 section to shareholders of record who are entitled to vote at the meeting.

8282 (5) (a) Notwithstanding a requirement that notice be given under any provision of this
8283 chapter, the articles of incorporation, or bylaws of any corporation, notice ~~[shall not be]~~ is not
8284 required to be given to any shareholder to whom:

8285 (i) a notice of two consecutive annual meetings, and all notices of meetings or of the
8286 taking of action by written consent without a meeting during the period between the two
8287 consecutive annual meetings, have been mailed, addressed to the shareholder at the
8288 shareholder's address as shown on the records of the corporation, and have been returned
8289 undeliverable; or

8290 (ii) at least two payments, if sent by first class mail, of dividends or interest on
8291 securities during a 12 month period, have been mailed, addressed to the shareholder at the
8292 shareholder's address as shown on the records of the corporation, and have been returned
8293 undeliverable.

8294 (b) Any action taken or meeting held without notice to a shareholder to whom notice is
8295 excused under Subsection (5) has the same force and effect as if notice had been duly given. If
8296 a shareholder to whom notice is excused under Subsection (5) delivers to the corporation a
8297 written notice setting forth the shareholder's current address, or if another address for the
8298 shareholder is otherwise made known to the corporation, the requirement that notice be given
8299 to the shareholder is reinstated. In the event that the action taken by the corporation requires the
8300 filing of a certificate under any provision of this chapter, the certificate need not state that
8301 notice was not given to shareholders to whom notice was not required pursuant to this
8302 subsection.

8303 Section 261. Section **16-10a-706** is amended to read:

8304 **16-10a-706. Waiver of notice.**

8305 (1) A shareholder may waive any notice required by this chapter, the articles of
8306 incorporation, or the bylaws before or after the date and time stated in the notice as the date or
8307 time when any action will occur or has occurred. The waiver [~~must~~] shall be in writing, be
8308 signed by the shareholder entitled to the notice, and be delivered to the corporation for
8309 inclusion in the minutes or filing with the corporate records.

8310 (2) A shareholder's attendance at a meeting:

8311 (a) waives objection to lack of notice or defective notice of the meeting, unless the
8312 shareholder at the beginning of the meeting objects to holding the meeting or transacting
8313 business at the meeting because of lack of notice or defective notice; and

8314 (b) waives objection to consideration of a particular matter at the meeting that is not
8315 within the purposes described in the meeting notice, unless the shareholder objects to
8316 considering the matter when it is presented.

8317 Section 262. Section **16-10a-707** is amended to read:

8318 **16-10a-707. Record date.**

8319 (1) The bylaws may fix or provide the manner of fixing the record date for one or more
8320 voting groups in order to determine the shareholders entitled to be given notice of a
8321 shareholders' meeting, to determine shareholders entitled to take action without a meeting, to
8322 demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or
8323 provide for the manner of fixing a record date, the board of directors of the corporation may fix
8324 a future date as the record date.

8325 (2) If not otherwise fixed under Section 16-10a-703 or Subsection (1), the record date
8326 for determining shareholders entitled to notice of and to vote at an annual or special
8327 shareholders' meeting is the close of business on the day before the first notice is delivered to
8328 shareholders.

8329 (3) A record date fixed under this section may not be more than 70 days before the
8330 meeting or action requiring a determination of shareholders.

8331 (4) A determination of shareholders entitled to notice of or to vote at a shareholders'
8332 meeting is effective for any adjournment of the meeting unless the board of directors fixes a
8333 new record date, which it [~~must~~] shall do if the meeting is adjourned to a date more than 120
8334 days after the date fixed for the original meeting.

8335 (5) If a court orders a meeting adjourned to a date more than 120 days after the date

8336 fixed for the original meeting, it may provide that the original record date continues in effect or
8337 it may fix a new record date.

8338 Section 263. Section **16-10a-720** is amended to read:

8339 **16-10a-720. Shareholders' list for meeting.**

8340 (1) After fixing a record date for a shareholders' meeting, a corporation shall prepare a
8341 list of the names of all its shareholders who are entitled to be given notice of the meeting. The
8342 list [~~must~~] shall be arranged by voting group, and within each voting group by class or series of
8343 shares. The list [~~must~~] shall be alphabetical within each class or series and [~~must~~] shall show
8344 the address of, and the number of shares held by, each shareholder.

8345 (2) The shareholders' list [~~must~~] shall be available for inspection by any shareholder,
8346 beginning on the earlier of 10 days before the meeting for which the list was prepared or two
8347 business days after notice of the meeting is given and continuing through the meeting and any
8348 meeting adjournments, at the corporation's principal office or at a place identified in the
8349 meeting notice in the city where the meeting will be held. A shareholder or a shareholder's
8350 agent or attorney is entitled on written demand to the corporation and, subject to the
8351 requirements of Subsections 16-10a-1602(3) and (7), and the provisions of Subsections
8352 16-10a-1603(2) and (3), to inspect and copy the list, during regular business hours and during
8353 the period it is available for inspection.

8354 (3) The corporation shall make the shareholders' list available at the meeting, and any
8355 shareholder, or any shareholder's agent or attorney is entitled to inspect the list at any time
8356 during the meeting or any adjournment, for any purposes germane to the meeting.

8357 (4) If the corporation refuses to allow a shareholder, or the shareholder's agent or
8358 attorney, to inspect the shareholders' list before or at the meeting, or to copy the list as
8359 permitted by Subsection (2), the district court of the county where a corporation's principal
8360 office is located, or, if it has none in this state, the district court for Salt Lake County, on
8361 application of the shareholder, may summarily order the inspection or copying at the
8362 corporation's expense and may postpone the meeting for which the list was prepared until the
8363 inspection or copying is complete.

8364 (5) If a court orders inspection or copying of the shareholders' list pursuant to
8365 Subsection (4), unless the corporation proves that it refused inspection or copying of the list in
8366 good faith because it had a reasonable basis for doubt about the right of the shareholder or the

8367 shareholder's agent or attorney to inspect or copy the shareholders' list:

8368 (a) the court shall also order the corporation to pay the shareholder's costs, including
8369 reasonable counsel fees, incurred to obtain the order;

8370 (b) the court may order the corporation to pay the shareholder for any damages
8371 incurred; and

8372 (c) the court may grant the shareholder any other remedy afforded by law.

8373 (6) If a court orders inspection or copying of the shareholders' list pursuant to
8374 Subsection (4), the court may impose reasonable restrictions on the use or distribution of the
8375 list by the shareholder.

8376 (7) Refusal or failure to prepare or make available the shareholders' list does not affect
8377 the validity of action taken at the meeting.

8378 Section 264. Section **16-10a-722** is amended to read:

8379 **16-10a-722. Proxies.**

8380 (1) A shareholder may vote his shares in person or by proxy.

8381 (2) A shareholder, his agent, or attorney-in-fact, may appoint a proxy to vote or
8382 otherwise act for the shareholder by signing an appointment form or by an electronic
8383 transmission. An electronic transmission [~~must~~] shall contain or be accompanied by
8384 information that indicates that the shareholder, the shareholder's agent, or the shareholder's
8385 attorney-in-fact authorized the transmission.

8386 (3) An appointment of a proxy is effective when a signed appointment form or an
8387 electronic transmission of the appointment is received by the inspector of election or the officer
8388 or agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months
8389 unless a longer period is expressly provided in the appointment form.

8390 (4) An appointment of a proxy is revocable unless the appointment form or electronic
8391 transmission states that it is irrevocable and the appointment is coupled with an interest.
8392 Appointments coupled with an interest include the appointment of any of the following persons
8393 or their designees:

8394 (a) a pledgee;

8395 (b) a person who purchased or agreed to purchase the shares;

8396 (c) a creditor of the corporation who extended its credit under terms requiring the
8397 appointment;

8398 (d) an employee of the corporation whose employment contract requires the
8399 appointment; or

8400 (e) a party to a voting agreement created under Section 16-10a-731.

8401 (5) The death or incapacity of the shareholder appointing a proxy does not affect the
8402 right of the corporation to accept the proxy's authority unless the appointment is not irrevocable
8403 and coupled with an interest, and notice of the death or incapacity is received by the secretary
8404 or other officer or agent authorized to tabulate votes before the proxy exercises the authority
8405 under the appointment.

8406 (6) An appointment made irrevocable under Subsection (4) is revoked when the
8407 interest with which it is coupled is extinguished but the revocation does not affect the right of
8408 the corporation to accept the proxy's authority unless:

8409 (a) the corporation had notice that the appointment was coupled with that interest and
8410 notice that the interest is extinguished is received by the secretary or other officer or agent
8411 authorized to tabulate votes before the proxy exercises the authority under the appointment; or

8412 (b) other notice of the revocation of the appointment is received by the secretary or
8413 other officer or agent authorized to tabulate votes before the proxy exercises the authority
8414 under the appointment.

8415 (7) The corporation is not required to recognize an appointment made irrevocable
8416 under Subsection (4) if it has received a writing revoking the appointment signed by the
8417 shareholder either personally or by the shareholder's attorney-in-fact, notwithstanding that the
8418 revocation may be a breach of an obligation of the shareholder to another person not to revoke
8419 the appointment. This provision [~~shall not~~] does not affect any claim the other person may
8420 have against the shareholder with respect to the revocation.

8421 (8) A transferee for value of shares subject to an irrevocable appointment may revoke
8422 the appointment if the transferee did not know of its existence when acquiring the shares and
8423 the existence of the irrevocable appointment was not noted conspicuously on the certificate
8424 representing the shares or on the information statement for shares without certificates.

8425 (9) Subject to Section 16-10a-724 and to any express limitation on the proxy's
8426 authority stated in the appointment form or electronic transmission, a corporation is entitled to
8427 accept the proxy's vote or other action as that of the shareholder making the appointment.

8428 Section 265. Section **16-10a-723** is amended to read:

8429 **16-10a-723. Shares held by nominees.**

8430 (1) A corporation may establish a procedure by which the beneficial owner of shares
8431 that are registered in the name of a nominee is recognized by the corporation as the
8432 shareholder. The extent of this recognition may be determined in the procedure.

8433 (2) The procedure described in Subsection (1) may set forth:

8434 (a) the types of nominees to which it applies;

8435 (b) the rights or privileges that the corporation recognizes in a beneficial owner, which
8436 may include rights or privileges other than voting;

8437 (c) the manner in which the procedure may be used by the nominee;

8438 (d) the information that [~~must~~] shall be provided by the nominee when the procedure is
8439 used;

8440 (e) the period for which the nominee's use of the procedure is effective; and

8441 (f) other aspects of the rights and duties created.

8442 Section 266. Section **16-10a-725** is amended to read:

8443 **16-10a-725. Quorum and voting requirements for voting groups.**

8444 (1) Shares entitled to vote as a separate voting group may take action on a matter at a
8445 meeting only if a quorum of those shares exists with respect to that matter. Unless the articles
8446 of incorporation or this chapter provide otherwise, a majority of the votes entitled to be cast on
8447 the matter by the voting group constitutes a quorum of that voting group for action on that
8448 matter.

8449 (2) Once a share is represented for any purpose at a meeting, including the purpose of
8450 determining that a quorum exists, it is deemed present for quorum purposes for the remainder
8451 of the meeting and for any adjournment of that meeting, unless a new record date is or [~~must~~]
8452 shall be set for that adjourned meeting.

8453 (3) If a quorum exists, action on a matter, other than the election of directors, by a
8454 voting group is approved if the votes cast within the voting group favoring the action exceed
8455 the votes cast within the voting group opposing the action, unless the articles of incorporation
8456 or this chapter requires a greater number of affirmative votes.

8457 (4) The election of directors is governed by Section 16-10a-728.

8458 Section 267. Section **16-10a-727** is amended to read:

8459 **16-10a-727. Greater quorum or voting requirements.**

8460 (1) The articles of incorporation may provide for a greater quorum or voting
8461 requirement for shareholders, or voting groups of shareholders, than is provided for by this
8462 chapter.

8463 (2) An amendment to the articles of incorporation that changes or deletes a greater
8464 quorum or voting requirement [~~must~~] shall meet the same quorum requirement and be adopted
8465 by the same vote and voting groups required to take action under the quorum and voting
8466 requirements then in effect.

8467 Section 268. Section **16-10a-730** is amended to read:

8468 **16-10a-730. Voting trusts.**

8469 (1) One or more shareholders may create a voting trust, conferring on a trustee the right
8470 to vote or otherwise act for them, by signing an agreement setting out the provisions of the
8471 trust, and transferring to the trustee the shares with respect to which the trustee is to act. When
8472 a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of
8473 all owners of beneficial interests in the trust, together with the number and class of shares each
8474 transferred to the trust, and promptly cause the corporation to receive copies of the list and
8475 agreement. Thereafter the trustee shall cause the corporation to receive changes to the list
8476 promptly as they occur and amendments to the agreement promptly as they are made.

8477 (2) A voting trust becomes effective on the date the first shares subject to the trust are
8478 registered in the trustee's name. A voting trust is valid for the period provided in the
8479 agreement, but not more than 10 years after its effective date unless extended under Subsection
8480 (3).

8481 (3) All or some of the parties to a voting trust may extend the voting trust for additional
8482 terms of not more than 10 years each by signing an extension agreement and obtaining the
8483 trustee's written consent to the extension. An extension is valid for not more than 10 years
8484 from the date the first shareholder signs the extension agreement. The trustee [~~must~~] shall
8485 deliver copies of the extension agreement and list of beneficial owners to the corporation's
8486 principal office. An extension agreement binds only those parties signing it.

8487 Section 269. Section **16-10a-732** is amended to read:

8488 **16-10a-732. Shareholder agreements.**

8489 (1) An agreement among the shareholders of a corporation that complies with this
8490 section is effective among the shareholders and the corporation even though it is inconsistent

8491 with one or more other provisions of this chapter in that it:

8492 (a) eliminates the board of directors or restricts the discretion or powers of the board of
8493 directors;

8494 (b) governs the authorization or making of distributions whether or not in proportion to
8495 ownership of shares, subject to the limitations in Section 16-10a-640;

8496 (c) establishes who shall be directors or officers of the corporation, or their terms of
8497 office or manner of selection or removal;

8498 (d) governs, in general or in regard to specific matters, the exercise or division of
8499 voting power by or between the shareholders and directors or by or among any of them,
8500 including use of weighted voting rights or director proxies;

8501 (e) establishes the terms and conditions of any agreement for the transfer or use of
8502 property or the provision of services between the corporation and any shareholder, director,
8503 officer or employee of the corporation or among any of them;

8504 (f) transfers to one or more shareholders or other persons all or part of the authority to
8505 exercise the corporate powers or to manage the business and affairs of the corporation,
8506 including the resolution of any issue about which there exists a deadlock among directors or
8507 shareholders;

8508 (g) requires dissolution of the corporation at the request of one or more of the
8509 shareholders or upon the occurrence of a specified event or contingency; or

8510 (h) otherwise governs the exercise of the corporate powers or the management of the
8511 business and affairs of the corporation or the relationship among the shareholders, the directors
8512 and the corporation, or among any of them, and is not contrary to public policy.

8513 (2) An agreement authorized by this section shall be:

8514 (a) set forth:

8515 (i) in the articles of incorporation or bylaws and approved by all persons who are
8516 shareholders at the time of the agreement; or

8517 (ii) in a written agreement that is signed by all persons who are shareholders at the time
8518 of the agreement and is made known to the corporation;

8519 (b) subject to amendment only by all persons who are shareholders at the time of the
8520 amendment, unless the agreement provides otherwise; and

8521 (c) valid for 10 years, unless the agreement provides otherwise.

8522 (3) The existence of an agreement authorized by this section shall be noted
8523 conspicuously on the front or back of each certificate for outstanding shares or on the
8524 information statement required by Section 16-10a-626(2). If at the time of the agreement the
8525 corporation has shares outstanding represented by certificates, the corporation shall recall the
8526 outstanding certificates and issue substitute certificates that comply with this subsection. The
8527 failure to note the existence of the agreement on the certificate or information statement does
8528 not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of
8529 shares who, at the time of purchase, did not have knowledge of the existence of the agreement
8530 is entitled to rescission of the purchase. A purchaser is considered to have knowledge of the
8531 existence of the agreement if its existence is noted on the certificate or information statement
8532 for the shares in compliance with this subsection and, if the shares are not represented by a
8533 certificate, the information statement is delivered to the purchaser at or prior to the time of
8534 purchase of the shares. An action to enforce the right of rescission authorized by this
8535 subsection ~~[must]~~ shall be commenced within the earlier of 90 days after discovery of the
8536 existence of the agreement or two years after the time of purchase of the shares.

8537 (4) An agreement authorized by this section shall cease to be effective when shares of
8538 the corporation are listed on a national securities exchange or regularly traded in a market
8539 maintained by one or more members of a national or affiliated securities association. If the
8540 agreement ceases to be effective for any reason, the board of directors may, if the agreement is
8541 contained or referred to in the corporation's articles of incorporation or bylaws, adopt an
8542 amendment to the articles of incorporation or bylaws, without shareholder action, to delete the
8543 agreement and any references to it.

8544 (5) An agreement authorized by this section that limits the discretion or powers of the
8545 board of directors shall relieve the directors of, and impose upon the person or persons in
8546 whom the discretion or powers are vested, liability for acts or omissions imposed by laws on
8547 directors to the extent that the discretion or powers of the directors are limited by the
8548 agreement.

8549 (6) The existence or performance of an agreement authorized by this section may not
8550 be a ground for imposing personal liability on any shareholder for the acts or debts of the
8551 corporation even if the agreement or its performance treats the corporation as if it were a
8552 partnership or results in failure to observe the corporate formalities otherwise applicable to the

8553 matters governed by the agreement.

8554 (7) Incorporators or subscribers for shares may act as shareholders with respect to an
8555 agreement authorized by this section if no shares have been issued when the agreement is
8556 made.

8557 Section 270. Section **16-10a-801** is amended to read:

8558 **16-10a-801. Requirement for and duties of board of directors.**

8559 (1) Except as provided in Section 16-10a-732, each corporation [~~must~~] shall have a
8560 board of directors.

8561 (2) All corporate powers shall be exercised by or under the authority of, and the
8562 business and affairs of the corporation managed under the direction of, its board of directors,
8563 subject to any limitation set forth in the articles of incorporation or in an agreement authorized
8564 under Section 16-10a-732.

8565 Section 271. Section **16-10a-803** is amended to read:

8566 **16-10a-803. Number and election of directors.**

8567 (1) (a) Except as provided in Subsection (1)(b), a corporation's board of directors
8568 [~~must~~] shall consist of a minimum of three individuals.

8569 (b) (i) Before any shares are issued, a corporation's board of directors may consist of
8570 one or more individuals.

8571 (ii) After shares are issued and for as long as a corporation has fewer than three
8572 shareholders entitled to vote for the election of directors, its board of directors may consist of a
8573 number of individuals equal to or greater than the number of those shareholders.

8574 (c) The number of directors shall be specified in or fixed in accordance with the
8575 bylaws. Unless otherwise provided in the articles of incorporation, the number of initial
8576 directors stated in the articles of incorporation as originally filed with the division, if initial
8577 directors are so named in the articles of incorporation, shall be superseded by a provision in the
8578 bylaws specifying the number of authorized directors.

8579 (d) The number of directors may be increased or decreased from time to time by
8580 amendment to the bylaws, but no decrease may have the effect of shortening the term of any
8581 incumbent director.

8582 (e) In the absence of a provision in the bylaws or articles of incorporation fixing the
8583 number of individuals composing a board of directors, the number shall be the greater of:

8584 (i) the number of directors then in office; or

8585 (ii) the minimum number of directors permitted by this section.

8586 (2) The bylaws may establish a variable range for the size of the board of directors by
8587 fixing a minimum and maximum number of directors. If a range is established, the number of
8588 directors may be fixed or changed from time to time within the range by the shareholders or the
8589 board of directors.

8590 (3) Directors are elected at each annual meeting of the shareholders except as provided
8591 in Section 16-10a-806.

8592 Section 272. Section **16-10a-808** is amended to read:

8593 **16-10a-808. Removal of directors by shareholders.**

8594 (1) The shareholders may remove one or more directors with or without cause unless
8595 the articles of incorporation provide that directors may be removed only for cause.

8596 (2) If a director is elected by a voting group of shareholders, only the shareholders of
8597 that voting group may participate in the vote to remove him.

8598 (3) If cumulative voting is in effect, a director may not be removed if the number of
8599 votes sufficient to elect the director under cumulative voting is voted against removal. If
8600 cumulative voting is not in effect, a director may be removed only if the number of votes cast
8601 to remove the director exceeds the number of votes cast against removal.

8602 (4) A director may be removed by the shareholders only at a meeting called for the
8603 purpose of removing the director and the meeting notice [~~must~~] shall state that the purpose, or
8604 one of the purposes, of the meeting is removal of the director.

8605 (5) A director who is removed pursuant to this section may deliver to the division for
8606 filing a statement to that effect pursuant to Section 16-10a-1608.

