

DISABILITY AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

To the extent possible, this bill replaces outdated terms relating to persons with a disability with updated terms.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ except where impracticable due to language used in federal law, uniform law, interstate compacts, or case law, replaces terms as follows:
 - replaces the term "mental retardation," and its variations, with "intellectual disability";
 - replaces the term "crippled," with "disability";
 - replaces the term "disabled person," and similar references, with the term "person with a disability" or similar variations;
 - replaces the term "mentally ill person" and similar references, with the term "person with a mental illness" or similar variations;
 - replaces the term "paraplegic" and similar references, with the term "person with paraplegia" or similar variations;
 - replaces the term "guilty and mentally ill," with the term "guilty with a mental illness";
 - replaces the term "guilty of a lesser offense and mentally ill," with the term "guilty of a lesser offense with a mental illness"; and
- ▶ makes technical changes.

30 **Money Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 This bill provides an effective date.

34 This bill coordinates with H.B. 13, Immunizations for Teen Mothers, by providing
35 technical amendments.

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **9-4-801**, as last amended by Laws of Utah 2010, Chapter 286

39 **9-4-802**, as last amended by Laws of Utah 2010, Chapter 278

40 **9-4-903**, as last amended by Laws of Utah 2001, Chapter 319

41 **17B-2a-823**, as renumbered and amended by Laws of Utah 2007, Chapter 329

42 **19-6-102**, as last amended by Laws of Utah 2007, Chapter 72

43 **20A-1-501**, as last amended by Laws of Utah 2006, Chapter 264

44 **20A-3-108**, as last amended by Laws of Utah 2007, Chapter 75

45 **20A-3-403**, as last amended by Laws of Utah 2006, Chapter 273

46 **20A-3-406**, as last amended by Laws of Utah 2010, Chapter 169

47 **20A-3-408**, as last amended by Laws of Utah 2002, Chapter 112

48 **20A-3-410**, as last amended by Laws of Utah 2006, Chapter 16

49 **20A-8-401**, as last amended by Laws of Utah 2010, Chapter 177

50 **23-19-1**, as last amended by Laws of Utah 2008, Chapter 69

51 **23-19-14**, as last amended by Laws of Utah 2003, Chapter 171

52 **23-19-36**, as last amended by Laws of Utah 1999, Chapter 128

53 **23-19-38.3**, as enacted by Laws of Utah 2010, Chapter 192

54 **23-20-12**, as last amended by Laws of Utah 1975, Chapter 60

55 **24-1-7**, as last amended by Laws of Utah 2004, Chapter 296

56 **26-1-18**, as last amended by Laws of Utah 1991, Chapter 112

57 **26-2-27**, as last amended by Laws of Utah 1998, Chapter 263

- 58 **26-4-7**, as last amended by Laws of Utah 2001, Chapter 278
59 **26-10-1**, as last amended by Laws of Utah 2001, Chapter 73
60 **26-10-2**, as enacted by Laws of Utah 1981, Chapter 126
61 **26-10-6**, as last amended by Laws of Utah 2010, Chapter 286
62 **26-18-3**, as last amended by Laws of Utah 2010, Chapters 149, 323, 340, and 391
63 **26-18-3.1**, as enacted by Laws of Utah 1994, Chapter 314
64 **26-18-501**, as enacted by Laws of Utah 2004, Chapter 215
65 **26-19-13.5**, as last amended by Laws of Utah 2004, Chapter 72
66 **26-21-3**, as last amended by Laws of Utah 2008, Chapter 74
67 **26-21-9.5**, as last amended by Laws of Utah 2009, Chapter 267
68 **26-21-13.5**, as last amended by Laws of Utah 1993, Chapter 201
69 **26-35a-102**, as enacted by Laws of Utah 2004, Chapter 284
70 **26-35a-103**, as last amended by Laws of Utah 2009, Chapter 83
71 **26-35a-108**, as enacted by Laws of Utah 2005, Chapter 31
72 **31A-1-301**, as last amended by Laws of Utah 2010, Chapter 10
73 **31A-22-611**, as last amended by Laws of Utah 2006, Chapter 188
74 **31A-22-614**, as last amended by Laws of Utah 2001, Chapter 116
75 **31A-22-625**, as last amended by Laws of Utah 2010, Chapters 10 and 68
76 **31A-22-802**, as last amended by Laws of Utah 2004, Chapter 90
77 **31A-23a-114**, as renumbered and amended by Laws of Utah 2003, Chapter 298
78 **31A-26-215**, as enacted by Laws of Utah 2001, Chapter 116
79 **31A-36-111**, as last amended by Laws of Utah 2009, Chapter 355
80 **34-38-14**, as last amended by Laws of Utah 2010, Chapter 284
81 **34-41-106**, as last amended by Laws of Utah 1997, Chapter 375
82 **34A-2-107**, as last amended by Laws of Utah 2010, Chapter 286
83 **34A-2-413**, as last amended by Laws of Utah 2010, Chapter 59
84 **34A-2-703**, as renumbered and amended by Laws of Utah 1997, Chapter 375
85 **34A-2-902**, as last amended by Laws of Utah 2008, Chapter 3

86 **34A-2-903**, as renumbered and amended by Laws of Utah 2005, Chapter 243
87 **34A-3-104**, as renumbered and amended by Laws of Utah 1997, Chapter 375
88 **34A-3-107**, as renumbered and amended by Laws of Utah 1997, Chapter 375
89 **34A-4-101**, as renumbered and amended by Laws of Utah 1997, Chapter 375
90 **34A-4-102**, as renumbered and amended by Laws of Utah 1997, Chapter 375
91 **34A-8a-102**, as renumbered and amended by Laws of Utah 2009, Chapter 158
92 **34A-8a-301**, as renumbered and amended by Laws of Utah 2009, Chapter 158
93 **34A-8a-302**, as renumbered and amended by Laws of Utah 2009, Chapter 158
94 **34A-8a-303**, as renumbered and amended by Laws of Utah 2009, Chapter 158
95 **39-1-59**, as last amended by Laws of Utah 1988, Chapter 210
96 **41-6a-1011**, as renumbered and amended by Laws of Utah 2005, Chapter 2
97 **41-22-2**, as last amended by Laws of Utah 2009, Chapters 289 and 311
98 **49-11-403**, as last amended by Laws of Utah 2010, Chapters 257, 266, and 321
99 **49-11-404**, as last amended by Laws of Utah 2010, Chapters 266 and 321
100 **49-12-601**, as renumbered and amended by Laws of Utah 2002, Chapter 250
101 **49-14-502**, as last amended by Laws of Utah 2003, Chapter 240
102 **49-14-504**, as last amended by Laws of Utah 2009, Chapter 224
103 **49-15-502**, as last amended by Laws of Utah 2003, Chapter 240
104 **49-15-504**, as last amended by Laws of Utah 2009, Chapter 224
105 **49-16-201**, as last amended by Laws of Utah 2010, Chapter 266
106 **49-16-502**, as renumbered and amended by Laws of Utah 2002, Chapter 250
107 **49-16-504**, as last amended by Laws of Utah 2003, Chapter 240
108 **49-16-602**, as last amended by Laws of Utah 2007, Chapter 130
109 **49-21-102**, as last amended by Laws of Utah 2007, Chapter 130
110 **49-21-401**, as last amended by Laws of Utah 2010, Chapter 321
111 **49-21-403**, as last amended by Laws of Utah 2010, Chapters 266 and 321
112 **49-22-402**, as enacted by Laws of Utah 2010, Chapter 266
113 **53-3-807**, as last amended by Laws of Utah 2009, Chapter 315

- 114 **53-10-208.1**, as last amended by Laws of Utah 2009, Chapter 356
- 115 **53A-1a-704**, as last amended by Laws of Utah 2009, Chapter 197
- 116 **53A-3-204**, as enacted by Laws of Utah 1988, Chapter 2
- 117 **53A-9-103**, as last amended by Laws of Utah 2001, Chapters 73 and 86
- 118 **53A-15-205**, as last amended by Laws of Utah 2002, Chapter 210
- 119 **53A-17a-112**, as last amended by Laws of Utah 2010, Chapter 3
- 120 **53A-17a-127**, as last amended by Laws of Utah 2010, Chapter 305
- 121 **53B-23-101**, as enacted by Laws of Utah 2006, Chapter 301
- 122 **54-1-1.6**, as last amended by Laws of Utah 2002, Chapter 176
- 123 **57-21-5**, as last amended by Laws of Utah 1993, Chapter 114
- 124 **58-15-2**, as last amended by Laws of Utah 1993, Chapter 297
- 125 **58-15-3**, as repealed and reenacted by Laws of Utah 1993, Chapter 297
- 126 **58-17b-503**, as last amended by Laws of Utah 2005, Chapter 160
- 127 **58-17b-701**, as last amended by Laws of Utah 2008, Chapter 382
- 128 **58-26a-307**, as last amended by Laws of Utah 2009, Chapter 183
- 129 **58-31b-102**, as last amended by Laws of Utah 2008, Chapters 214 and 382
- 130 **58-31b-401**, as last amended by Laws of Utah 2008, Chapters 214 and 382
- 131 **58-60-114**, as last amended by Laws of Utah 2009, Chapter 356
- 132 **58-60-509**, as last amended by Laws of Utah 2009, Chapter 356
- 133 **58-61-602**, as last amended by Laws of Utah 2009, Chapter 356
- 134 **58-67-601**, as last amended by Laws of Utah 2008, Chapter 382
- 135 **58-68-601**, as last amended by Laws of Utah 2008, Chapter 382
- 136 **58-69-601**, as last amended by Laws of Utah 2008, Chapter 382
- 137 **58-71-601**, as last amended by Laws of Utah 2008, Chapter 382
- 138 **58-73-401**, as last amended by Laws of Utah 2010, Chapter 324
- 139 **59-2-1101**, as last amended by Laws of Utah 2007, Chapter 329
- 140 **59-2-1104**, as last amended by Laws of Utah 2010, Chapter 71
- 141 **59-2-1105**, as last amended by Laws of Utah 2008, Chapters 104 and 382

142 **59-2-1109**, as last amended by Laws of Utah 2009, Chapter 72
143 **59-7-602**, as enacted by Laws of Utah 1993, Chapter 169
144 **59-10-1011**, as renumbered and amended by Laws of Utah 2006, Chapter 223
145 **62A-1-108.5**, as last amended by Laws of Utah 2008, Chapter 382
146 **62A-2-101**, as last amended by Laws of Utah 2009, Chapter 75
147 **62A-2-120**, as last amended by Laws of Utah 2010, Chapter 365
148 **62A-2-122**, as last amended by Laws of Utah 2009, Chapter 75
149 **62A-4a-1010**, as last amended by Laws of Utah 2008, Chapters 3 and 299
150 **62A-5-101**, as last amended by Laws of Utah 2009, Chapter 75
151 **62A-5-103**, as last amended by Laws of Utah 2008, Chapter 382
152 **62A-5-104**, as last amended by Laws of Utah 2009, Chapter 75
153 **62A-5-110**, as last amended by Laws of Utah 1998, Chapter 145
154 **62A-5-201**, as last amended by Laws of Utah 2010, Chapter 42
155 **62A-5-206**, as last amended by Laws of Utah 1996, Chapter 79
156 **62A-5-207**, as last amended by Laws of Utah 1992, Chapter 104
157 **62A-5-302**, as last amended by Laws of Utah 2004, Chapter 114
158 **62A-5-304**, as last amended by Laws of Utah 1991, Chapter 207
159 **62A-5-305**, as last amended by Laws of Utah 1991, Chapter 207
160 **62A-5-308**, as last amended by Laws of Utah 1993, Chapter 132
161 **62A-5-309**, as last amended by Laws of Utah 2004, Chapter 114
162 **62A-5-310**, as enacted by Laws of Utah 1988, Chapter 1
163 **62A-5-311**, as last amended by Laws of Utah 2004, Chapter 114
164 **62A-5-312**, as last amended by Laws of Utah 2004, Chapter 114
165 **62A-5-313**, as last amended by Laws of Utah 2008, Chapter 382
166 **62A-5-316**, as enacted by Laws of Utah 1988, Chapter 1
167 **62A-5-317**, as last amended by Laws of Utah 2004, Chapter 114
168 **62A-5-318**, as enacted by Laws of Utah 1993, Chapter 132
169 **62A-6-101**, as last amended by Laws of Utah 2005, Chapter 254

- 170 **62A-11-111**, as last amended by Laws of Utah 1994, Chapter 12
- 171 **62A-15-605**, as last amended by Laws of Utah 2010, Chapter 286
- 172 **62A-15-608**, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
- 173 Chapter 8
- 174 **62A-15-610**, as last amended by Laws of Utah 2003, Chapter 195
- 175 **62A-15-616**, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
- 176 Chapter 8
- 177 **62A-15-619**, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
- 178 Chapter 8
- 179 **62A-15-629**, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
- 180 Chapter 8
- 181 **62A-15-631**, as last amended by Laws of Utah 2003, Chapter 303
- 182 **62A-15-632**, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
- 183 Chapter 8
- 184 **62A-15-644**, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
- 185 Chapter 8
- 186 **62A-15-706**, as renumbered and amended by Laws of Utah 2002, Fifth Special Session,
- 187 Chapter 8
- 188 **62A-15-902**, as last amended by Laws of Utah 2010, Chapter 218
- 189 **63M-9-103**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 190 **64-9b-1**, as last amended by Laws of Utah 1998, Chapter 363
- 191 **67-19-27**, as last amended by Laws of Utah 2009, Chapter 344
- 192 **68-3-12.5**, as enacted by Laws of Utah 2010, Chapter 254
- 193 **71-10-1**, as last amended by Laws of Utah 2007, Chapter 329
- 194 **71-10-2**, as last amended by Laws of Utah 2000, Chapter 134
- 195 **71-11-2**, as last amended by Laws of Utah 2007, Chapter 173
- 196 **72-10-601**, as last amended by Laws of Utah 2007, Chapter 329
- 197 **75-2-801**, as repealed and reenacted by Laws of Utah 1998, Chapter 39

198 **75-5-303**, as last amended by Laws of Utah 1988, Chapter 104
199 **75-5-316**, as last amended by Laws of Utah 2001, Chapter 73
200 **75-5-408**, as enacted by Laws of Utah 1975, Chapter 150
201 **75-5-425**, as last amended by Laws of Utah 1977, Chapter 194
202 **75-5-501**, as last amended by Laws of Utah 2003, Chapter 241
203 **76-3-203.5**, as last amended by Laws of Utah 2010, Chapter 334
204 **76-3-406**, as last amended by Laws of Utah 2007, Chapter 339
205 **76-5-109**, as last amended by Laws of Utah 2008, Chapter 45
206 **76-5-110**, as last amended by Laws of Utah 2009, Chapter 219
207 **77-13-1**, as last amended by Laws of Utah 2007, Chapter 306
208 **77-16a-101**, as last amended by Laws of Utah 1994, Chapter 13
209 **77-16a-102**, as last amended by Laws of Utah 2009, Chapter 206
210 **77-16a-103**, as last amended by Laws of Utah 2002, Chapter 61
211 **77-16a-104**, as last amended by Laws of Utah 2003, Chapter 206
212 **77-16a-201**, as last amended by Laws of Utah 2002, Chapter 61
213 **77-16a-202**, as last amended by Laws of Utah 2002, Fifth Special Session, Chapter 8
214 **77-16a-203**, as last amended by Laws of Utah 2005, Chapter 61
215 **77-16a-204**, as last amended by Laws of Utah 2002, Fifth Special Session, Chapter 8
216 **77-16a-205**, as enacted by Laws of Utah 1992, Chapter 171
217 **77-16a-302**, as last amended by Laws of Utah 2002, Fifth Special Session, Chapter 8
218 **77-16a-304**, as last amended by Laws of Utah 2005, Chapter 61
219 **77-16a-306**, as enacted by Laws of Utah 1992, Chapter 171
220 **77-18-1**, as last amended by Laws of Utah 2009, Chapter 81
221 **77-18-1.1**, as last amended by Laws of Utah 2009, Chapter 337
222 **77-18-8.3**, as enacted by Laws of Utah 1996, Chapter 210
223 **77-18-8.5**, as enacted by Laws of Utah 1996, Chapter 210
224 **77-27-2**, as last amended by Laws of Utah 2010, Chapter 110
225 **77-27-5.3**, as enacted by Laws of Utah 1996, Chapter 161

- 226 **77-27-10.5**, as last amended by Laws of Utah 1997, Chapter 10
- 227 **77-33-5**, as enacted by Laws of Utah 1980, Chapter 15
- 228 **77-38-302**, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and
- 229 amended by Laws of Utah 2008, Chapter 3
- 230 **78A-2-302**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 231 **78A-6-103**, as last amended by Laws of Utah 2009, Chapter 146
- 232 **78A-6-117 (Superseded 07/01/11)**, as renumbered and amended by Laws of Utah
- 233 2008, Chapter 3
- 234 **78A-6-117 (Effective 07/01/11)**, as last amended by Laws of Utah 2010, Chapter 276
- 235 **78A-11-108**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 236 **78B-3-110**, as renumbered and amended by Laws of Utah 2008, Chapter 3

Utah Code Sections Affected by Coordination Clause:

- 237 **26-10-1**, as last amended by Laws of Utah 2001, Chapter 73
- 238 **26-10-2**, as enacted by Laws of Utah 1981, Chapter 126

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

242 Section 1. Section **9-4-801** is amended to read:

243 **9-4-801. Creation.**

244 (1) There is created the Homeless Coordinating Committee.

245 (2) (a) The committee shall consist of the state planning coordinator, the state
246 superintendent of public instruction, the chair of the board of trustees of the Utah Housing
247 Corporation, and the executive directors of the Department of Human Services, the Department
248 of Corrections, the Department of Community and Culture, the Department of Workforce
249 Services, and the Department of Health, or their designees.

250 (b) The governor shall appoint the chair from among these members.

251 (3) The governor may also appoint as members of the committee representatives of
252 local governments, local housing authorities, local law enforcement agencies, and of federal
253 and private agencies and organizations concerned with the homeless, [~~mentally ill~~] persons

254 with a mental illness, the elderly, single-parent families, substance abusers, and persons with a
255 disability.

256 (4) (a) Except as required by Subsection (4)(b), as terms of current committee members
257 expire, the governor shall appoint each new member or reappointed member to a four-year
258 term.

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

263 (c) A person appointed under this Subsection (4) may not be appointed to serve more
264 than three consecutive terms.

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

267 (6) A member may not receive compensation or benefits for the member's service, but
268 may receive per diem and travel expenses in accordance with:

269 (a) Section 63A-3-106;

270 (b) Section 63A-3-107; and

271 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
272 63A-3-107.

273 Section 2. Section **9-4-802** is amended to read:

274 **9-4-802. Purposes of Homeless Coordinating Committee -- Uses of Pamela**
275 **Atkinson Homeless Account.**

276 (1) (a) The Homeless Coordinating Committee shall work to ensure that services
277 provided to the homeless by state agencies, local governments, and private organizations are
278 provided in a cost-effective manner.

279 (b) Programs funded by the committee shall emphasize emergency housing and
280 self-sufficiency, including placement in meaningful employment or occupational training
281 activities and, where needed, special services to meet the unique needs of the homeless who;

- 282 (i) have families with children ~~[, or who are mentally ill, disabled, or]~~;
- 283 (ii) have a disability or a mental illness; or
- 284 (iii) suffer from other serious challenges to employment and self-sufficiency.
- 285 (c) The committee may also fund treatment programs to ameliorate the effects of
- 286 substance abuse or a disability.
- 287 (2) The committee members designated in Subsection 9-4-801(2) shall:
- 288 (a) award contracts funded by the Pamela Atkinson Homeless Account with the advice
- 289 and input of those designated in Subsection 9-4-801(3);
- 290 (b) consider need, diversity of geographic location, coordination with or enhancement
- 291 of existing services, and the extensive use of volunteers; and
- 292 (c) give priority for funding to programs that serve the homeless who ~~[are mentally ill]~~
- 293 have a mental illness and who are in families with children.
- 294 (3) (a) In any fiscal year, no more than 80% of the funds in the Pamela Atkinson
- 295 Homeless Account may be allocated to organizations that provide services only in Salt Lake,
- 296 Davis, Weber, and Utah Counties.
- 297 (b) The committee may:
- 298 (i) expend up to 3% of its annual appropriation for administrative costs associated with
- 299 the allocation of funds from the Pamela Atkinson Homeless Account, and up to 2% of its
- 300 annual appropriation for marketing the account and soliciting donations to the account; and
- 301 (ii) pay for the initial costs of the State Tax Commission in implementing Section
- 302 59-10-1306 from the account.
- 303 (4) (a) The committee may not expend, except as provided in Subsection (4)(b), an
- 304 amount equal to the greater of \$50,000 or 20% of the amount donated to the Pamela Atkinson
- 305 Homeless Account during fiscal year 1988-89.
- 306 (b) If there are decreases in contributions to the account, the committee may expend
- 307 funds held in the account to provide program stability, but the committee shall reimburse the
- 308 amounts of those expenditures to the account.
- 309 (5) The committee shall make an annual report to the Economic Development and

310 Human Resources Appropriations Subcommittee regarding the programs and services funded
311 by contributions to the Pamela Atkinson Homeless Account.