8607 Section 273. Section **16-10a-822** is amended to read:

8608 **16-10a-822. Notice of meeting.**

8609 (1) Unless the articles of incorporation, bylaws, or this chapter provide otherwise,
8610 regular meetings of the board of directors may be held without notice of the date, time, place,
8611 or purposes of the meeting.

8612 (2) Unless the articles of incorporation or bylaws provide for a longer or shorter period,
8613 special meetings of the board of directors [~~must~~] shall be preceded by at least two days' notice
8614 of the date, time, and place of the meeting. The notice need not describe the purpose of the

8615 special meeting unless required by the articles of incorporation, bylaws, or this chapter.

8616 Section 274. Section **16-10a-823** is amended to read:

8617 **16-10a-823. Waiver of notice.**

8618 (1) A director may waive any notice of a meeting before or after the date and time of
8619 the meeting stated in the notice. Except as provided by Subsection (2), the waiver [~~must~~] shall
8620 be in writing and signed by the director entitled to the notice. The waiver shall be delivered to
8621 the corporation for filing with the corporate records, but delivery and filing are not conditions
8622 to its effectiveness.

8623 (2) A director's attendance at or participation in a meeting waives any required notice
8624 to the director of the meeting unless the director at the beginning of the meeting, or promptly
8625 upon the director's arrival, objects to holding the meeting or transacting business at the meeting
8626 because of lack of notice or defective notice, and does not thereafter vote for or assent to action
8627 taken at the meeting.

8628 Section 275. Section **16-10a-825** is amended to read:

8629 **16-10a-825. Committees.**

8630 (1) Unless the articles of incorporation or bylaws provide otherwise, a board of
8631 directors may create one or more committees and appoint members of the board of directors to
8632 serve on them. Each committee [~~must~~] shall have two or more members, who serve at the
8633 pleasure of the board of directors.

8634 (2) The creation of a committee and appointment of members to it [~~must~~] shall be
8635 approved by the greater of:

8636 (a) a majority of all the directors in office when the action is taken; or

8637 (b) the number of directors required by the articles of incorporation or bylaws to take
8638 action under Section 16-10a-824.

8639 (3) Sections 16-10a-820 through 16-10a-824, which govern meetings, action without
8640 meeting, notice, waiver of notice, and quorum and voting requirements of the board of
8641 directors, apply to committees and their members as well.

8642 (4) To the extent specified by the board of directors or in the articles of incorporation
8643 or bylaws, each committee may exercise the authority of the board of directors under Section
8644 16-10a-801.

8645 (5) The creation of, delegation of authority to, or action by a committee does not alone

8646 constitute compliance by a director with the standards of conduct described in Section
8647 16-10a-840.

8648 Section 276. Section **16-10a-904** is amended to read:

8649 **16-10a-904. Advance of expenses for directors.**

8650 (1) A corporation may pay for or reimburse the reasonable expenses incurred by a
8651 director who is a party to a proceeding in advance of final disposition of the proceeding if:

8652 (a) the director furnishes the corporation a written affirmation of his good faith belief
8653 that he has met the applicable standard of conduct described in Section 16-10a-902;

8654 (b) the director furnishes to the corporation a written undertaking, executed personally
8655 or on his behalf, to repay the advance if it is ultimately determined that he did not meet the
8656 standard of conduct; and

8657 (c) a determination is made that the facts then known to those making the
8658 determination would not preclude indemnification under this part.

8659 (2) The undertaking required by Subsection (1)(b) [~~must~~] shall be an unlimited general
8660 obligation of the director but need not be secured and may be accepted without reference to
8661 financial ability to make repayment.

8662 (3) Determinations and authorizations of payments under this section shall be made in
8663 the manner specified in Section 16-10a-906.

8664 Section 277. Section **16-10a-1003** is amended to read:

8665 **16-10a-1003. Amendment by board of directors and shareholders.**

8666 (1) A corporation's board of directors may propose one or more amendments to the
8667 articles of incorporation for submission to the shareholders.

8668 (2) For an amendment to the articles of incorporation proposed pursuant to Subsection
8669 (1) to be adopted:

8670 (a) the board of directors [~~must~~] shall recommend the amendment to the shareholders
8671 unless the board determines that, because of conflicts of interest or other special circumstances,
8672 it should make no recommendation and communicates the basis for its determination to the
8673 shareholders with the amendment; and

8674 (b) shareholders entitled to vote on the amendment [~~must~~] shall approve the
8675 amendment as provided in Subsection (5).

8676 (3) The board of directors may condition its submission of the proposed amendment on

8677 any basis.

8678 (4) The corporation shall give notice, in accordance with Section 16-10a-705, of the
8679 shareholders' meeting at which the amendment will be voted upon, to each shareholder entitled
8680 to vote on the proposed amendment. The notice of the meeting [~~must~~] shall state that one of
8681 the purposes of the meeting is to consider the proposed amendment and it [~~must~~] shall contain
8682 or be accompanied by a copy or summary of the amendment.

8683 (5) Unless this chapter, the articles of incorporation, the bylaws, [~~f~~]if authorized by the
8684 articles of incorporation[~~g~~], or the board of directors acting pursuant to Subsection (3) require a
8685 greater vote or a vote by voting groups, the amendment to be adopted must be approved by:

8686 (a) a majority of the votes entitled to be cast on the amendment by any voting group
8687 with respect to which the amendment would create dissenters' rights;

8688 (b) a majority of the votes entitled to be cast on the amendment by any voting group
8689 with respect to which the amendment would materially and adversely affect rights in respect of
8690 the shares of the voting group because it:

8691 (i) alters or abolishes a preferential right of the shares;

8692 (ii) creates, alters, or abolishes a right in respect of redemption, including a provision
8693 respecting a sinking fund for the redemption or repurchase, of the shares;

8694 (iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares
8695 or other securities;

8696 (iv) excludes or limits the right of the shares to vote on any matter, or to cumulate
8697 votes, other than a limitation by dilution through issuance of shares or other securities with
8698 similar voting rights; or

8699 (v) reduces the number of shares owned by the shareholder to a fraction of a share or
8700 scrip if the fractional share or scrip so created is to be acquired for cash or the scrip is to be
8701 voided under Section 16-10a-604; and

8702 (c) the votes required by Sections 16-10a-725 and 16-10a-726 by every other voting
8703 group entitled to vote on the amendment.

8704 (6) If any amendment to the articles of incorporation would impose personal liability
8705 on shareholders for the debts of a corporation, it must be approved by all of the outstanding
8706 shares affected, regardless of limitations or restrictions on the voting rights of the shares.

8707 Section 278. Section **16-10a-1007** is amended to read:

8708 **16-10a-1007. Restated articles of incorporation.**

8709 (1) A corporation's board of directors may restate its articles of incorporation at any
8710 time with or without shareholder action. A corporation's incorporators may restate its articles
8711 of incorporation at any time if the corporation has not issued shares and if no directors have
8712 been appointed.

8713 (2) The restatement may include one or more amendments to the articles of
8714 incorporation. If the restatement includes an amendment requiring shareholder approval, it
8715 must be adopted as provided in Section 16-10a-1003.

8716 (3) If the board of directors submits a restatement for shareholder action, the
8717 corporation shall give notice, in accordance with Section 16-10a-705, to each shareholder
8718 entitled to vote on the restatement, of the proposed shareholders' meeting at which the
8719 restatement will be voted upon. The notice [~~must~~] shall state that the purpose, or one of the
8720 purposes, of the meeting is to consider the proposed restatement and the notice shall contain or
8721 be accompanied by a copy of the restatement that identifies any amendment or other change it
8722 would make in the articles of incorporation.

8723 (4) A corporation restating its articles of incorporation shall deliver to the division for
8724 filing articles of restatement setting forth:

8725 (a) the name of the corporation;

8726 (b) the text of the restated articles of incorporation;

8727 (c) if the restatement contains an amendment to the articles of incorporation, the
8728 information required to be set forth in articles of amendment by Section 16-10a-1006;

8729 (d) if the restatement does not contain an amendment to the articles of incorporation, a
8730 statement to that effect; and

8731 (e) if the restatement was adopted by the board of directors or incorporators without
8732 shareholder action, a statement as to how the restatement was adopted and that shareholder
8733 action was not required.

8734 (5) Upon filing by the division or at any later effective date determined pursuant to
8735 Section 16-10a-123, restated articles of incorporation supersede the original articles of
8736 incorporation and all prior amendments to them.

8737 Section 279. Section **16-10a-1022** is amended to read:

8738 **16-10a-1022. Bylaw changing quorum or voting requirement for directors.**

8739 (1) A bylaw that fixes a greater quorum or voting requirement for the board of directors
8740 than is required by this chapter may be amended or repealed:

8741 (a) if originally adopted by the shareholders, only by the shareholders, unless otherwise
8742 permitted as contemplated by Subsection (2); or

8743 (b) if originally adopted by the board of directors, by the shareholders or unless
8744 otherwise provided in the articles of incorporation or bylaws, by the board of directors.

8745 (2) A bylaw adopted or amended by the shareholders that fixes a greater quorum or
8746 voting requirement for the board of directors may provide that it may be amended or repealed
8747 only by a specified vote of either the shareholders or the board of directors.

8748 (3) Action by the board of directors under Subsection (1)(b) to amend or repeal a bylaw
8749 that changes the quorum or voting requirement for the board of directors [~~must~~] shall meet the
8750 same quorum requirement and be adopted by the same vote required to take action under the
8751 quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

8752 Section 280. Section **16-10a-1023** is amended to read:

8753 **16-10a-1023. Bylaw provisions relating to election of directors.**

8754 (1) A corporation that has shares listed on a national securities exchange or regularly
8755 traded in a market maintained by one or more members of a national or affiliated securities
8756 association may elect in its bylaws to be governed in the election of directors by Subsection (2)
8757 unless the articles of incorporation:

8758 (a) specifically prohibit the adoption of a bylaw electing to be governed by this section;

8759 (b) alter the vote required by Subsection 16-10a-728(2); or

8760 (c) provide for cumulative voting.

8761 (2) A corporation may elect to be governed in the election of directors as follows:

8762 (a) Each vote entitled to be cast may be voted for or against up to that number of
8763 candidates that is equal to the number of directors to be elected, or the shareholder may
8764 indicate abstention, but without cumulating the votes.

8765 (b) To be elected, a nominee [~~must~~] shall receive a plurality of the votes cast by
8766 shareholders of shares entitled to vote in the election at a meeting at which a quorum is present.

8767 (c) Notwithstanding Subsection (2)(b), a nominee who is elected but receives more
8768 votes against than for election shall serve as a director for a term that terminates on the earlier
8769 of:

8770 (i) 90 days after the day on which the corporation certifies the voting results; or
8771 (ii) the day on which a person is selected by the board of directors to fill the office held
8772 by the director, which selection constitutes the filling of a vacancy by the board for the purpose
8773 of Section 16-10a-810.

8774 (d) Subject to Subsection (2)(e), a nominee who is elected but receives more votes
8775 against than for election may not serve as a director beyond the 90-day period allowed by
8776 Subsection (2)(c).

8777 (e) The board of directors may select any qualified person to fill the office held by a
8778 director who receives more votes against than for election.

8779 (3) (a) Subsection (2) does not apply to an election of a director by a voting group if
8780 there are more candidates for election by the voting group than the number of directors to be
8781 elected, one or more of whom are properly proposed by shareholders.

8782 (b) The determination of the number of candidates under Subsection (3)(a) is made:

8783 (i) at the expiration of a time fixed by the articles of incorporation or bylaws for the
8784 advance notification of director candidates; or

8785 (ii) if there is no provision under Subsection (3)(b)(i), at a time fixed by the board of
8786 directors not more than 14 days before notice is given of the meeting at which the election is to
8787 occur.

8788 (4) A person may not be considered a candidate for the purpose of Subsection (3) if the
8789 board of directors determines before the notice of meeting is given that the person's candidacy
8790 does not create a bona fide election contest.

8791 (5) A bylaw electing to be governed by this section may be repealed:

8792 (a) by the shareholders if originally adopted by the shareholders, unless otherwise
8793 provided by the bylaws; or

8794 (b) by the board of directors or the shareholders, if originally adopted by the board of
8795 directors.

8796 Section 281. Section **16-10a-1101** is amended to read:

8797 **16-10a-1101. Merger.**

8798 (1) One or more domestic corporations may merge into another domestic corporation if
8799 the board of directors of each corporation adopts and its shareholders, if required by Section
8800 16-10a-1103, approve the plan of merger.

- 8801 (2) The plan of merger referred to in Subsection (1) [~~must~~] shall set forth:
8802 (a) the name of each corporation planning to merge and the name of the surviving
8803 corporation into which each other corporation plans to merge;
8804 (b) the terms and conditions of the merger;
8805 (c) the manner and basis of converting the shares of each corporation into shares,
8806 obligations, or other securities of the surviving or any other corporation or into cash or other
8807 property in whole or part; and
8808 (d) any amendments to the articles of incorporation of the surviving corporation to be
8809 effected by the merger.

8810 (3) The plan of merger may set forth other provisions relating to the merger.

8811 Section 282. Section **16-10a-1102** is amended to read:

8812 **16-10a-1102. Share exchange.**

8813 (1) A domestic corporation may acquire all of the outstanding shares of one or more
8814 classes or series of one or more domestic corporations if the board of directors of each
8815 corporation adopts a plan of share exchange and the shareholders of the corporation, if required
8816 by Section 16-10a-1103, approve the plan of share exchange.

8817 (2) The plan of share exchange referred to in Subsection (1) [~~must~~] shall set forth:

- 8818 (a) the name of each corporation whose shares will be acquired and the name of the
8819 acquiring corporation;
8820 (b) the terms and conditions of the share exchange; and
8821 (c) the manner and basis of exchanging the shares to be acquired for shares,
8822 obligations, or other securities of the acquiring or any other corporation or for money or other
8823 property in whole or part.

8824 (3) The plan of share exchange may set forth other provisions relating to the share
8825 exchange.

8826 (4) This section does not limit the power of a corporation to acquire all or part of the
8827 shares of one or more classes or series of another corporation through a voluntary exchange of
8828 shares or otherwise.

8829 Section 283. Section **16-10a-1103** is amended to read:

8830 **16-10a-1103. Action on plan.**

8831 (1) After adopting a plan of merger or share exchange, the board of directors of each

8832 corporation party to the merger, and the board of directors of each corporation whose shares
8833 will be acquired in the share exchange, shall submit the plan of merger to its shareholders for
8834 approval, except as provided in:

- 8835 (a) Subsection (7);
- 8836 (b) Section 16-10a-1104; or
- 8837 (c) the plan of share exchange.

8838 (2) For a plan of merger or share exchange to be approved:

8839 (a) the board of directors [~~must~~] shall recommend the plan of merger or share exchange
8840 to the shareholders, unless the board of directors determines that because of conflict of interest
8841 or other special circumstances it should make no recommendation and communicates the basis
8842 for its determination to the shareholders with the plan; and

8843 (b) the shareholders entitled to vote on the plan of merger or share exchange [~~must~~]
8844 shall approve the plan as provided in Subsection (5).

8845 (3) The board of directors may condition its submission of the proposed merger or
8846 share exchange on any basis.

8847 (4) The corporation shall give notice of the shareholders' meeting in accordance with
8848 Section 16-10a-705 to each shareholder entitled to vote on the plan of merger or share
8849 exchange. The notice [~~must~~] shall state that one of the purposes of the meeting is to consider
8850 the plan of merger or share exchange and contain or be accompanied by a copy or summary of
8851 the plan.

8852 (5) Unless this chapter, the articles of incorporation, the initial bylaws, the amended
8853 bylaws, or the board of directors acting pursuant to Subsection (3) requires a greater vote, the
8854 plan of merger or share exchange to be authorized [~~must~~] shall be approved by each voting
8855 group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on
8856 the plan by that voting group.

8857 (6) Separate voting by voting groups is required on a plan of:

8858 (a) merger if the plan contains a provision that, if contained in an amendment to the
8859 articles of incorporation, would require action by one or more separate voting groups on the
8860 amendment under Section 16-10a-1004; and

8861 (b) share exchange by each class or series of shares included in the share exchange,
8862 with each class or series constituting a separate voting group.

8863 (7) Action by the shareholders of the surviving corporation on a plan of merger is not
8864 required if:

8865 (a) the articles of incorporation of the surviving corporation will not differ, except for
8866 amendments enumerated in Section 16-10a-1002, from its articles of incorporation before the
8867 merger;

8868 (b) each shareholder of the surviving corporation whose shares were outstanding
8869 immediately before the merger will hold the same number of shares, with identical
8870 designations, preferences, limitations, and relative rights, immediately after the merger;

8871 (c) the number of voting shares outstanding immediately after the merger, plus the
8872 number of voting shares issuable as a result of the merger either by the conversion of securities
8873 issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the
8874 merger, will not exceed by more than 20% the total number of voting shares of the surviving
8875 corporation outstanding immediately before the merger; and

8876 (d) the number of participating shares outstanding immediately after the merger, plus
8877 the number of participating shares issuable as a result of the merger either by the conversion of
8878 securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant
8879 to the merger, will not exceed by more than 20% the total number of participating shares
8880 outstanding immediately before the merger.

8881 (8) As used in Subsection (7):

8882 (a) "Participating shares" means shares that entitle their holders to participate without
8883 limitation in distributions.

8884 (b) "Voting shares" means shares that entitle their holders to vote unconditionally in
8885 elections of directors.

8886 (9) After a plan of merger or share exchange is approved, and at any time before the
8887 merger or share exchange becomes effective the merger or share exchange may be abandoned,
8888 subject to any contractual rights, without further shareholder action, in accordance with the
8889 procedure set forth in the plan of merger or share exchange or, if none is set forth, in the
8890 manner determined by the board of directors.

8891 (10) If a merger or share exchange is abandoned after articles of merger or share
8892 exchange have been filed by the division pursuant to Section 16-10a-1105 specifying a delayed
8893 effective date, the merger or share exchange may be prevented from becoming effective by

8894 delivering to the division for filing prior to the specified effective time and date a statement of
8895 abandonment stating that by appropriate corporate action the merger or share exchange has
8896 been abandoned. The statement of abandonment shall be executed in the same manner as the
8897 articles of merger or share exchange.

8898 Section 284. Section **16-10a-1202** is amended to read:

8899 **16-10a-1202. Sale of property requiring shareholder approval.**

8900 (1) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially
8901 all, of its property, with or without the good will, otherwise than in the usual and regular course
8902 of business, on the terms and conditions and for the consideration determined by the board of
8903 directors, if the board of directors proposes and the shareholders approve the transaction. A
8904 sale, lease, exchange, or other disposition of all, or substantially all, of the property of a
8905 corporation, with or without the good will, other than in the usual and regular course of
8906 business and other than pursuant to a court order, in connection with its dissolution is subject
8907 to the requirements of this section, but a sale, lease, exchange, or other disposition of all, or
8908 substantially all, of the property of a corporation, with or without the good will, that is pursuant
8909 to a court order is not subject to the requirements of this section.

8910 (2) If a corporation is entitled to vote or otherwise consent, other than in the usual and
8911 regular course of its business, with respect to the sale, lease, exchange, or other disposition of
8912 all, or substantially all, of the property, with or without the good will, of another entity which it
8913 controls, and if the shares or other interests held by the corporation in the other entity constitute
8914 all, or substantially all, of the property of the corporation, then the corporation shall consent to
8915 the transaction only if the board of directors proposes and the shareholders approve the
8916 consent.

8917 (3) For a transaction described in Subsection (1) or a consent described in Subsection
8918 (2) to be authorized:

8919 (a) the board of directors [~~must~~] shall recommend the transaction or the consent to the
8920 shareholders unless the board of directors determines that because of conflict of interest or
8921 other special circumstances it should make no recommendation and communicates the basis for
8922 its determination to the shareholders with the submission of the proposed transaction; and

8923 (b) the shareholders entitled to vote on the transaction or the consent [~~must~~] shall
8924 approve the transaction or the consent as provided in Subsections (5) and (6).

8925 (4) The board of directors may condition the effectiveness of the transaction or the
8926 consent on any basis.

8927 (5) The corporation shall give notice in accordance with Section 16-10a-705 to each
8928 shareholder entitled to vote on the transaction described in Subsection (1) or the consent
8929 described in Subsection (2), of the shareholders' meeting at which the transaction or the
8930 consent will be voted upon. The notice ~~must~~ shall:

8931 (a) state that the purpose, or one of the purposes, of the meeting is to consider:

8932 (i) in the case of action pursuant to Subsection (1), the sale, lease, exchange, or other
8933 disposition of all, or substantially all, of the property of the corporation; or

8934 (ii) in the case of action pursuant to Subsection (2), the corporation's consent to the
8935 sale, lease, exchange, or other disposition of all, or substantially all, of the property of another
8936 entity, ~~(f)which shall be identified in the notice(f)~~, the shares or other interests of which held by
8937 the corporation constitute all, or substantially all, of the property of the corporation; and

8938 (b) contain or be accompanied by a description of the transaction, in the case of action
8939 pursuant to Subsection (1), or by a description of the transaction underlying the consent, in the
8940 case of action pursuant to Subsection (2).

8941 (6) Unless this chapter, the articles of incorporation, the initial bylaws or the bylaws as
8942 amended pursuant to Section 16-10a-1021, or the board of directors acting pursuant to
8943 Subsection (4) requires a greater vote, the transaction described in Subsection (1) or the
8944 consent described in Subsection (2) ~~must~~ shall be approved by each voting group entitled to
8945 vote on the transaction or the consent by a majority of all the votes entitled to be cast on the
8946 transaction or the consent by that voting group.

8947 (7) After a transaction described in Subsection (1) or a consent described in Subsection
8948 (2) is authorized, the transaction may be abandoned or the consent withheld or revoked by the
8949 corporation's board of directors subject to any contractual rights or other limitation on the
8950 abandonment, withholding, or revocation, without further shareholder action.

8951 (8) A transaction that constitutes a distribution is governed by Section 16-10a-640 and
8952 not by this section.

8953 Section 285. Section **16-10a-1303** is amended to read:

8954 **16-10a-1303. Dissent by nominees and beneficial owners.**

8955 (1) A record shareholder may assert dissenters' rights as to fewer than all the shares

8956 registered in his name only if the shareholder dissents with respect to all shares beneficially
8957 owned by any one person and causes the corporation to receive written notice which states the
8958 dissent and the name and address of each person on whose behalf dissenters' rights are being
8959 asserted. The rights of a partial dissenter under this subsection are determined as if the shares
8960 as to which the shareholder dissents and the other shares held of record by him were registered
8961 in the names of different shareholders.

8962 (2) A beneficial shareholder may assert dissenters' rights as to shares held on his behalf
8963 only if:

8964 (a) the beneficial shareholder causes the corporation to receive the record shareholder's
8965 written consent to the dissent not later than the time the beneficial shareholder asserts
8966 dissenters' rights; and

8967 (b) the beneficial shareholder dissents with respect to all shares of which he is the
8968 beneficial shareholder.

8969 (3) The corporation may require that, when a record shareholder dissents with respect
8970 to the shares held by any one or more beneficial shareholders, each beneficial shareholder
8971 ~~[must]~~ shall certify to the corporation that both he and the record shareholders of all shares
8972 owned beneficially by him have asserted, or will timely assert, dissenters' rights as to all the
8973 shares unlimited on the ability to exercise dissenters' rights. The certification requirement
8974 ~~[must]~~ shall be stated in the dissenters' notice given pursuant to Section 16-10a-1322.

8975 Section 286. Section **16-10a-1320** is amended to read:

8976 **16-10a-1320. Notice of dissenters' rights.**

8977 (1) If a proposed corporate action creating dissenters' rights under Section 16-10a-1302
8978 is submitted to a vote at a shareholders' meeting, the meeting notice ~~[must]~~ shall be sent to all
8979 shareholders of the corporation as of the applicable record date, whether or not they are entitled
8980 to vote at the meeting. The notice shall state that shareholders are or may be entitled to assert
8981 dissenters' rights under this part. The notice ~~[must]~~ shall be accompanied by a copy of this part
8982 and the materials, if any, that under this chapter are required to be given the shareholders
8983 entitled to vote on the proposed action at the meeting. Failure to give notice as required by this
8984 subsection does not affect any action taken at the shareholders' meeting for which the notice
8985 was to have been given.

8986 (2) If a proposed corporate action creating dissenters' rights under Section 16-10a-1302

8987 is authorized without a meeting of shareholders pursuant to Section 16-10a-704, any written or
8988 oral solicitation of a shareholder to execute a written consent to the action contemplated by
8989 Section 16-10a-704 [~~must~~] shall be accompanied or preceded by a written notice stating that
8990 shareholders are or may be entitled to assert dissenters' rights under this part, by a copy of this
8991 part, and by the materials, if any, that under this chapter would have been required to be given
8992 to shareholders entitled to vote on the proposed action if the proposed action were submitted to
8993 a vote at a shareholders' meeting. Failure to give written notice as provided by this subsection
8994 does not affect any action taken pursuant to Section 16-10a-704 for which the notice was to
8995 have been given.

8996 Section 287. Section **16-10a-1321** is amended to read:

8997 **16-10a-1321. Demand for payment -- Eligibility and notice of intent.**

8998 (1) If a proposed corporate action creating dissenters' rights under Section 16-10a-1302
8999 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters'
9000 rights:

9001 (a) [~~must~~] shall cause the corporation to receive, before the vote is taken, written notice
9002 of his intent to demand payment for shares if the proposed action is effectuated; and

9003 (b) may not vote any of his shares in favor of the proposed action.

9004 (2) If a proposed corporate action creating dissenters' rights under Section 16-10a-1302
9005 is authorized without a meeting of shareholders pursuant to Section 16-10a-704, a shareholder
9006 who wishes to assert dissenters' rights may not execute a writing consenting to the proposed
9007 corporate action.

9008 (3) In order to be entitled to payment for shares under this part, unless otherwise
9009 provided in the articles of incorporation, bylaws, or a resolution adopted by the board of
9010 directors, a shareholder [~~must~~] shall have been a shareholder with respect to the shares for
9011 which payment is demanded as of the date the proposed corporate action creating dissenters'
9012 rights under Section 16-10a-1302 is approved by the shareholders, if shareholder approval is
9013 required, or as of the effective date of the corporate action if the corporate action is authorized
9014 other than by a vote of shareholders.

9015 (4) A shareholder who does not satisfy the requirements of Subsections (1) through (3)
9016 is not entitled to payment for shares under this part.

9017 Section 288. Section **16-10a-1322** is amended to read:

9018 **16-10a-1322. Dissenters' notice.**

9019 (1) If proposed corporate action creating dissenters' rights under Section 16-10a-1302
9020 is authorized, the corporation shall give a written dissenters' notice to all shareholders who are
9021 entitled to demand payment for their shares under this part.

9022 (2) The dissenters' notice required by Subsection (1) [~~must~~] shall be sent no later than
9023 10 days after the effective date of the corporate action creating dissenters' rights under Section
9024 16-10a-1302, and shall:

9025 (a) state that the corporate action was authorized and the effective date or proposed
9026 effective date of the corporate action;

9027 (b) state an address at which the corporation will receive payment demands and an
9028 address at which certificates for certificated shares [~~must~~] shall be deposited;

9029 (c) inform holders of uncertificated shares to what extent transfer of the shares will be
9030 restricted after the payment demand is received;

9031 (d) supply a form for demanding payment, which form requests a dissenter to state an
9032 address to which payment is to be made;

9033 (e) set a date by which the corporation must receive the payment demand and by which
9034 certificates for certificated shares must be deposited at the address indicated in the dissenters'
9035 notice, which dates may not be fewer than 30 nor more than 70 days after the date the
9036 dissenters' notice required by Subsection (1) is given;

9037 (f) state the requirement contemplated by Subsection 16-10a-1303(3), if the
9038 requirement is imposed; and

9039 (g) be accompanied by a copy of this part.

9040 Section 289. Section **16-10a-1323** is amended to read:

9041 **16-10a-1323. Procedure to demand payment.**

9042 (1) A shareholder who is given a dissenters' notice described in Section 16-10a-1322,
9043 who meets the requirements of Section 16-10a-1321, and wishes to assert dissenters' rights
9044 [~~must~~] shall, in accordance with the terms of the dissenters' notice:

9045 (a) cause the corporation to receive a payment demand, which may be the payment
9046 demand form contemplated in Subsection 16-10a-1322(2)(d), duly completed, or may be stated
9047 in another writing;

9048 (b) deposit certificates for his certificated shares in accordance with the terms of the

9049 dissenters' notice; and

9050 (c) if required by the corporation in the dissenters' notice described in Section
9051 16-10a-1322, as contemplated by Section 16-10a-1327, certify in writing, in or with the
9052 payment demand, whether or not he or the person on whose behalf he asserts dissenters' rights
9053 acquired beneficial ownership of the shares before the date of the first announcement to news
9054 media or to shareholders of the terms of the proposed corporate action creating dissenters'
9055 rights under Section 16-10a-1302.

9056 (2) A shareholder who demands payment in accordance with Subsection (1) retains all
9057 rights of a shareholder except the right to transfer the shares until the effective date of the
9058 proposed corporate action giving rise to the exercise of dissenters' rights and has only the right
9059 to receive payment for the shares after the effective date of the corporate action.

9060 (3) A shareholder who does not demand payment and deposit share certificates as
9061 required, by the date or dates set in the dissenters' notice, is not entitled to payment for shares
9062 under this part.

9063 Section 290. Section **16-10a-1325** is amended to read:

9064 **16-10a-1325. Payment.**

9065 (1) Except as provided in Section 16-10a-1327, upon the later of the effective date of
9066 the corporate action creating dissenters' rights under Section 16-10a-1302, and receipt by the
9067 corporation of each payment demand pursuant to Section 16-10a-1323, the corporation shall
9068 pay the amount the corporation estimates to be the fair value of the dissenter's shares, plus
9069 interest to each dissenter who has complied with Section 16-10a-1323, and who meets the
9070 requirements of Section 16-10a-1321, and who has not yet received payment.

9071 (2) Each payment made pursuant to Subsection (1) [~~must~~] shall be accompanied by:

9072 (a) (i) (A) the corporation's balance sheet as of the end of its most recent fiscal year, or
9073 if not available, a fiscal year ending not more than 16 months before the date of payment;

9074 (B) an income statement for that year;

9075 (C) a statement of changes in shareholders' equity for that year and a statement of cash
9076 flow for that year, if the corporation customarily provides such statements to shareholders; and

9077 (D) the latest available interim financial statements, if any;

9078 (ii) the balance sheet and statements referred to in Subsection (i) [~~must~~] shall be
9079 audited if the corporation customarily provides audited financial statements to shareholders;

9080 (b) a statement of the corporation's estimate of the fair value of the shares and the
9081 amount of interest payable with respect to the shares;

9082 (c) a statement of the dissenter's right to demand payment under Section 16-10a-1328;
9083 and

9084 (d) a copy of this part.

9085 Section 291. Section **16-10a-1330** is amended to read:

9086 **16-10a-1330. Judicial appraisal of shares -- Court action.**

9087 (1) If a demand for payment under Section 16-10a-1328 remains unresolved, the
9088 corporation shall commence a proceeding within 60 days after receiving the payment demand
9089 contemplated by Section 16-10a-1328, and petition the court to determine the fair value of the
9090 shares and the amount of interest. If the corporation does not commence the proceeding within
9091 the 60-day period, it shall pay each dissenter whose demand remains unresolved the amount
9092 demanded.

9093 (2) The corporation shall commence the proceeding described in Subsection (1) in the
9094 district court of the county in this state where the corporation's principal office, or if it has no
9095 principal office in this state, Salt Lake County. If the corporation is a foreign corporation, it
9096 shall commence the proceeding in the county in this state where the principal office of the
9097 domestic corporation merged with, or whose shares were acquired by, the foreign corporation
9098 was located, or, if the domestic corporation did not have its principal office in this state at the
9099 time of the transaction, in Salt Lake County.

9100 (3) The corporation shall make all dissenters who have satisfied the requirements of
9101 Sections 16-10a-1321, 16-10a-1323, and 16-10a-1328, whether or not they are residents of this
9102 state whose demands remain unresolved, parties to the proceeding commenced under
9103 Subsection (2) as an action against their shares. All such dissenters who are named as parties
9104 [~~must~~] shall be served with a copy of the petition. Service on each dissenter may be by
9105 registered or certified mail to the address stated in his payment demand made pursuant to
9106 Section 16-10a-1328. If no address is stated in the payment demand, service may be made at
9107 the address stated in the payment demand given pursuant to Section 16-10a-1323. If no
9108 address is stated in the payment demand, service may be made at the address shown on the
9109 corporation's current record of shareholders for the record shareholder holding the dissenter's
9110 shares. Service may also be made otherwise as provided by law.

9111 (4) The jurisdiction of the court in which the proceeding is commenced under
9112 Subsection (2) is plenary and exclusive. The court may appoint one or more persons as
9113 appraisers to receive evidence and recommend decision on the question of fair value. The
9114 appraisers have the powers described in the order appointing them, or in any amendment to it.
9115 The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

9116 (5) Each dissenter made a party to the proceeding commenced under Subsection (2) is
9117 entitled to judgment:

9118 (a) for the amount, if any, by which the court finds that the fair value of his shares, plus
9119 interest, exceeds the amount paid by the corporation pursuant to Section 16-10a-1325; or

9120 (b) for the fair value, plus interest, of the dissenter's after-acquired shares for which the
9121 corporation elected to withhold payment under Section 16-10a-1327.

9122 Section 292. Section **16-10a-1402** is amended to read:

9123 **16-10a-1402. Authorization of dissolution after issuance of shares.**

9124 (1) After shares have been issued, dissolution of a corporation may be authorized in the
9125 manner provided in Subsection (2).

9126 (2) For a proposal to dissolve the corporation to be authorized:

9127 (a) the board of directors must recommend dissolution to the shareholders unless the
9128 board of directors determines that because of a conflict of interest or other special
9129 circumstances it should make no recommendation and communicates the basis for its
9130 determination to the shareholders; and

9131 (b) the shareholders entitled to vote on the proposal must approve the proposal to
9132 dissolve as provided in Subsection (5).

9133 (3) The board of directors may condition the effectiveness of the dissolution on any
9134 basis.

9135 (4) The corporation shall give notice in accordance with Section 16-10a-705 to each
9136 shareholder entitled to vote on the proposal to dissolve, of the proposed shareholders' meeting
9137 at which the proposal to dissolve will be voted upon. The notice [~~must~~] shall state that the
9138 purpose or one of the purposes of the meeting is to consider the proposal to dissolve the
9139 corporation.

9140 (5) The proposal to dissolve must be approved by each voting group entitled to vote
9141 separately on the proposal, by a majority of all the votes entitled to be cast on the proposal by

9142 that voting group, unless a greater vote is required by the articles of incorporation, the initial
9143 bylaws or the bylaws amended pursuant to Section 16-10a-1021, or the board of directors
9144 acting pursuant to Subsection (3).

9145 Section 293. Section **16-10a-1404** is amended to read:

9146 **16-10a-1404. Revocation of dissolution.**

9147 (1) A corporation may revoke its dissolution within 120 days after the effective date of
9148 the dissolution.

9149 (2) Revocation of dissolution [~~must~~] shall be authorized in the same manner as the
9150 dissolution was authorized unless, in the case of authorization pursuant to Section
9151 16-10a-1402, that authorization permitted revocation by action of the board of directors alone,
9152 in which event the board of directors may revoke the dissolution without shareholder action.

9153 (3) After the revocation of dissolution is authorized, the corporation may revoke the
9154 dissolution by delivering to the division for filing articles of revocation of dissolution, together
9155 with a copy of its articles of dissolution, that set forth:

9156 (a) the name of the corporation;

9157 (b) the effective date of the dissolution that was revoked;

9158 (c) the date that the revocation of dissolution was authorized;

9159 (d) if pursuant to Subsection (2) the corporation's board of directors or incorporators
9160 revoked the dissolution authorized under Section 16-10a-1401, a statement to that effect;

9161 (e) if pursuant to Subsection (2) the corporation's board of directors revoked a
9162 dissolution approved by the shareholders, a statement that the revocation was permitted by
9163 action by the board of directors alone pursuant to that authorization; and

9164 (f) if the revocation of dissolution was approved pursuant to Subsection (2) by the
9165 shareholders, the information required by Subsection 16-10a-1403(1)(e).

9166 (4) Revocation of dissolution is effective as provided in Subsection 16-10a-123(1). A
9167 provision may not be made for a delayed effective date for revocation pursuant to Subsection
9168 16-10a-123(2).

9169 (5) When the revocation of dissolution is effective, it relates back to and takes effect as
9170 of the effective date of the dissolution and the corporation may carry on its business as if
9171 dissolution had never occurred.

9172 Section 294. Section **16-10a-1406** is amended to read:

9173 **16-10a-1406. Disposition of known claims by notification.**

9174 (1) A dissolved corporation may dispose of the known claims against it by following
9175 the procedures described in this section.

9176 (2) A dissolved corporation electing to dispose of known claims pursuant to this
9177 section may give written notice of the dissolution to known claimants at any time after the
9178 effective date of the dissolution. The written notice [~~must~~] shall:

9179 (a) describe the information that must be included in a claim;

9180 (b) provide an address to which written notice of any claim must be given to the
9181 corporation;

9182 (c) state the deadline, which may not be fewer than 120 days after the effective date of
9183 the notice, by which the dissolved corporation must receive the claim; and

9184 (d) state that unless sooner barred by any other state statute limiting actions, the claim
9185 will be barred if not received by the deadline.

9186 (3) Unless sooner barred by any other statute limiting actions, a claim against the
9187 dissolved corporation is barred if:

9188 (a) a claimant was given notice under Subsection (2) and the claim is not received by
9189 the dissolved corporation by the deadline; or

9190 (b) the dissolved corporation delivers to the claimant written notice of rejection of the
9191 claim within 90 days after receipt of the claim and the claimant whose claim was rejected by
9192 the dissolved corporation does not commence a proceeding to enforce the claim within 90 days
9193 after the effective date of the rejection notice.

9194 (4) Claims which are not rejected by the dissolved corporation in writing within 90
9195 days after receipt of the claim by the dissolved corporation shall be considered accepted.

9196 (5) The failure of the dissolved corporation to give notice to any known claimant
9197 pursuant to Subsection (2) does not affect the disposition under this section of any claim held
9198 by any other known claimant.

9199 (6) For purposes of this section, "claim" does not include a contingent liability or a
9200 claim based on an event occurring after the effective date of dissolution.

9201 Section 295. Section **16-10a-1407** is amended to read:

9202 **16-10a-1407. Disposition of claims by publication -- Disposition in absence of**
9203 **publication.**

9204 (1) A dissolved corporation may publish notice of its dissolution and request that
9205 persons with claims against the corporation present them in accordance with the notice.

9206 (2) The notice contemplated in Subsection (1) [~~must~~] shall:

9207 (a) be published:

9208 (i) one time in a newspaper of general circulation in the county where the dissolved
9209 corporation's principal office is or was located or, if it has no principal office in this state, in
9210 Salt Lake County; and

9211 (ii) as required in Section 45-1-101;

9212 (b) describe the information that must be included in a claim and provide an address at
9213 which any claim must be given to the corporation; and

9214 (c) state that unless sooner barred by any other statute limiting actions, the claim will
9215 be barred if an action to enforce the claim is not commenced within five years after the
9216 publication of the notice.

9217 (3) If the dissolved corporation publishes a newspaper or website notice in accordance
9218 with Subsection (2), then unless sooner barred under Section 16-10a-1406 or under any other
9219 statute limiting actions, the claim of any claimant against the dissolved corporation is barred
9220 unless the claimant commences an action to enforce the claim against the dissolved corporation
9221 within five years after the publication date of the notice.

9222 (4) (a) For purposes of this section, "claim" means any claim, including claims of this
9223 state, whether known, due or to become due, absolute or contingent, liquidated or unliquidated,
9224 founded on contract, tort, or other legal basis, or otherwise.

9225 (b) For purposes of this section, an action to enforce a claim includes any civil action,
9226 and any arbitration under any agreement for binding arbitration between the dissolved
9227 corporation and the claimant.

9228 (5) If a dissolved corporation does not publish a newspaper notice in accordance with
9229 Subsection (2), then unless sooner barred under Section 16-10a-1406 or under any other statute
9230 limiting actions, the claim of any claimant against the dissolved corporation is barred unless the
9231 claimant commences an action to enforce the claim against the dissolved corporation within
9232 seven years after the date the corporation was dissolved.

9233 Section 296. Section **16-10a-1434** is amended to read:

9234 **16-10a-1434. Election to purchase in lieu of dissolution.**

9235 (1) In a proceeding under Subsection 16-10a-1430(2) to dissolve a corporation that has
9236 no shares listed on a national securities exchange or regularly traded in a market maintained by
9237 one or more members of a national or affiliated securities association, the corporation may
9238 elect, or if it fails to elect, one or more shareholders may elect to purchase all shares of the
9239 corporation owned by the petitioning shareholder, at the fair value of the shares, determined as
9240 provided in this section. An election pursuant to this section is irrevocable unless the court
9241 determines that it is equitable to set aside or modify the election.

9242 (2) (a) An election to purchase pursuant to this section may be filed with the court at
9243 any time within 90 days after the filing of the petition under Subsection 16-10a-1430(2) or at
9244 any later time as the court in its discretion may allow. If the corporation files an election with
9245 the court within the 90-day period, or at any later time allowed by the court, to purchase all
9246 shares of the corporation owned by the petitioning shareholder, the corporation shall purchase
9247 the shares in the manner provided in this section.

9248 (b) If the corporation does not file an election with the court within the time period, but
9249 an election to purchase all shares of the corporation owned by the petitioning shareholder is
9250 filed by one or more shareholders within the time period, the corporation shall, within 10 days
9251 after the later of:

9252 (i) the end of the time period allowed for the filing of elections to purchase under this
9253 section; or

9254 (ii) notification from the court of an election by shareholders to purchase all shares of
9255 the corporation owned by the petitioning shareholder as provided in this section, give written
9256 notice of the election to purchase to all shareholders of the corporation, other than the
9257 petitioning shareholder. The notice shall state the name and number of shares owned by the
9258 petitioning shareholder and the name and number of shares owned by each electing
9259 shareholder. The notice shall advise any recipients who have not participated in the election of
9260 their right to join in the election to purchase shares in accordance with this section, and of the
9261 date by which any notice of intent to participate must be filed with the court.