312 (6) The money in the Pamela Atkinson Homeless Account shall be invested by the
313 state treasurer according to the procedures and requirements of Title 51, Chapter 7, State
314 Money Management Act, except that all interest or other earnings derived from the restricted
315 account shall be deposited in the restricted account.

316 Section 3. Section **9-4-903** is amended to read:

317 **9-4-903. Definitions.**

318 As used in this part the following words and terms have the following meanings, unless
319 a different meaning clearly appears from the context:

320 (1) "Bonds," "notes," and "other obligations" mean any bonds, notes, debentures,
321 interim certificates, or other evidences of financial indebtedness of the corporation authorized
322 to be issued under the provisions of this part.

323 (2) "Construction loan" means a short-term advance of money for the purpose of
324 constructing residential housing for low and moderate income persons.

325 (3) "Corporation" means the Utah Housing Corporation created by Section 9-4-904,
326 which, prior to July 1, 2001, was named the Utah Housing Finance Agency.

327 (4) "Employee of the corporation" means any individual who is employed by the
328 corporation but who is not a trustee of the corporation.

329 (5) "Financial assistance" includes:

330 (a) a loan, whether interest or noninterest bearing, secured or unsecured;

331 (b) a loan that converts to a grant upon the occurrence of specified conditions;

332 (c) a development loan;

333 (d) a grant;

334 (e) an award;

335 (f) a subsidy;

336 (g) a guarantee;

337 (h) a warranty;

- 338 (i) a lease;
- 339 (j) a payment on behalf of a borrower of an amount usually paid by a borrower,
- 340 including a down payment;
- 341 (k) any other form of financial assistance that helps provide affordable housing for low
- 342 and moderate income persons; or
- 343 (l) any combination of the foregoing.
- 344 (6) "Housing development" means a residential housing project, which includes
- 345 residential housing for low and moderate income persons.
- 346 (7) "Housing sponsor" includes a person who constructs, develops, rehabilitates,
- 347 purchases, or owns a housing development that is or will be subject to legally enforceable
- 348 restrictive covenants that require the housing development to provide, at least in part,
- 349 residential housing to low and moderate income persons, including a local public body, a
- 350 nonprofit, limited profit, or for profit corporation, a limited partnership, a limited liability
- 351 company, a joint venture, a subsidiary of the corporation, or any subsidiary of the subsidiary, a
- 352 cooperative, a mutual housing organization, or any other type of entity or arrangement that
- 353 helps provide affordable housing for low and moderate income persons.
- 354 (8) "Interest rate contract" means interest rate exchange contracts, interest rate floor
- 355 contracts, interest rate ceiling contracts, and other similar contracts authorized in a resolution
- 356 or policy adopted or approved by the trustees.
- 357 (9) "Local public body" means the state, any municipality, county, district, or other
- 358 subdivision or instrumentality of the state, including redevelopment agencies and housing
- 359 authorities created under Part 6, Housing Authorities.
- 360 (10) "Low and moderate income persons" means persons, irrespective of race, religion,
- 361 creed, national origin, or sex, as determined by the corporation to require such assistance as is
- 362 made available by this part on account of insufficient personal or family income taking into
- 363 consideration factors, including:
 - 364 (a) the amount of income that persons and families have available for housing needs;
 - 365 (b) the size of family;

366 (c) whether or not a person is a single head of household;

367 (d) the cost and condition of residential housing available; and

368 (e) the ability of persons and families to compete successfully in the normal private
369 housing market and to pay the amounts at which private enterprise is providing decent, safe,
370 and sanitary housing.

371 ~~[(13)]~~ (11) "Mortgage" means a mortgage, deed of trust, or other instrument securing a
372 mortgage loan and constituting a lien on real property (the property being held in fee simple or
373 on a leasehold under a lease having a remaining term, at the time the mortgage is acquired, of
374 not less than the term for repayment of the mortgage loan secured by the mortgage) improved
375 or to be improved by residential housing, creating a lien which may be first priority or
376 subordinate.

377 ~~[(11)]~~ (12) "Mortgage lender" means any bank, trust company, savings and loan
378 association, credit union, mortgage banker, or other financial institution authorized to transact
379 business in the state, any local public body, or any other entity, profit or nonprofit, that makes
380 mortgage loans.

381 ~~[(12)]~~ (13) "Mortgage loan" means a loan secured by a mortgage, which loan may bear
382 interest at either a fixed or variable rate or which may be noninterest bearing, the proceeds of
383 which are used for the purpose of financing the construction, development, rehabilitation, or
384 purchase of residential housing for low and moderate income persons, including low and
385 moderate income persons who:

386 (a) are first-time homebuyers~~[-]~~;

387 (b) are single heads of household~~[-]~~;

388 (c) are elderly~~[-]~~;

389 (d) are homeless~~[-or disabled-]~~; or

390 (e) have a disability.

391 (14) "Rehabilitation" includes the reconstruction, rehabilitation, improvement, and
392 repair of residential housing.

393 (15) "Residential housing" means a specific work or improvement within this state

394 undertaken primarily to provide dwelling accommodations, including land, buildings, and
395 improvements to land and buildings, whether in one to four family units or multifamily units,
396 and other incidental or appurtenant nonhousing facilities, or as otherwise specified by the
397 agency.

398 (16) "State" means the state of Utah.

399 (17) "State housing credit ceiling" means the amount specified in Subsection
400 42(h)(3)(C) of the Internal Revenue Code for each calendar year.

401 Section 4. Section **17B-2a-823** is amended to read:

402 **17B-2a-823. Public transit district special services.**

403 (1) As used in this section, "bureau" means a recreational, tourist, or convention bureau
404 established under Section 17-31-2.

405 (2) (a) A public transit district may lease its buses to private certified public carriers or
406 operate transit services requested by a public entity if a bureau certifies that privately owned
407 carriers furnishing like services or operating like equipment within the area served by the
408 bureau:

- 409 (i) have declined to provide the service; or
- 410 (ii) do not have the equipment necessary to provide the service.

411 (b) A public transit district may lease its buses or operate services as authorized under
412 Subsection (2)(a) outside of the area served by the district.

413 (3) If part or all of the transportation services are paid for by public funds, a public
414 transit district may:

415 (a) provide school bus services for transportation of pupils and supervisory personnel
416 between homes and school and other related school activities within the area served by the
417 district; or

418 (b) provide the transportation of passengers covered by ~~[an elderly or disabled persons]~~
419 a program within the district for people who are elderly or who have a disability.

420 (4) Notwithstanding the provisions in Subsection (3), a municipality or county is not
421 prohibited from providing the transportation services identified in Subsection (3).

422 Section 5. Section **19-6-102** is amended to read:

423 **19-6-102. Definitions.**

424 As used in this part:

425 (1) "Board" means the Solid and Hazardous Waste Control Board created in Section
426 19-1-106.

427 (2) "Closure plan" means a plan under Section 19-6-108 to close a facility or site at
428 which the owner or operator has disposed of nonhazardous solid waste or has treated, stored, or
429 disposed of hazardous waste including, if applicable, a plan to provide postclosure care at the
430 facility or site.

431 (3) (a) "Commercial nonhazardous solid waste treatment, storage, or disposal facility"
432 means a facility that receives, for profit, nonhazardous solid waste for treatment, storage, or
433 disposal.

434 (b) "Commercial nonhazardous solid waste treatment, storage, or disposal facility"
435 does not include a facility that:

436 (i) receives waste for recycling;

437 (ii) receives waste to be used as fuel, in compliance with federal and state
438 requirements; or

439 (iii) is solely under contract with a local government within the state to dispose of
440 nonhazardous solid waste generated within the boundaries of the local government.

441 (4) "Construction waste or demolition waste":

442 (a) means waste from building materials, packaging, and rubble resulting from
443 construction, demolition, remodeling, and repair of pavements, houses, commercial buildings,
444 and other structures, and from road building and land clearing; and

445 (b) does not include: asbestos; contaminated soils or tanks resulting from remediation
446 or cleanup at any release or spill; waste paints; solvents; sealers; adhesives; or similar
447 hazardous or potentially hazardous materials.

448 (5) "Demolition waste" has the same meaning as the definition of construction waste in
449 this section.

450 (6) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or
451 placing of any solid or hazardous waste into or on any land or water so that the waste or any
452 constituent of the waste may enter the environment, be emitted into the air, or discharged into
453 any waters, including groundwaters.

454 (7) "Executive secretary" means the executive secretary of the board.

455 (8) "Generation" or "generated" means the act or process of producing nonhazardous
456 solid or hazardous waste.

457 (9) "Hazardous waste" means a solid waste or combination of solid wastes other than
458 household waste which, because of its quantity, concentration, or physical, chemical, or
459 infectious characteristics may cause or significantly contribute to an increase in mortality or an
460 increase in serious irreversible or incapacitating reversible illness or may pose a substantial
461 present or potential hazard to human health or the environment when improperly treated,
462 stored, transported, disposed of, or otherwise managed.

463 (10) "Health facility" means hospitals, psychiatric hospitals, home health agencies,
464 hospices, skilled nursing facilities, intermediate care facilities, intermediate care facilities for
465 ~~[the mentally retarded]~~ people with an intellectual disability, residential health care facilities,
466 maternity homes or birthing centers, free standing ambulatory surgical centers, facilities owned
467 or operated by health maintenance organizations, and state renal disease treatment centers
468 including free standing hemodialysis units, the offices of private physicians and dentists
469 whether for individual or private practice, veterinary clinics, and mortuaries.

470 (11) "Household waste" means any waste material, including garbage, trash, and
471 sanitary wastes in septic tanks, derived from households, including single-family and
472 multiple-family residences, hotels and motels, bunk houses, ranger stations, crew quarters,
473 campgrounds, picnic grounds, and day-use recreation areas.

474 (12) "Infectious waste" means a solid waste that contains or may reasonably be
475 expected to contain pathogens of sufficient virulence and quantity that exposure to the waste by
476 a susceptible host could result in an infectious disease.

477 (13) "Manifest" means the form used for identifying the quantity, composition, origin,

478 routing, and destination of hazardous waste during its transportation from the point of
479 generation to the point of disposal, treatment, or storage.

480 (14) "Mixed waste" means any material that is a hazardous waste as defined in this
481 chapter and is also radioactive as defined in Section 19-3-102.

482 (15) "Modification plan" means a plan under Section 19-6-108 to modify a facility or
483 site for the purpose of disposing of nonhazardous solid waste or treating, storing, or disposing
484 of hazardous waste.

485 (16) "Operation plan" or "nonhazardous solid or hazardous waste operation plan"
486 means a plan or approval under Section 19-6-108, including:

487 (a) a plan to own, construct, or operate a facility or site for the purpose of disposing of
488 nonhazardous solid waste or treating, storing, or disposing of hazardous waste;

489 (b) a closure plan;

490 (c) a modification plan; or

491 (d) an approval that the executive secretary is authorized to issue.

492 (17) "Permittee" means a person who is obligated under an operation plan.

493 (18) (a) "Solid waste" means any garbage, refuse, sludge, including sludge from a
494 waste treatment plant, water supply treatment plant, or air pollution control facility, or other
495 discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting
496 from industrial, commercial, mining, or agricultural operations and from community activities
497 but does not include solid or dissolved materials in domestic sewage or in irrigation return
498 flows or discharges for which a permit is required under Title 19, Chapter 5, Water Quality
499 Act, or under the Water Pollution Control Act, 33 U.S.C., Section 1251, et seq.

500 (b) "Solid waste" does not include any of the following wastes unless the waste causes
501 a public nuisance or public health hazard or is otherwise determined to be a hazardous waste:

502 (i) certain large volume wastes, such as inert construction debris used as fill material;

503 (ii) drilling muds, produced waters, and other wastes associated with the exploration,
504 development, or production of oil, gas, or geothermal energy;

505 (iii) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste

506 generated primarily from the combustion of coal or other fossil fuels;

507 (iv) solid wastes from the extraction, beneficiation, and processing of ores and
508 minerals; or

509 (v) cement kiln dust.

510 (19) "Storage" means the actual or intended containment of solid or hazardous waste
511 either on a temporary basis or for a period of years in such a manner as not to constitute
512 disposal of the waste.

513 (20) "Transportation" means the off-site movement of solid or hazardous waste to any
514 intermediate point or to any point of storage, treatment, or disposal.

515 (21) "Treatment" means a method, technique, or process designed to change the
516 physical, chemical, or biological character or composition of any solid or hazardous waste so as
517 to neutralize the waste or render the waste nonhazardous, safer for transport, amenable for
518 recovery, amenable to storage, or reduced in volume.

519 (22) "Underground storage tank" means a tank which is regulated under Subtitle I of
520 the Resource Conservation and Recovery Act, 42 U.S.C., Section 6991, et seq.

521 Section 6. Section **20A-1-501** is amended to read:

522 **20A-1-501. Candidate vacancies -- Procedure for filling.**

523 (1) The state central committee of a political party, for candidates for United States
524 senator, United States representative, governor, lieutenant governor, attorney general, state
525 treasurer, and state auditor, and for legislative candidates whose legislative districts encompass
526 more than one county, and the county central committee of a political party, for all other party
527 candidates seeking an office elected at a regular general election, may certify the name of
528 another candidate to the appropriate election officer if:

529 (a) after the close of the period for filing declarations of candidacy and continuing
530 through the date 15 days before the date of the primary election:

531 (i) only one or two candidates from that party have filed a declaration of candidacy for
532 that office; and

533 (ii) one or both:

534 (A) dies;
535 (B) resigns because of [~~becoming physically or mentally disabled~~] acquiring a physical
536 or mental disability as certified by a physician; or

537 (C) is disqualified by an election officer for improper filing or nominating procedures;
538 or

539 (b) after the close of the primary election and continuing through the date of the voter
540 registration deadline for the general election as established in Section 20A-2-102.5, the party's
541 candidate:

542 (i) dies;
543 (ii) resigns because of [~~becoming physically or mentally disabled~~] acquiring a physical
544 or mental disability as certified by a physician;

545 (iii) is disqualified by an election officer for improper filing or nominating procedures;
546 or

547 (iv) resigns to become a candidate for President or Vice President of the United States.

548 (2) If no more than two candidates from a political party have filed a declaration of
549 candidacy for an office elected at a regular general election and one resigns to become the party
550 candidate for another position, the state central committee of that political party, for candidates
551 for governor, lieutenant governor, attorney general, state treasurer, and state auditor, and for
552 legislative candidates whose legislative districts encompass more than one county, and the
553 county central committee of that political party, for all other party candidates, may certify the
554 name of another candidate to the appropriate election officer.

555 (3) Each replacement candidate shall file a declaration of candidacy as required by
556 Title 20A, Chapter 9, Part 2, Candidate Qualifications and Declarations of Candidacy.

557 (4) A replacement candidate may not be certified for an election during the period
558 beginning on the day after the date of the voter registration deadline and continuing through the
559 date of the election.

560 Section 7. Section **20A-3-108** is amended to read:

561 **20A-3-108. Assisting disabled, illiterate, or blind voters.**

562 (1) Any voter who has a disability, or is blind, [disabled,] unable to read or write,
563 unable to read or write the English language, or is physically unable to enter a polling place,
564 may be given assistance by a person of the voter's choice.

565 (2) The person providing assistance may not be:

566 (a) the voter's employer;

567 (b) an agent of the employer;

568 (c) an officer or agent of the voter's union; or

569 (d) a candidate.

570 (3) The person providing assistance may not request, persuade, or otherwise induce the
571 voter to vote for or vote against any particular candidate or issue or release any information
572 regarding the voter's selection.

573 (4) Each time a voter is assisted, the poll worker shall note that fact in the official
574 register and the pollbook.

575 Section 8. Section **20A-3-403** is amended to read:

576 **20A-3-403. Definitions.**

577 As used in this part:

578 (1) (a) "Ballot," [~~"disabled voter's ballot"~~] "ballot of a person with a disability," and
579 "official Utah military ballot" [~~means~~] mean the same ballots that will be submitted to and used
580 by other voters of Utah at the primary or general election.

581 (b) "Ballot" includes any official federal ballot provided by any Act of Congress to
582 allow voting by voters in the military service of the United States.

583 (2) "Federal postcard application form" means the form created by the Federal Voting
584 Assistance Program (FVAP) which allows military and overseas citizens to register to vote and
585 apply for an absentee ballot.

586 (3) "Hostile fire zone" means a geographical area in which forces are assigned on
587 official temporary duty and placed in imminent danger of being exposed to hostile fire or
588 explosion of hostile mines.

589 (4) "Military voter" means each person who is qualified as a voter under the Utah

590 Constitution and laws or who is eligible for registration and who would, by registration, be
591 qualified to vote, and who is:

592 (a) a member of the armed forces of the United States while in the active service or is
593 the spouse or dependent of that member;

594 (b) a member of the merchant marine of the United States or is the spouse or dependent
595 of that member;

596 (c) a civilian employee of the United States in all categories who is serving outside the
597 territorial limits of the United States whether or not the employee is subject to the civil service
598 laws and the Classification Act of 1949, and whether or not the employee is paid from funds
599 appropriated by the Congress or is the spouse or dependent of that member when residing with
600 or accompanying them; and

601 (d) a member of religious groups or welfare agencies assisting members of the armed
602 forces, who is officially attached to and serving with the armed forces, or is the spouse or
603 dependent of that member.

604 (5) "Overseas citizen voter" means:

605 (a) a member of the armed forces of the United States while in the active service or the
606 spouse or dependent of that member;

607 (b) a member of the merchant marines of the United States or the spouse or dependent
608 of that member; and

609 (c) a citizen of the United States residing outside the territorial limits of the United
610 States or the spouse or dependent of that member when residing with them or accompanying
611 them.

612 Section 9. Section **20A-3-406** is amended to read:

613 **20A-3-406. Absentee ballots for military personnel and citizens living overseas --**
614 **Federal postcard applications for ballot.**

615 (1) (a) An application for an absentee ballot for a military voter who is located in the
616 United States shall be filed in the county clerk's office no later than the Friday immediately
617 before the day of election.

618 (b) A member of the military voting an absentee ballot at the office of the clerk shall
619 apply and cast the absentee ballot no later than the day before the election.

620 (2) (a) (i) A military voter stationed overseas and an overseas citizen voter shall file an
621 application for a ballot with the county clerk no later than 20 days before the date of the
622 election.

623 (ii) The application for an overseas military voter under Subsection (2)(a)(i) may be
624 filed electronically as provided in Section 20A-3-408.5.

625 (b) Upon receipt of a properly completed application for an absentee ballot signed by a
626 military voter or an overseas citizen voter, the county clerk shall mail an appropriate ballot to
627 the military voter or overseas citizen voter.

628 (c) At the time the ballot is furnished, the county clerk shall record, in a record book
629 provided for that purpose:

630 (i) the name and home address of the military voter or overseas citizen voter to whom
631 the ballot is mailed;

632 (ii) the address to which the ballot was mailed; and

633 (iii) the date the ballot was mailed.

634 (d) If the military voter or overseas citizen voter sends the absentee ballot application
635 to the lieutenant governor, the lieutenant governor shall forward the application to the county
636 clerk of the county where the military voter or overseas citizen voter is entitled to vote.

637 (e) If the county clerk rejects the application for an absentee ballot from a military or
638 overseas citizen voter, the county clerk shall inform the voter of the reasons for rejecting the
639 application.

640 (3) A military voter or overseas citizen voter who ~~[is physically disabled and]~~ has a
641 disability and is unable to see or write may apply for a ballot by having a commissioned,
642 noncommissioned, or petty officer not below the rank of sergeant or other person authorized to
643 administer oaths to apply for a ballot on the voter's behalf.

644 (4) (a) A federal postcard application issued under the authority of any Act of Congress
645 or federal regulation is acceptable, when properly executed, as an application for a ballot under

646 this chapter.

647 (b) The county clerk shall accept the completed postcard application as an application
648 for ballots for each election for federal office held in the next general election and shall send
649 the applicant a ballot for each of those elections, as required by Section 20A-3-407.

650 (5) The county clerk shall retain the application for use at the time the ballot is received
651 from the military voter or overseas citizen voter.

652 Section 10. Section **20A-3-408** is amended to read:

653 **20A-3-408. Voting of ballot by military or overseas citizen voter.**

654 (1) (a) The military or overseas citizen voter shall:

655 (i) upon receipt of the ballot, mark it in secret;

656 (ii) seal it in the ballot envelope provided for that purpose; and

657 (iii) execute the registration and voting certificate and mailing affidavit on the back of
658 the envelope.

659 (b) (i) If the military or overseas citizen voter [~~is physically disabled so as to be~~] has a
660 disability that renders the voter unable to see or write, [~~he~~] the voter may request assistance
661 from two persons, each of whom shall be qualified to certify to the registration and voting
662 certificate.

663 (ii) The military or overseas citizen voter shall tell those persons how [~~he~~] the citizen
664 wishes [~~his~~] the citizen's ballot marked.

665 (iii) Those persons shall mark the ballot as directed by the military or overseas citizen
666 voter in [~~his~~] the voter's presence.

667 (iv) One of the persons assisting the military or overseas citizen voter shall:

668 (A) read to the voter the registration and voting certificate upon the ballot;

669 (B) fill in its blanks as the voter directs; and

670 (C) sign, on the line provided for the signature of the voter, the name of the voter and
671 [~~his~~] the person's own name.

672 (2) (a) The ballot shall be sent by any available mail service to the county clerk who
673 issued it.

674 (b) The military or overseas citizen voter is not required to return the ballot by
675 registered mail.

676 (3) The ballot is not valid unless:

677 (a) (i) it is clearly postmarked by the appropriate military post office, the Fleet Post
678 Office (FPO) or the Army/Air Force Post Office (APO), before election day and received in the
679 office of the election officer before noon on the day of the official canvass following the
680 election; or

681 (ii) the voter has signed the mailing affidavit on the back of the ballot envelope and the
682 ballot is received in the office of the election officer before noon on the day of the official
683 canvass following the election.

684 (b) The county clerk shall cause a mailing affidavit to be printed on the back of the
685 ballot envelope that is in substantially the following form:

686 "I certify that I am/may be unable to obtain a proper postmark and, subject to penalty of
687 law for false statements, swear or affirm that this ballot was voted and mailed before the day of
688 the election.

689 Signature of
690 Voter _____

691 Date _____

692 To be signed when voter is physically unable to see or write:

693 _____ Signature of
694 additional witness who is a commissioned, noncommissioned, or petty officer not below the
695 rank of sergeant or its equivalent, or another person authorized to administer oaths who does
696 swear, under penalty of law for false statements, that at the request of
697 _____(name of the voter), I completed the mailing affidavit because the
698 voter was unable to see or write because of a physical disability."

699 Section 11. Section **20A-3-410** is amended to read:

700 **20A-3-410. Duty of election judges.**

701 (1) (a) Voting precinct election judges shall open envelopes containing military or

702 overseas citizen voter ballots that are in their custody on election day at the polling places
703 during the time the polls are open as provided in this subsection.

704 (b) The election judges shall:

705 (i) first, open the outer envelope only; and

706 (ii) unless the ballot is a ~~[disabled]~~ ballot of a military or overseas citizen ~~[voter's~~
707 ~~ballot]~~ with a disability, compare the signature of the military or overseas citizen voter on the
708 application with the signature on the registration and voting certificate.

709 (2) (a) The judges shall register the military or overseas citizen voter to vote if the
710 voter is not already registered if the judges find that:

711 (i) the registration and voting certificate appears to be executed in proper form and
712 contains information qualifying the military or overseas citizen voter to be registered as a voter;
713 and

714 (ii) the signatures on the certificate and the application correspond, where a
715 comparison is required.

716 (b) If the election judges determine that the registration and voting certificate is
717 insufficient or that the signatures do not correspond, they shall:

718 (i) disallow the registration; and

719 (ii) without opening the ballot envelope, mark across the face of the envelope
720 "Rejected as defective because of _____ ." with the reason for the rejection placed in the
721 blank.

722 (c) When a military or overseas citizen voter's name is entered upon the registration
723 books, the voter is considered to be registered and the registration and voting certificate, signed
724 and sworn to by the military or overseas citizen voter on the back of the ballot envelope,
725 together with ~~[his]~~ the military or overseas citizen voter's name upon the registration books,
726 constitute ~~[his]~~ the military or overseas citizen voter's registration record.

727 (d) Nothing in this title may abridge the right of the military or overseas citizen voter to
728 be registered as provided in this section.

729 (3) (a) After registering the voter, the judges shall carefully open the ballot envelope so

730 as not to destroy the information printed on it if they find that:

731 (i) the registration and voting certificate is sufficient; and

732 (ii) the signatures on the certificate and the application correspond, where a
733 comparison is required.

734 (b) The election judges shall:

735 (i) remove the ballot from the envelope without unfolding it or permitting it to be
736 opened or examined;

737 (ii) initial the stub in the same manner as for other ballots;

738 (iii) deposit the ballot in the proper ballot box; and

739 (iv) mark the official register and pollbook to show that the voter has voted.

740 (c) If the election judges determine that the registration and voting certificate is
741 insufficient or that the signatures do not correspond, they shall:

742 (i) disallow the vote; and

743 (ii) without opening the ballot envelope, mark across the face of the envelope
744 "Rejected as defective because of _____ ." with the reason for the rejection placed in the
745 blank.

746 (4) The election judges shall deposit the envelope, when the ballot is voted, and the
747 envelope with its contents unopened, when the absent vote is rejected, in the ballot box
748 containing the ballots.

749 (5) The county clerk shall retain and preserve the envelopes in the manner provided by
750 law for the retention and preservation of official ballots voted at that election.

751 Section 12. Section **20A-8-401** is amended to read:

752 **20A-8-401. Registered political parties -- Bylaws.**

753 (1) (a) Each registered state political party shall file a copy of its constitution and
754 bylaws with the lieutenant governor by January 1, 1995.

755 (b) Each new or unregistered state political party that seeks to become a registered
756 political party under the authority of this chapter shall file a copy of its proposed constitution
757 and bylaws at the time it files its registration information.

758 (c) Each registered state political party shall file revised copies of its constitution or
759 bylaws with the lieutenant governor within 15 days after the constitution or bylaws are adopted
760 or amended.

761 (2) Each state political party, each new political party seeking registration, and each
762 unregistered political party seeking registration shall ensure that its constitution or bylaws
763 contain:

764 (a) provisions establishing party organization, structure, membership, and governance
765 that include:

766 (i) a description of the position, selection process, qualifications, duties, and terms of
767 each party officer and committees defined by constitution and bylaws;

768 (ii) a provision requiring a designated party officer to serve as liaison with the
769 lieutenant governor on all matters relating to the political party's relationship with the state;

770 (iii) a description of the requirements for participation in party processes;

771 (iv) the dates, times, and quorum of any regularly scheduled party meetings,
772 conventions, or other conclaves; and

773 (v) a mechanism for making the names of delegates, candidates, and elected party
774 officers available to the public shortly after they are selected;

775 (b) a procedure for selecting party officers that allows active participation by party
776 members;

777 (c) a procedure for selecting party candidates at the federal, state, and county levels that
778 allows active participation by party members;

779 (d) (i) a procedure for selecting electors who are pledged to cast their votes in the
780 electoral college for the party's candidates for President and Vice President of the United
781 States; and

782 (ii) a procedure for filling vacancies in the office of presidential elector because of
783 death, refusal to act, failure to attend, ineligibility, or any other cause;

784 (e) a procedure for filling vacancies in the office of representative or senator because of
785 death, resignation, or ineligibility;

- 786 (f) a provision requiring the governor and lieutenant governor to run as a joint ticket;
- 787 (g) a procedure for replacing party candidates who die, [~~become disabled~~] acquire a
- 788 disability, or are disqualified before a primary or regular general election;
- 789 (h) provisions governing the deposit and expenditure of party funds, and governing the
- 790 accounting for, reporting, and audit of party financial transactions;
- 791 (i) provisions governing access to party records;
- 792 (j) a procedure for amending the constitution or bylaws that allows active participation
- 793 by party members or their representatives;
- 794 (k) a process for resolving grievances against the political party; and
- 795 (l) if desired by the political party, a process for consulting with, and obtaining the
- 796 opinion of, the political party's Utah Senate and Utah House members about:
 - 797 (i) the performance of the two United States Senators from Utah, including
 - 798 specifically:
 - 799 (A) their views and actions regarding the defense of state's rights and federalism; and
 - 800 (B) their performance in representing Utah's interests;
 - 801 (ii) the members' opinion about, or rating of, and support or opposition to the policy
 - 802 positions of any candidates for United States Senate from Utah, including incumbents,
 - 803 including specifically:
 - 804 (A) their views and actions regarding the defense of state's rights and federalism; and
 - 805 (B) their performance in representing Utah's interests; and
 - 806 (iii) the members' collective or individual endorsement or rating of a particular
 - 807 candidate for United States Senate from Utah.

808 Section 13. Section **23-19-1** is amended to read:

809 **23-19-1. Possession of licenses, certificates of registration, permits, and tags**
810 **required -- Nonassignability -- Exceptions -- Free fishing day.**

811 (1) A person may not engage in hunting, trapping, fishing, or seining protected wildlife
812 or in the sale, trade, or barter of protected wildlife or their parts without first having procured
813 the necessary licenses, certificates of registration, permits, and tags as provided under this

814 chapter and having at the same time the licenses, certificates of registration, permits, and tags
815 on his or her person, except as provided under Subsection (3).

816 (2) (a) Except as provided in Subsection (2)(b) a person may not:

817 (i) lend, transfer, sell, give, or assign licenses, certificates of registration, permits, or
818 tags belonging to the person or the rights granted by licenses, certificates of registration,
819 permits, or tags; or

820 (ii) use or attempt to use a license, certificate of registration, permit, or tag of another
821 person.

822 (b) The Wildlife Board may make exceptions to the prohibitions specified in
823 Subsection (2)(a) for purposes of:

824 (i) transporting wildlife;

825 (ii) taking protected wildlife for a person who has a permanent physical impairment
826 due to injury or disease, congenital or acquired, [~~which renders the person so severely disabled~~
827 ~~as to be~~] that results in the person having a disability that renders the person physically unable
828 to use a legal hunting weapon or fishing device; or

829 (iii) transferring a certificate of registration to harvest brine shrimp and brine shrimp
830 eggs to another person, if the certificate is transferred in connection with the sale or transfer of
831 the brine shrimp harvest operation or the harvesting equipment, subject to the restrictions
832 referred to under Subsection (2)(c).

833 (c) (i) A certificate of registration to harvest brine shrimp and brine shrimp eggs may
834 not be transferred without the approval of the division.

835 (ii) Application to allow the transfer of a certificate of registration to harvest brine
836 shrimp and brine shrimp eggs shall be made to the division on a form prescribed and furnished
837 by it.

838 (iii) The division may grant a transfer of a certificate of registration to harvest brine
839 shrimp and brine shrimp eggs if the proposed transferee meets all the requirements necessary to
840 obtain an original certificate of registration.

841 (3) No license, certificate of registration, permit, or tag is required to:

842 (a) fish on a free fishing day which the Wildlife Board may establish each year under
843 rules prescribed by the board;

844 (b) fish at a private fish pond operated in accordance with Section 23-15-10; or

845 (c) hunt birds on a commercial hunting area that the owner or operator is authorized to
846 propagate, keep, and release for shooting pursuant to a certificate of registration issued under
847 Section 23-17-6.

848 Section 14. Section **23-19-14** is amended to read:

849 **23-19-14. Persons residing in certain institutions authorized to fish without**
850 **license.**

851 (1) The Division of Wildlife Resources shall permit a person to fish without a license
852 if:

853 (a) (i) the person resides in:

854 (A) the Utah State Developmental Center in American Fork;

855 (B) the state hospital;

856 (C) a veteran's hospital;

857 (D) a veteran's nursing home;

858 (E) a mental health center;

859 (F) an intermediate care facility for [~~the mentally retarded~~] people with an intellectual
860 disability;

861 (G) a group home licensed by the Department of Human Services and operated under
862 contract with the Division of Services for People with Disabilities;

863 (H) a group home or other community-based placement licensed by the Department of
864 Human Services and operated under contract with the Division of Juvenile Justice Services;

865 (I) a private residential facility for at-risk youth licensed by the Department of Human
866 Services; or

867 (J) another similar institution approved by the division; or

868 (ii) the person is a youth who participates in a work camp operated by the Division of
869 Juvenile Justice Services;

- 870 (b) the person is properly supervised by a representative of the institution; and
- 871 (c) the institution obtains from the division a certificate of registration that specifies:
 - 872 (i) the date and place where the person will fish; and
 - 873 (ii) the name of the institution's representative who will supervise the person fishing.
- 874 (2) The institution must apply for the certificate of registration at least 10 days before
- 875 the fishing outing.

876 (3) (a) An institution that receives a certificate of registration authorizing at-risk youth
877 to fish shall provide instruction to the youth on fishing laws and regulations.

878 (b) The division shall provide educational materials to the institution to assist it in
879 complying with Subsection (3)(a).

880 Section 15. Section **23-19-36** is amended to read:

881 **23-19-36. Persons with a physical or intellectual disability, terminally ill persons,**
882 **and children in the custody of the state -- License to fish for free.**

883 (1) A resident who is blind, [~~paraplegic, or otherwise permanently disabled~~] has
884 paraplegia, or has another permanent disability so as to be permanently confined to a
885 wheelchair or the use of crutches, or who has lost either or both lower extremities, may receive
886 a free license to fish upon furnishing satisfactory proof of this fact to the Division of Wildlife
887 Resources.

888 (2) A resident who [~~is a mentally retarded person~~] has an intellectual disability and is
889 not eligible under Section 23-19-14 to fish without a license may receive a free license to fish
890 upon furnishing verification [~~of mental retardation, as defined in Section 62A-5-101,~~] from a
891 physician that the person has an intellectual disability.

892 (3) A resident who is terminally ill, and has less than five years to live, may receive a
893 free license to fish:

894 (a) upon furnishing verification from a physician; and

895 (b) if [~~he~~] the resident qualifies for assistance under any low income public assistance
896 program administered by a state agency.

897 (4) A child placed in the custody of the state by a court order may receive a free fishing

898 license upon furnishing verification of custody to the Division of Wildlife Resources.

899 Section 16. Section **23-19-38.3** is amended to read:

900 **23-19-38.3. Fishing licenses for disabled veterans -- Free or reduced price.**

901 (1) The division may make rules in accordance with Title 63G, Chapter 3, Utah
902 Administrative Rulemaking Act, under which a [~~disabled~~] veteran with a disability may receive
903 a fishing license free or at a reduced price.

904 (2) In making rules under this section, the division shall utilize the same guidelines for
905 disability as the United States Department of Veterans Affairs.

906 Section 17. Section **23-20-12** is amended to read:

907 **23-20-12. Airplanes or terrestrial or aquatic vehicles -- Use in taking wildlife**
908 **unlawful -- Exceptions.**

909 (1) It is unlawful for any person to take any wildlife from an airplane or any other
910 airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including
911 snowmobiles and other recreational vehicles, except as provided by this code or in the rules
912 and regulations of the Wildlife Board. [~~Provided, however, that an~~]

913 (2) ~~Notwithstanding Subsection (1), an individual validly licensed to hunt [who is a~~
914 ~~paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair~~
915 ~~or the use of crutches,]~~ may be authorized to hunt from a vehicle under terms and conditions
916 specified by the Wildlife Board[~~;~~] if the individual has:

917 (a) paraplegia; or

918 (b) a disability that permanently confines the individual to a wheelchair or the use of
919 crutches.

920 Section 18. Section **24-1-7** is amended to read:

921 **24-1-7. Hardship release of seized property.**

922 (1) After property is seized for forfeiture, a person or entity may not alienate, convey,
923 sequester, or attach that property until the court issues a final order of dismissal or an order of
924 forfeiture regarding the property.

925 (2) The seizing agency or the prosecuting attorney may authorize the release of

926 property seized for forfeiture to its owner if retention of actual custody is unnecessary.

927 (3) With the consent of a court of competent jurisdiction, the prosecuting attorney may
928 discontinue forfeiture proceedings and transfer the action to another state or federal agency
929 which has initiated forfeiture proceedings involving the same property.

930 (4) Property seized for forfeiture is considered to be in the custody of the district court
931 and subject only to:

932 (a) the orders and decrees of the court having jurisdiction over the property or the
933 forfeiture proceedings; and

934 (b) the acts of the seizing agency or the prosecuting attorney pursuant to this chapter.

935 (5) (a) An owner of property seized pursuant to this chapter may obtain release of the
936 property by posting with the district court a surety bond or cash in an amount equal to the
937 current fair market value of the property as determined by the court or by the parties'
938 stipulation.

939 (b) The district court may refuse to order the release of the property if:

940 (i) the bond tendered is inadequate;

941 (ii) the property is contraband or is retained as evidence; or

942 (iii) the property is particularly altered or designed for use in conduct giving cause for
943 forfeiture.

944 (c) If a surety bond or cash is posted and the property seized and then released on a
945 bond or cash is forfeited, the court shall order the forfeiture of the surety bond or cash in lieu of
946 the property.

947 (6) (a) As soon as practicable after seizure for forfeiture, and in no case later than 30
948 days after seizure for forfeiture, the seizing agency shall conduct a written inventory of the
949 property seized.

950 (b) The seizing agency shall deposit property that is in the form of cash or other readily
951 negotiable instruments into a restricted account maintained by the agency solely for the purpose
952 of managing and protecting the property from commingling, loss, or devaluation during the
953 pendency of the forfeiture proceedings.

954 (c) The seizing agency shall have in place written policy for the identification, tracking,
955 management, and safekeeping of seized property, which shall include a prohibition against the
956 transfer, sale, or auction of forfeited property to any employee of the seizing agency.

957 (d) An agency may not be awarded any funds from forfeiture through the Crime
958 Reduction Assistance Program under Section 24-1-19 if the agency has not established or
959 maintained the inventory policy, restricted account, and written policies required by this
960 Subsection (6).

961 (7) An owner is entitled to the immediate release of seized property from the seizing
962 agency pending the final determination of forfeiture if:

963 (a) the owner had a possessory interest in the property at the time of seizure;
964 (b) continued possession by the agency or the state pending the final disposition of the
965 forfeiture proceedings will cause substantial hardship to the owner, such as:

- 966 (i) preventing the functioning of a legitimate business;
- 967 (ii) preventing any individual from working;
- 968 (iii) preventing any minor child or student from attending school;
- 969 (iv) preventing or hindering any person from receiving necessary medical care;
- 970 (v) hindering the care of:

971 (A) an elderly [~~or disabled~~] dependent adult;

972 (B) a dependent child [~~or adult,~~] with a disability; or

973 (C) a dependent adult with a disability;

974 (vi) preventing an owner from retaining counsel to provide a defense in the forfeiture
975 proceeding; or

976 (vii) leaving any individual homeless, or any other condition that the court determines
977 causes a substantial hardship;

978 (c) the hardship from the continued possession by the agency of the seized property
979 outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred
980 if it is returned to the owner during the pendency of the proceeding; and

981 (d) determination of substantial hardship under this Subsection (7) is based upon the

982 property's use prior to the seizure.

983 (8) The right to appointed counsel under Section 24-1-9 applies throughout civil
984 forfeiture proceedings, including an owner's motion for hardship release.

985 (9) An owner may file a motion for hardship release:

986 (a) in the court in which forfeiture proceedings have commenced; or

987 (b) in any district court having jurisdiction over the property, if forfeiture proceedings
988 have not yet commenced.

989 (10) The motion for hardship release shall also be served upon the prosecuting attorney
990 or the seizing agency within 10 days after filing the motion.

991 (11) The court shall render a decision on a motion for hardship filed under this section
992 not later than 20 days after the date of filing, or 10 days after service upon the prosecuting
993 attorney or seizing agency, whichever is earlier, unless this period is extended by the parties or
994 by the court for good cause shown.

995 (12) (a) If the owner demonstrates substantial hardship pursuant to this section, the
996 court shall order the property immediately released to the owner pending completion of
997 proceedings by the government to obtain forfeiture of the property.

998 (b) The court may place conditions on release of the property as it finds necessary and
999 appropriate to preserve the availability of the property or its equivalent for forfeiture.

1000 (13) The hardship release does not apply if the seized property is:

1001 (a) contraband;

1002 (b) currency or other monetary instrument or electronic funds, unless the property is
1003 used to pay for the reasonable costs of defending against the forfeiture proceeding or
1004 constitutes the assets of a legitimate business; or

1005 (c) likely to be used to commit additional illegal acts if returned to the owner.