9262 (c) Shareholders who wish to participate in the purchase of shares from the petitioning
9263 shareholder [~~must~~] shall file notice of their intention to join in the purchase by the electing
9264 shareholders, no later than 30 days after the effective date of the corporation's notice of their
9265 right to join in the election to purchase.

9266 (d) All shareholders who have filed with the court an election or notice of their
9267 intention to participate in the election to purchase the shares of the corporation owned by the
9268 petitioning shareholder thereby become irrevocably obligated to participate in the purchase of
9269 shares from the petitioning shareholders upon the terms and conditions of this section, unless
9270 the court otherwise directs.

9271 (e) After an election has been filed by the corporation or one or more shareholders, the
9272 proceedings under Subsection 16-10a-1430(2) may not be discontinued or settled, nor may the
9273 petitioning shareholder sell or otherwise dispose of any shares of the corporation, unless the
9274 court determines that it would be equitable to the corporation and the shareholders, other than
9275 the petitioning shareholders, to permit any discontinuance, settlement, sale, or other
9276 disposition.

9277 (3) If, within 60 days after the earlier of:

9278 (a) the corporation's filing of an election to purchase all shares of the corporation
9279 owned by the petitioning shareholder; or

9280 (b) the corporation's mailing of a notice to its shareholders of the filing of an election
9281 by the shareholders to purchase all shares of the corporation owned by the petitioning
9282 shareholder, the petitioning shareholder and electing corporation or shareholders reach
9283 agreement as to the fair value and terms of purchase of the petitioning shareholder's shares, the
9284 court shall enter an order directing the purchase of petitioner's shares, upon the terms and
9285 conditions agreed to by the parties.

9286 (4) If the parties are unable to reach an agreement as provided for in Subsection (3),
9287 upon application of any party the court shall stay the proceedings under Subsection
9288 16-10a-1430(2) and determine the fair value of the petitioning shareholder's shares as of the
9289 day before the date on which the petition under Subsection 16-10a-1430(2) was filed or as of
9290 any other date the court determines to be appropriate under the circumstances and based on the
9291 factors the court determines to be appropriate.

9292 (5) (a) Upon determining the fair value of the shares of the corporation owned by the
9293 petitioning shareholder, the court shall enter an order directing the purchase of the shares upon
9294 terms and conditions the court determines to be appropriate. The terms and conditions may
9295 include payment of the purchase price in installments, where necessary in the interests of
9296 equity, provision for security to assure payment of the purchase price and any additional costs,

9297 fees, and expenses awarded by the court, and an allocation of shares among shareholders if the
9298 shares are to be purchased by shareholders.

9299 (b) In allocating the petitioning shareholders' shares among holders of different classes
9300 of shares, the court shall attempt to preserve the existing distribution of voting rights among
9301 holders of different share classes to the extent practicable. The court may direct that holders of
9302 a specific class or classes ~~shall not~~ may not participate in the purchase. The court may not
9303 require any electing shareholder to purchase more of the shares of the corporation owned by the
9304 petitioning shareholder than the number of shares that the purchasing shareholder may have set
9305 forth in his election or notice of intent to participate filed with the court as the maximum
9306 number of shares he is willing to purchase.

9307 (c) Interest may be allowed at the rate and from the date determined by the court to be
9308 equitable. However, if the court finds that the refusal of the petitioning shareholder to accept
9309 an offer of payment was arbitrary or otherwise not in good faith, interest may not be allowed.

9310 (d) If the court finds that the petitioning shareholder had probable grounds for relief
9311 under Subsection 16-10a-1430(2)(b) or (d), it may award to the petitioning shareholder
9312 reasonable fees and expenses of counsel and experts employed by the petitioning shareholder.

9313 (6) Upon entry of an order under Subsection (3) or (5), the court shall dismiss the
9314 petition to dissolve the corporation under Section 16-10a-1430, and the petitioning shareholder
9315 shall no longer have any rights or status as a shareholder of the corporation, except the right to
9316 receive the amounts awarded to him by the court. The award is enforceable in the same
9317 manner as any other judgment.

9318 (7) (a) The purchase ordered pursuant to Subsection (5) shall be made within 10 days
9319 after the date the order becomes final, unless before that time the corporation files with the
9320 court a notice of its intention to adopt articles of dissolution pursuant to Sections 16-10a-1402
9321 and 16-10a-1403. The articles of dissolution must then be adopted and filed within 50 days
9322 after notice.

9323 (b) Upon filing of the articles of dissolution, the corporation is dissolved in accordance
9324 with the provisions of Sections 16-10a-1405 through 16-10a-1408, and the order entered
9325 pursuant to Subsection (5) is no longer of any force or effect. However, the court may award
9326 the petitioning shareholder reasonable fees and expenses in accordance with the provisions of
9327 Subsection (5)(d). The petitioning shareholder may continue to pursue any claims previously

9328 asserted on behalf of the corporation.

9329 (8) Any payment by the corporation pursuant to an order under Subsection (3) or (5),
9330 other than an award of fees and expenses pursuant to Subsection (5)(d), is subject to the
9331 provisions of Section 16-10a-640.

9332 Section 297. Section **16-10a-1506** is amended to read:

9333 **16-10a-1506. Corporate name and assumed corporate name of foreign**
9334 **corporation.**

9335 (1) Except as provided in Subsection (2), if the corporate name of a foreign corporation
9336 does not satisfy the requirements of Section 16-10a-401, which applies to domestic
9337 corporations, the foreign corporation, in order to obtain authority to transact business in this
9338 state, [~~must~~] shall assume for use in this state a name that satisfies the requirements of Section
9339 16-10a-401.

9340 (2) A foreign corporation may obtain authority to transact business in this state with a
9341 name that does not meet the requirements of Subsection (1) because it is not distinguishable as
9342 required under Subsection 16-10a-401(2), if the foreign corporation delivers to the division for
9343 filing either:

9344 (a) a written consent to the foreign corporation's use of the name, given and signed by
9345 the other person entitled to the use of the name together with a written undertaking by the other
9346 person, in a form satisfactory to the division, to change its name to a name that is
9347 distinguishable from the name of the applicant; or

9348 (b) a certified copy of a final judgment of a court of competent jurisdiction establishing
9349 the prior right of the foreign corporation to use the requested name in this state.

9350 (3) A foreign corporation may use in this state the name, including the fictitious name,
9351 of another domestic or foreign corporation that is used or registered in this state if the other
9352 corporation is incorporated or authorized to transact business in this state and the foreign
9353 corporation:

9354 (a) has merged with the other corporation; or

9355 (b) has been formed by reorganization of the other corporation.

9356 (4) If a foreign corporation authorized to transact business in this state, whether under
9357 its corporate name or an assumed corporate name, changes its corporate name to one that does
9358 not satisfy the requirements of Subsections (1) through (3), or the requirements of Section

9359 16-10a-401, it may not transact business in this state under the changed name but [~~must~~] shall
9360 use an assumed corporate name that does meet the requirements of this section and [~~must~~] shall
9361 deliver to the division for filing an amended application for authority to transact business
9362 pursuant to Section 16-10a-1504.

9363 Section 298. Section **16-10a-1507** is amended to read:

9364 **16-10a-1507. Registered name of foreign corporation.**

9365 (1) A foreign corporation may register its corporate name as provided in this section if
9366 the name would be available for use as a corporate name for a domestic corporation under
9367 Section 16-10a-401. If the foreign corporation's corporate name would not be available for
9368 such use, then the foreign corporation may register its corporate name modified by the addition
9369 of any of the following words or abbreviations, if the modified name would be available for use
9370 under Section 16-10a-401: "corporation," "incorporated," "company," "corp.," "inc.," or "co."

9371 (2) A foreign corporation registers its corporate name, or its corporate name with any
9372 addition permitted by Subsection (1), by delivering to the division for filing an application for
9373 registration:

9374 (a) setting forth its corporate name, the name to be registered which [~~must~~] shall meet
9375 the requirements of Section 16-10a-401 that apply to domestic corporations, the state or
9376 country and date of incorporation, and a brief description of the nature of the business in which
9377 it is engaged; and

9378 (b) accompanied by a certificate of existence, or a document of similar import from the
9379 state or country of incorporation as evidence that the foreign corporation is in existence or has
9380 authority to transact business under the laws of the state or country in which it is organized.

9381 (3) The name is registered for the applicant upon the effective date of the application,
9382 and the initial registration is effective until the end of the calendar year in which it became
9383 effective.

9384 (4) A foreign corporation that has in effect a registration of its corporate name as
9385 permitted by Subsection (1) may renew the registration for the following year by delivering to
9386 the division for filing a renewal application for registration, which complies with the
9387 requirements of Subsection (2), between October 1 and December 31 of the preceding year.
9388 When filed, the renewal application for registration renews the registration for the following
9389 calendar year.

9390 (5) A foreign corporation that has in effect registration of its corporate name may apply
9391 for authority to transact business in this state under the registered name in accordance with the
9392 procedure set forth in this part or it may assign the registration to another foreign corporation
9393 by delivering to the division for filing an assignment of the registration that states the registered
9394 name, the name of the assigning foreign corporation, and the name of the assignee,
9395 concurrently with the delivery to the division for filing of the assignee's application for
9396 registration of the name. The assignee's application [~~must~~] shall meet the requirements of this
9397 part.

9398 (6) (a) A foreign corporation that has in effect registration of its corporate name may
9399 terminate the registration at any time by delivering to the division for filing a statement of
9400 termination setting forth the corporate name and stating that the registration is terminated.

9401 (b) A registration automatically terminates upon the filing of an application for
9402 authority to transact business in this state under the registered name.

9403 (7) The registration of a corporate name under Subsection (1) constitutes authority by
9404 the division to file an application meeting the requirements of this part for authority to transact
9405 business in this state under the registered name, but the authorization is subject to the
9406 limitations applicable to corporate names as set forth in Section 16-10a-403.

9407 Section 299. Section **16-10a-1510** is amended to read:

9408 **16-10a-1510. Resignation of registered agent of foreign corporation.**

9409 (1) The registered agent of a foreign corporation authorized to transact business in this
9410 state may resign the agency appointment by delivering to the division for filing a statement of
9411 resignation, which [~~must~~] shall be signed by the resigning registered agent and accompanied by
9412 two exact or conformed copies of the statement of resignation. The statement of resignation
9413 may include a statement that the registered office is also discontinued. The statement of
9414 resignation filed by the registered agent shall include a declaration that notice of the resignation
9415 has been given to the corporation.

9416 (2) After filing the statement of resignation, the division shall deliver one copy of the
9417 resignation to the registered office of the foreign corporation and the other copy to its principal
9418 office.

9419 (3) The agency appointment terminates, and the registered office discontinues if so
9420 provided, on the 31st day after the filing date of the statement of resignation.

9421 Section 300. Section **16-10a-1533** is amended to read:

9422 **16-10a-1533. Domestication of foreign corporations.**

9423 (1) (a) Any foreign corporation may become a domestic corporation by delivering to
9424 the division for filing articles of domestication meeting the requirements of Subsection (2) if
9425 the board of directors of the corporation adopts, and its shareholders approve, the
9426 domestication.

9427 (b) The adoption and approval of the domestication shall be in accordance with the
9428 consent requirements of Section 16-10a-1003 for amending articles of incorporation.

9429 (2) (a) The articles of domestication shall meet the requirements applicable to articles
9430 of incorporation set forth in Sections 16-10a-120 and 16-10a-202, except that:

9431 (i) the articles of domestication need not name, or be signed by, the incorporators of
9432 the foreign corporation; and

9433 (ii) any reference to the corporation's registered office, registered agent, or directors
9434 shall be to the registered office and agent in Utah, and the directors then in office at the time of
9435 filing the articles of domestication.

9436 (b) The articles of domestication shall set forth:

9437 (i) the date on which and jurisdiction where the corporation was first formed,
9438 incorporated, or otherwise came into being;

9439 (ii) the name of the corporation immediately prior to the filing of the articles of
9440 domestication;

9441 (iii) any jurisdiction that constituted the seat, location of incorporation, principal place
9442 of business, or central administration of the corporation immediately prior to the filing of the
9443 articles of domestication; and

9444 (iv) a statement that the articles of domestication were adopted by the corporation's
9445 board of directors and approved by its shareholders.

9446 (3) (a) Upon the filing of articles of domestication with the division, the corporation
9447 shall be domesticated in this state, shall thereafter be subject to all of the provisions of this
9448 chapter, and shall continue as if it had been incorporated under this chapter.

9449 (b) Notwithstanding any other provisions of this chapter, the existence of the
9450 corporation shall be considered to have commenced on the date the corporation commenced its
9451 existence in the jurisdiction in which the corporation was first formed, incorporated, or

9452 otherwise came into being.

9453 (4) The articles of domestication, upon filing with the division, shall become the
9454 articles of incorporation of the corporation, and shall be subject to amendments or restatement
9455 the same as any other articles of incorporation under this chapter.

9456 (5) The domestication of any corporation in this state [~~shall not~~] may not be considered
9457 to affect any obligation or liability of the corporation incurred prior to its domestication.

9458 (6) The filing of the articles of domestication [~~shall not~~] do not affect the choice of law
9459 applicable to the corporation, except that from the date the articles of domestication are filed,
9460 the law of Utah, including the provisions of this chapter, shall apply to the corporation to the
9461 same extent as if the corporation had been incorporated as a corporation of this state on that
9462 date.

9463 Section 301. Section **16-10a-1607** is amended to read:

9464 **16-10a-1607. Annual report for division.**

9465 (1) Each domestic corporation, and each foreign corporation authorized to transact
9466 business in this state, shall deliver to the division for filing an annual report on a form provided
9467 by the division that sets forth:

9468 (a) the corporate name of the domestic or foreign corporation and any assumed
9469 corporate name of the foreign corporation;

9470 (b) the jurisdiction under whose law it is incorporated;

9471 (c) the information required by Subsection 16-17-203(1);

9472 (d) the street address of its principal office, wherever located; and

9473 (e) the names of its principal officers.

9474 (2) The division shall deliver a copy of the prescribed form of annual report to each
9475 domestic corporation and each foreign corporation authorized to transact business in this state.

9476 (3) Information in the annual report [~~must~~] shall be current as of the date the annual
9477 report is executed on behalf of the corporation.

9478 (4) The annual report of a domestic or foreign corporation shall be delivered annually
9479 to the division no later than the end of the second calendar month following the calendar month
9480 in which the report form is mailed by the division. Proof to the satisfaction of the division that
9481 the corporation has mailed an annual report form is considered in compliance with this
9482 subsection.

9483 (5) If an annual report contains the information required by this section, the division
9484 shall file it. If a report does not contain the information required by this section, the division
9485 shall promptly notify the reporting domestic or foreign corporation in writing and return the
9486 report to it for correction. If the report was otherwise timely filed and is corrected to contain
9487 the information required by this section and delivered to the division within 30 days after the
9488 effective date of the notice of rejection, the annual report is considered to be timely filed.

9489 (6) The fact that an individual's name is signed on an annual report form is prima facie
9490 evidence for division purposes that the individual is authorized to certify the report on behalf of
9491 the corporation.

9492 (7) The annual report form provided by the division may be designed to provide a
9493 simplified certification by the corporation if no changes have been made in the required
9494 information from the last preceding report filed.

9495 (8) A domestic or foreign corporation may, but may not be required to, deliver to the
9496 division for filing an amendment to its annual report reflecting any change in the information
9497 contained in its annual report as last amended.

9498 Section 302. Section **16-11-6** is amended to read:

9499 **16-11-6. Purpose of professional corporation -- Power to own property and invest**
9500 **funds.**

9501 A professional corporation may be organized pursuant to the provisions of this act only
9502 for the purpose of rendering one specific type of professional service and services ancillary
9503 thereto and [~~shall not~~] may not engage in any business other than rendering the professional
9504 service which it was organized to render and services ancillary thereto; provided, however, that
9505 a professional corporation may own real and personal property necessary or appropriate for
9506 rendering the type of professional service it was organized to render and may invest its funds in
9507 real estate, mortgages, stocks, bonds and any other type of investments.

9508 Section 303. Section **16-11-8** is amended to read:

9509 **16-11-8. Officer, director, or shareholder [~~must~~] shall be licensed professional --**
9510 **Nonlicensed person as secretary or treasurer.**

9511 (1) (a) Except as provided in Subsection (1)(b), a person may not be an officer,
9512 director, or shareholder of a professional corporation unless that person is:

9513 (i) an individual licensed to render the same specific professional services as those for

9514 which the corporation is organized; or

9515 (ii) qualified to be an officer, director, or shareholder under the applicable licensing act
9516 for the profession for which the corporation is organized.

9517 (b) Notwithstanding Subsection (1)(a), a nonlicensed person may serve as secretary or
9518 treasurer of the professional corporation.

9519 (2) For purposes of Subsection (1), professional services are considered the same
9520 specific professional services as those for which the corporation is organized if:

9521 (a) the corporation is organized to provide services described in:

9522 (i) Title 58, Chapter 67, Utah Medical Practice Act; or

9523 (ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; and

9524 (b) the officer, director, or shareholder is licensed under either of the chapters listed in
9525 Subsection (2)(a).

9526 Section 304. Section **16-11-15** is amended to read:

9527 **16-11-15. Incorporation under Utah Revised Business Corporation Act permitted**
9528 **-- Existing corporations may come under Professional Corporation Act.**

9529 This act [~~shall not~~] does not preclude incorporation by professional persons under Title
9530 16, Chapter 10a, Utah Revised Business Corporation Act, where such persons would be
9531 permitted to organize a corporation and perform professional services by means of such
9532 corporation in the absence of this act. This act [~~shall not~~] does not apply to any corporation
9533 organized by such persons prior to the passage of this act, but any such persons or any such
9534 corporation may bring themselves and such corporation within the provisions of this act by
9535 amending the articles of incorporation in such a manner as to be consistent with all of the
9536 provisions of this act and by affirmatively stating in the amended articles of incorporation that
9537 the shareholders have elected to bring the corporation within the provisions of this act.

9538 Section 305. Section **16-11-16** is amended to read:

9539 **16-11-16. Corporate name.**

9540 (1) The name of each professional corporation as set forth in its articles of
9541 incorporation:

9542 (a) shall contain the terms:

9543 (i) "professional corporation"; or

9544 (ii) "P.C.";

- 9545 (b) may not contain the words:
- 9546 (i) "incorporated"; or
- 9547 (ii) "inc.";
- 9548 (c) may not contain language stating or implying that the professional corporation is
- 9549 organized for a purpose other than that permitted by:
- 9550 (i) Section 16-11-6; and
- 9551 (ii) the professional corporation's articles of incorporation;
- 9552 (d) without the written consent of the United States Olympic Committee, may not
- 9553 contain the words:
- 9554 (i) "Olympic";
- 9555 (ii) "Olympiad"; or
- 9556 (iii) "Citius Altius Fortius"; and
- 9557 (e) without the written consent of the Division of Consumer Protection in accordance
- 9558 with Section 13-34-114, may not contain the words:
- 9559 (i) "university";
- 9560 (ii) "college"; or
- 9561 (iii) "institute."
- 9562 (2) The professional corporation may not imply by any word in the name that it is an
- 9563 agency of the state or of any of its political subdivisions.
- 9564 (3) A person, other than a professional corporation formed or registered under this
- 9565 chapter, may not use in its name in this state any of the terms:
- 9566 (a) "professional corporation"; or
- 9567 (b) "P.C."
- 9568 (4) Except as authorized by Subsection (5), the name of the professional corporation
- 9569 ~~must~~ shall be distinguishable, as defined in Subsection (6), upon the records of the division
- 9570 from:
- 9571 (a) the name of any domestic corporation incorporated in or foreign corporation
- 9572 authorized to transact business in this state;
- 9573 (b) the name of any domestic or foreign nonprofit corporation incorporated or
- 9574 authorized to transact business in this state;
- 9575 (c) the name of any domestic or foreign limited liability company formed or authorized

9576 to transact business in this state;

9577 (d) the name of any limited partnership formed or authorized to transact business in
9578 this state;

9579 (e) any name reserved or registered with the division for a corporation, limited liability
9580 company, or general or limited partnership, under the laws of this state; and

9581 (f) any business name, fictitious name, assumed name, trademark, or service mark
9582 registered by the division.

9583 (5) (a) A professional corporation may apply to the division for authorization to file its
9584 articles of incorporation under, or to register or reserve, a name that is not distinguishable upon
9585 its records from one or more of the names described in Subsection (4).

9586 (b) The division shall approve the application filed under Subsection (5)(a) if:

9587 (i) the other person whose name is not distinguishable from the name under which the
9588 applicant desires to file, or which the applicant desires to register or reserve:

9589 (A) consents to the filing, registration, or reservation in writing; and

9590 (B) submits an undertaking in a form satisfactory to the division to change its name to
9591 a name that is distinguishable from the name of the applicant; or

9592 (ii) the applicant delivers to the division a certified copy of the final judgment of a
9593 court of competent jurisdiction establishing the applicant's right to make the requested filing in
9594 this state under the name applied for.