1006 (14) (a) The court may order property which has been seized for forfeiture to be sold as
1007 allowed by Subsection (15), leased, rented, or operated to satisfy a specified interest of any
1008 owner or interest holder, or to preserve the interests of any party on motion of that party.

1009 (b) The court may enter orders under Subsection (14)(a) after notice to persons known

1010 to have an interest in the property, and after an opportunity for a hearing.

1011 (15) (a) A sale may be ordered under Subsection (14) when the property is liable to
1012 perish, waste, or be significantly reduced in value, or when the expenses of maintaining the
1013 property are disproportionate to its value.

1014 (b) A third party designated by the court shall dispose of the property by commercially
1015 reasonable public sale and distribute the proceeds in the following order of priority:

1016 (i) first, for the payment of reasonable expenses incurred in connection with the sale;

1017 (ii) second, for the satisfaction of any interests, including those of interest holders, in
1018 the order of their priority as determined by Title 70A, Uniform Commercial Code; and

1019 (iii) third, any balance of the proceeds shall be preserved in the actual or constructive
1020 custody of the court, in an interest-bearing account, subject to further proceedings under this
1021 chapter.

1022 Section 19. Section **26-1-18** is amended to read:

1023 **26-1-18. Authority of department generally.**

1024 The department is the health, health planning, and medical assistance authority of the
1025 state and is the sole state agency for administration of federally assisted state programs or plans
1026 for public health, health planning, maternal and child health, [~~crippled children's services~~]
1027 services for children with a disability, and medical assistance.

1028 Section 20. Section **26-2-27** is amended to read:

1029 **26-2-27. Identifying birth certificates of missing persons -- Procedures.**

1030 (1) As used in this section:

1031 (a) "Division" means the Criminal Investigations and Technical Services Division,
1032 Department of Public Safety, in Title 53, Chapter 10, Criminal Investigation and Technical
1033 Services Act.

1034 (b) "Missing child" means a person younger than 18 years of age who is missing from
1035 [~~his~~] the person's home environment or a temporary placement facility for any reason, and
1036 whose whereabouts cannot be determined by the person responsible for the child's care.

1037 (c) "Missing person" means a person who:

1038 (i) is missing from [~~his~~] the person's home environment; and [~~is: (i) physically or~~
1039 ~~mentally disabled;~~]

1040 (ii) (A) has a physical or mental disability;

1041 [~~(ii)~~] (B) is missing under circumstances that indicate that [~~they are~~] the person is
1042 endangered, missing involuntarily, or a victim of a catastrophe; or

1043 [~~(iii)~~] (C) is a missing child.

1044 (2) (a) In accordance with Section 53-10-203, upon the state registrar's notification by
1045 the division that a person who was born in this state is missing, the state and local registrars
1046 shall flag the registered birth certificate of that person so that when a copy of the registered
1047 birth certificate or information regarding the birth record is requested, the state and local
1048 registrars are alerted to the fact the registered birth certificate is that of a missing person.

1049 (b) Upon notification by the division the missing person has been recovered, the state
1050 and local registrars shall remove the flag from that person's registered birth certificate.

1051 (3) The state and local registrars may not provide a copy of a registered birth certificate
1052 of any person whose record is flagged under Subsection (2), except as approved by the
1053 division.

1054 (4) (a) When a copy of the registered birth certificate of a person whose record has
1055 been flagged is requested in person, the state or local registrar shall require that person to
1056 complete a form supplying [~~his~~] that person's name, address, telephone number, and
1057 relationship to the missing person, and the name and birth date of the missing person.

1058 (b) The state or local registrar shall inform the requester that a copy of the registered
1059 birth certificate will be mailed to [~~him~~] the requester.

1060 (c) The state or local registrar shall note the physical description of the person making
1061 the request, and shall immediately notify the division of the request and the information
1062 obtained pursuant to this Subsection (4).

1063 (5) When a copy of the registered birth certificate of a person whose record has been
1064 flagged is requested in writing, the state or local registrar or [~~his~~] personnel of the state or local
1065 registrar shall immediately notify the division, and provide it with a copy of the written request.

1066 Section 21. Section **26-4-7** is amended to read:

1067 **26-4-7. Custody by medical examiner.**

1068 Upon notification under Section 26-4-8 or investigation by the medical examiner's
1069 office, the medical examiner shall assume custody of a deceased body if it appears that death
1070 was:

1071 (1) by violence, gunshot, suicide, or accident unless the accident is a highway accident.

1072 If the death was from a highway accident, custody shall only be assumed if an autopsy is
1073 required or permitted under the provisions of Section 26-4-13 or if requested by the law
1074 enforcement agency with jurisdiction over the highway accident;

1075 (2) sudden death while in apparent good health;

1076 (3) unattended deaths, except that an autopsy may only be performed in accordance
1077 with the provisions of Subsection 26-4-9(3);

1078 (4) under suspicious or unusual circumstances;

1079 (5) resulting from poisoning or overdose of drugs;

1080 (6) resulting from diseases that may constitute a threat to the public health;

1081 (7) resulting from disease, injury, toxic effect, or unusual exertion incurred within the
1082 scope of the decedent's employment;

1083 (8) due to sudden infant death syndrome;

1084 (9) resulting while the decedent was in prison, jail, police custody, the state hospital, or
1085 in a detention or medical facility operated for the treatment of [~~the mentally ill,~~] persons with a
1086 mental illness, persons who are emotionally disturbed, or delinquent persons;

1087 (10) associated with diagnostic or therapeutic procedures; or

1088 (11) described in this section when request is made to assume custody by a county or
1089 district attorney or law enforcement agency in connection with a potential homicide
1090 investigation or prosecution.

1091 Section 22. Section **26-10-1** is amended to read:

1092 **26-10-1. Definitions.**

1093 As used in this chapter:

1094 (1) "Maternal and child health services" means:
1095 (a) the provision of educational, preventative, diagnostic, and treatment services,
1096 including medical care, hospitalization, and other institutional care and aftercare, appliances,
1097 and facilitating services directed toward reducing infant mortality and improving the health of
1098 mothers and children provided, however, that nothing in this section shall be construed to
1099 allow any agency of the state to interfere with the rights of the parent of an unmarried minor in
1100 decisions about the providing of health information or services;
1101 (b) the development, strengthening, and improvement of standards and techniques
1102 relating to the services and care;
1103 (c) the training of personnel engaged in the provision, development, strengthening, or
1104 improvement of the services and care; and
1105 (d) necessary administrative services connected with Subsections (1)(a), (b), and (c).
1106 (2) [~~"Crippled children's services"~~] "Services for children with a disability" means:
1107 (a) the early location of [~~crippled~~] children with a disability, provided that any program
1108 of prenatal diagnosis for the purpose of detecting the possible disease or disabilities of an
1109 unborn child will not be used for screening, but rather will be utilized only when there are
1110 medical or genetic indications that warrant diagnosis;
1111 (b) the provision for [~~such~~] children described in Subsection (2)(a) of preventive,
1112 diagnosis, and treatment services, including medical care, hospitalization, and other
1113 institutional care and aftercare, appliances, and facilitating services directed toward the
1114 diagnosis of the condition of [~~such~~] those children or toward the restoration of the children to
1115 maximum physical and mental health;
1116 (c) the development, strengthening, and improvement of standards and techniques
1117 relating to such services and care;
1118 (d) the training of personnel engaged in the provision, development, strengthening, or
1119 improvement of such services and care; and
1120 (e) necessary administrative services connected with Subsections (2)(a), (b), and (c).
1121 Section 23. Section **26-10-2** is amended to read:

1122 **26-10-2. Maternal and child health services -- Services for children with a**
1123 **disability.**

1124 The department shall provide for maternal and child health services and [~~crippled~~
1125 ~~children's~~] services for children with a disability to individuals who need [~~such~~] these services
1126 and cannot reasonably obtain them from other sources.

1127 Section 24. Section **26-10-6** is amended to read:

1128 **26-10-6. Testing of newborn infants.**

1129 (1) Except in the case where parents object on the grounds that they are members of a
1130 specified, well-recognized religious organization whose teachings are contrary to the tests
1131 required by this section, each newborn infant shall be tested for:

1132 (a) phenylketonuria (PKU);

1133 (b) other metabolic diseases which may result in [~~mental retardation~~] an intellectual
1134 disability or brain damage and for which:

1135 (i) a preventive measure or treatment is available; and

1136 (ii) there exists a reliable laboratory diagnostic test method; and

1137 (c) (i) beginning July 1, 1998, for an infant born in a hospital with 100 or more live
1138 births annually, hearing loss; and

1139 (ii) beginning July 1, 1999, for an infant born in a setting other than a hospital with 100
1140 or more live births annually, hearing loss.

1141 (2) In accordance with Section 26-1-6, the department may charge fees for:

1142 (a) materials supplied by the department to conduct tests required under Subsection (1);

1143 (b) tests required under Subsection (1) conducted by the department;

1144 (c) laboratory analyses by the department of tests conducted under Subsection (1); and

1145 (d) the administrative cost of follow-up contacts with the parents or guardians of tested
1146 infants.

1147 (3) Tests for hearing loss under Subsection (1) shall be based on one or more methods
1148 approved by the Newborn Hearing Screening Committee, including:

1149 (a) auditory brainstem response;

- 1150 (b) automated auditory brainstem response; and
- 1151 (c) evoked otoacoustic emissions.
- 1152 (4) Results of tests for hearing loss under Subsection (1) shall be reported to:
- 1153 (a) parents when results of tests for hearing loss under Subsection (1) suggest that
- 1154 additional diagnostic procedures or medical interventions are necessary; and
- 1155 (b) the department.
- 1156 (5) (a) There is established the Newborn Hearing Screening Committee.
- 1157 (b) The committee shall advise the department on:
- 1158 (i) the validity and cost of newborn infant hearing loss testing procedures; and
- 1159 (ii) rules promulgated by the department to implement this section.
- 1160 (c) The committee shall be composed of at least 11 members appointed by the
- 1161 executive director, including:
- 1162 (i) one representative of the health insurance industry;
- 1163 (ii) one pediatrician;
- 1164 (iii) one family practitioner;
- 1165 (iv) one ear, nose, and throat specialist nominated by the Utah Medical Association;
- 1166 (v) two audiologists nominated by the Utah Speech-Language-Hearing Association;
- 1167 (vi) one representative of hospital neonatal nurseries;
- 1168 (vii) one representative of the Early Intervention Baby Watch Program administered by
- 1169 the department;
- 1170 (viii) one public health nurse;
- 1171 (ix) one consumer; and
- 1172 (x) the executive director or his designee.
- 1173 (d) Of the initial members of the committee, the executive director shall appoint as
- 1174 nearly as possible half to two-year terms and half to four-year terms. Thereafter, appointments
- 1175 shall be for four-year terms except:
- 1176 (i) for those members who have been appointed to complete an unexpired term; and
- 1177 (ii) as necessary to ensure that as nearly as possible the terms of half the appointments

1178 expire every two years.

1179 (e) A majority of the members constitute a quorum and a vote of the majority of the
1180 members present constitutes an action of the committee.

1181 (f) The committee shall appoint a chairman from its membership.

1182 (g) The committee shall meet at least quarterly.

1183 (h) A member may not receive compensation or benefits for the member's service, but
1184 may receive per diem and travel expenses in accordance with:

1185 (i) Section 63A-3-106;

1186 (ii) Section 63A-3-107; and

1187 (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
1188 63A-3-107.

1189 (i) The department shall provide staff for the committee.

1190 Section 25. Section **26-18-3** is amended to read:

1191 **26-18-3. Administration of Medicaid program by department -- Reporting to the**
1192 **Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility**
1193 **standards -- Internal audits -- Studies -- Health opportunity accounts.**

1194 (1) The department shall be the single state agency responsible for the administration
1195 of the Medicaid program in connection with the United States Department of Health and
1196 Human Services pursuant to Title XIX of the Social Security Act.

1197 (2) (a) The department shall implement the Medicaid program through administrative
1198 rules in conformity with this chapter, Title 63G, Chapter 3, Utah Administrative Rulemaking
1199 Act, the requirements of Title XIX, and applicable federal regulations.

1200 (b) The rules adopted under Subsection (2)(a) shall include, in addition to other rules
1201 necessary to implement the program:

1202 (i) the standards used by the department for determining eligibility for Medicaid
1203 services;

1204 (ii) the services and benefits to be covered by the Medicaid program; and

1205 (iii) reimbursement methodologies for providers under the Medicaid program.

1206 (3) (a) The department shall, in accordance with Subsection (3)(b), report to the Health
1207 and Human Services Appropriations Subcommittee when the department:

1208 (i) implements a change in the Medicaid State Plan;

1209 (ii) initiates a new Medicaid waiver;

1210 (iii) initiates an amendment to an existing Medicaid waiver;

1211 (iv) applies for an extension of an application for a waiver or an existing Medicaid
1212 waiver; or

1213 (v) initiates a rate change that requires public notice under state or federal law.

1214 (b) The report required by Subsection (3)(a) shall:

1215 (i) be submitted to the Health and Human Services Appropriations Subcommittee prior
1216 to the department implementing the proposed change; and

1217 (ii) include:

1218 (A) a description of the department's current practice or policy that the department is
1219 proposing to change;

1220 (B) an explanation of why the department is proposing the change;

1221 (C) the proposed change in services or reimbursement, including a description of the
1222 effect of the change;

1223 (D) the effect of an increase or decrease in services or benefits on individuals and
1224 families;

1225 (E) the degree to which any proposed cut may result in cost-shifting to more expensive
1226 services in health or human service programs; and

1227 (F) the fiscal impact of the proposed change, including:

1228 (I) the effect of the proposed change on current or future appropriations from the
1229 Legislature to the department;

1230 (II) the effect the proposed change may have on federal matching dollars received by
1231 the state Medicaid program;

1232 (III) any cost shifting or cost savings within the department's budget that may result
1233 from the proposed change; and

1234 (IV) identification of the funds that will be used for the proposed change, including any
1235 transfer of funds within the department's budget.

1236 (4) (a) The Department of Human Services shall report to the Legislative Health and
1237 Human Services Appropriations Subcommittee no later than December 31, 2010 in accordance
1238 with Subsection (4)(b).

1239 (b) The report required by Subsection (4)(a) shall include:

1240 (i) changes made by the division or the department beginning July 1, 2010 that effect
1241 the Medicaid program, a waiver under the Medicaid program, or an interpretation of Medicaid
1242 services or funding, that relate to care for children and youth in the custody of the Division of
1243 Child and Family Services or the Division of Juvenile Justice Services;

1244 (ii) the history and impact of the changes under Subsection (4)(b)(i);

1245 (iii) the Department of Human Service's plans for addressing the impact of the changes
1246 under Subsection (4)(b)(i); and

1247 (iv) ways to consolidate administrative functions within the Department of Human
1248 Services, the Department of Health, the Division of Child and Family Services, and the
1249 Division of Juvenile Justice Services to more efficiently meet the needs of children and youth
1250 with mental health and substance disorder treatment needs.

1251 (5) Any rules adopted by the department under Subsection (2) are subject to review and
1252 reauthorization by the Legislature in accordance with Section 63G-3-502.

1253 (6) The department may, in its discretion, contract with the Department of Human
1254 Services or other qualified agencies for services in connection with the administration of the
1255 Medicaid program, including:

1256 (a) the determination of the eligibility of individuals for the program;

1257 (b) recovery of overpayments; and

1258 (c) consistent with Section 26-20-13, and to the extent permitted by law and quality
1259 control services, enforcement of fraud and abuse laws.

1260 (7) The department shall provide, by rule, disciplinary measures and sanctions for
1261 Medicaid providers who fail to comply with the rules and procedures of the program, provided

1262 that sanctions imposed administratively may not extend beyond:

1263 (a) termination from the program;

1264 (b) recovery of claim reimbursements incorrectly paid; and

1265 (c) those specified in Section 1919 of Title XIX of the federal Social Security Act.

1266 (8) Funds collected as a result of a sanction imposed under Section 1919 of Title XIX
1267 of the federal Social Security Act shall be deposited in the General Fund as dedicated credits to
1268 be used by the division in accordance with the requirements of Section 1919 of Title XIX of
1269 the federal Social Security Act.

1270 (9) (a) In determining whether an applicant or recipient is eligible for a service or
1271 benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department
1272 shall, if Subsection (9)(b) is satisfied, exclude from consideration one passenger vehicle
1273 designated by the applicant or recipient.

1274 (b) Before Subsection (9)(a) may be applied:

1275 (i) the federal government must:

1276 (A) determine that Subsection (9)(a) may be implemented within the state's existing
1277 public assistance-related waivers as of January 1, 1999;

1278 (B) extend a waiver to the state permitting the implementation of Subsection (9)(a); or

1279 (C) determine that the state's waivers that permit dual eligibility determinations for
1280 cash assistance and Medicaid are no longer valid; and

1281 (ii) the department must determine that Subsection (9)(a) can be implemented within
1282 existing funding.

1283 (10) (a) For purposes of this Subsection (10):

1284 (i) "aged, blind, or [~~disabled~~ shall be defined by administrative rule] has a disability"
1285 means an aged, blind, or disabled individual, as defined in 42 U.S.C. 1382c(a)(1); and

1286 (ii) "spend down" means an amount of income in excess of the allowable income
1287 standard that must be paid in cash to the department or incurred through the medical services
1288 not paid by Medicaid.

1289 (b) In determining whether an applicant or recipient who is aged, blind, or [~~disabled~~]

1290 has a disability is eligible for a service or benefit under this chapter, the department shall use
1291 100% of the federal poverty level as:

1292 (i) the allowable income standard for eligibility for services or benefits; and

1293 (ii) the allowable income standard for eligibility as a result of spend down.

1294 (11) The department shall conduct internal audits of the Medicaid program, in
1295 proportion to at least the level of funding it receives from Medicaid to conduct internal audits.

1296 (12) In order to determine the feasibility of contracting for direct Medicaid providers
1297 for primary care services, the department shall:

1298 (a) issue a request for information for direct contracting for primary services that shall
1299 provide that a provider shall exclusively serve all Medicaid clients:

1300 (i) in a geographic area;

1301 (ii) for a defined range of primary care services; and

1302 (iii) for a predetermined total contracted amount; and

1303 (b) by February 1, 2011, report to the Health and Human Services Appropriations
1304 Subcommittee on the response to the request for information under Subsection (12)(a).

1305 (13) (a) By December 31, 2010, the department shall:

1306 (i) determine the feasibility of implementing a three year patient-centered medical
1307 home demonstration project in an area of the state using existing budget funds; and

1308 (ii) report the department's findings and recommendations under Subsection (13)(a)(i)
1309 to the Health and Human Services Appropriations Subcommittee.

1310 (b) If the department determines that the medical home demonstration project
1311 described in Subsection (13)(a) is feasible, and the Health and Human Services Appropriations
1312 Subcommittee recommends that the demonstration project be implemented, the department
1313 shall:

1314 (i) implement the demonstration project; and

1315 (ii) by December 1, 2012, make recommendations to the Health and Human Services
1316 Appropriations Subcommittee regarding the:

1317 (A) continuation of the demonstration project;

1318 (B) expansion of the demonstration project to other areas of the state; and

1319 (C) cost savings incurred by the implementation of the demonstration project.

1320 (14) (a) The department may apply for and, if approved, implement a demonstration
1321 program for health opportunity accounts, as provided for in 42 U.S.C. Sec. 1396u-8.

1322 (b) A health opportunity account established under Subsection (14)(a) shall be an
1323 alternative to the existing benefits received by an individual eligible to receive Medicaid under
1324 this chapter.

1325 (c) Subsection (14)(a) is not intended to expand the coverage of the Medicaid program.

1326 Section 26. Section **26-18-3.1** is amended to read:

1327 **26-18-3.1. Medicaid expansion.**

1328 (1) The purpose of this section is to expand the coverage of the Medicaid program to
1329 persons who are in categories traditionally not served by that program.

1330 (2) Within appropriations from the Legislature, the department may amend the state
1331 plan for medical assistance to provide for eligibility for Medicaid:

1332 (a) on or after July 1, 1994, for children 12 to 17 years old who live in households
1333 below the federal poverty income guideline; and

1334 (b) on or after July 1, 1995, for persons who have incomes below the federal poverty
1335 income guideline and who are aged, blind, or ~~disabled~~ have a disability.

1336 (3) (a) Within appropriations from the Legislature, on or after July 1, 1996, the
1337 Medicaid program may provide for eligibility for persons who have incomes below the federal
1338 poverty income guideline.