9595 (6) (a) A name is distinguishable from other names, trademarks, and service marks
9596 registered with the division if it:

9597 (i) contains one or more different letters or numerals from other names upon the
9598 division's records; or

9599 (ii) has a different sequence of letter or numerals from the other names on the division's
9600 records.

9601 (b) The following differences are not distinguishable:

9602 (i) the words or abbreviations of the words:

9603 (A) "corporation";

9604 (B) "incorporated";

9605 (C) "company";

9606 (D) "limited partnership";

- 9607 (E) "limited";
 9608 (F) "L.P.";
 9609 (G) "Ltd.";
 9610 (H) "limited liability company";
 9611 (I) "limited company";
 9612 (J) "L.C."; or
 9613 (K) "L.L.C.";
 9614 (ii) the presence or absence of the words or symbols of the words "the," "and," "a," or
 9615 "plus";
 9616 (iii) differences in punctuation and special characters;
 9617 (iv) differences in capitalization; or
 9618 (v) differences in abbreviations.

9619 (7) The director of the division shall have the power and authority reasonably necessary
 9620 to interpret and efficiently administer this section and to perform the duties imposed upon the
 9621 division by this section.

9622 Section 306. Section **16-12-5** is amended to read:

9623 **16-12-5. Limited liability of shareholders or beneficiaries.**

9624 The shareholders or beneficiaries of a real estate investment trust [~~shall not~~] are not, as
 9625 such, [~~be~~] personally liable for obligations of the real estate investment trust, and shall be under
 9626 no obligation to the trust or its creditors with respect to such shares or interest other than the
 9627 obligation to pay the trust the full amount of consideration for which such shares were issued
 9628 or to be issued.

9629 Section 307. Section **16-12-6** is amended to read:

9630 **16-12-6. Trustee governed by declaration of trust -- Liability.**

9631 A trustee of a real estate investment trust shall be governed by all the provisions of the
 9632 declaration of trust and [~~shall not be~~] is not liable for any claims or damages that may result
 9633 from his acts in the discharge of any duty imposed or power conferred upon him by the trust, if
 9634 he exercises ordinary care, and acts in good faith, but shall be liable for his own willful
 9635 misfeasance or malfeasance. Persons dealing with the trust through the trustees or agents shall
 9636 look to the trust estate for performance of obligations.

9637 Section 308. Section **16-13-4** is amended to read:

9638 **16-13-4. General powers of business development corporation.**

9639 In furtherance of the purposes of a development corporation, and in addition to the
9640 powers conferred on corporations by Title 16, Chapter 10a, Utah Revised Business Corporation
9641 Act, such corporation, subject to the restrictions and limitations contained in this act, shall have
9642 the following powers:

9643 (a) To borrow money from lenders, and otherwise incur indebtedness for any of its
9644 purposes; to issue its bonds, debentures, notes, or other evidences of indebtedness whether
9645 secured or unsecured therefor; and to secure the same by mortgage, pledge, deed of trust, or
9646 other lien on its property, franchises, rights and privileges of every kind and nature or any part
9647 thereof.

9648 (b) To lend money to, and to guarantee, indorse, or act as surety on the bonds, notes,
9649 contracts, or other obligations of, or otherwise assist financially, any person, firm, corporation,
9650 or association, and to establish and regulate the terms and conditions with respect to any such
9651 loans or financial assistance and the charges for interest and service connected therewith;
9652 provided, however, that the corporation [~~shall not~~] may not approve any application for a loan
9653 unless and until the applicant shall have shown that the applicant has applied for the loan
9654 through ordinary financial channels and that the loan has been refused by at least one financial
9655 institution doing business in this state and, in the ordinary course of its business, granting loans
9656 similar in amount and kind to the requested loan.

9657 (c) To purchase, receive, hold, lease, or otherwise acquire, and to sell, convey,
9658 mortgage, lease, pledge, or otherwise dispose of, upon such terms and conditions as its board of
9659 directors may deem advisable, real and personal property, together with such rights and
9660 privileges as may be incidental and appurtenant thereto and the use thereof, including, but not
9661 restricted to, any real or personal property acquired by such corporation from time to time in
9662 the satisfaction of debts or enforcement of obligations.

9663 (d) To acquire the good will, business, rights, real and personal property, and other
9664 assets, or any part thereof, of such persons, firms, corporations, joint stock companies,
9665 associations, or trusts as may be in furtherance of the corporate purposes provided herein, and
9666 to assume, undertake, guarantee, or pay the obligations, debts, and liabilities of any such
9667 person, firm, corporation, joint stock company, association, or trust; to acquire improved or
9668 unimproved real estate for the purpose of constructing industrial plants or other business

9669 establishments thereon or for the purpose of disposing of such real estate to others for the
9670 construction of industrial plants or other business establishments, and, in furtherance of the
9671 corporate purposes, to acquire, construct, or reconstruct, alter, repair, maintain, operate, sell,
9672 lease, or otherwise dispose of industrial plants or business establishments.

9673 (e) To acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge, or
9674 otherwise dispose of the stock, shares, bonds, debentures, notes, or other securities and
9675 evidences of interest in, or indebtedness of, any person, firm, corporation, joint stock company,
9676 association, or trust, and while the owner or holder thereof, to exercise all the rights, powers,
9677 and privileges of ownership, including the right to vote thereon, but nothing herein provided
9678 shall authorize the holding of securities of or otherwise engaging directly or indirectly in a
9679 business where such holding of securities or engaging in business is not authorized for
9680 corporations by general law.

9681 (f) To cooperate with and avail itself of the facilities of state departments and other
9682 government agencies; and to cooperate with and assist, and otherwise encourage, local
9683 organizations in the various communities in the state in the promotion, assistance, and
9684 development of the business prosperity and economic welfare of such communities and of the
9685 state.

9686 Section 309. Section **16-13-5** is amended to read:

9687 **16-13-5. Bonds or securities, capital stock of development corporations --**
9688 **Authority to purchase, hold, or dispose of -- Rights of holders -- Rights of financial**
9689 **institutions.**

9690 (1) All persons, firms, partnerships, associations, trusts and domestic and foreign
9691 corporations organized or authorized to do business in this state, including, without implied
9692 limitation, all financial institutions, public utility corporations and insurance corporations, are
9693 hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage, pledge, or
9694 otherwise dispose of any bonds, securities or other evidences of indebtedness created by a
9695 development corporation, and to exercise all the rights, powers and privileges of ownership
9696 thereof, all without the approval of any regulatory authority of the state.

9697 (2) All persons, firms, partnerships, associations, trusts, domestic and foreign
9698 corporations organized or authorized to do business in this state, including without implied
9699 limitation all public utility corporations and insurance corporations, other than financial

9700 institutions, are hereby authorized to acquire, purchase, hold, sell, assign, transfer, mortgage,
9701 pledge, or otherwise dispose of any of the shares of the capital stock of a development
9702 corporation, and while owners of said stock to exercise all the rights, powers and privileges of
9703 ownership, including the right to vote thereon, all without the approval of any regulatory
9704 authority of the state.

9705 (3) All financial institutions are hereby authorized to become lenders to development
9706 corporations and to make loans to the corporations as provided herein, without the approval of
9707 any regulatory authority of the state.

9708 (4) A financial institution is authorized to acquire, purchase, hold, sell, assign, transfer,
9709 mortgage, pledge, or otherwise dispose of, any bonds, securities or other evidences of
9710 indebtedness created by the corporation in accordance with its provisions for the call of loans,
9711 and any of the shares of the capital stock of the corporation, and while owners thereof, to
9712 exercise all the rights, powers and privileges of ownership, including the right to vote, all
9713 without approval of any regulatory authority of the state; provided, that the amount of the
9714 capital stock of the corporation which may be acquired by any lender pursuant to the authority
9715 granted herein [~~shall not~~] may not exceed 10% of the loan limit of such lender. The amount of
9716 capital stock of the corporation which any lender is authorized to acquire pursuant to the
9717 authority granted herein is in addition to the amount of capital stock in corporations which such
9718 lender may otherwise be authorized to acquire.

9719 Section 310. Section **16-13-9** is amended to read:

9720 **16-13-9. Requirement before commencing business -- Cash consideration for**
9721 **shares -- Minimum stated capital.**

9722 A development corporation incorporated after July 1, 1979, [~~shall not~~] may not transact
9723 any business or incur any indebtedness, except as is incidental to its organization or to obtain
9724 subscriptions to or payment for its shares, until there has been paid in for the issuance of shares
9725 consideration in cash of at least \$300,000. A development corporation shall have a stated
9726 capital of not less than \$300,000.

9727 Section 311. Section **16-13-11** is amended to read:

9728 **16-13-11. Designation of depository.**

9729 A development corporation [~~shall not~~] may not deposit any of its funds in any banking
9730 institution unless such institution has been designated as a depository by a vote of a majority of

9731 the directors present at an authorized meeting of the board of directors, exclusive of any
9732 director who is an officer or director of the depository so designated. A development
9733 corporation [~~shall not~~] may not receive money on deposit.

9734 Section 312. Section **16-16-111** is amended to read:

9735 **16-16-111. Name.**

9736 (1) Use of the term "cooperative" or its abbreviation under this chapter is not a
9737 violation of the provisions restricting the use of the term under any other law of this state.

9738 (2) Notwithstanding Section 48-2a-102, the name of a limited cooperative association
9739 [~~must~~] shall contain the words "limited cooperative association" or "limited cooperative" or the
9740 abbreviation "L.C.A." or "LCA". "Limited" may be abbreviated as "Ltd.". "Cooperative" may
9741 be abbreviated as "Co-op" or "Coop". "Association" may be abbreviated as "Assoc." or
9742 "Assn.". Use of the term "cooperative" or its abbreviation as permitted by this chapter is not a
9743 violation of the provisions restricting the use of the term under any other law of this state. A
9744 limited cooperative association or a member may enforce the restrictions on the use of the term
9745 "cooperative" under this chapter and any other law of this state. A limited cooperative
9746 association or a member may enforce the restrictions on the use of the term "cooperative" under
9747 any other law of this state.

9748 (3) Except as otherwise provided in Subsection (4), a limited cooperative association
9749 may use only a name that is available. A name is available if it is distinguishable in the records
9750 of the division from:

- 9751 (a) the name of any entity organized or authorized to transact business in this state;
9752 (b) a name reserved under Section 16-16-112; and
9753 (c) an alternative name approved for a foreign cooperative authorized to transact
9754 business in this state.

9755 (4) A limited cooperative association may apply to the division for authorization to use
9756 a name that is not available. The division shall authorize use of the name if:

- 9757 (a) the person with ownership rights to use the name consents in a record to the use and
9758 applies in a form satisfactory to the division to change the name used or reserved to a name that
9759 is distinguishable upon the records of the division from the name applied for; or
9760 (b) the applicant delivers to the division a certified copy of the final judgment of a
9761 court establishing the applicant's right to use the name in this state.

9762 Section 313. Section **16-16-112** is amended to read:

9763 **16-16-112. Reservation of name.**

9764 (1) A person may reserve the exclusive use of the name of a limited cooperative
9765 association, including a fictitious name for a foreign cooperative whose name is not available
9766 under Section 16-16-111, by delivering an application to the division for filing. The
9767 application [~~must~~] shall set forth the name and address of the applicant and the name proposed
9768 to be reserved. If the division finds that the name applied for is available under Section
9769 16-16-111, the division shall reserve the name for the applicant's exclusive use for a
9770 nonrenewable period of 120 days.

9771 (2) A person that has reserved a name for a limited cooperative association may
9772 transfer the reservation to another person by delivering to the division a signed notice of the
9773 transfer which states the name, street address, and, if different, the mailing address of the
9774 transferee. If the person is an organizer of the association and the name of the association is
9775 the same as the reserved name, the delivery of articles of organization for filing by the division
9776 is a transfer by the person to the association.

9777 Section 314. Section **16-16-113** is amended to read:

9778 **16-16-113. Effect of organic rules.**

9779 (1) The relations between a limited cooperative association and its members are
9780 consensual. Unless required, limited, or prohibited by this chapter, the organic rules may
9781 provide for any matter concerning the relations among the members of the association and
9782 between the members and the association, the activities of the association, and the conduct of
9783 its activities.

9784 (2) The matters referred to in Subsections (2)(a) through (i) may be varied only in the
9785 articles of organization. The articles may:

9786 (a) state a term of existence for the association under Subsection 16-16-105(3);

9787 (b) limit or eliminate the acceptance of new or additional members by the initial board
9788 of directors under Subsection 16-16-303(2);

9789 (c) vary the limitations on the obligations and liability of members for association
9790 obligations under Section 16-16-504;

9791 (d) require a notice of an annual members meeting to state a purpose of the meeting
9792 under Subsection 16-16-508(2);

- 9793 (e) vary the board of directors meeting quorum under Subsection 16-16-815(1);
- 9794 (f) vary the matters the board of directors may consider in making a decision under
- 9795 Section 16-16-820;
- 9796 (g) specify causes of dissolution under Subsection 16-16-1202(1);
- 9797 (h) delegate amendment of the bylaws to the board of directors pursuant to Subsection
- 9798 16-16-405(6);
- 9799 (i) provide for member approval of asset dispositions under Subsection 16-16-1501;
- 9800 and
- 9801 (j) provide for any matters that may be contained in the organic rules, including those
- 9802 under Subsection (3).
- 9803 (3) The matters referred to in Subsections (3)(a) through (y) may be varied only in the
- 9804 organic rules. The organic rules may:
- 9805 (a) require more information to be maintained under Section 16-16-114 or provided to
- 9806 members under Subsection 16-16-505(11);
- 9807 (b) provide restrictions on transactions between a member and an association under
- 9808 Section 16-16-115;
- 9809 (c) provide for the percentage and manner of voting on amendments to the organic
- 9810 rules by district, class, or voting group under Subsection 16-16-404(1);
- 9811 (d) provide for the percentage vote required to amend the bylaws concerning the
- 9812 admission of new members under Subsection 16-16-405(5)(e);
- 9813 (e) provide for terms and conditions to become a member under Section 16-16-502;
- 9814 (f) restrict the manner of conducting members meetings under Subsections
- 9815 16-16-506(3) and 16-16-507(5);
- 9816 (g) designate the presiding officer of members meetings under Subsections
- 9817 16-16-506(5) and 16-16-507(7);
- 9818 (h) require a statement of purposes in the annual meeting notice under Subsection
- 9819 16-16-508(2);
- 9820 (i) increase quorum requirements for members meetings under Section 16-16-510 and
- 9821 board of directors meetings under Section 16-16-815;
- 9822 (j) allocate voting power among members, including patron members and investor
- 9823 members, and provide for the manner of member voting and action as permitted by Sections

9824 16-16-511 through 16-16-517;

9825 (k) authorize investor members and expand or restrict the transferability of members'
9826 interests to the extent provided in Sections 16-16-602 through 16-16-604;

9827 (l) provide for enforcement of a marketing contract under Subsection 16-16-704(1);

9828 (m) provide for qualification, election, terms, removal, filling vacancies, and member
9829 approval for compensation of directors in accordance with Sections 16-16-803 through

9830 16-16-805, 16-16-807, 16-16-809, and 16-16-810;

9831 (n) restrict the manner of conducting board meetings and taking action without a
9832 meeting under Sections 16-16-811 and 16-16-812;

9833 (o) provide for frequency, location, notice and waivers of notice for board meetings
9834 under Sections 16-16-813 and 16-16-814;

9835 (p) increase the percentage of votes necessary for board action under Subsection
9836 16-16-816(2);

9837 (q) provide for the creation of committees of the board of directors and matters related
9838 to the committees in accordance with Section 16-16-817;

9839 (r) provide for officers and their appointment, designation, and authority under Section
9840 16-16-822;

9841 (s) provide for forms and values of contributions under Section 16-16-1002;

9842 (t) provide for remedies for failure to make a contribution under Subsection
9843 16-16-1003(2);

9844 (u) provide for the allocation of profits and losses of the association, distributions, and
9845 the redemption or repurchase of distributed property other than money in accordance with
9846 Sections 16-16-1004 through 16-16-1007;

9847 (v) specify when a member's dissociation is wrongful and the liability incurred by the
9848 dissociating member for damage to the association under Subsections 16-16-1101(2) and (3);

9849 (w) provide the personal representative, or other legal representative of, a deceased
9850 member or a member adjudged incompetent with additional rights under Section 16-16-1103;

9851 (x) increase the percentage of votes required for board of director approval of:

9852 (i) a resolution to dissolve under Subsection 16-16-1205(1)(a);

9853 (ii) a proposed amendment to the organic rules under Subsection 16-16-402(1)(a);

9854 (iii) a plan of conversion under Subsection 16-16-1603(1);

- 9855 (iv) a plan of merger under Subsection 16-16-1607(1); and
9856 (v) a proposed disposition of assets under Subsection 16-16-1503(1); and
9857 (y) vary the percentage of votes required for members' approval of:
9858 (i) a resolution to dissolve under Section 16-16-1205;
9859 (ii) an amendment to the organic rules under Section 16-16-405;
9860 (iii) a plan of conversion under Section 16-16-1603;
9861 (iv) a plan of merger under Section 16-16-1608; and
9862 (v) a disposition of assets under Section 16-16-1504.

9863 (4) The organic rules [~~must~~] shall address members' contributions pursuant to Section
9864 16-16-1001.

9865 Section 315. Section **16-16-114** is amended to read:

9866 **16-16-114. Required information.**

9867 (1) Subject to Subsection (2), a limited cooperative association shall maintain in a
9868 record available at its principal office:

9869 (a) a list containing the name, last known street address and, if different, mailing
9870 address, and term of office of each director and officer;

9871 (b) the initial articles of organization and all amendments to and restatements of the
9872 articles, together with a signed copy of any power of attorney under which any article,
9873 amendment, or restatement has been signed;

9874 (c) the initial bylaws and all amendments to and restatements of the bylaws;

9875 (d) all filed articles of merger and statements of conversion;

9876 (e) all financial statements of the association for the six most recent years;

9877 (f) the six most recent annual reports delivered by the association to the division;

9878 (g) the minutes of members meetings for the six most recent years;

9879 (h) evidence of all actions taken by members without a meeting for the six most recent
9880 years;

9881 (i) a list containing:

9882 (i) the name, in alphabetical order, and last known street address and, if different,
9883 mailing address of each patron member and each investor member; and

9884 (ii) if the association has districts or classes of members, information from which each
9885 current member in a district or class may be identified;

9886 (j) the federal income tax returns, any state and local income tax returns, and any tax
9887 reports of the association for the six most recent years;

9888 (k) accounting records maintained by the association in the ordinary course of its
9889 operations for the six most recent years;

9890 (l) the minutes of directors meetings for the six most recent years;

9891 (m) evidence of all actions taken by directors without a meeting for the six most recent
9892 years;

9893 (n) the amount of money contributed and agreed to be contributed by each member;

9894 (o) a description and statement of the agreed value of contributions other than money
9895 made and agreed to be made by each member;

9896 (p) the times at which, or events on the happening of which, any additional
9897 contribution is to be made by each member;

9898 (q) for each member, a description and statement of the member's interest or
9899 information from which the description and statement can be derived; and

9900 (r) all communications concerning the association made in a record to all members, or
9901 to all members in a district or class, for the six most recent years.

9902 (2) If a limited cooperative association has existed for less than the period for which
9903 records ~~[must]~~ are required to be maintained under Subsection (1), the period records ~~[must]~~
9904 shall be kept is the period of the association's existence.

9905 (3) The organic rules may require that more information be maintained.

9906 Section 316. Section **16-16-117** is amended to read:

9907 **16-16-117. Designated office and agent for service of process.**

9908 (1) A limited cooperative association, or a foreign cooperative that has a certificate of
9909 authority under Section 16-16-1404, shall designate and continuously maintain in this state:

9910 (a) an office, as its designated office, which need not be a place of the association's or
9911 foreign cooperative's activity in this state; and

9912 (b) an agent for service of process at the designated office.

9913 (2) An agent for service of process of a limited cooperative association or foreign
9914 cooperative ~~[must]~~ shall be an individual who is a resident of this state or an entity that is
9915 authorized to do business in this state.

9916 Section 317. Section **16-16-118** is amended to read:

9917 **16-16-118. Change of designated office or agent for service of process.**

9918 (1) Except as otherwise provided in Subsection 16-16-207(5), to change its designated
9919 office, its agent for service of process, or the street address or, if different, mailing address of
9920 its principal office, a limited cooperative association [~~must~~] shall deliver to the division for
9921 filing a statement of change containing:

9922 (a) the name of the limited cooperative association;

9923 (b) the street address and, if different, mailing address of its designated office;

9924 (c) if the designated office is to be changed, the street address and, if different, mailing
9925 address of the new designated office;

9926 (d) the name of its agent for service of process; and

9927 (e) if the agent for service of process is to be changed, the name of the new agent.

9928 (2) Except as otherwise provided in Subsection 16-16-207(5), to change its agent for
9929 service of process, the address of its designated office, or the street address or, if different,
9930 mailing address of its principal office, a foreign cooperative shall deliver to the division for
9931 filing a statement of change containing:

9932 (a) the name of the foreign cooperative;

9933 (b) the name, street address and, if different, mailing address of its designated office;

9934 (c) if the current agent for service of process or an address of the designated office is to
9935 be changed, the new information;

9936 (d) the street address and, if different, mailing address of its principal office; and

9937 (e) if the street address or, if different, the mailing address of its principal office is to
9938 be changed, the street address and, if different, the mailing address of the new principal office.

9939 (3) Except as otherwise provided in Section 16-16-204, a statement of change is
9940 effective when filed by the division.

9941 Section 318. Section **16-16-119** is amended to read:

9942 **16-16-119. Resignation of agent for service of process.**

9943 (1) To resign as an agent for service of process of a limited cooperative association or
9944 foreign cooperative, the agent [~~must~~] shall deliver to the division for filing a statement of
9945 resignation containing the name of the agent and the name of the association or foreign
9946 cooperative.

9947 (2) After receiving a statement of resignation under Subsection (1), the division shall

9948 file it and mail or otherwise provide or deliver a copy to the limited cooperative association or
9949 foreign cooperative at its principal office.

9950 (3) An agency for service of process of a limited cooperative association or foreign
9951 cooperative terminates on the earlier of:

9952 (a) the 31st day after the division files a statement of resignation under Subsection (2);
9953 or

9954 (b) when a record designating a new agent for service of process is delivered to the
9955 division for filing on behalf of the association or foreign cooperative and becomes effective.

9956 Section 319. Section **16-16-201** is amended to read:

9957 **16-16-201. Signing of records delivered for filing to division.**

9958 (1) A record delivered to the division for filing pursuant to this chapter [~~must~~] shall be
9959 signed as follows:

9960 (a) The initial articles of organization [~~must~~] shall be signed by at least one organizer.

9961 (b) A statement of cancellation under Subsection 16-16-302(4) [~~must~~] shall be signed
9962 by at least one organizer.

9963 (c) Except as otherwise provided in Subsection (1)(d), a record signed on behalf of an
9964 existing limited cooperative association [~~must~~] shall be signed by an officer.

9965 (d) A record filed on behalf of a dissolved association [~~must~~] shall be signed by a
9966 person winding up activities under Section 16-16-1206 or a person appointed under Section
9967 16-16-1206 to wind up those activities.

9968 (e) Any other record [~~must~~] shall be signed by the person on whose behalf the record is
9969 delivered to the division.

9970 (2) Any record to be signed under this chapter may be signed by an authorized agent.

9971 Section 320. Section **16-16-203** is amended to read:

9972 **16-16-203. Delivery to and filing of records by division -- Effective time and date.**

9973 (1) A record authorized or required by this chapter to be delivered to the division for
9974 filing [~~must~~] shall be captioned to describe the record's purpose, be in a medium and format
9975 permitted by the division, and be delivered to the division. If the filing fees have been paid,
9976 and unless the division determines that the record does not comply with the filing requirements
9977 of this chapter, the division shall file the record.

9978 (2) The division, upon request and payment of the required fee, shall furnish a certified

9979 copy of any record filed by the division under this chapter to the person making the request.

9980 (3) Except as otherwise provided in Sections 16-16-118 and 16-16-204, a record
9981 delivered to the division for filing under this chapter may specify an effective time and a
9982 delayed effective date that may include an effective time on that date. Except as otherwise
9983 provided in Sections 16-16-118 and 16-16-204, a record filed by the division under this chapter
9984 is effective:

9985 (a) if the record does not specify an effective time and does not specify a delayed
9986 effective date, on the date and at the time the record is filed as evidenced by the division's
9987 endorsement of the date and time on the record;

9988 (b) if the record specifies an effective time but not a delayed effective date, on the date
9989 the record is filed at the time specified in the record;

9990 (c) if the record specifies a delayed effective date but not an effective time, at 12:01
9991 a.m. on the earlier of:

9992 (i) the specified date; or

9993 (ii) the 90th day after the record is filed; or

9994 (d) if the record specifies an effective time and a delayed effective date, at the specified
9995 time on the earlier of:

9996 (i) the specified date; or

9997 (ii) the 90th day after the record is filed.

9998 Section 321. Section **16-16-204** is amended to read:

9999 **16-16-204. Correcting filed record.**

10000 (1) A limited cooperative association or foreign cooperative may deliver to the division
10001 for filing a statement of correction to correct a record previously delivered by the association or
10002 foreign cooperative to the division and filed by the division if, at the time of filing, the record
10003 contained inaccurate information or was defectively signed.

10004 (2) A statement of correction may not state a delayed effective date and ~~[must]~~ shall:

10005 (a) describe the record to be corrected, including its filing date, or have attached a copy
10006 of the record as filed;

10007 (b) specify the inaccurate information and the reason it is inaccurate or the manner in
10008 which the signing was defective; and

10009 (c) correct the inaccurate information or defective signature.

- 10010 (3) When filed by the division, a statement of correction is effective:
- 10011 (a) when filed as to persons relying on the inaccurate information or defective signature
- 10012 before its correction and adversely affected by the correction; and
- 10013 (b) as to all other persons, retroactively as of the effective date and time of the record
- 10014 the statement corrects.
- 10015 Section 322. Section **16-16-207** is amended to read:
- 10016 **16-16-207. Annual report for division.**
- 10017 (1) A limited cooperative association or foreign cooperative authorized to transact
- 10018 business in this state shall deliver to the division for filing an annual report that states:
- 10019 (a) the name of the association or foreign cooperative;
- 10020 (b) the street address and, if different, mailing address of the association's or foreign
- 10021 cooperative's designated office and the name of its agent for service of process at the
- 10022 designated office;
- 10023 (c) the street address and, if different, mailing address of the association's or foreign
- 10024 cooperative's principal office; and
- 10025 (d) in the case of a foreign cooperative, the state or other jurisdiction under whose law
- 10026 the foreign cooperative is formed and any alternative name adopted under Section 16-16-1405.
- 10027 (2) Information in an annual report [~~must~~] shall be current as of the date the report is
- 10028 delivered to the division.
- 10029 (3) The first annual report [~~must~~] shall be delivered to the division between January 1
- 10030 and April 1 of the year following the calendar year in which the limited cooperative association
- 10031 is formed or the foreign cooperative is authorized to transact business in this state. For
- 10032 subsequent years, an annual report [~~must~~] shall be delivered to the division during the month in
- 10033 which falls the anniversary of the limited cooperative association's organization or the foreign
- 10034 cooperative's authorization to transact business.
- 10035 (4) If an annual report does not contain the information required by Subsection (1), the
- 10036 division shall promptly notify the reporting limited cooperative association or foreign
- 10037 cooperative and return the report for correction. If the report is corrected to contain the
- 10038 information required by Subsection (1) and delivered to the division not later than 30 days after
- 10039 the date of the notice from the division, it is timely delivered.
- 10040 (5) If a filed annual report contains an address of the designated office, name of the

10041 agent for service of process, or address of the principal office which differs from the
10042 information shown in the records of the division immediately before the filing, the differing
10043 information in the annual report is considered a statement of change.

10044 (6) If a limited cooperative association fails to deliver an annual report under this
10045 section, the division may proceed under Section 16-16-1211 to dissolve the association
10046 administratively.

10047 (7) If a foreign cooperative fails to deliver an annual report under this section, the
10048 division may revoke the certificate of authority of the cooperative.

10049 Section 323. Section **16-16-301** is amended to read:

10050 **16-16-301. Organizers.**

10051 A limited cooperative association [~~must~~] shall be organized by one or more organizers.

10052 Section 324. Section **16-16-302** is amended to read:

10053 **16-16-302. Formation of limited cooperative association -- Articles of**
10054 **organization.**

10055 (1) To form a limited cooperative association, an organizer of the association [~~must~~]
10056 shall deliver articles of organization to the division for filing. The articles [~~must~~] shall state:

10057 (a) the name of the association;

10058 (b) the purposes for which the association is formed;

10059 (c) the street address and, if different, mailing address of the association's initial
10060 designated office and the name of the association's initial agent for service of process at the
10061 designated office;

10062 (d) the street address and, if different, mailing address of the initial principal office;

10063 (e) the name and street address and, if different, mailing address of each organizer; and

10064 (f) the term for which the association is to exist if other than perpetual.

10065 (2) Subject to Subsection 16-16-113(1), articles of organization may contain any other
10066 provisions in addition to those required by Subsection (1).

10067 (3) A limited cooperative association is formed after articles of organization that
10068 substantially comply with Subsection (1) are delivered to the division, are filed, and become
10069 effective under Subsection 16-16-203(3).

10070 (4) If articles of organization filed by the division state a delayed effective date, a
10071 limited cooperative association is not formed if, before the articles take effect, an organizer

10072 signs and delivers to the division for filing a statement of cancellation.

10073 Section 325. Section **16-16-304** is amended to read:

10074 **16-16-304. Bylaws.**

10075 (1) Bylaws [~~must~~] shall be in a record and, if not stated in the articles of organization,
10076 [~~must~~] shall include:

10077 (a) a statement of the capital structure of the limited cooperative association, including:

10078 (i) the classes or other types of members' interests and relative rights, preferences, and
10079 restrictions granted to or imposed upon each class or other type of member's interest; and

10080 (ii) the rights to share in profits or distributions of the association;

10081 (b) a statement of the method for admission of members;

10082 (c) a statement designating voting and other governance rights, including which
10083 members have voting power and any restriction on voting power;

10084 (d) a statement that a member's interest is transferable if it is to be transferable and a
10085 statement of the conditions upon which it may be transferred;

10086 (e) a statement concerning the manner in which profits and losses are allocated and
10087 distributions are made among patron members and, if investor members are authorized, the
10088 manner in which profits and losses are allocated and how distributions are made among
10089 investor members and between patron members and investor members;

10090 (f) a statement concerning:

10091 (i) whether persons that are not members but conduct business with the association
10092 may be permitted to share in allocations of profits and losses and receive distributions; and

10093 (ii) the manner in which profits and losses are allocated and distributions are made
10094 with respect to those persons; and

10095 (g) a statement of the number and terms of directors or the method by which the
10096 number and terms are determined.

10097 (2) Subject to Subsection 16-16-113(3) and the articles of organization, bylaws may
10098 contain any other provision for managing and regulating the affairs of the association.

10099 (3) In addition to amendments permitted under Part 4, Amendment of Organic Rules of
10100 Limited Cooperative Association, the initial board of directors may amend the bylaws by a
10101 majority vote of the directors at any time before the admission of members.

10102 Section 326. Section **16-16-402** is amended to read:

10103 **16-16-402. Notice and action on amendment of organic rules.**

10104 (1) Except as provided in Subsections 16-16-401(1) and 16-16-405(6), the organic
10105 rules of a limited cooperative association may be amended only at a members meeting. An
10106 amendment may be proposed by either:

10107 (a) a majority of the board of directors, or a greater percentage if required by the
10108 organic rules; or

10109 (b) one or more petitions signed by at least 10% of the patron members or at least 10%
10110 of the investor members.

10111 (2) The board of directors shall call a members meeting to consider an amendment
10112 proposed pursuant to Subsection (1). The meeting [~~must~~] shall be held not later than 90 days
10113 following the proposal of the amendment by the board or receipt of a petition. The board
10114 [~~must~~] shall mail or otherwise transmit or deliver in a record to each member:

10115 (a) the proposed amendment, or a summary of the proposed amendment and a
10116 statement of the manner in which a copy of the amendment in a record may be reasonably
10117 obtained by a member;

10118 (b) a recommendation that the members approve the amendment, or if the board
10119 determines that because of conflict of interest or other special circumstances it should not make
10120 a favorable recommendation, the basis for that determination;

10121 (c) a statement of any condition of the board's submission of the amendment to the
10122 members; and

10123 (d) notice of the meeting at which the proposed amendment will be considered, which
10124 [~~must~~] shall be given in the same manner as notice for a special meeting of members.

10125 Section 327. Section **16-16-403** is amended to read:

10126 **16-16-403. Change to amendment of organic rules at meeting.**

10127 (1) A substantive change to a proposed amendment of the organic rules may not be
10128 made at the members meeting at which a vote on the amendment occurs.

10129 (2) A nonsubstantive change to a proposed amendment of the organic rules may be
10130 made at the members meeting at which the vote on the amendment occurs and need not be
10131 separately voted upon by the board of directors.

10132 (3) A vote to adopt a nonsubstantive change to a proposed amendment to the organic
10133 rules [~~must~~] shall be by the same percentage of votes required to pass a proposed amendment.

10134 Section 328. Section **16-16-404** is amended to read:

10135 **16-16-404. Voting by district, class, or voting group.**

10136 (1) This section applies if the organic rules provide for voting by district or class, or if
10137 there is one or more identifiable voting groups that a proposed amendment to the organic rules
10138 would affect differently from other members with respect to matters identified in Subsections
10139 16-16-405(5)(a) through (e). Approval of the amendment requires the same percentage of
10140 votes of the members of that district, class, or voting group required in Sections 16-16-405 and
10141 16-16-514.

10142 (2) If a proposed amendment to the organic rules would affect members in two or more
10143 districts or classes entitled to vote separately under Subsection (1) in the same or a substantially
10144 similar way, the districts or classes affected [~~must~~] shall vote as a single voting group unless
10145 the organic rules otherwise provide for separate voting.

10146 Section 329. Section **16-16-405** is amended to read:

10147 **16-16-405. Approval of amendment.**

10148 (1) Subject to Section 16-16-404 and Subsections (3) and (4), an amendment to the
10149 articles of organization [~~must~~] shall be approved by:

10150 (a) at least two-thirds of the voting power of members present at a members meeting
10151 called under Section 16-16-402; and

10152 (b) if the limited cooperative association has investor members, at least a majority of
10153 the votes cast by patron members, unless the organic rules require a greater percentage vote by
10154 patron members.

10155 (2) Subject to Section 16-16-404 and Subsections (3), (4), (5), and (6), an amendment
10156 to the bylaws [~~must~~] shall be approved by:

10157 (a) at least a majority vote of the voting power of all members present at a members
10158 meeting called under Section 16-16-402, unless the organic rules require a greater percentage;
10159 and

10160 (b) if a limited cooperative association has investor members, a majority of the votes
10161 cast by patron members, unless the organic rules require a larger affirmative vote by patron
10162 members.

10163 (3) The organic rules may require that the percentage of votes under Subsection (1)(a)
10164 or (2)(a) be:

- 10165 (a) a different percentage that is not less than a majority of members voting at the
10166 meeting;
- 10167 (b) measured against the voting power of all members; or
- 10168 (c) a combination of Subsections (3)(a) and (b).
- 10169 (4) Consent in a record by a member [~~must~~] shall be delivered to a limited cooperative
10170 association before delivery of an amendment to the articles of organization or restated articles
10171 of organization for filing pursuant to Section 16-16-407, if as a result of the amendment the
10172 member will have:
- 10173 (a) personal liability for an obligation of the association; or
- 10174 (b) an obligation or liability for an additional contribution.
- 10175 (5) The vote required to amend bylaws [~~must~~] shall satisfy the requirements of
10176 Subsection (1) if the proposed amendment modifies:
- 10177 (a) the equity capital structure of the limited cooperative association, including the
10178 rights of the association's members to share in profits or distributions, or the relative rights,
10179 preferences, and restrictions granted to or imposed upon one or more districts, classes, or
10180 voting groups of similarly situated members;
- 10181 (b) the transferability of a member's interest;
- 10182 (c) the manner or method of allocation of profits or losses among members;
- 10183 (d) the quorum for a meeting and the rights of voting and governance; or
- 10184 (e) unless otherwise provided in the organic rules, the terms for admission of new
10185 members.
- 10186 (6) Except for the matters described in Subsection (5), the articles of organization may
10187 delegate amendment of all or a part of the bylaws to the board of directors without requiring
10188 member approval.
- 10189 (7) If the articles of organization delegate amendment of bylaws to the board of
10190 directors, the board shall provide a description of any amendment of the bylaws made by the
10191 board to the members in a record not later than 30 days after the amendment, but the
10192 description may be provided at the next annual members meeting if the meeting is held within
10193 the 30-day period.
- 10194 Section 330. Section **16-16-407** is amended to read:
- 10195 **16-16-407. Amendment or restatement of articles of organization--Filing.**

10196 (1) To amend its articles of organization, a limited cooperative association [must] shall
10197 deliver to the division for filing an amendment of the articles, or restated articles of
10198 organization or articles of conversion or merger pursuant to Part 16, Conversion and Merger,
10199 which contain one or more amendments of the articles of organization, stating:

- 10200 (a) the name of the association;
- 10201 (b) the date of filing of the association's initial articles; and
- 10202 (c) the changes the amendment makes to the articles as most recently amended or
10203 restated.

10204 (2) Before the beginning of the initial meeting of the board of directors, an organizer
10205 who knows that information in the filed articles of organization was inaccurate when the
10206 articles were filed or has become inaccurate due to changed circumstances shall promptly:

- 10207 (a) cause the articles to be amended; or
- 10208 (b) if appropriate, deliver an amendment to the division for filing pursuant to Section
10209 16-16-203.

10210 (3) If restated articles of organization are adopted, the restated articles may be
10211 delivered to the division for filing in the same manner as an amendment.

10212 (4) Upon filing, an amendment of the articles of organization or other record
10213 containing an amendment of the articles which has been properly adopted by the members is
10214 effective as provided in Subsection 16-16-203(3).

10215 Section 331. Section **16-16-501** is amended to read:

10216 **16-16-501. Members.**

10217 To begin business, a limited cooperative association [must] shall have at least two
10218 patron members unless the sole member is a cooperative.

10219 Section 332. Section **16-16-507** is amended to read:

10220 **16-16-507. Special meeting of members.**

10221 (1) A special meeting of members may be called only:

- 10222 (a) as provided in the organic rules;
- 10223 (b) by a majority vote of the board of directors on a proposal stating the purpose of the
10224 meeting;

10225 (c) by demand in a record signed by members holding at least 20% of the voting power
10226 of the persons in any district or class entitled to vote on the matter that is the purpose of the

10227 meeting stated in the demand; or

10228 (d) by demand in a record signed by members holding at least 10% of the total voting
10229 power of all the persons entitled to vote on the matter that is the purpose of the meeting stated
10230 in the demand.

10231 (2) A demand under Subsection (1)(c) or (d) [~~must~~] shall be submitted to the officer of
10232 the limited cooperative association charged with keeping its records.

10233 (3) Any voting member may withdraw its demand under Subsection (1)(c) or (d) before
10234 receipt by the limited cooperative association of demands sufficient to require a special
10235 meeting of members.

10236 (4) A special meeting of members may be held inside or outside this state at the place
10237 stated in the organic rules or selected by the board of directors not inconsistent with the organic
10238 rules.

10239 (5) Unless the organic rules otherwise provide, members may attend or conduct a
10240 special meeting of members through the use of any means of communication if all members
10241 attending the meeting can communicate with each other during the meeting.

10242 (6) Only business within the purpose or purposes stated in the notice of a special
10243 meeting of members may be conducted at the meeting.

10244 (7) Unless the organic rules otherwise provide, the presiding officer of a special
10245 meeting of members shall be designated by the board of directors.

10246 Section 333. Section **16-16-508** is amended to read:

10247 **16-16-508. Notice of members meeting.**

10248 (1) A limited cooperative association shall notify each member of the time, date, and
10249 place of a members meeting at least 15 and not more than 60 days before the meeting.

10250 (2) Unless the articles of organization otherwise provide, notice of an annual members
10251 meeting need not include any purpose of the meeting.

10252 (3) Notice of a special meeting of members [~~must~~] shall include each purpose of the
10253 meeting as contained in the demand under Subsection 16-16-507(1)(c) or (d) or as voted upon
10254 by the board of directors under Subsection 16-16-507(1)(b).

10255 (4) Notice of a members meeting [~~must~~] shall be given in a record unless oral notice is
10256 reasonable under the circumstances.

10257 Section 334. Section **16-16-603** is amended to read:

10258 **16-16-603. Transferability of member's interest.**

10259 (1) The provisions of this chapter relating to the transferability of a member's interest
10260 are subject to Title 70A, Uniform Commercial Code.

10261 (2) Unless the organic rules otherwise provide, a member's interest other than financial
10262 rights is not transferable.

10263 (3) Unless a transfer is restricted or prohibited by the organic rules, a member may
10264 transfer the member's financial rights in the limited cooperative association.

10265 (4) The terms of any restriction on transferability of financial rights [~~must~~] shall be:

10266 (a) set forth in the organic rules and the member records of the association; and

10267 (b) conspicuously noted on any certificates evidencing a member's interest.

10268 (5) A transferee of a member's financial rights, to the extent the rights are transferred,
10269 has the right to share in the allocation of profits or losses and to receive the distributions to the
10270 member transferring the interest to the same extent as the transferring member.