1339 (b) In order to meet the provisions of this subsection, the department may seek
1340 approval for a demonstration project under 42 U.S.C. Section 1315 from the secretary of the
1341 United States Department of Health and Human Services. This demonstration project may also
1342 provide for the voluntary participation of private firms that:

1343 (i) are newly established or marginally profitable;

1344 (ii) do not provide health insurance to their employees;

1345 (iii) employ predominantly low wage workers; and

1346 (iv) are unable to obtain adequate and affordable health care insurance in the private
1347 market.

1348 (4) Services available for persons described in this section shall include required
1349 Medicaid services and may include one or more optional Medicaid services if those services
1350 are funded by the Legislature. The department may also require persons described in this
1351 section to meet an asset test.

1352 Section 27. Section **26-18-501** is amended to read:

1353 **26-18-501. Definitions.**

1354 As used in this part:

1355 (1) "Certified program" means a nursing care facility program with Medicaid
1356 certification.

1357 (2) "Director" means the director of the Division of Health Care Financing.

1358 (3) "Medicaid certification" means the right to Medicaid reimbursement as a provider
1359 of a nursing care facility program as established by division rule.

1360 (4) (a) "Nursing care facility" means the following facilities licensed by the department
1361 under Chapter 21, Health Care Facility Licensing and Inspection Act:

1362 (i) skilled nursing homes;

1363 (ii) intermediate care facilities; and

1364 (iii) an intermediate care [facilities for the mentally retarded] facility for people with an
1365 intellectual disability.

1366 (b) "Nursing care facility" does not mean a critical access hospital that meets the
1367 criteria of 42 U.S.C. 1395i-4(c)(2) (1998).

1368 (5) "Nursing care facility program" means the personnel, licenses, services, contracts
1369 and all other requirements that must be met for a nursing care facility to be eligible for
1370 Medicaid certification under this part and division rule.

1371 (6) "Physical facility" means the buildings or other physical structures where a nursing
1372 care facility program is operated.

1373 (7) "Service area" means the boundaries of the distinct geographic area served by a

1374 certified program as determined by the division in accordance with this part and division rule.

1375 Section 28. Section **26-19-13.5** is amended to read:

1376 **26-19-13.5. Estate and trust recovery.**

1377 (1) Upon a recipient's death, the department may recover from the recipient's estate and
1378 any trust, in which the recipient is the grantor and a beneficiary, medical assistance correctly
1379 provided for the benefit of the recipient when [~~he~~] the recipient was 55 years of age or older if,
1380 at the time of death, the recipient has no:

1381 (a) surviving spouse; or

1382 (b) child:

1383 (i) younger than 21 years of age; or

1384 (ii) who is blind or [~~permanently and totally disabled~~] has a permanent and total
1385 disability.

1386 (2) (a) The amount of medial assistance correctly provided for the benefit of a recipient
1387 and recoverable under this section is a lien against the estate of the deceased recipient or any
1388 trust when the recipient is the grantor and a beneficiary.

1389 (b) The lien holds the same priority as reasonable and necessary medical expenses of
1390 the last illness as provided in Section 75-3-805.

1391 (3) (a) The department shall perfect the lien by filing a notice in the court of
1392 appropriate jurisdiction for the amount of the lien, in the same manner as a creditor's claim is
1393 filed, prior to final distribution.

1394 (b) The department may file an amended lien prior to the entry of the final order
1395 closing the estate.

1396 (4) Claims against a deceased recipient's inter vivos trust shall be presented in
1397 accordance with Sections 75-7-509 and 75-7-510.

1398 (5) Any trust provision that denies recovery for medical assistance is void at the time of
1399 its making.

1400 (6) Nothing in this section affects the right of the department to recover Medicaid
1401 assistance before a recipient's death under Section 26-19-4.5 or Section 26-19-13.7.

1402 Section 29. Section **26-21-3** is amended to read:

1403 **26-21-3. Health Facility Committee -- Members -- Terms -- Organization --**
1404 **Meetings.**

1405 (1) The Health Facility Committee created by Section 26-1-7 consists of 15 members
1406 appointed by the governor with the consent of the Senate. The appointed members shall be
1407 knowledgeable about health care facilities and issues. The membership of the committee is:

1408 (a) one physician, licensed to practice medicine and surgery under Title 58, Chapter 67,
1409 Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act,
1410 who is a graduate of a regularly chartered medical school;

1411 (b) one hospital administrator;

1412 (c) one hospital trustee;

1413 (d) one representative of a freestanding ambulatory surgical facility;

1414 (e) one representative of an ambulatory surgical facility that is affiliated with a
1415 hospital;

1416 (f) two representatives of the nursing care facility industry;

1417 (g) one registered nurse, licensed to practice under Title 58, Chapter 31b, Nurse
1418 Practice Act;

1419 (h) one professional in the field of [~~mental retardation~~] intellectual disabilities not
1420 affiliated with a nursing care facility;

1421 (i) one licensed architect or engineer with expertise in health care facilities;

1422 (j) two representatives of assisted living facilities licensed under this chapter;

1423 (k) two consumers, one of whom has an interest in or expertise in geriatric care; and

1424 (l) one representative from either a home health care provider or a hospice provider.

1425 (2) (a) Except as required by Subsection (2)(b), members shall be appointed for a term
1426 of four years.

1427 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the
1428 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
1429 committee members are staggered so that approximately half of the committee is appointed

1430 every two years.

1431 (c) When a vacancy occurs in the membership for any reason, the replacement shall be
1432 appointed for the unexpired term by the governor, giving consideration to recommendations
1433 made by the committee, with the consent of the Senate.

1434 (d) A member may not serve more than two consecutive full terms or 10 consecutive
1435 years, whichever is less. However, a member may continue to serve as a member until he is
1436 replaced.

1437 (e) The committee shall annually elect from its membership a chair and vice chair.

1438 (f) The committee shall meet at least quarterly, or more frequently as determined by the
1439 chair or five members of the committee.

1440 (g) Eight members constitute a quorum. A vote of the majority of the members present
1441 constitutes action of the committee.

1442 Section 30. Section **26-21-9.5** is amended to read:

1443 **26-21-9.5. Criminal background check and Licensing Information System check.**

1444 (1) For purposes of this section:

1445 (a) "Covered employer" means an individual who:

1446 (i) is not a covered health care facility;

1447 (ii) is not a licensed business within the state; and

1448 (iii) is hiring an individual to provide services to an elderly [~~or disabled~~] person or a
1449 person with a disability in the person's home [~~of the elderly or disabled person~~].

1450 (b) "Covered health care facility" means:

1451 (i) home health care agencies;

1452 (ii) hospices;

1453 (iii) nursing care facilities;

1454 (iv) assisted-living facilities;

1455 (v) small health care facilities; and

1456 (vi) end stage renal disease facilities.

1457 (c) "Covered person" includes:

1458 (i) the following people who provide direct patient care:
1459 (A) employees;
1460 (B) volunteers; and
1461 (C) people under contract with the covered health care facility; and
1462 (ii) for residential settings, any individual residing in the home where the assisted
1463 living or small health care program is to be licensed who:
1464 (A) is 18 years of age or older; or
1465 (B) is a child between the age of 12 and 17 years of age[; ~~however, the identifying~~
1466 ~~information required for a child between the age of 12 and 17 does not include fingerprints~~].
1467 (2) In addition to the licensing requirements of Sections 26-21-8 and 26-21-9, a
1468 covered health care facility at the time of initial application for a license and license renewal
1469 shall:
1470 (a) submit the name and other identifying information of each covered person at the
1471 covered facility who:
1472 (i) provides direct care to a patient; and
1473 (ii) has been the subject of a criminal background check within the preceding
1474 three-year period by a public or private entity recognized by the department; and
1475 (b) submit the name and other identifying information, which, except as provided in
1476 Subsection (3)(c), may include fingerprints, of each covered person at the covered facility who
1477 has not been the subject of a criminal background check in accordance with Subsection
1478 (2)(a)(ii).
1479 (3) (a) The department shall forward the information received under Subsection (2)(b)
1480 or (6)(b) to the Criminal Investigations and Technical Services Division of the Department of
1481 Public Safety for processing to determine whether the individual has been convicted of any
1482 crime.
1483 (b) Except for individuals described in Subsection (1)(c)(ii)(B), if an individual has not
1484 had residency in Utah for the last five years, the individual shall submit fingerprints for an FBI
1485 national criminal history record check. The fingerprints shall be submitted to the FBI through

1486 the Criminal Investigations and Technical Services Division. The individual or licensee is
1487 responsible for the cost of the fingerprinting and national criminal history check.

1488 (c) Identifying information required under this section for a covered person who is
1489 between the age of 12 and 17 does not include fingerprints.

1490 (4) The department may determine whether:

1491 (a) an individual whose name and other identifying information has been submitted
1492 pursuant to Subsection (2) and who provides direct care to children is listed in the Licensing
1493 Information System described in Section 62A-4a-1006 or has a substantiated finding by a court
1494 of a severe type of child abuse or neglect under Section 78A-6-323, if identification as a
1495 possible perpetrator of child abuse or neglect is relevant to the employment activities of that
1496 individual;

1497 (b) an individual whose name and other identifying information has been submitted
1498 pursuant to Subsection (2) or (6)(b) and who provides direct care to [~~disabled or elder adults~~]
1499 an elderly person or an adult with a disability, or who is residing in a residential home that is a
1500 facility licensed to provide direct care to [~~disabled or elder adults~~] an elderly person or an adult
1501 with a disability, has a substantiated finding of abuse, neglect, or exploitation of [~~a disabled or~~
1502 ~~elder adult~~] an elderly person or an adult with a disability by accessing in accordance with
1503 Subsection (5) the database created in Section 62A-3-311.1 if identification as a possible
1504 perpetrator of disabled or elder adult abuse, neglect, or exploitation is relevant to the
1505 employment activities or residence of that person; or

1506 (c) an individual whose name or other identifying information has been submitted
1507 pursuant to Subsection (2) or (6)(b) has been adjudicated in a juvenile court of committing an
1508 act which if committed by an adult would be a felony or a misdemeanor if:

1509 (i) the individual is under the age of 28 years; or

1510 (ii) the individual is over the age of 28 and has been convicted, has pleaded no contest,
1511 or is currently subject to a plea in abeyance or diversion agreement for any felony or
1512 misdemeanor.

1513 (5) (a) The department shall:

1514 (i) designate persons within the department to access:
1515 (A) the Licensing Information System described in Section 62A-4a-1006;
1516 (B) court records under Subsection 78A-6-323(6);
1517 (C) the database described in Subsection (4)(b); and
1518 (D) juvenile court records as permitted by Subsection (4)(c); and
1519 (ii) adopt measures to:
1520 (A) protect the security of the Licensing Information System, the court records, and the
1521 database; and
1522 (B) strictly limit access to the Licensing Information System, the court records, and the
1523 database to those designated under Subsection (5)(a)(i).
1524 (b) Those designated under Subsection (5)(a)(i) shall receive training from the
1525 Department of Human Services with respect to:
1526 (i) accessing the Licensing Information System, the court records, and the database;
1527 (ii) maintaining strict security; and
1528 (iii) the criminal provisions in Section 62A-4a-412 for the improper release of
1529 information.
1530 (c) Those designated under Subsection (5)(a)(i):
1531 (i) are the only ones in the department with the authority to access the Licensing
1532 Information System, the court records, and database; and
1533 (ii) may only access the Licensing Information System, the court records, and the
1534 database for the purpose of licensing and in accordance with the provisions of Subsection (4).
1535 (6) (a) Within 10 days of initially hiring a covered individual, a covered health care
1536 facility shall submit the covered individual's information to the department in accordance with
1537 Subsection (2).
1538 (b) (i) [~~Prior to~~] Before, or within 10 days of initially hiring an individual to provide
1539 care to an elderly [~~adult~~] person or a [~~disabled person~~] person with a disability in the home of
1540 the [~~elderly adult or disabled~~] person, a covered employer may submit the employed
1541 individual's information to the department.

1542 (ii) The department shall:
1543 (A) in accordance with Subsections (4) and (6)(c) [~~of this section~~], and Subsection
1544 62A-3-311.1[~~(4)~~] (2)(b), determine whether the individual has a substantiated finding of abuse,
1545 neglect, or exploitation of a minor or an elderly [~~adult~~] person; and
1546 (B) in accordance with Subsection (9), inform the covered employer of the
1547 department's findings.
1548 (c) A covered employer:
1549 (i) must certify to the department that the covered employer intends to hire, or has
1550 hired, the individual whose information the covered employer has submitted to the department
1551 for the purpose of providing care to an elderly [~~adult or a disabled~~] person or a person with a
1552 disability in the home of the [~~elderly adult or disabled~~] person;
1553 (ii) must pay the reasonable fees established by the department under Subsection (8);
1554 and
1555 (iii) commits an infraction if the covered employer intentionally misrepresents any fact
1556 certified under Subsection (6)(c)(i).
1557 (7) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative
1558 Rulemaking Act, consistent with this chapter, defining the circumstances under which a person
1559 who has been convicted of a criminal offense, or a person described in Subsection (4), may
1560 provide direct care to a patient in a covered health care facility, taking into account the nature
1561 of the criminal conviction or substantiated finding and its relation to patient care.
1562 (8) The department may, in accordance with Section 26-1-6, assess reasonable fees for
1563 a criminal background check processed pursuant to this section.
1564 (9) The department may inform the covered health care facility or a covered employer
1565 of information discovered under Subsection (4) with respect to a covered individual, or an
1566 individual whose name is submitted by a covered employer.
1567 (10) (a) A covered health care facility is not civilly liable for submitting information to
1568 the department as required by this section.
1569 (b) A covered employer is not civilly liable for submitting information to the

1570 department as permitted by this section if the covered employer:

1571 (i) complies with Subsection (6)(c)(i); and

1572 (ii) does not use the information obtained about an individual under this section for any
1573 purpose other than hiring decisions directly related to the care of the elderly [~~adult or disabled~~]
1574 person or the person with a disability.

1575 Section 31. Section **26-21-13.5** is amended to read:

1576 **26-21-13.5. Intermediate care facilities for people with an intellectual disability --**
1577 **Licensing.**

1578 (1) (a) It is the Legislature's intent that [~~developmentally disabled persons~~] a person
1579 with a developmental disability be provided with an environment and surrounding that, as
1580 closely as possible, resembles small community-based, homelike settings, to allow those
1581 persons to have the opportunity, to the maximum extent feasible, to exercise their full rights
1582 and responsibilities as citizens.

1583 (b) It is the Legislature's purpose, in enacting this section, to provide assistance and
1584 opportunities to enable [~~persons~~] a person with a developmental [~~disabilities~~] disability to
1585 achieve [~~their~~] the person's maximum potential through increased independence, productivity,
1586 and integration into the community.

1587 (2) After July 1, 1990, the department may only license intermediate care beds for [~~the~~
1588 ~~mentally retarded~~] people with an intellectual disability in small health care facilities.

1589 (3) The department may define by rule "small health care facility" for purposes of
1590 licensure under this section and adopt rules necessary to carry out the requirements and
1591 purposes of this section.

1592 (4) This section does not apply to the renewal of a license or the licensure to a new
1593 owner of any facility that was licensed on or before July 1, 1990, and that licensure has been
1594 maintained without interruption.

1595 Section 32. Section **26-35a-102** is amended to read:

1596 **26-35a-102. Legislative findings.**

1597 (1) The Legislature finds that there is an important state purpose to improve the quality

1598 of care given to ~~[the elderly and the physically disabled]~~ persons who are elderly and to people
1599 who have a disability, in long-term care nursing facilities.

1600 (2) The Legislature finds that in order to improve the quality of care to those persons
1601 described in Subsection (1), the rates paid to the nursing care facilities by the Medicaid
1602 program must be adequate to encourage and support quality care.

1603 (3) The Legislature finds that in order to meet the objectives in Subsections (1) and (2),
1604 adequate funding must be provided to increase the rates paid to nursing care facilities providing
1605 services pursuant to the Medicaid program.

1606 Section 33. Section **26-35a-103** is amended to read:

1607 **26-35a-103. Definitions.**

1608 As used in this chapter:

1609 (1) (a) "Nursing care facility" means:

1610 (i) a nursing care facility described in Subsection 26-21-2(17);

1611 (ii) beginning January 1, 2006, a designated swing bed in:

1612 (A) a general acute hospital as defined in Subsection 26-21-2(11); and

1613 (B) a critical access hospital which meets the criteria of 42[;] U.S.C. Sec. 1395i-4(c)(2)
1614 (1998); and

1615 (iii) an intermediate care facility for ~~[the mentally retarded]~~ people with an intellectual
1616 disability that is licensed under Section 26-21-13.5.

1617 (b) "Nursing care facility" does not include:

1618 (i) the Utah State Developmental Center;

1619 (ii) the Utah State Hospital;

1620 (iii) a general acute hospital, specialty hospital, or small health care facility as defined
1621 in Section 26-21-2; or

1622 (iv) a Utah State Veterans' Home.

1623 (2) "Patient day" means each calendar day in which an individual patient is admitted to
1624 the nursing care facility during a calendar month, even if on a temporary leave of absence from
1625 the facility.

1626 Section 34. Section **26-35a-108** is amended to read:

1627 **26-35a-108. Intermediate care facility for people with an intellectual disability --**
1628 **Uniform rate.**

1629 An intermediate care facility for ~~[the mentally retarded]~~ people with an intellectual
1630 disability is subject to all the provisions of this chapter, except that the department shall
1631 establish a uniform rate for ~~[intermediate care facilities for the mentally retarded]~~ an
1632 intermediate care facility for people with an intellectual disability that:

- 1633 (1) is based on the same formula specified for nursing care facilities under the
1634 provisions of Subsection 26-35a-104(1)(b); and
- 1635 (2) may be different than the uniform rate established for other nursing care facilities.

1636 Section 35. Section **31A-1-301** is amended to read:

1637 **31A-1-301. Definitions.**

1638 As used in this title, unless otherwise specified:

1639 (1) (a) "Accident and health insurance" means insurance to provide protection against
1640 economic losses resulting from:

- 1641 (i) a medical condition including:
 - 1642 (A) a medical care expense; or
 - 1643 (B) the risk of disability;
- 1644 (ii) accident; or
- 1645 (iii) sickness.
- 1646 (b) "Accident and health insurance":
 - 1647 (i) includes a contract with disability contingencies including:
 - 1648 (A) an income replacement contract;
 - 1649 (B) a health care contract;
 - 1650 (C) an expense reimbursement contract;
 - 1651 (D) a credit accident and health contract;
 - 1652 (E) a continuing care contract; and
 - 1653 (F) a long-term care contract; and

- 1654 (ii) may provide:
- 1655 (A) hospital coverage;
- 1656 (B) surgical coverage;
- 1657 (C) medical coverage;
- 1658 (D) loss of income coverage;
- 1659 (E) prescription drug coverage;
- 1660 (F) dental coverage; or
- 1661 (G) vision coverage.
- 1662 (c) "Accident and health insurance" does not include workers' compensation insurance.
- 1663 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with Title
- 1664 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 1665 (3) "Administrator" is defined in Subsection (159).
- 1666 (4) "Adult" means an individual who has attained the age of at least 18 years.
- 1667 (5) "Affiliate" means a person who controls, is controlled by, or is under common
- 1668 control with, another person. A corporation is an affiliate of another corporation, regardless of
- 1669 ownership, if substantially the same group of individuals manage the corporations.
- 1670 (6) "Agency" means:
- 1671 (a) a person other than an individual, including a sole proprietorship by which an
- 1672 individual does business under an assumed name; and
- 1673 (b) an insurance organization licensed or required to be licensed under Section
- 1674 31A-23a-301.
- 1675 (7) "Alien insurer" means an insurer domiciled outside the United States.
- 1676 (8) "Amendment" means an endorsement to an insurance policy or certificate.
- 1677 (9) "Annuity" means an agreement to make periodical payments for a period certain or
- 1678 over the lifetime of one or more individuals if the making or continuance of all or some of the
- 1679 series of the payments, or the amount of the payment, is dependent upon the continuance of
- 1680 human life.
- 1681 (10) "Application" means a document:

1682 (a) (i) completed by an applicant to provide information about the risk to be insured;
1683 and

1684 (ii) that contains information that is used by the insurer to evaluate risk and decide
1685 whether to:

1686 (A) insure the risk under:

1687 (I) the coverage as originally offered; or

1688 (II) a modification of the coverage as originally offered; or

1689 (B) decline to insure the risk; or

1690 (b) used by the insurer to gather information from the applicant before issuance of an
1691 annuity contract.

1692 (11) "Articles" or "articles of incorporation" means:

1693 (a) the original articles;

1694 (b) a special law;

1695 (c) a charter;

1696 (d) an amendment;

1697 (e) restated articles;

1698 (f) articles of merger or consolidation;

1699 (g) a trust instrument;

1700 (h) another constitutive document for a trust or other entity that is not a corporation;

1701 and

1702 (i) an amendment to an item listed in Subsections (11)(a) through (h).