10271 (6) A transferee of a member's financial rights does not become a member upon
10272 transfer of the rights unless the transferee is admitted as a member by the limited cooperative
10273 association.

10274 (7) A limited cooperative association need not give effect to a transfer under this
10275 section until the association has notice of the transfer.

10276 (8) A transfer of a member's financial rights in violation of a restriction on transfer
10277 contained in the organic rules is ineffective as to a person having notice of the restriction at the
10278 time of transfer.

10279 Section 335. Section **16-16-801** is amended to read:

10280 **16-16-801. Board of directors.**

10281 (1) A limited cooperative association [~~must~~] shall have a board of directors of at least
10282 three individuals, unless the association has fewer than three members. If the association has
10283 fewer than three members, the number of directors may not be fewer than the number of
10284 members.

10285 (2) The affairs of a limited cooperative association [~~must~~] shall be managed by, or
10286 under the direction of, the board of directors. The board may adopt policies and procedures
10287 that do not conflict with the organic rules or this chapter.

10288 (3) An individual is not an agent for a limited cooperative association solely by being a

10289 director.

10290 Section 336. Section **16-16-803** is amended to read:

10291 **16-16-803. Qualifications of directors.**

10292 (1) Unless the organic rules otherwise provide, and subject to Subsection (3), each
10293 director of a limited cooperative association [~~must~~] shall be an individual who is a member of
10294 the association or an individual who is designated by a member that is not an individual for
10295 purposes of qualifying and serving as a director. Initial directors need not be members.

10296 (2) Unless the organic rules otherwise provide, a director may be an officer or
10297 employee of the limited cooperative association.

10298 (3) If the organic rules provide for nonmember directors, the number of nonmember
10299 directors may not exceed:

10300 (a) one, if there are two through four directors;

10301 (b) two, if there are five through eight directors; or

10302 (c) 1/3 of the total number of directors if there are at least nine directors.

10303 (4) The organic rules may provide qualifications for directors in addition to those in
10304 this section.

10305 Section 337. Section **16-16-804** is amended to read:

10306 **16-16-804. Election of directors and composition of board.**

10307 (1) Unless the organic rules require a greater number:

10308 (a) the number of directors that [~~must~~] shall be patron members may not be fewer than:

10309 (i) one, if there are two or three directors;

10310 (ii) two, if there are four or five directors;

10311 (iii) three, if there are six through eight directors; or

10312 (iv) 1/3 of the directors if there are at least nine directors; and

10313 (b) a majority of the board of directors [~~must~~] shall be elected exclusively by patron
10314 members.

10315 (2) Unless the organic rules otherwise provide, if a limited cooperative association has
10316 investor members, the directors who are not elected exclusively by patron members are elected
10317 by the investor members.

10318 (3) Subject to Subsection (1), the organic rules may provide for the election of all or a
10319 specified number of directors by one or more districts or classes of members.

10320 (4) Subject to Subsection (1), the organic rules may provide for the nomination or
10321 election of directors by districts or classes, directly or by district delegates.

10322 (5) If a class of members consists of a single member, the organic rules may provide
10323 for the member to appoint a director or directors.

10324 (6) Unless the organic rules otherwise provide, cumulative voting for directors is
10325 prohibited.

10326 (7) Except as otherwise provided by the organic rules, Subsection (5), or Sections
10327 16-16-303, 16-16-516, 16-16-517, and 16-16-809, member directors [~~must~~] shall be elected at
10328 an annual members meeting.

10329 Section 338. Section **16-16-809** is amended to read:

10330 **16-16-809. Vacancy on board.**

10331 (1) Unless the organic rules otherwise provide, a vacancy on the board of directors
10332 [~~must~~] shall be filled:

10333 (a) within a reasonable time by majority vote of the remaining directors until the next
10334 annual members meeting or a special meeting of members called to fill the vacancy; and

10335 (b) for the unexpired term by members at the next annual members meeting or a
10336 special meeting of members called to fill the vacancy.

10337 (2) Unless the organic rules otherwise provide, if a vacating director was elected or
10338 appointed by a class of members or a district:

10339 (a) the new director [~~must~~] shall be of that class or district; and

10340 (b) the selection of the director for the unexpired term [~~must~~] shall be conducted in the
10341 same manner as would the selection for that position without a vacancy.

10342 (3) If a member appointed a vacating director, the organic rules may provide for that
10343 member to appoint a director to fill the vacancy.

10344 Section 339. Section **16-16-813** is amended to read:

10345 **16-16-813. Meetings and notice.**

10346 (1) Unless the organic rules otherwise provide, a board of directors may establish a
10347 time, date, and place for regular board meetings, and notice of the time, date, place, or purpose
10348 of those meetings is not required.

10349 (2) Unless the organic rules otherwise provide, notice of the time, date, and place of a
10350 special meeting of a board of directors [~~must~~] shall be given to all directors at least three days

10351 before the meeting, the notice [must] shall contain a statement of the purpose of the meeting,
10352 and the meeting is limited to the matters contained in the statement.

10353 Section 340. Section **16-16-1001** is amended to read:

10354 **16-16-1001. Members' contributions.**

10355 The organic rules [must] shall establish the amount, manner, or method of determining
10356 any contribution requirements for members or [must] shall authorize the board of directors to
10357 establish the amount, manner, or other method of determining any contribution requirements
10358 for members.

10359 Section 341. Section **16-16-1002** is amended to read:

10360 **16-16-1002. Contribution and valuation.**

10361 (1) Unless the organic rules otherwise provide, the contributions of a member to a
10362 limited cooperative association may consist of tangible or intangible property or other benefit
10363 to the association, including money, labor or other services performed or to be performed,
10364 promissory notes, other agreements to contribute money or property, and contracts to be
10365 performed.

10366 (2) The receipt and acceptance of contributions and the valuation of contributions
10367 [must] shall be reflected in a limited cooperative association's records.

10368 (3) Unless the organic rules otherwise provide, the board of directors shall determine
10369 the value of a member's contributions received or to be received and the determination by the
10370 board of directors of valuation is conclusive for purposes of determining whether the member's
10371 contribution obligation has been met.

10372 Section 342. Section **16-16-1004** is amended to read:

10373 **16-16-1004. Allocations of profits and losses.**

10374 (1) The organic rules may provide for allocating profits of a limited cooperative
10375 association among members, among persons that are not members but conduct business with
10376 the association, to an unallocated account, or to any combination thereof. Unless the organic
10377 rules otherwise provide, losses of the association [must] shall be allocated in the same
10378 proportion as profits.

10379 (2) Unless the organic rules otherwise provide, all profits and losses of a limited
10380 cooperative association [must] shall be allocated to patron members.

10381 (3) If a limited cooperative association has investor members, the organic rules may

10382 not reduce the allocation to patron members to less than 50% of profits. For purposes of this
10383 Subsection (3), the following rules apply:

10384 (a) Amounts paid or due on contracts for the delivery to the association by patron
10385 members of products, goods, or services are not considered amounts allocated to patron
10386 members.

10387 (b) Amounts paid, due, or allocated to investor members as a stated fixed return on
10388 equity are not considered amounts allocated to investor members.

10389 (4) Unless prohibited by the organic rules, in determining the profits for allocation
10390 under Subsections (1), (2), and (3), the board of directors may first deduct and set aside a part
10391 of the profits to create or accumulate:

10392 (a) an unallocated capital reserve; and

10393 (b) reasonable unallocated reserves for specific purposes, including expansion and
10394 replacement of capital assets; education, training, cooperative development; creation and
10395 distribution of information concerning principles of cooperation; and community
10396 responsibility.

10397 (5) Subject to Subsections (2) and (6) and the organic rules, the board of directors shall
10398 allocate the amount remaining after any deduction or setting aside of profits for unallocated
10399 reserves under Subsection (4):

10400 (a) to patron members in the ratio of each member's patronage to the total patronage of
10401 all patron members during the period for which allocations are to be made; and

10402 (b) to investor members, if any, in the ratio of each investor member's contributions to
10403 the total contributions of all investor members.

10404 (6) For purposes of allocation of profits and losses or specific items of profits or losses
10405 of a limited cooperative association to members, the organic rules may establish allocation
10406 units or methods based on separate classes of members or, for patron members, on class,
10407 function, division, district, department, allocation units, pooling arrangements, members'
10408 contributions, or other equitable methods.

10409 Section 343. Section **16-16-1202** is amended to read:

10410 **16-16-1202. Nonjudicial dissolution.**

10411 Except as otherwise provided in Sections 16-16-1203 and 16-16-1211, a limited
10412 cooperative association is dissolved and its activities [~~must~~] shall be wound up:

10413 (1) upon the occurrence of an event or at a time specified in the articles of
10414 organization;

10415 (2) upon the action of the association's organizers, board of directors, or members
10416 under Section 16-16-1204 or 16-16-1205; or

10417 (3) 90 days after the dissociation of a member, which results in the association having
10418 one patron member and no other members, unless the association:

10419 (a) has a sole member that is a cooperative; or

10420 (b) not later than the end of the 90-day period, admits at least one member in
10421 accordance with the organic rules and has at least two members, at least one of which is a
10422 patron member.

10423 Section 344. Section **16-16-1205** is amended to read:

10424 **16-16-1205. Voluntary dissolution by the board and members.**

10425 (1) Except as otherwise provided in Section 16-16-1204, for a limited cooperative
10426 association to voluntarily dissolve:

10427 (a) a resolution to dissolve [~~must~~] shall be approved by a majority vote of the board of
10428 directors unless a greater percentage is required by the organic rules;

10429 (b) the board of directors [~~must~~] shall call a members meeting to consider the
10430 resolution, to be held not later than 90 days after adoption of the resolution; and

10431 (c) the board of directors [~~must~~] shall mail or otherwise transmit or deliver to each
10432 member in a record that complies with Section 16-16-508:

10433 (i) the resolution required by Subsection (1)(a);

10434 (ii) a recommendation that the members vote in favor of the resolution or, if the board
10435 determines that because of conflict of interest or other special circumstances it should not make
10436 a favorable recommendation, the basis of that determination; and

10437 (iii) notice of the members meeting, which [~~must~~] shall be given in the same manner as
10438 notice of a special meeting of members.

10439 (2) Subject to Subsection (3), a resolution to dissolve [~~must~~] shall be approved by:

10440 (a) at least two-thirds of the voting power of members present at a members meeting
10441 called under Subsection (1)(b); and

10442 (b) if the limited cooperative association has investor members, at least a majority of
10443 the votes cast by patron members, unless the organic rules require a greater percentage.

10444 (3) The organic rules may require that the percentage of votes under Subsection (2)(a)
10445 is:

10446 (a) a different percentage that is not less than a majority of members voting at the
10447 meeting;

10448 (b) measured against the voting power of all members; or

10449 (c) a combination of Subsections (3)(a) and (b).

10450 Section 345. Section **16-16-1208** is amended to read:

10451 **16-16-1208. Known claims against dissolved limited cooperative association.**

10452 (1) Subject to Subsection (4), a dissolved limited cooperative association may dispose
10453 of the known claims against it by following the procedure in Subsections (2) and (3).

10454 (2) A dissolved limited cooperative association may notify its known claimants of the
10455 dissolution in a record. The notice [~~must~~] shall:

10456 (a) specify that a claim be in a record;

10457 (b) specify the information required to be included in the claim;

10458 (c) provide an address to which the claim [~~must~~] shall be sent;

10459 (d) state the deadline for receipt of the claim, which may not be less than 120 days after
10460 the date the notice is received by the claimant; and

10461 (e) state that the claim will be barred if not received by the deadline.

10462 (3) A claim against a dissolved limited cooperative association is barred if the
10463 requirements of Subsection (2) are met, and:

10464 (a) the association is not notified of the claimant's claim, in a record, by the deadline
10465 specified in the notice under Subsection (2)(d);

10466 (b) in the case of a claim that is timely received but rejected by the association, the
10467 claimant does not commence an action to enforce the claim against the association not later
10468 than 90 days after receipt of the notice of the rejection; or

10469 (c) if a claim is timely received but is neither accepted nor rejected by the association
10470 not later than 120 days after the deadline for receipt of claims, the claimant does not commence
10471 an action to enforce the claim against the association:

10472 (i) after the 120-day period; and

10473 (ii) not later than 90 days after the 120-day period.

10474 (4) This section does not apply to a claim based on an event occurring after the date of

10475 dissolution or a liability that is contingent on that date.

10476 Section 346. Section **16-16-1209** is amended to read:

10477 **16-16-1209. Other claims against dissolved limited cooperative association.**

10478 (1) A dissolved limited cooperative association may publish notice of its dissolution
10479 and request persons having claims against the association to present them in accordance with
10480 the notice.

10481 (2) A notice under Subsection (1) [~~must~~] shall:

10482 (a) be published:

10483 (i) at least once in a newspaper of general circulation in the county in which the
10484 dissolved limited cooperative association's principal office is located or, if the association does
10485 not have a principal office in this state, in the county in which the association's designated
10486 office is or was last located; and

10487 (ii) as required in Section 45-1-101;

10488 (b) describe the information required to be contained in a claim and provide an address
10489 to which the claim is to be sent; and

10490 (c) state that a claim against the association is barred unless an action to enforce the
10491 claim is commenced not later than three years after publication of the notice.

10492 (3) If a dissolved limited cooperative association publishes a notice in accordance with
10493 Subsection (2), the claim of each of the following claimants is barred unless the claimant
10494 commences an action to enforce the claim not later than three years after the first publication
10495 date of the notice:

10496 (a) a claimant that is entitled to but did not receive notice in a record under Section
10497 16-16-1208; and

10498 (b) a claimant whose claim is contingent or based on an event occurring after the
10499 effective date of dissolution.

10500 (4) A claim not barred under this section may be enforced:

10501 (a) against a dissolved limited cooperative association, to the extent of its undistributed
10502 assets; or

10503 (b) if the association's assets have been distributed in connection with winding up the
10504 association's activities against a member or holder of financial rights to the extent of that
10505 person's proportionate share of the claim or the association's assets distributed to the person in

10506 connection with the winding up, whichever is less. The person's total liability for all claims
10507 under this Subsection (4) [~~shall not~~] may not exceed the total amount of assets distributed to
10508 the person as part of the winding up of the association.

10509 Section 347. Section **16-16-1212** is amended to read:

10510 **16-16-1212. Reinstatement following administrative dissolution.**

10511 (1) A limited cooperative association that has been dissolved administratively may
10512 apply to the division for reinstatement not later than two years after the effective date of
10513 dissolution. The application [~~must~~] shall be delivered to the division for filing and state:

- 10514 (a) the name of the association and the effective date of its administrative dissolution;
- 10515 (b) that the grounds for dissolution either did not exist or have been eliminated; and
- 10516 (c) that the association's name satisfies the requirements of Section 16-16-111.

10517 (2) If the division determines that an application contains the information required by
10518 Subsection (1) and that the information is correct, the division shall:

- 10519 (a) prepare a declaration of reinstatement;
- 10520 (b) file the original of the declaration; and
- 10521 (c) serve a copy of the declaration on the association.

10522 (3) When reinstatement under this section becomes effective, it relates back to and
10523 takes effect as of the effective date of the administrative dissolution, and the limited
10524 cooperative association may resume or continue its activities as if the administrative
10525 dissolution had not occurred.

10526 Section 348. Section **16-16-1213** is amended to read:

10527 **16-16-1213. Denial of reinstatement -- Appeal.**

10528 (1) If the division denies a limited cooperative association's application for
10529 reinstatement following administrative dissolution, the division shall prepare and file a notice
10530 that explains the reason for denial and serve the association with a copy of the notice.

10531 (2) Not later than 30 days after service of a notice of denial of reinstatement by the
10532 division, a limited cooperative association may appeal the denial by petitioning the district
10533 court to set aside the dissolution. The petition [~~must~~] shall be served on the division and
10534 contain a copy of the division's declaration of dissolution, the association's application for
10535 reinstatement, and the division's notice of denial.

10536 (3) The court may summarily order the division to reinstate the dissolved cooperative

10537 association or may take other action the court considers appropriate.

10538 Section 349. Section **16-16-1303** is amended to read:

10539 **16-16-1303. Pleading.**

10540 In a derivative action to enforce a right of a limited cooperative association, the
10541 complaint [~~must~~] shall state:

10542 (1) the date and content of the plaintiff's demand under Subsection 16-16-1301(1) and
10543 the association's response;

10544 (2) if 90 days have not expired since the demand, how irreparable harm to the
10545 association would result by waiting for the expiration of 90 days; and

10546 (3) if the association agreed to bring an action demanded, that the action has not been
10547 brought within a reasonable time.

10548 Section 350. Section **16-16-1402** is amended to read:

10549 **16-16-1402. Application for certificate of authority.**

10550 (1) A foreign cooperative may apply for a certificate of authority by delivering an
10551 application to the division for filing. The application [~~must~~] shall state:

10552 (a) the name of the foreign cooperative and, if the name does not comply with Section
10553 16-16-111, an alternative name adopted pursuant to Section 16-16-1405;

10554 (b) the name of the state or other jurisdiction under whose law the foreign cooperative
10555 is organized;

10556 (c) the street address and, if different, mailing address of the principal office and, if the
10557 law of the jurisdiction under which the foreign cooperative is organized requires the foreign
10558 cooperative to maintain another office in that jurisdiction, the street address and, if different,
10559 mailing address of the required office;

10560 (d) the street address and, if different, mailing address of the foreign cooperative's
10561 designated office in this state, and the name of the foreign cooperative's agent for service of
10562 process at the designated office; and

10563 (e) the name, street address and, if different, mailing address of each of the foreign
10564 cooperative's current directors and officers.

10565 (2) A foreign cooperative shall deliver with a completed application under Subsection
10566 (1) a certificate of good standing or a similar record signed by the division or other official
10567 having custody of the foreign cooperative's publicly filed records in the state or other

10568 jurisdiction under whose law the foreign cooperative is organized.

10569 Section 351. Section **16-16-1405** is amended to read:

10570 **16-16-1405. Noncomplying name of foreign cooperative.**

10571 (1) A foreign cooperative whose name does not comply with Section 16-16-111 may
10572 not obtain a certificate of authority until it adopts, for the purpose of transacting business in
10573 this state, an alternative name that complies with Section 16-16-111. A foreign cooperative
10574 that adopts an alternative name under this Subsection (1) and then obtains a certificate of
10575 authority with that name need not also comply with Section 42-2-5. After obtaining a
10576 certificate of authority with an alternative name, a foreign cooperative's business in this state
10577 [~~must~~] shall be transacted under that name unless the foreign cooperative is authorized under
10578 Section 42-2-5 to transact business in this state under another name.

10579 (2) If a foreign cooperative authorized to transact business in this state changes its
10580 name to one that does not comply with Section 16-16-111, it may not thereafter transact
10581 business in this state until it complies with Subsection (1) and obtains an amended certificate of
10582 authority.

10583 Section 352. Section **16-16-1406** is amended to read:

10584 **16-16-1406. Revocation of certificate of authority.**

10585 (1) A certificate of authority may be revoked by the division in the manner provided in
10586 Subsection (2) if the foreign cooperative does not:

10587 (a) pay, not later than 60 days after the due date, any fee, tax, or penalty due to the
10588 division under this chapter or any other law of this state;

10589 (b) deliver, not later than 60 days after the due date, its annual report;

10590 (c) appoint and maintain an agent for service of process; or

10591 (d) deliver for filing a statement of change not later than 30 days after a change has
10592 occurred in the name of the agent or the address of the foreign cooperative's designated office.

10593 (2) To revoke a certificate of authority, the division [~~must~~] shall file a notice of
10594 revocation and send a copy to the foreign cooperative's registered agent for service of process
10595 in this state or, if the foreign cooperative does not appoint and maintain an agent for service of
10596 process in this state, to the foreign cooperative's principal office. The notice [~~must~~] shall state:

10597 (a) the revocation's effective date, which [~~must~~] shall be at least 60 days after the date
10598 the division sends the copy; and

10599 (b) the foreign cooperative's noncompliance that is the reason for the revocation.

10600 (3) The authority of a foreign cooperative to transact business in this state ceases on the
10601 effective date of the notice of revocation unless before that date the foreign cooperative cures
10602 each failure to comply stated in the notice. If the foreign cooperative cures the failures, the
10603 division shall so indicate on the filed notice.

10604 Section 353. Section **16-16-1407** is amended to read:

10605 **16-16-1407. Cancellation of certificate of authority -- Effect of failure to have**
10606 **certificate.**

10607 (1) To cancel its certificate of authority, a foreign cooperative [~~must~~] shall deliver to
10608 the division for filing a notice of cancellation. The certificate is canceled when the notice
10609 becomes effective under Section 16-16-203.

10610 (2) A foreign cooperative transacting business in this state may not maintain an action
10611 or proceeding in this state unless it has a certificate of authority.

10612 (3) The failure of a foreign cooperative to have a certificate of authority does not
10613 impair the validity of a contract or act of the foreign cooperative or prevent the foreign
10614 cooperative from defending an action or proceeding in this state.

10615 (4) A member of a foreign cooperative is not liable for the obligations of the foreign
10616 cooperative solely by reason of the foreign cooperative's having transacted business in this state
10617 without a certificate of authority.