1703 (12) "Bail bond insurance" means a guarantee that a person will attend court when
1704 required, up to and including surrender of the person in execution of a sentence imposed under
1705 Subsection 77-20-7(1), as a condition to the release of that person from confinement.

1706 (13) "Binder" is defined in Section 31A-21-102.

1707 (14) "Blanket insurance policy" means a group policy covering a defined class of
1708 persons:

1709 (a) without individual underwriting or application; and

1710 (b) that is determined by definition with or without designating each person covered.

1711 (15) "Board," "board of trustees," or "board of directors" means the group of persons
1712 with responsibility over, or management of, a corporation, however designated.

1713 (16) "Business entity" means:

1714 (a) a corporation;

1715 (b) an association;

1716 (c) a partnership;

1717 (d) a limited liability company;

1718 (e) a limited liability partnership; or

1719 (f) another legal entity.

1720 (17) "Business of insurance" is defined in Subsection (85).

1721 (18) "Business plan" means the information required to be supplied to the
1722 commissioner under Subsections 31A-5-204(2)(i) and (j), including the information required
1723 when these subsections apply by reference under:

1724 (a) Section 31A-7-201;

1725 (b) Section 31A-8-205; or

1726 (c) Subsection 31A-9-205(2).

1727 (19) (a) "Bylaws" means the rules adopted for the regulation or management of a
1728 corporation's affairs, however designated.

1729 (b) "Bylaws" includes comparable rules for a trust or other entity that is not a
1730 corporation.

1731 (20) "Captive insurance company" means:

1732 (a) an insurer:

1733 (i) owned by another organization; and

1734 (ii) whose exclusive purpose is to insure risks of the parent organization and an
1735 affiliated company; or

1736 (b) in the case of a group or association, an insurer:

1737 (i) owned by the insureds; and

- 1738 (ii) whose exclusive purpose is to insure risks of:
- 1739 (A) a member organization;
- 1740 (B) a group member; or
- 1741 (C) an affiliate of:
- 1742 (I) a member organization; or
- 1743 (II) a group member.
- 1744 (21) "Casualty insurance" means liability insurance.
- 1745 (22) "Certificate" means evidence of insurance given to:
- 1746 (a) an insured under a group insurance policy; or
- 1747 (b) a third party.
- 1748 (23) "Certificate of authority" is included within the term "license."
- 1749 (24) "Claim," unless the context otherwise requires, means a request or demand on an
- 1750 insurer for payment of a benefit according to the terms of an insurance policy.
- 1751 (25) "Claims-made coverage" means an insurance contract or provision limiting
- 1752 coverage under a policy insuring against legal liability to claims that are first made against the
- 1753 insured while the policy is in force.
- 1754 (26) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance
- 1755 commissioner.
- 1756 (b) When appropriate, the terms listed in Subsection (26)(a) apply to the equivalent
- 1757 supervisory official of another jurisdiction.
- 1758 (27) (a) "Continuing care insurance" means insurance that:
- 1759 (i) provides board and lodging;
- 1760 (ii) provides one or more of the following:
- 1761 (A) a personal service;
- 1762 (B) a nursing service;
- 1763 (C) a medical service; or
- 1764 (D) any other health-related service; and
- 1765 (iii) provides the coverage described in this Subsection (27)(a) under an agreement

1766 effective:

1767 (A) for the life of the insured; or

1768 (B) for a period in excess of one year.

1769 (b) Insurance is continuing care insurance regardless of whether or not the board and
1770 lodging are provided at the same location as a service described in Subsection (27)(a)(ii).

1771 (28) (a) "Control," "controlling," "controlled," or "under common control" means the
1772 direct or indirect possession of the power to direct or cause the direction of the management
1773 and policies of a person. This control may be:

1774 (i) by contract;

1775 (ii) by common management;

1776 (iii) through the ownership of voting securities; or

1777 (iv) by a means other than those described in Subsections (28)(a)(i) through (iii).

1778 (b) There is no presumption that an individual holding an official position with another
1779 person controls that person solely by reason of the position.

1780 (c) A person having a contract or arrangement giving control is considered to have
1781 control despite the illegality or invalidity of the contract or arrangement.

1782 (d) There is a rebuttable presumption of control in a person who directly or indirectly
1783 owns, controls, holds with the power to vote, or holds proxies to vote 10% or more of the
1784 voting securities of another person.

1785 (29) "Controlled insurer" means a licensed insurer that is either directly or indirectly
1786 controlled by a producer.

1787 (30) "Controlling person" means a person that directly or indirectly has the power to
1788 direct or cause to be directed, the management, control, or activities of a reinsurance
1789 intermediary.

1790 (31) "Controlling producer" means a producer who directly or indirectly controls an
1791 insurer.

1792 (32) (a) "Corporation" means an insurance corporation, except when referring to:

1793 (i) a corporation doing business:

- 1794 (A) as:
- 1795 (I) an insurance producer;
- 1796 (II) a limited line producer;
- 1797 (III) a consultant;
- 1798 (IV) a managing general agent;
- 1799 (V) a reinsurance intermediary;
- 1800 (VI) a third party administrator; or
- 1801 (VII) an adjuster; and
- 1802 (B) under:
- 1803 (I) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
- 1804 Reinsurance Intermediaries;
- 1805 (II) Chapter 25, Third Party Administrators; or
- 1806 (III) Chapter 26, Insurance Adjusters; or
- 1807 (ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance
- 1808 Holding Companies.
- 1809 (b) "Stock corporation" means a stock insurance corporation.
- 1810 (c) "Mutual" or "mutual corporation" means a mutual insurance corporation.
- 1811 (33) (a) "Creditable coverage" has the same meaning as provided in federal regulations
- 1812 adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, Pub. L.
- 1813 104-191, 110 Stat. 1936.
- 1814 (b) "Creditable coverage" includes coverage that is offered through a public health plan
- 1815 such as:
- 1816 (i) the Primary Care Network Program under a Medicaid primary care network
- 1817 demonstration waiver obtained subject to Section 26-18-3;
- 1818 (ii) the Children's Health Insurance Program under Section 26-40-106; or
- 1819 (iii) the Ryan White Program Comprehensive AIDS Resources Emergency Act, Pub. L.
- 1820 101-381, and Ryan White HIV/AIDS Treatment Modernization Act of 2006, Pub. L. 109-415.
- 1821 (34) "Credit accident and health insurance" means insurance on a debtor to provide

1822 indemnity for payments coming due on a specific loan or other credit transaction while the
1823 debtor [~~is disabled~~] has a disability.

1824 (35) (a) "Credit insurance" means insurance offered in connection with an extension of
1825 credit that is limited to partially or wholly extinguishing that credit obligation.

1826 (b) "Credit insurance" includes:

1827 (i) credit accident and health insurance;

1828 (ii) credit life insurance;

1829 (iii) credit property insurance;

1830 (iv) credit unemployment insurance;

1831 (v) guaranteed automobile protection insurance;

1832 (vi) involuntary unemployment insurance;

1833 (vii) mortgage accident and health insurance;

1834 (viii) mortgage guaranty insurance; and

1835 (ix) mortgage life insurance.

1836 (36) "Credit life insurance" means insurance on the life of a debtor in connection with
1837 an extension of credit that pays a person if the debtor dies.

1838 (37) "Credit property insurance" means insurance:

1839 (a) offered in connection with an extension of credit; and

1840 (b) that protects the property until the debt is paid.

1841 (38) "Credit unemployment insurance" means insurance:

1842 (a) offered in connection with an extension of credit; and

1843 (b) that provides indemnity if the debtor is unemployed for payments coming due on a:

1844 (i) specific loan; or

1845 (ii) credit transaction.

1846 (39) "Creditor" means a person, including an insured, having a claim, whether:

1847 (a) matured;

1848 (b) unmatured;

1849 (c) liquidated;

- 1850 (d) unliquidated;
- 1851 (e) secured;
- 1852 (f) unsecured;
- 1853 (g) absolute;
- 1854 (h) fixed; or
- 1855 (i) contingent.
- 1856 (40) (a) "Customer service representative" means a person that provides an insurance
- 1857 service and insurance product information:
- 1858 (i) for the customer service representative's:
- 1859 (A) producer; or
- 1860 (B) consultant employer; and
- 1861 (ii) to the customer service representative's employer's:
- 1862 (A) customer;
- 1863 (B) client; or
- 1864 (C) organization.
- 1865 (b) A customer service representative may only operate within the scope of authority of
- 1866 the customer service representative's producer or consultant employer.
- 1867 (41) "Deadline" means a final date or time:
- 1868 (a) imposed by:
- 1869 (i) statute;
- 1870 (ii) rule; or
- 1871 (iii) order; and
- 1872 (b) by which a required filing or payment must be received by the department.
- 1873 (42) "Deemer clause" means a provision under this title under which upon the
- 1874 occurrence of a condition precedent, the commissioner is considered to have taken a specific
- 1875 action. If the statute so provides, a condition precedent may be the commissioner's failure to
- 1876 take a specific action.
- 1877 (43) "Degree of relationship" means the number of steps between two persons

1878 determined by counting the generations separating one person from a common ancestor and
1879 then counting the generations to the other person.

1880 (44) "Department" means the Insurance Department.

1881 (45) "Director" means a member of the board of directors of a corporation.

1882 (46) "Disability" means a physiological or psychological condition that partially or
1883 totally limits an individual's ability to:

1884 (a) perform the duties of:

1885 (i) that individual's occupation; or

1886 (ii) any occupation for which the individual is reasonably suited by education, training,
1887 or experience; or

1888 (b) perform two or more of the following basic activities of daily living:

1889 (i) eating;

1890 (ii) toileting;

1891 (iii) transferring;

1892 (iv) bathing; or

1893 (v) dressing.

1894 (47) "Disability income insurance" is defined in Subsection (76).

1895 (48) "Domestic insurer" means an insurer organized under the laws of this state.

1896 (49) "Domiciliary state" means the state in which an insurer:

1897 (a) is incorporated;

1898 (b) is organized; or

1899 (c) in the case of an alien insurer, enters into the United States.

1900 (50) (a) "Eligible employee" means:

1901 (i) an employee who:

1902 (A) works on a full-time basis; and

1903 (B) has a normal work week of 30 or more hours; or

1904 (ii) a person described in Subsection (50)(b).

1905 (b) "Eligible employee" includes, if the individual is included under a health benefit

- 1906 plan of a small employer:
- 1907 (i) a sole proprietor;
- 1908 (ii) a partner in a partnership; or
- 1909 (iii) an independent contractor.
- 1910 (c) "Eligible employee" does not include, unless eligible under Subsection (50)(b):
- 1911 (i) an individual who works on a temporary or substitute basis for a small employer;
- 1912 (ii) an employer's spouse; or
- 1913 (iii) a dependent of an employer.
- 1914 (51) "Employee" means an individual employed by an employer.
- 1915 (52) "Employee benefits" means one or more benefits or services provided to:
- 1916 (a) an employee; or
- 1917 (b) a dependent of an employee.
- 1918 (53) (a) "Employee welfare fund" means a fund:
- 1919 (i) established or maintained, whether directly or through a trustee, by:
- 1920 (A) one or more employers;
- 1921 (B) one or more labor organizations; or
- 1922 (C) a combination of employers and labor organizations; and
- 1923 (ii) that provides employee benefits paid or contracted to be paid, other than income
- 1924 from investments of the fund:
- 1925 (A) by or on behalf of an employer doing business in this state; or
- 1926 (B) for the benefit of a person employed in this state.
- 1927 (b) "Employee welfare fund" includes a plan funded or subsidized by a user fee or tax
- 1928 revenues.
- 1929 (54) "Endorsement" means a written agreement attached to a policy or certificate to
- 1930 modify the policy or certificate coverage.
- 1931 (55) "Enrollment date," with respect to a health benefit plan, means:
- 1932 (a) the first day of coverage; or
- 1933 (b) if there is a waiting period, the first day of the waiting period.

- 1934 (56) (a) "Escrow" means:
- 1935 (i) a real estate settlement or real estate closing conducted by a third party pursuant to
- 1936 the requirements of a written agreement between the parties in a real estate transaction; or
- 1937 (ii) a settlement or closing involving:
- 1938 (A) a mobile home;
- 1939 (B) a grazing right;
- 1940 (C) a water right; or
- 1941 (D) other personal property authorized by the commissioner.
- 1942 (b) "Escrow" includes the act of conducting a:
- 1943 (i) real estate settlement; or
- 1944 (ii) real estate closing.
- 1945 (57) "Escrow agent" means:
- 1946 (a) an insurance producer with:
- 1947 (i) a title insurance line of authority; and
- 1948 (ii) an escrow subline of authority; or
- 1949 (b) a person defined as an escrow agent in Section 7-22-101.
- 1950 (58) (a) "Excludes" is not exhaustive and does not mean that another thing is not also
- 1951 excluded.
- 1952 (b) The items listed in a list using the term "excludes" are representative examples for
- 1953 use in interpretation of this title.
- 1954 (59) "Exclusion" means for the purposes of accident and health insurance that an
- 1955 insurer does not provide insurance coverage, for whatever reason, for one of the following:
- 1956 (a) a specific physical condition;
- 1957 (b) a specific medical procedure;
- 1958 (c) a specific disease or disorder; or
- 1959 (d) a specific prescription drug or class of prescription drugs.
- 1960 (60) "Expense reimbursement insurance" means insurance:
- 1961 (a) written to provide a payment for an expense relating to hospital confinement

- 1962 resulting from illness or injury; and
- 1963 (b) written:
- 1964 (i) as a daily limit for a specific number of days in a hospital; and
- 1965 (ii) to have a one or two day waiting period following a hospitalization.
- 1966 (61) "Fidelity insurance" means insurance guaranteeing the fidelity of a person holding
- 1967 a position of public or private trust.
- 1968 (62) (a) "Filed" means that a filing is:
- 1969 (i) submitted to the department as required by and in accordance with applicable
- 1970 statute, rule, or filing order;
- 1971 (ii) received by the department within the time period provided in applicable statute,
- 1972 rule, or filing order; and
- 1973 (iii) accompanied by the appropriate fee in accordance with:
- 1974 (A) Section 31A-3-103; or
- 1975 (B) rule.
- 1976 (b) "Filed" does not include a filing that is rejected by the department because it is not
- 1977 submitted in accordance with Subsection (62)(a).
- 1978 (63) "Filing," when used as a noun, means an item required to be filed with the
- 1979 department including:
- 1980 (a) a policy;
- 1981 (b) a rate;
- 1982 (c) a form;
- 1983 (d) a document;
- 1984 (e) a plan;
- 1985 (f) a manual;
- 1986 (g) an application;
- 1987 (h) a report;
- 1988 (i) a certificate;
- 1989 (j) an endorsement;

- 1990 (k) an actuarial certification;
- 1991 (l) a licensee annual statement;
- 1992 (m) a licensee renewal application;
- 1993 (n) an advertisement; or
- 1994 (o) an outline of coverage.
- 1995 (64) "First party insurance" means an insurance policy or contract in which the insurer
- 1996 agrees to pay a claim submitted to it by the insured for the insured's losses.
- 1997 (65) "Foreign insurer" means an insurer domiciled outside of this state, including an
- 1998 alien insurer.
- 1999 (66) (a) "Form" means one of the following prepared for general use:
- 2000 (i) a policy;
- 2001 (ii) a certificate;
- 2002 (iii) an application;
- 2003 (iv) an outline of coverage; or
- 2004 (v) an endorsement.
- 2005 (b) "Form" does not include a document specially prepared for use in an individual
- 2006 case.
- 2007 (67) "Franchise insurance" means an individual insurance policy provided through a
- 2008 mass marketing arrangement involving a defined class of persons related in some way other
- 2009 than through the purchase of insurance.
- 2010 (68) "General lines of authority" include:
- 2011 (a) the general lines of insurance in Subsection (69);
- 2012 (b) title insurance under one of the following sublines of authority:
- 2013 (i) search, including authority to act as a title marketing representative;
- 2014 (ii) escrow, including authority to act as a title marketing representative; and
- 2015 (iii) title marketing representative only;
- 2016 (c) surplus lines;
- 2017 (d) workers' compensation; and

2018 (e) any other line of insurance that the commissioner considers necessary to recognize
2019 in the public interest.

2020 (69) "General lines of insurance" include:

2021 (a) accident and health;

2022 (b) casualty;

2023 (c) life;

2024 (d) personal lines;

2025 (e) property; and

2026 (f) variable contracts, including variable life and annuity.

2027 (70) "Group health plan" means an employee welfare benefit plan to the extent that the
2028 plan provides medical care:

2029 (a) (i) to an employee; or

2030 (ii) to a dependent of an employee; and

2031 (b) (i) directly;

2032 (ii) through insurance reimbursement; or

2033 (iii) through another method.

2034 (71) (a) "Group insurance policy" means a policy covering a group of persons that is
2035 issued:

2036 (i) to a policyholder on behalf of the group; and

2037 (ii) for the benefit of a member of the group who is selected under a procedure defined

2038 in:

2039 (A) the policy; or

2040 (B) an agreement that is collateral to the policy.

2041 (b) A group insurance policy may include a member of the policyholder's family or a
2042 dependent.

2043 (72) "Guaranteed automobile protection insurance" means insurance offered in
2044 connection with an extension of credit that pays the difference in amount between the
2045 insurance settlement and the balance of the loan if the insured automobile is a total loss.

2046 (73) (a) Except as provided in Subsection (73)(b), "health benefit plan" means a policy
2047 or certificate that:

- 2048 (i) provides health care insurance;
- 2049 (ii) provides major medical expense insurance; or
- 2050 (iii) is offered as a substitute for hospital or medical expense insurance, such as:
 - 2051 (A) a hospital confinement indemnity; or
 - 2052 (B) a limited benefit plan.

2053 (b) "Health benefit plan" does not include a policy or certificate that:

- 2054 (i) provides benefits solely for:
 - 2055 (A) accident;
 - 2056 (B) dental;
 - 2057 (C) income replacement;
 - 2058 (D) long-term care;
 - 2059 (E) a Medicare supplement;
 - 2060 (F) a specified disease;
 - 2061 (G) vision; or
 - 2062 (H) a short-term limited duration; or
- 2063 (ii) is offered and marketed as supplemental health insurance.

2064 (74) "Health care" means any of the following intended for use in the diagnosis,
2065 treatment, mitigation, or prevention of a human ailment or impairment:

- 2066 (a) a professional service;
- 2067 (b) a personal service;
- 2068 (c) a facility;
- 2069 (d) equipment;
- 2070 (e) a device;
- 2071 (f) supplies; or
- 2072 (g) medicine.

2073 (75) (a) "Health care insurance" or "health insurance" means insurance providing:

- 2074 (i) a health care benefit; or
- 2075 (ii) payment of an incurred health care expense.
- 2076 (b) "Health care insurance" or "health insurance" does not include accident and health
- 2077 insurance providing a benefit for:
 - 2078 (i) replacement of income;
 - 2079 (ii) short-term accident;
 - 2080 (iii) fixed indemnity;
 - 2081 (iv) credit accident and health;
 - 2082 (v) supplements to liability;
 - 2083 (vi) workers' compensation;
 - 2084 (vii) automobile medical payment;
 - 2085 (viii) no-fault automobile;
 - 2086 (ix) equivalent self-insurance; or
 - 2087 (x) a type of accident and health insurance coverage that is a part of or attached to
 - 2088 another type of policy.
- 2089 (76) "Income replacement insurance" or "disability income insurance" means insurance
- 2090 written to provide payments to replace income lost from accident or sickness.
- 2091 (77) "Indemnity" means the payment of an amount to offset all or part of an insured
- 2092 loss.
- 2093 (78) "Independent adjuster" means an insurance adjuster required to be licensed under
- 2094 Section 31A-26-201 who engages in insurance adjusting as a representative of an insurer.
- 2095 (79) "Independently procured insurance" means insurance procured under Section
- 2096 31A-15-104.
- 2097 (80) "Individual" means a natural person.
- 2098 (81) "Inland marine insurance" includes insurance covering:
 - 2099 (a) property in transit on or over land;
 - 2100 (b) property in transit over water by means other than boat or ship;
 - 2101 (c) bailee liability;

2102 (d) fixed transportation property such as bridges, electric transmission systems, radio
2103 and television transmission towers and tunnels; and

2104 (e) personal and commercial property floaters.

2105 (82) "Insolvency" means that:

2106 (a) an insurer is unable to pay its debts or meet its obligations as the debts and
2107 obligations mature;

2108 (b) an insurer's total adjusted capital is less than the insurer's mandatory control level
2109 RBC under Subsection 31A-17-601(8)(c); or

2110 (c) an insurer is determined to be hazardous under this title.

2111 (83) (a) "Insurance" means:

2112 (i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more
2113 persons to one or more other persons; or

2114 (ii) an arrangement, contract, or plan for the distribution of a risk or risks among a
2115 group of persons that includes the person seeking to distribute that person's risk.

2116 (b) "Insurance" includes:

2117 (i) a risk distributing arrangement providing for compensation or replacement for
2118 damages or loss through the provision of a service or a benefit in kind;

2119 (ii) a contract of guaranty or suretyship entered into by the guarantor or surety as a
2120 business and not as merely incidental to a business transaction; and

2121 (iii) a plan in which the risk does not rest upon the person who makes an arrangement,
2122 but with a class of persons who have agreed to share the risk.

2123 (84) "Insurance adjuster" means a person who directs the investigation, negotiation, or
2124 settlement of a claim under an insurance policy other than life insurance or an annuity, on
2125 behalf of an insurer, policyholder, or a claimant under an insurance policy.

2126 (85) "Insurance business" or "business of insurance" includes:

2127 (a) providing health care insurance by an organization that is or is required to be
2128 licensed under this title;

2129 (b) providing a benefit to an employee in the event of a contingency not within the

2130 control of the employee, in which the employee is entitled to the benefit as a right, which
2131 benefit may be provided either:

- 2132 (i) by a single employer or by multiple employer groups; or
- 2133 (ii) through one or more trusts, associations, or other entities;
- 2134 (c) providing an annuity:
 - 2135 (i) including an annuity issued in return for a gift; and
 - 2136 (ii) except an annuity provided by a person specified in Subsections 31A-22-1305(2)
- 2137 and (3);
- 2138 (d) providing the characteristic services of a motor club as outlined in Subsection
- 2139 (113);
- 2140 (e) providing another person with insurance;
- 2141 (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor,
- 2142 or surety, a contract or policy of title insurance;
- 2143 (g) transacting or proposing to transact any phase of title insurance, including:
 - 2144 (i) solicitation;
 - 2145 (ii) negotiation preliminary to execution;
 - 2146 (iii) execution of a contract of title insurance;
 - 2147 (iv) insuring;
 - 2148 (v) transacting matters subsequent to the execution of the contract and arising out of
 - 2149 the contract, including reinsurance; and
 - 2150 (vi) transacting or proposing a life settlement; and
 - 2151 (h) doing, or proposing to do, any business in substance equivalent to Subsections
 - 2152 (85)(a) through (g) in a manner designed to evade this title.
- 2153 (86) "Insurance consultant" or "consultant" means a person who:
 - 2154 (a) advises another person about insurance needs and coverages;
 - 2155 (b) is compensated by the person advised on a basis not directly related to the insurance
 - 2156 placed; and
 - 2157 (c) except as provided in Section 31A-23a-501, is not compensated directly or

2158 indirectly by an insurer or producer for advice given.

2159 (87) "Insurance holding company system" means a group of two or more affiliated
2160 persons, at least one of whom is an insurer.

2161 (88) (a) "Insurance producer" or "producer" means a person licensed or required to be
2162 licensed under the laws of this state to sell, solicit, or negotiate insurance.

2163 (b) With regards to the selling, soliciting, or negotiating of an insurance product to an
2164 insurance customer or an insured:

2165 (i) "producer for the insurer" means a producer who is compensated directly or
2166 indirectly by an insurer for selling, soliciting, or negotiating a product of that insurer; and

2167 (ii) "producer for the insured" means a producer who:

2168 (A) is compensated directly and only by an insurance customer or an insured; and

2169 (B) receives no compensation directly or indirectly from an insurer for selling,
2170 soliciting, or negotiating a product of that insurer to an insurance customer or insured.

2171 (89) (a) "Insured" means a person to whom or for whose benefit an insurer makes a
2172 promise in an insurance policy and includes:

2173 (i) a policyholder;

2174 (ii) a subscriber;

2175 (iii) a member; and

2176 (iv) a beneficiary.

2177 (b) The definition in Subsection (89)(a):

2178 (i) applies only to this title; and

2179 (ii) does not define the meaning of this word as used in an insurance policy or
2180 certificate.

2181 (90) (a) "Insurer" means a person doing an insurance business as a principal including:

2182 (i) a fraternal benefit society;

2183 (ii) an issuer of a gift annuity other than an annuity specified in Subsections
2184 31A-22-1305(2) and (3);

2185 (iii) a motor club;

- 2186 (iv) an employee welfare plan; and
- 2187 (v) a person purporting or intending to do an insurance business as a principal on that
- 2188 person's own account.
- 2189 (b) "Insurer" does not include a governmental entity to the extent the governmental
- 2190 entity is engaged in an activity described in Section 31A-12-107.
- 2191 (91) "Interinsurance exchange" is defined in Subsection (142).
- 2192 (92) "Involuntary unemployment insurance" means insurance:
- 2193 (a) offered in connection with an extension of credit; and
- 2194 (b) that provides indemnity if the debtor is involuntarily unemployed for payments
- 2195 coming due on a:
- 2196 (i) specific loan; or
- 2197 (ii) credit transaction.
- 2198 (93) "Large employer," in connection with a health benefit plan, means an employer
- 2199 who, with respect to a calendar year and to a plan year:
- 2200 (a) employed an average of at least 51 eligible employees on each business day during
- 2201 the preceding calendar year; and
- 2202 (b) employs at least two employees on the first day of the plan year.
- 2203 (94) "Late enrollee," with respect to an employer health benefit plan, means an
- 2204 individual whose enrollment is a late enrollment.
- 2205 (95) "Late enrollment," with respect to an employer health benefit plan, means
- 2206 enrollment of an individual other than:
- 2207 (a) on the earliest date on which coverage can become effective for the individual
- 2208 under the terms of the plan; or
- 2209 (b) through special enrollment.
- 2210 (96) (a) Except for a retainer contract or legal assistance described in Section
- 2211 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for a
- 2212 specified legal expense.
- 2213 (b) "Legal expense insurance" includes an arrangement that creates a reasonable

2214 expectation of an enforceable right.

2215 (c) "Legal expense insurance" does not include the provision of, or reimbursement for,
2216 legal services incidental to other insurance coverage.

2217 (97) (a) "Liability insurance" means insurance against liability:

2218 (i) for death, injury, or disability of a human being, or for damage to property,
2219 exclusive of the coverages under:

2220 (A) Subsection (107) for medical malpractice insurance;

2221 (B) Subsection (134) for professional liability insurance; and

2222 (C) Subsection (168) for workers' compensation insurance;

2223 (ii) for a medical, hospital, surgical, and funeral benefit to a person other than the
2224 insured who is injured, irrespective of legal liability of the insured, when issued with or
2225 supplemental to insurance against legal liability for the death, injury, or disability of a human
2226 being, exclusive of the coverages under:

2227 (A) Subsection (107) for medical malpractice insurance;

2228 (B) Subsection (134) for professional liability insurance; and

2229 (C) Subsection (168) for workers' compensation insurance;

2230 (iii) for loss or damage to property resulting from an accident to or explosion of a
2231 boiler, pipe, pressure container, machinery, or apparatus;

2232 (iv) for loss or damage to property caused by:

2233 (A) the breakage or leakage of a sprinkler, water pipe, or water container; or

2234 (B) water entering through a leak or opening in a building; or

2235 (v) for other loss or damage properly the subject of insurance not within another kind
2236 of insurance as defined in this chapter, if the insurance is not contrary to law or public policy.

2237 (b) "Liability insurance" includes:

2238 (i) vehicle liability insurance;

2239 (ii) residential dwelling liability insurance; and

2240 (iii) making inspection of, and issuing a certificate of inspection upon, an elevator,
2241 boiler, machinery, or apparatus of any kind when done in connection with insurance on the

2242 elevator, boiler, machinery, or apparatus.

2243 (98) (a) "License" means authorization issued by the commissioner to engage in an
2244 activity that is part of or related to the insurance business.

2245 (b) "License" includes a certificate of authority issued to an insurer.

2246 (99) (a) "Life insurance" means:

2247 (i) insurance on a human life; and

2248 (ii) insurance pertaining to or connected with human life.

2249 (b) The business of life insurance includes:

2250 (i) granting a death benefit;

2251 (ii) granting an annuity benefit;

2252 (iii) granting an endowment benefit;

2253 (iv) granting an additional benefit in the event of death by accident;

2254 (v) granting an additional benefit to safeguard the policy against lapse; and

2255 (vi) providing an optional method of settlement of proceeds.

2256 (100) "Limited license" means a license that:

2257 (a) is issued for a specific product of insurance; and

2258 (b) limits an individual or agency to transact only for that product or insurance.

2259 (101) "Limited line credit insurance" includes the following forms of insurance:

2260 (a) credit life;

2261 (b) credit accident and health;

2262 (c) credit property;

2263 (d) credit unemployment;

2264 (e) involuntary unemployment;

2265 (f) mortgage life;

2266 (g) mortgage guaranty;

2267 (h) mortgage accident and health;

2268 (i) guaranteed automobile protection; and

2269 (j) another form of insurance offered in connection with an extension of credit that:

2270 (i) is limited to partially or wholly extinguishing the credit obligation; and
2271 (ii) the commissioner determines by rule should be designated as a form of limited line
2272 credit insurance.

2273 (102) "Limited line credit insurance producer" means a person who sells, solicits, or
2274 negotiates one or more forms of limited line credit insurance coverage to an individual through
2275 a master, corporate, group, or individual policy.

2276 (103) "Limited line insurance" includes:

- 2277 (a) bail bond;
- 2278 (b) limited line credit insurance;
- 2279 (c) legal expense insurance;
- 2280 (d) motor club insurance;
- 2281 (e) rental car-related insurance;
- 2282 (f) travel insurance;
- 2283 (g) crop insurance;
- 2284 (h) self-service storage insurance; and

2285 (i) another form of limited insurance that the commissioner determines by rule should
2286 be designated a form of limited line insurance.

2287 (104) "Limited lines authority" includes:

- 2288 (a) the lines of insurance listed in Subsection (103); and
- 2289 (b) a customer service representative.

2290 (105) "Limited lines producer" means a person who sells, solicits, or negotiates limited
2291 lines insurance.

2292 (106) (a) "Long-term care insurance" means an insurance policy or rider advertised,
2293 marketed, offered, or designated to provide coverage:

- 2294 (i) in a setting other than an acute care unit of a hospital;
- 2295 (ii) for not less than 12 consecutive months for a covered person on the basis of:
 - 2296 (A) expenses incurred;
 - 2297 (B) indemnity;

- 2298 (C) prepayment; or
- 2299 (D) another method;
- 2300 (iii) for one or more necessary or medically necessary services that are:
- 2301 (A) diagnostic;
- 2302 (B) preventative;
- 2303 (C) therapeutic;
- 2304 (D) rehabilitative;
- 2305 (E) maintenance; or
- 2306 (F) personal care; and
- 2307 (iv) that may be issued by:
- 2308 (A) an insurer;
- 2309 (B) a fraternal benefit society;
- 2310 (C) (I) a nonprofit health hospital; and
- 2311 (II) a medical service corporation;
- 2312 (D) a prepaid health plan;
- 2313 (E) a health maintenance organization; or
- 2314 (F) an entity similar to the entities described in Subsections (106)(a)(iv)(A) through (E)
- 2315 to the extent that the entity is otherwise authorized to issue life or health care insurance.
- 2316 (b) "Long-term care insurance" includes:
- 2317 (i) any of the following that provide directly or supplement long-term care insurance:
- 2318 (A) a group or individual annuity or rider; or
- 2319 (B) a life insurance policy or rider;
- 2320 (ii) a policy or rider that provides for payment of benefits on the basis of:
- 2321 (A) cognitive impairment; or
- 2322 (B) functional capacity; or
- 2323 (iii) a qualified long-term care insurance contract.
- 2324 (c) "Long-term care insurance" does not include:
- 2325 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;

- 2326 (ii) basic hospital expense coverage;
- 2327 (iii) basic medical/surgical expense coverage;
- 2328 (iv) hospital confinement indemnity coverage;
- 2329 (v) major medical expense coverage;
- 2330 (vi) income replacement or related asset-protection coverage;
- 2331 (vii) accident only coverage;
- 2332 (viii) coverage for a specified:
 - 2333 (A) disease; or
 - 2334 (B) accident;
- 2335 (ix) limited benefit health coverage; or
- 2336 (x) a life insurance policy that accelerates the death benefit to provide the option of a
2337 lump sum payment:
 - 2338 (A) if the following are not conditioned on the receipt of long-term care:
 - 2339 (I) benefits; or
 - 2340 (II) eligibility; and
 - 2341 (B) the coverage is for one or more the following qualifying events:
 - 2342 (I) terminal illness;
 - 2343 (II) medical conditions requiring extraordinary medical intervention; or
 - 2344 (III) permanent institutional confinement.
- 2345 (107) "Medical malpractice insurance" means insurance against legal liability incident
2346 to the practice and provision of a medical service other than the practice and provision of a
2347 dental service.
- 2348 (108) "Member" means a person having membership rights in an insurance
2349 corporation.
- 2350 (109) "Minimum capital" or "minimum required capital" means the capital that must be
2351 constantly maintained by a stock insurance corporation as required by statute.
- 2352 (110) "Mortgage accident and health insurance" means insurance offered in connection
2353 with an extension of credit that provides indemnity for payments coming due on a mortgage

2354 while the debtor [~~is disabled~~] has a disability.

2355 (111) "Mortgage guaranty insurance" means surety insurance under which a mortgagee
2356 or other creditor is indemnified against losses caused by the default of a debtor.

2357 (112) "Mortgage life insurance" means insurance on the life of a debtor in connection
2358 with an extension of credit that pays if the debtor dies.

2359 (113) "Motor club" means a person:

2360 (a) licensed under:

2361 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

2362 (ii) Chapter 11, Motor Clubs; or

2363 (iii) Chapter 14, Foreign Insurers; and

2364 (b) that promises for an advance consideration to provide for a stated period of time
2365 one or more:

2366 (i) legal services under Subsection 31A-11-102(1)(b);

2367 (ii) bail services under Subsection 31A-11-102(1)(c); or

2368 (iii) (A) trip reimbursement;

2369 (B) towing services;

2370 (C) emergency road services;

2371 (D) stolen automobile services;

2372 (E) a combination of the services listed in Subsections (113)(b)(iii)(A) through (D); or

2373 (F) other services given in Subsections 31A-11-102(1)(b) through (f).

2374 (114) "Mutual" means a mutual insurance corporation.

2375 (115) "Network plan" means health care insurance:

2376 (a) that is issued by an insurer; and

2377 (b) under which the financing and delivery of medical care is provided, in whole or in
2378 part, through a defined set of providers under contract with the insurer, including the financing
2379 and delivery of an item paid for as medical care.

2380 (116) "Nonparticipating" means a plan of insurance under which the insured is not
2381 entitled to receive a dividend representing a share of the surplus of the insurer.

- 2382 (117) "Ocean marine insurance" means insurance against loss of or damage to:
2383 (a) ships or hulls of ships;
2384 (b) goods, freight, cargoes, merchandise, effects, disbursements, profits, money,
2385 securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia
2386 interests, or other cargoes in or awaiting transit over the oceans or inland waterways;
2387 (c) earnings such as freight, passage money, commissions, or profits derived from
2388 transporting goods or people upon or across the oceans or inland waterways; or
2389 (d) a vessel owner or operator as a result of liability to employees, passengers, bailors,
2390 owners of other vessels, owners of fixed objects, customs or other authorities, or other persons
2391 in connection with maritime activity.
- 2392 (118) "Order" means an order of the commissioner.
- 2393 (119) "Outline of coverage" means a summary that explains an accident and health
2394 insurance policy.
- 2395 (120) "Participating" means a plan of insurance under which the insured is entitled to
2396 receive a dividend representing a share of the surplus of the insurer.
- 2397 (121) "Participation," as used in a health benefit plan, means a requirement relating to
2398 the minimum percentage of eligible employees that must be enrolled in relation to the total
2399 number of eligible employees of an employer reduced by each eligible employee who
2400 voluntarily declines coverage under the plan because the employee:
2401 (a) has other group health care insurance coverage; or
2402 (b) receives:
2403 (i) Medicare, under the Health Insurance for the Aged Act, Title XVIII of the Social
2404 Security Amendments of 1965; or
2405 (ii) another government health benefit.
- 2406 (122) "Person" includes:
2407 (a) an individual;
2408 (b) a partnership;
2409 (c) a corporation;

- 2410 (d) an incorporated or unincorporated association;
- 2411 (e) a joint stock company;
- 2412 (f) a trust;
- 2413 (g) a limited liability company;
- 2414 (h) a reciprocal;
- 2415 (i) a syndicate; or
- 2416 (j) another similar entity or combination of entities acting in concert.
- 2417 (123) "Personal lines insurance" means property and casualty insurance coverage sold
- 2418 for primarily noncommercial purposes to:
 - 2419 (a) an individual; or
 - 2420 (b) a family.
- 2421 (124) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).
- 2422 (125) "Plan year" means:
 - 2423 (a) the year that is designated as the plan year in:
 - 2424 (i) the plan document of a group health plan; or
 - 2425 (ii) a summary plan description of a group health plan;
 - 2426 (b) if the plan document or summary plan description does not designate a plan year or
 - 2427 there is no plan document or summary plan description:
 - 2428 (i) the year used to determine deductibles or limits;
 - 2429 (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis;
- 2430 or
 - 2431 (iii) the employer's taxable year if:
 - 2432 (A) the plan does not impose deductibles or limits on a yearly basis; and
 - 2433 (B) (I) the plan is not insured; or
 - 2434 (II) the insurance policy is not renewed on an annual basis; or
 - 2435 (c) in a case not described in Subsection (125)(a) or (b), the calendar year.
- 2436 (126) (a) "Policy" means a document, including an attached endorsement or application
- 2437 that:

- 2438 (i) purports to be an enforceable contract; and
- 2439 (ii) memorializes in writing some or all of the terms of an insurance contract.
- 2440 (b) "Policy" includes a service contract issued by:
- 2441 (i) a motor club under Chapter 11, Motor Clubs;
- 2442 (ii) a service contract provided under Chapter 6a, Service Contracts; and
- 2443 (iii) a corporation licensed under:
- 2444 (A) Chapter 7, Nonprofit Health Service Insurance Corporations; or
- 2445 (B) Chapter 8, Health Maintenance Organizations and Limited Health Plans.
- 2446 (c) "Policy" does not include:
- 2447 (i) a certificate under a group insurance contract; or
- 2448 (ii) a document that does not purport to have legal effect.
- 2449 (127) "Policyholder" means a person who controls a policy, binder, or oral contract by
- 2450 ownership, premium payment, or otherwise.
- 2451 (128) "Policy illustration" means a presentation or depiction that includes
- 2452 nonguaranteed elements of a policy of life insurance over a period of years.
- 2453 (129) "Policy summary" means a synopsis describing the elements of a life insurance
- 2454 policy.
- 2455 (130) "Preexisting condition," with respect to a health benefit plan:
- 2456 (a) means a condition that was present before the effective date of coverage, whether or
- 2457 not medical advice, diagnosis, care, or treatment was recommended or received before that day;
- 2458 and
- 2459 (b) does not include a condition indicated by genetic information unless an actual
- 2460 diagnosis of the condition by a physician has been made.
- 2461 (131) (a) "Premium" means the monetary consideration for an insurance policy.
- 2462 (b) "Premium" includes, however designated:
- 2463 (i) an assessment;
- 2464 (ii) a membership fee;
- 2465 (iii) a required contribution; or

2466 (iv) monetary consideration.

2467 (c) (i) "Premium" does not include consideration paid to a third party administrator for
2468 the third party administrator's services.

2469 (ii) "Premium" includes an amount paid by a third party administrator to an insurer for
2470 insurance on the risks administered by the third party administrator.

2471 (132) "Principal officers" for a corporation means the officers designated under
2472 Subsection 31A-5-203(3).

2473 (133) "Proceeding" includes an action or special statutory proceeding.

2474 (134) "Professional liability insurance" means insurance against legal liability incident
2475 to the practice of a profession and provision of a professional service.

2476 (135) (a) Except as provided in Subsection (135)(b), "property insurance" means
2477 insurance against loss or damage to real or personal property of every kind and any interest in
2478 that property:

2479 (i) from all hazards or causes; and

2480 (ii) against loss consequential upon the loss or damage including vehicle
2481 comprehensive and vehicle physical damage coverages.