10618 (5) If a foreign cooperative transacts business in this state without a certificate of
10619 authority or cancels its certificate, it appoints the division as its agent for service of process for
10620 an action arising out of the transaction of business in this state.

10621 Section 354. Section **16-16-1503** is amended to read:

10622 **16-16-1503. Notice and action on disposition of assets.**

10623 For a limited cooperative association to dispose of assets under Section 16-16-1502:

10624 (1) a majority of the board of directors, or a greater percentage if required by the
10625 organic rules, [~~must~~] shall approve the proposed disposition; and

10626 (2) the board of directors [~~must~~] shall call a members meeting to consider the proposed
10627 disposition, hold the meeting not later than 90 days after approval of the proposed disposition
10628 by the board, and mail or otherwise transmit or deliver in a record to each member:

10629 (a) the terms of the proposed disposition;

10630 (b) a recommendation that the members approve the disposition, or if the board
10631 determines that because of conflict of interest or other special circumstances it should not make
10632 a favorable recommendation, the basis for that determination;

10633 (c) a statement of any condition of the board's submission of the proposed disposition
10634 to the members; and

10635 (d) notice of the meeting at which the proposed disposition will be considered, which
10636 [~~must~~] shall be given in the same manner as notice of a special meeting of members.

10637 Section 355. Section **16-16-1504** is amended to read:

10638 **16-16-1504. Disposition of assets.**

10639 (1) Subject to Subsection (2), a disposition of assets under Section 16-16-1502 [~~must~~]
10640 shall be approved by:

10641 (a) at least two-thirds of the voting power of members present at a members meeting
10642 called under Subsection 16-16-1503(2); and

10643 (b) if the limited cooperative association has investor members, at least a majority of
10644 the votes cast by patron members, unless the organic rules require a greater percentage vote by
10645 patron members.

10646 (2) The organic rules may require that the percentage of votes under Subsection (1)(a)
10647 is:

10648 (a) a different percentage that is not less than a majority of members voting at the
10649 meeting;

10650 (b) measured against the voting power of all members; or

10651 (c) a combination of Subsections (2)(a) and (b).

10652 (3) Subject to any contractual obligations, after a disposition of assets is approved and
10653 at any time before the consummation of the disposition, a limited cooperative association may
10654 approve an amendment to the contract for disposition or the resolution authorizing the
10655 disposition or approve abandonment of the disposition:

10656 (a) as provided in the contract or the resolution; and

10657 (b) except as prohibited by the resolution, with the same affirmative vote of the board
10658 of directors and of the members as was required to approve the disposition.

10659 (4) The voting requirements for districts, classes, or voting groups under Section
10660 16-16-404 apply to approval of a disposition of assets under this part.

10661 Section 356. Section **16-16-1602** is amended to read:

10662 **16-16-1602. Conversion.**

10663 (1) An entity that is not a limited cooperative association may convert to a limited
10664 cooperative association and a limited cooperative association may convert to an entity that is
10665 not a limited cooperative association pursuant to this section, Sections 16-16-1603 through
10666 16-16-1605, and a plan of conversion, if:

10667 (a) the other entity's organic law authorizes the conversion;

10668 (b) the conversion is not prohibited by the law of the jurisdiction that enacted the other
10669 entity's organic law; and

10670 (c) the other entity complies with its organic law in effecting the conversion.

10671 (2) A plan of conversion [**must**] shall be in a record and [**must**] shall include:

10672 (a) the name and form of the entity before conversion;

10673 (b) the name and form of the entity after conversion;

10674 (c) the terms and conditions of the conversion, including the manner and basis for
10675 converting interests in the converting entity into any combination of money, interests in the
10676 converted entity, and other consideration; and

10677 (d) the organizational documents of the proposed converted entity.

10678 Section 357. Section **16-16-1603** is amended to read:

10679 **16-16-1603. Action on plan of conversion by converting limited cooperative**
10680 **association.**

10681 (1) For a limited cooperative association to convert to another entity, a plan of
10682 conversion [**must**] shall be approved by a majority of the board of directors, or a greater
10683 percentage if required by the organic rules, and the board of directors [**must**] shall call a
10684 members meeting to consider the plan of conversion, hold the meeting not later than 90 days
10685 after approval of the plan by the board, and mail or otherwise transmit or deliver in a record to
10686 each member:

10687 (a) the plan, or a summary of the plan and a statement of the manner in which a copy of
10688 the plan in a record may be reasonably obtained by a member;

10689 (b) a recommendation that the members approve the plan of conversion, or if the board
10690 determines that because of a conflict of interest or other circumstances it should not make a
10691 favorable recommendation, the basis for that determination;

10692 (c) a statement of any condition of the board's submission of the plan of conversion to
10693 the members; and

10694 (d) notice of the meeting at which the plan of conversion will be considered, which
10695 [~~must~~] shall be given in the same manner as notice of a special meeting of members.

10696 (2) Subject to Subsections (3) and (4), a plan of conversion [~~must~~] shall be approved
10697 by:

10698 (a) at least two-thirds of the voting power of members present at a members meeting
10699 called under Subsection (1); and

10700 (b) if the limited cooperative association has investor members, at least a majority of
10701 the votes cast by patron members, unless the organic rules require a greater percentage vote by
10702 patron members.

10703 (3) The organic rules may require that the percentage of votes under Subsection (2)(a)
10704 is:

10705 (a) a different percentage that is not less than a majority of members voting at the
10706 meeting;

10707 (b) measured against the voting power of all members; or

10708 (c) a combination of Subsections (3)(a) and (b).

10709 (4) The vote required to approve a plan of conversion may not be less than the vote
10710 required for the members of the limited cooperative association to amend the articles of
10711 organization.

10712 (5) Consent in a record to a plan of conversion by a member [~~must~~] shall be delivered
10713 to the limited cooperative association before delivery of articles of conversion for filing if as a
10714 result of the conversion the member will have:

10715 (a) personal liability for an obligation of the association; or

10716 (b) an obligation or liability for an additional contribution.

10717 (6) Subject to Subsection (5) and any contractual rights, after a conversion is approved
10718 and at any time before the effective date of the conversion, a converting limited cooperative
10719 association may amend a plan of conversion or abandon the planned conversion:

10720 (a) as provided in the plan; and

10721 (b) except as prohibited by the plan, by the same affirmative vote of the board of
10722 directors and of the members as was required to approve the plan.

- 10723 (7) The voting requirements for districts, classes, or voting groups under Section
10724 16-16-404 apply to approval of a conversion under this part.
- 10725 Section 358. Section **16-16-1604** is amended to read:
- 10726 **16-16-1604. Filings required for conversion -- Effective date.**
- 10727 (1) After a plan of conversion is approved:
- 10728 (a) a converting limited cooperative association shall deliver to the division for filing
10729 articles of conversion, which [~~must~~] shall include:
- 10730 (i) a statement that the limited cooperative association has been converted into another
10731 entity;
- 10732 (ii) the name and form of the converted entity and the jurisdiction of its governing
10733 statute;
- 10734 (iii) the date the conversion is effective under the governing statute of the converted
10735 entity;
- 10736 (iv) a statement that the conversion was approved as required by this chapter;
- 10737 (v) a statement that the conversion was approved as required by the governing statute
10738 of the converted entity; and
- 10739 (vi) if the converted entity is an entity organized in a jurisdiction other than this state
10740 and is not authorized to transact business in this state, the street address and, if different,
10741 mailing address of an office which the division may use for purposes of Section 16-16-120; and
- 10742 (b) if the converting entity is not a converting limited cooperative association, the
10743 converting entity shall deliver to the division for filing articles of organization, which [~~must~~]
10744 shall include, in addition to the information required by Section 16-16-302:
- 10745 (i) a statement that the association was converted from another entity;
- 10746 (ii) the name and form of the converting entity and the jurisdiction of its governing
10747 statute; and
- 10748 (iii) a statement that the conversion was approved in a manner that complied with the
10749 converting entity's governing statute.
- 10750 (2) A conversion becomes effective:
- 10751 (a) if the converted entity is a limited cooperative association, when the articles of
10752 conversion take effect pursuant to Subsection 16-16-203(3); or
- 10753 (b) if the converted entity is not a limited cooperative association, as provided by the

10754 governing statute of the converted entity.

10755 Section 359. Section **16-16-1606** is amended to read:

10756 **16-16-1606. Merger.**

10757 (1) One or more limited cooperative associations may merge with one or more other
10758 entities pursuant to this part and a plan of merger if:

10759 (a) the governing statute of each of the other entities authorizes the merger;

10760 (b) the merger is not prohibited by the law of a jurisdiction that enacted any of those
10761 governing statutes; and

10762 (c) each of the other entities complies with its governing statute in effecting the
10763 merger.

10764 (2) A plan of merger [~~must~~] shall be in a record and [~~must~~] shall include:

10765 (a) the name and form of each constituent entity;

10766 (b) the name and form of the surviving entity and, if the surviving entity is to be
10767 created by the merger, a statement to that effect;

10768 (c) the terms and conditions of the merger, including the manner and basis for
10769 converting the interests in each constituent entity into any combination of money, interests in
10770 the surviving entity, and other consideration;

10771 (d) if the surviving entity is to be created by the merger, the surviving entity's
10772 organizational documents;

10773 (e) if the surviving entity is not to be created by the merger, any amendments to be
10774 made by the merger to the surviving entity's organizational documents; and

10775 (f) if a member of a constituent limited cooperative association will have personal
10776 liability with respect to a surviving entity, the identity of the member by descriptive class or
10777 other reasonable manner.

10778 Section 360. Section **16-16-1607** is amended to read:

10779 **16-16-1607. Notice and action on plan of merger by constituent limited**
10780 **cooperative association.**

10781 (1) For a limited cooperative association to merge with another entity, a plan of merger
10782 [~~must~~] shall be approved by a majority vote of the board of directors or a greater percentage if
10783 required by the association's organic rules.

10784 (2) The board of directors shall call a members meeting to consider a plan of merger

10785 approved by the board, hold the meeting not later than 90 days after approval of the plan by the
10786 board, and mail or otherwise transmit or deliver in a record to each member:

10787 (a) the plan of merger, or a summary of the plan and a statement of the manner in
10788 which a copy of the plan in a record may be reasonably obtained by a member;

10789 (b) a recommendation that the members approve the plan of merger, or if the board
10790 determines that because of conflict of interest or other special circumstances it should not make
10791 a favorable recommendation, the basis for that determination;

10792 (c) a statement of any condition of the board's submission of the plan of merger to the
10793 members; and

10794 (d) notice of the meeting at which the plan of merger will be considered, which [~~must~~]
10795 shall be given in the same manner as notice of a special meeting of members.

10796 Section 361. Section **16-16-1608** is amended to read:

10797 **16-16-1608. Approval or abandonment of merger by members.**

10798 (1) Subject to Subsections (2) and (3), a plan of merger [~~must~~] shall be approved by:

10799 (a) at least two-thirds of the voting power of members present at a members meeting
10800 called under Subsection 16-16-1607(2); and

10801 (b) if the limited cooperative association has investor members, at least a majority of
10802 the votes cast by patron members, unless the organic rules require a greater percentage vote by
10803 patron members.

10804 (2) The organic rules may provide that the percentage of votes under Subsection (1)(a)
10805 is:

10806 (a) a different percentage that is not less than a majority of members voting at the
10807 meeting;

10808 (b) measured against the voting power of all members; or

10809 (c) a combination of Subsections (2)(a) and (b).

10810 (3) The vote required to approve a plan of merger may not be less than the vote
10811 required for the members of the limited cooperative association to amend the articles of
10812 organization.

10813 (4) Consent in a record to a plan of merger by a member [~~must~~] shall be delivered to
10814 the limited cooperative association before delivery of articles of merger for filing pursuant to
10815 Section 16-16-1609 if as a result of the merger the member will have:

- 10816 (a) personal liability for an obligation of the association; or
- 10817 (b) an obligation or liability for an additional contribution.
- 10818 (5) Subject to Subsection (4) and any contractual rights, after a merger is approved, and
- 10819 at any time before the effective date of the merger, a limited cooperative association that is a
- 10820 party to the merger may approve an amendment to the plan of merger or approve abandonment
- 10821 of the planned merger:
- 10822 (a) as provided in the plan; and
- 10823 (b) except as prohibited by the plan, with the same affirmative vote of the board of
- 10824 directors and of the members as was required to approve the plan.
- 10825 (6) The voting requirements for districts, classes, or voting groups under Section
- 10826 16-16-404 apply to approval of a merger under this part.
- 10827 Section 362. Section **16-16-1609** is amended to read:
- 10828 **16-16-1609. Filings required for merger -- Effective date.**
- 10829 (1) After each constituent entity has approved a merger, articles of merger [~~must~~] shall
- 10830 be signed on behalf of each constituent entity by an authorized representative.
- 10831 (2) The articles of merger [~~must~~] shall include:
- 10832 (a) the name and form of each constituent entity and the jurisdiction of its governing
- 10833 statute;
- 10834 (b) the name and form of the surviving entity, the jurisdiction of its governing statute,
- 10835 and, if the surviving entity is created by the merger, a statement to that effect;
- 10836 (c) the date the merger is effective under the governing statute of the surviving entity;
- 10837 (d) if the surviving entity is to be created by the merger and:
- 10838 (i) will be a limited cooperative association, the limited cooperative association's
- 10839 articles of organization; or
- 10840 (ii) will be an entity other than a limited cooperative association, the organizational
- 10841 document that creates the entity;
- 10842 (e) if the surviving entity is not created by the merger, any amendments provided for in
- 10843 the plan of merger to the organizational document that created the entity;
- 10844 (f) a statement as to each constituent entity that the merger was approved as required
- 10845 by the entity's governing statute;
- 10846 (g) if the surviving entity is a foreign organization not authorized to transact business

10847 in this state, the street address and, if different, mailing address of an office which the division
10848 may use for the purposes of Section 16-16-120; and

10849 (h) any additional information required by the governing statute of any constituent
10850 entity.

10851 (3) Each limited cooperative association that is a party to a merger shall deliver the
10852 articles of merger to the division for filing.

10853 (4) A merger becomes effective under this part:

10854 (a) if the surviving entity is a limited cooperative association, upon the later of:

10855 (i) compliance with Subsection (3); or

10856 (ii) subject to Subsection 16-16-203(3), as specified in the articles of merger; or

10857 (b) if the surviving entity is not a limited cooperative association, as provided by the
10858 governing statute of the surviving entity.

10859 Section 363. Section **16-16-1701** is amended to read:

10860 **16-16-1701. Uniformity of application and construction.**

10861 In applying and construing this uniform act, consideration [~~must~~] shall be given to the
10862 need to promote uniformity of the law with respect to its subject matter among states that enact
10863 it.

10864 Section 364. Section **16-17-202** is amended to read:

10865 **16-17-202. Addresses in filings.**

10866 Whenever a provision of this chapter other than Subsection 16-17-209(1)(d) requires
10867 that a filing state an address, the filing [~~must~~] shall state:

10868 (1) an actual street address or rural route box number in this state; and

10869 (2) a mailing address in this state, if different from the address under Subsection (1).

10870 Section 365. Section **16-17-203** is amended to read:

10871 **16-17-203. Appointment of registered agent.**

10872 (1) A registered agent filing [~~must~~] shall state:

10873 (a) the name of the represented entity's commercial registered agent; or

10874 (b) if the entity does not have a commercial registered agent:

10875 (i) the name and address of the entity's noncommercial registered agent; or

10876 (ii) the title of an office or other position with the entity if service of process is to be
10877 sent to the person holding that office or position, and the address of the business office of that

10878 person.

10879 (2) The appointment of a registered agent pursuant to Subsection (1)(a) or (b)(i) is an
10880 affirmation by the represented entity that the agent has consented to serve as such.

10881 (3) The division shall make available in a record as soon as practicable a daily list of
10882 filings that contain the name of a registered agent. The list [~~must~~] shall:

10883 (a) be available for at least 14 calendar days;

10884 (b) list in alphabetical order the names of the registered agents; and

10885 (c) state the type of filing and name of the represented entity making the filing.

10886 Section 366. Section **16-17-204** is amended to read:

10887 **16-17-204. Listing of commercial registered agent.**

10888 (1) An individual or a domestic or foreign entity may become listed as a commercial
10889 registered agent by filing with the division a commercial registered agent listing statement
10890 signed by or on behalf of the person which states:

10891 (a) the name of the individual or the name, type, and jurisdiction of organization of the
10892 entity;

10893 (b) that the person is in the business of serving as a commercial registered agent in this
10894 state; and

10895 (c) the address of a place of business of the person in this state to which service of
10896 process and other notice and documents being served on or sent to entities represented by it
10897 may be delivered.

10898 (2) A commercial registered agent listing statement may include the information
10899 regarding acceptance of service of process in a record by the commercial registered agent
10900 provided for in Subsection 16-17-301(4).

10901 (3) If the name of a person filing a commercial registered agent listing statement is not
10902 distinguishable on the records of the division from the name of another commercial registered
10903 agent listed under this section, the person [~~must~~] shall adopt a fictitious name that is
10904 distinguishable and use that name in its statement and when it does business in this state as a
10905 commercial registered agent.

10906 (4) A commercial registered agent listing statement takes effect on filing.

10907 (5) The division shall note the filing of the commercial registered agent listing
10908 statement in the index of filings maintained by the division for each entity represented by the

10909 registered agent at the time of the filing. The statement has the effect of deleting the address of
10910 the registered agent from the registered agent filing of each of those entities.

10911 Section 367. Section **16-17-210** is amended to read:

10912 **16-17-210. Appointment of agent by nonfiling or nonqualified foreign entity.**

10913 (1) A domestic entity that is not a filing entity or a nonqualified foreign entity may file
10914 with the division a statement appointing an agent for service of process signed on behalf of the
10915 entity which states:

10916 (a) the name, type, and jurisdiction of organization of the entity; and

10917 (b) the information required by Subsection 16-17-203(1).

10918 (2) A statement appointing an agent for service of process takes effect on filing.

10919 (3) The appointment of a registered agent under this section does not qualify a
10920 nonqualified foreign entity to do business in this state and is not sufficient alone to create
10921 personal jurisdiction over the nonqualified foreign entity in this state.

10922 (4) A statement appointing an agent for service of process may not be rejected for
10923 filing because the name of the entity filing the statement is not distinguishable on the records of
10924 the division from the name of another entity appearing in those records. The filing of a
10925 statement appointing an agent for service of process does not make the name of the entity filing
10926 the statement unavailable for use by another entity.

10927 (5) An entity that has filed a statement appointing an agent for service of process may
10928 cancel the statement by filing a statement of cancellation, which shall take effect upon filing,
10929 and ~~must~~ shall state the name of the entity and that the entity is canceling its appointment of
10930 an agent for service of process in this state. A statement appointing an agent for service of
10931 process which has not been canceled earlier is effective for a period of five years after the date
10932 of filing.

10933 (6) A statement appointing an agent for service of process for a nonqualified foreign
10934 entity terminates automatically on the date the entity becomes a qualified foreign entity.

10935 Section 368. Section **16-17-301** is amended to read:

10936 **16-17-301. Service of process on entities.**

10937 (1) A registered agent is an agent of the represented entity authorized to receive service
10938 of any process, notice, or demand required or permitted by law to be served on the entity.

10939 (2) If an entity that previously filed a registered agent filing with the division no longer

10940 has a registered agent, or if its registered agent cannot with reasonable diligence be served, the
10941 entity may be served by registered or certified mail, return receipt requested, addressed to the
10942 governors of the entity by name at its principal office in accordance with any applicable
10943 judicial rules and procedures. The names of the governors and the address of the principal
10944 office may be as shown in the most recent annual report filed with the division. Service is
10945 perfected under this Subsection (2) at the earliest of:

- 10946 (a) the date the entity receives the mail;
 - 10947 (b) the date shown on the return receipt, if signed on behalf of the entity; or
 - 10948 (c) five days after its deposit with the United States Postal Service, if correctly
10949 addressed and with sufficient postage.
- 10950 (3) If process, notice, or demand cannot be served on an entity pursuant to Subsection
10951 (1) or (2), service of process may be made by handing a copy to the manager, clerk, or other
10952 person in charge of any regular place of business or activity of the entity if the person served is
10953 not a plaintiff in the action.
- 10954 (4) Service of process, notice, or demand on a registered agent [~~must~~] shall be in the
10955 form of a written document, except that service may be made on a commercial registered agent
10956 in such other forms of a record, and subject to such requirements as the agent has stated from
10957 time to time in its listing under Section 16-17-204 that it will accept.
- 10958 (5) Service of process, notice, or demand may be perfected by any other means
10959 prescribed by law other than this chapter.

10960 Section 369. Section **16-17-402** is amended to read:

10961 **16-17-402. Consistency of application.**

10962 In applying and construing this chapter, consideration [~~must~~] shall be given to the need
10963 to promote consistency of the law with respect to its subject matter among states that enact it.

Legislative Review Note
as of 1-27-10 9:59 AM

Office of Legislative Research and General Counsel

H.B. 274 - Statutory Construction Compliance Amendments

Fiscal Note

2010 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

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