2482 (b) "Property insurance" does not include:

2483 (i) inland marine insurance; and

2484 (ii) ocean marine insurance.

2485 (136) "Qualified long-term care insurance contract" or "federally tax qualified
2486 long-term care insurance contract" means:

2487 (a) an individual or group insurance contract that meets the requirements of Section
2488 7702B(b), Internal Revenue Code; or

2489 (b) the portion of a life insurance contract that provides long-term care insurance:

2490 (i) (A) by rider; or

2491 (B) as a part of the contract; and

2492 (ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue
2493 Code.

- 2494 (137) "Qualified United States financial institution" means an institution that:
- 2495 (a) is:
- 2496 (i) organized under the laws of the United States or any state; or
- 2497 (ii) in the case of a United States office of a foreign banking organization, licensed
- 2498 under the laws of the United States or any state;
- 2499 (b) is regulated, supervised, and examined by a United States federal or state authority
- 2500 having regulatory authority over a bank or trust company; and
- 2501 (c) meets the standards of financial condition and standing that are considered
- 2502 necessary and appropriate to regulate the quality of a financial institution whose letters of credit
- 2503 will be acceptable to the commissioner as determined by:
- 2504 (i) the commissioner by rule; or
- 2505 (ii) the Securities Valuation Office of the National Association of Insurance
- 2506 Commissioners.
- 2507 (138) (a) "Rate" means:
- 2508 (i) the cost of a given unit of insurance; or
- 2509 (ii) for property or casualty insurance, that cost of insurance per exposure unit either
- 2510 expressed as:
- 2511 (A) a single number; or
- 2512 (B) a pure premium rate, adjusted before the application of individual risk variations
- 2513 based on loss or expense considerations to account for the treatment of:
- 2514 (I) expenses;
- 2515 (II) profit; and
- 2516 (III) individual insurer variation in loss experience.
- 2517 (b) "Rate" does not include a minimum premium.
- 2518 (139) (a) Except as provided in Subsection (139)(b), "rate service organization" means
- 2519 a person who assists an insurer in rate making or filing by:
- 2520 (i) collecting, compiling, and furnishing loss or expense statistics;
- 2521 (ii) recommending, making, or filing rates or supplementary rate information; or

- 2522 (iii) advising about rate questions, except as an attorney giving legal advice.
- 2523 (b) "Rate service organization" does not mean:
- 2524 (i) an employee of an insurer;
- 2525 (ii) a single insurer or group of insurers under common control;
- 2526 (iii) a joint underwriting group; or
- 2527 (iv) an individual serving as an actuarial or legal consultant.
- 2528 (140) "Rating manual" means any of the following used to determine initial and
- 2529 renewal policy premiums:
- 2530 (a) a manual of rates;
- 2531 (b) a classification;
- 2532 (c) a rate-related underwriting rule; and
- 2533 (d) a rating formula that describes steps, policies, and procedures for determining
- 2534 initial and renewal policy premiums.
- 2535 (141) "Received by the department" means:
- 2536 (a) the date delivered to and stamped received by the department, if delivered in
- 2537 person;
- 2538 (b) the post mark date, if delivered by mail;
- 2539 (c) the delivery service's post mark or pickup date, if delivered by a delivery service;
- 2540 (d) the received date recorded on an item delivered, if delivered by:
- 2541 (i) facsimile;
- 2542 (ii) email; or
- 2543 (iii) another electronic method; or
- 2544 (e) a date specified in:
- 2545 (i) a statute;
- 2546 (ii) a rule; or
- 2547 (iii) an order.
- 2548 (142) "Reciprocal" or "interinsurance exchange" means an unincorporated association
- 2549 of persons:

2550 (a) operating through an attorney-in-fact common to all of the persons; and
2551 (b) exchanging insurance contracts with one another that provide insurance coverage
2552 on each other.

2553 (143) "Reinsurance" means an insurance transaction where an insurer, for
2554 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to
2555 reinsurance transactions, this title sometimes refers to:

- 2556 (a) the insurer transferring the risk as the "ceding insurer"; and
- 2557 (b) the insurer assuming the risk as the:
 - 2558 (i) "assuming insurer"; or
 - 2559 (ii) "assuming reinsurer."

2560 (144) "Reinsurer" means a person licensed in this state as an insurer with the authority
2561 to assume reinsurance.

2562 (145) "Residential dwelling liability insurance" means insurance against liability
2563 resulting from or incident to the ownership, maintenance, or use of a residential dwelling that is
2564 a detached single family residence or multifamily residence up to four units.

2565 (146) (a) "Retrocession" means reinsurance with another insurer of a liability assumed
2566 under a reinsurance contract.

2567 (b) A reinsurer "retrocedes" when the reinsurer reinsures with another insurer part of a
2568 liability assumed under a reinsurance contract.

2569 (147) "Rider" means an endorsement to:

- 2570 (a) an insurance policy; or
- 2571 (b) an insurance certificate.

2572 (148) (a) "Security" means a:

- 2573 (i) note;
- 2574 (ii) stock;
- 2575 (iii) bond;
- 2576 (iv) debenture;
- 2577 (v) evidence of indebtedness;

- 2578 (vi) certificate of interest or participation in a profit-sharing agreement;
- 2579 (vii) collateral-trust certificate;
- 2580 (viii) preorganization certificate or subscription;
- 2581 (ix) transferable share;
- 2582 (x) investment contract;
- 2583 (xi) voting trust certificate;
- 2584 (xii) certificate of deposit for a security;
- 2585 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
- 2586 payments out of production under such a title or lease;
- 2587 (xiv) commodity contract or commodity option;
- 2588 (xv) certificate of interest or participation in, temporary or interim certificate for,
- 2589 receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed
- 2590 in Subsections (148)(a)(i) through (xiv); or
- 2591 (xvi) another interest or instrument commonly known as a security.
- 2592 (b) "Security" does not include:
- 2593 (i) any of the following under which an insurance company promises to pay money in a
- 2594 specific lump sum or periodically for life or some other specified period:
- 2595 (A) insurance;
- 2596 (B) an endowment policy; or
- 2597 (C) an annuity contract; or
- 2598 (ii) a burial certificate or burial contract.
- 2599 (149) "Secondary medical condition" means a complication related to an exclusion
- 2600 from coverage in accident and health insurance.
- 2601 (150) "Self-insurance" means an arrangement under which a person provides for
- 2602 spreading its own risks by a systematic plan.
- 2603 (a) Except as provided in this Subsection (150), "self-insurance" does not include an
- 2604 arrangement under which a number of persons spread their risks among themselves.
- 2605 (b) "Self-insurance" includes:

- 2606 (i) an arrangement by which a governmental entity undertakes to indemnify an
2607 employee for liability arising out of the employee's employment; and
- 2608 (ii) an arrangement by which a person with a managed program of self-insurance and
2609 risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or
2610 employees for liability or risk that is related to the relationship or employment.
- 2611 (c) "Self-insurance" does not include an arrangement with an independent contractor.
- 2612 (151) "Sell" means to exchange a contract of insurance:
- 2613 (a) by any means;
- 2614 (b) for money or its equivalent; and
- 2615 (c) on behalf of an insurance company.
- 2616 (152) "Short-term care insurance" means an insurance policy or rider advertised,
2617 marketed, offered, or designed to provide coverage that is similar to long-term care insurance,
2618 but that provides coverage for less than 12 consecutive months for each covered person.
- 2619 (153) "Significant break in coverage" means a period of 63 consecutive days during
2620 each of which an individual does not have creditable coverage.
- 2621 (154) "Small employer," in connection with a health benefit plan, means an employer
2622 who, with respect to a calendar year and to a plan year:
- 2623 (a) employed an average of at least two employees but not more than 50 eligible
2624 employees on each business day during the preceding calendar year; and
- 2625 (b) employs at least two employees on the first day of the plan year.
- 2626 (155) "Special enrollment period," in connection with a health benefit plan, has the
2627 same meaning as provided in federal regulations adopted pursuant to the Health Insurance
2628 Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936.
- 2629 (156) (a) "Subsidiary" of a person means an affiliate controlled by that person either
2630 directly or indirectly through one or more affiliates or intermediaries.
- 2631 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting
2632 shares are owned by that person either alone or with its affiliates, except for the minimum
2633 number of shares the law of the subsidiary's domicile requires to be owned by directors or

2634 others.

2635 (157) Subject to Subsection (83)(b), "surety insurance" includes:

2636 (a) a guarantee against loss or damage resulting from the failure of a principal to pay or

2637 perform the principal's obligations to a creditor or other obligee;

2638 (b) bail bond insurance; and

2639 (c) fidelity insurance.

2640 (158) (a) "Surplus" means the excess of assets over the sum of paid-in capital and

2641 liabilities.

2642 (b) (i) "Permanent surplus" means the surplus of a mutual insurer that is designated by

2643 the insurer as permanent.

2644 (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-209 require

2645 that mutuals doing business in this state maintain specified minimum levels of permanent

2646 surplus.

2647 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is the

2648 same as the minimum required capital requirement that applies to stock insurers.

2649 (c) "Excess surplus" means:

2650 (i) for a life insurer, accident and health insurer, health organization, or property and

2651 casualty insurer as defined in Section 31A-17-601, the lesser of:

2652 (A) that amount of an insurer's or health organization's total adjusted capital that

2653 exceeds the product of:

2654 (I) 2.5; and

2655 (II) the sum of the insurer's or health organization's minimum capital or permanent

2656 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

2657 (B) that amount of an insurer's or health organization's total adjusted capital that

2658 exceeds the product of:

2659 (I) 3.0; and

2660 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

2661 (ii) for a monoline mortgage guaranty insurer, financial guaranty insurer, or title insurer

2662 that amount of an insurer's paid-in-capital and surplus that exceeds the product of:
2663 (A) 1.5; and
2664 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).
2665 (159) "Third party administrator" or "administrator" means a person who collects
2666 charges or premiums from, or who, for consideration, adjusts or settles claims of residents of
2667 the state in connection with insurance coverage, annuities, or service insurance coverage,
2668 except:
2669 (a) a union on behalf of its members;
2670 (b) a person administering a:
2671 (i) pension plan subject to the federal Employee Retirement Income Security Act of
2672 1974;
2673 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or
2674 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;
2675 (c) an employer on behalf of the employer's employees or the employees of one or
2676 more of the subsidiary or affiliated corporations of the employer;
2677 (d) an insurer licensed under Chapter 5, 7, 8, 9, or 14, but only for a line of insurance
2678 for which the insurer holds a license in this state; or
2679 (e) a person:
2680 (i) licensed or exempt from licensing under:
2681 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
2682 Reinsurance Intermediaries; or
2683 (B) Chapter 26, Insurance Adjusters; and
2684 (ii) whose activities are limited to those authorized under the license the person holds
2685 or for which the person is exempt.
2686 (160) "Title insurance" means the insuring, guaranteeing, or indemnifying of an owner
2687 of real or personal property or the holder of liens or encumbrances on that property, or others
2688 interested in the property against loss or damage suffered by reason of liens or encumbrances
2689 upon, defects in, or the unmarketability of the title to the property, or invalidity or

2690 unenforceability of any liens or encumbrances on the property.

2691 (161) "Total adjusted capital" means the sum of an insurer's or health organization's
2692 statutory capital and surplus as determined in accordance with:

2693 (a) the statutory accounting applicable to the annual financial statements required to be
2694 filed under Section 31A-4-113; and

2695 (b) another item provided by the RBC instructions, as RBC instructions is defined in
2696 Section 31A-17-601.

2697 (162) (a) "Trustee" means "director" when referring to the board of directors of a
2698 corporation.

2699 (b) "Trustee," when used in reference to an employee welfare fund, means an
2700 individual, firm, association, organization, joint stock company, or corporation, whether acting
2701 individually or jointly and whether designated by that name or any other, that is charged with
2702 or has the overall management of an employee welfare fund.

2703 (163) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer"
2704 means an insurer:

2705 (i) not holding a valid certificate of authority to do an insurance business in this state;

2706 or

2707 (ii) transacting business not authorized by a valid certificate.

2708 (b) "Admitted insurer" or "authorized insurer" means an insurer:

2709 (i) holding a valid certificate of authority to do an insurance business in this state; and

2710 (ii) transacting business as authorized by a valid certificate.

2711 (164) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

2712 (165) "Vehicle liability insurance" means insurance against liability resulting from or
2713 incident to ownership, maintenance, or use of a land vehicle or aircraft, exclusive of a vehicle
2714 comprehensive or vehicle physical damage coverage under Subsection (135).

2715 (166) "Voting security" means a security with voting rights, and includes a security
2716 convertible into a security with a voting right associated with the security.

2717 (167) "Waiting period" for a health benefit plan means the period that must pass before

2718 coverage for an individual, who is otherwise eligible to enroll under the terms of the health
2719 benefit plan, can become effective.

2720 (168) "Workers' compensation insurance" means:

2721 (a) insurance for indemnification of an employer against liability for compensation
2722 based on:

2723 (i) a compensable accidental injury; and

2724 (ii) occupational disease disability;

2725 (b) employer's liability insurance incidental to workers' compensation insurance and
2726 written in connection with workers' compensation insurance; and

2727 (c) insurance assuring to a person entitled to workers' compensation benefits the
2728 compensation provided by law.

2729 Section 36. Section **31A-22-611** is amended to read:

2730 **31A-22-611. Coverage for children with a disability.**

2731 (1) For the purposes of this section:

2732 (a) [~~"Disabled dependent"~~] "Dependent with a disability" means a child who is and
2733 continues to be both:

2734 (i) unable to engage in substantial gainful employment to the degree that the child can
2735 achieve economic independence due to a medically determinable physical or mental
2736 impairment which can be expected to result in death, or which has lasted or can be expected to
2737 last for a continuous period of not less than 12 months; and

2738 (ii) chiefly dependent upon an insured for support and maintenance since the child
2739 reached the age specified in Subsection 31A-22-610.5(2).

2740 [~~(e)~~] (b) "Mental impairment" means a mental or psychological disorder such as:

2741 (i) [~~mental retardation~~] an intellectual disability;

2742 (ii) organic brain syndrome;

2743 (iii) emotional or mental illness; or

2744 (iv) specific learning disabilities as determined by the insurer.

2745 [~~(b)~~] (c) "Physical impairment" means a physiological disorder, condition, or

2746 disfigurement, or anatomical loss affecting one or more of the following body systems:

- 2747 (i) neurological;
- 2748 (ii) musculoskeletal;
- 2749 (iii) special sense organs;
- 2750 (iv) respiratory organs;
- 2751 (v) speech organs;
- 2752 (vi) cardiovascular;
- 2753 (vii) reproductive;
- 2754 (viii) digestive;
- 2755 (ix) genito-urinary;
- 2756 (x) hemic and lymphatic;
- 2757 (xi) skin; or
- 2758 (xii) endocrine.

2759 (2) The insurer may require proof of the incapacity and dependency be furnished by the
2760 person insured under the policy within 30 days of the effective date or the date the child attains
2761 the age specified in Subsection 31A-22-610.5(2), and at any time thereafter, except that the
2762 insurer may not require proof more often than annually after the two-year period immediately
2763 following attainment of the limiting age by the ~~[disabled]~~ dependent with a disability.

2764 (3) Any individual or group accident and health insurance policy or health maintenance
2765 organization contract that provides coverage for a policyholder's or certificate holder's
2766 dependent shall, upon application, provide coverage for all unmarried ~~[disabled]~~ dependents
2767 with a disability who have been continuously covered, with no break of more than 63 days,
2768 under any accident and health insurance since the age specified in Subsection 31A-22-610.5(2).

2769 (4) Every accident and health insurance policy or contract that provides coverage of a
2770 ~~[disabled]~~ dependent with a disability shall not terminate the policy due to an age limitation.

2771 Section 37. Section **31A-22-614** is amended to read:

2772 **31A-22-614. Claims under accident and health policies.**

2773 (1) Section 31A-21-312 applies generally to claims under accident and health policies.

2774 (2) (a) Subject to Subsection (1), an accident and health insurance policy may not
2775 contain a claim notice requirement less favorable to the insured than one which requires written
2776 notice of the claim within 20 days after the occurrence or commencement of any loss covered
2777 by the policy. The policy shall specify to whom claim notices may be given.

2778 (b) If a loss of time benefit under a policy may be paid for a period of at least two
2779 years, an insurer may require periodic notices that the insured continues to [~~be disabled~~] have a
2780 disability, unless the insured is legally incapacitated. The insured's delay in giving that notice
2781 does not impair the insured's or beneficiary's right to any indemnity which would otherwise
2782 have accrued during the six months preceding the date on which that notice is actually given.

2783 (3) An accident and health insurance policy may not contain a time limit on proof of
2784 loss which is more restrictive to the insured than a provision requiring written proof of loss,
2785 delivered to the insurer, within the following time:

2786 (a) for a claim where periodic payments are contingent upon continuing loss, within 90
2787 days after the termination of the period for which the insurer is liable; or

2788 (b) for any other claim, within 90 days after the date of the loss.

2789 (4) (a) (i) Section 31A-26-301 applies generally to the payment of claims.

2790 (ii) Indemnity for loss of life is paid in accordance with the beneficiary designation
2791 effective at the time of payment. If no valid beneficiary designation exists, the indemnity is
2792 paid to the insured's estate. Any other accrued indemnities unpaid at the insured's death are
2793 paid to the insured's estate.

2794 (b) Reasonable facility of payment clauses, specified by the commissioner by rule or in
2795 approving the policy form, are permitted. Payment made in good faith and in accordance with
2796 those clauses discharges the insurer's obligation to pay those claims.

2797 (c) All or a portion of any indemnities provided under an accident and health policy on
2798 account of hospital, nursing, medical, or surgical services may, at the insurer's option, be paid
2799 directly to the hospital or person rendering the services.

2800 Section 38. Section **31A-22-625** is amended to read:

2801 **31A-22-625. Catastrophic coverage of mental health conditions.**

2802 (1) As used in this section:

2803 (a) (i) "Catastrophic mental health coverage" means coverage in a health benefit plan
2804 that does not impose a lifetime limit, annual payment limit, episodic limit, inpatient or
2805 outpatient service limit, or maximum out-of-pocket limit that places a greater financial burden
2806 on an insured for the evaluation and treatment of a mental health condition than for the
2807 evaluation and treatment of a physical health condition.

2808 (ii) "Catastrophic mental health coverage" may include a restriction on cost sharing
2809 factors, such as deductibles, copayments, or coinsurance, before reaching a maximum
2810 out-of-pocket limit.

2811 (iii) "Catastrophic mental health coverage" may include one maximum out-of-pocket
2812 limit for physical health conditions and another maximum out-of-pocket limit for mental health
2813 conditions, except that if separate out-of-pocket limits are established, the out-of-pocket limit
2814 for mental health conditions may not exceed the out-of-pocket limit for physical health
2815 conditions.

2816 (b) (i) "50/50 mental health coverage" means coverage in a health benefit plan that
2817 pays for at least 50% of covered services for the diagnosis and treatment of mental health
2818 conditions.

2819 (ii) "50/50 mental health coverage" may include a restriction on:

2820 (A) episodic limits;

2821 (B) inpatient or outpatient service limits; or

2822 (C) maximum out-of-pocket limits.

2823 (c) "Large employer" is as defined in 42 U.S.C. Sec. 300gg-91.

2824 (d) (i) "Mental health condition" means a condition or disorder involving mental illness
2825 that falls under a diagnostic category listed in the Diagnostic and Statistical Manual, as
2826 periodically revised.

2827 (ii) "Mental health condition" does not include the following when diagnosed as the
2828 primary or substantial reason or need for treatment:

2829 (A) a marital or family problem;

- 2830 (B) a social, occupational, religious, or other social maladjustment;
- 2831 (C) a conduct disorder;
- 2832 (D) a chronic adjustment disorder;
- 2833 (E) a psychosexual disorder;
- 2834 (F) a chronic organic brain syndrome;
- 2835 (G) a personality disorder;
- 2836 (H) a specific developmental disorder or learning disability; or
- 2837 (I) ~~[mental retardation]~~ an intellectual disability.
- 2838 (e) "Small employer" is as defined in 42 U.S.C. Sec. 300gg-91.
- 2839 (2) (a) At the time of purchase and renewal, an insurer shall offer to a small employer
- 2840 that it insures or seeks to insure a choice between catastrophic mental health coverage and
- 2841 50/50 mental health coverage.
- 2842 (b) In addition to complying with Subsection (2)(a), an insurer may offer to provide:
- 2843 (i) catastrophic mental health coverage, 50/50 mental health coverage, or both at levels
- 2844 that exceed the minimum requirements of this section; or
- 2845 (ii) coverage that excludes benefits for mental health conditions.
- 2846 (c) A small employer may, at its option, choose either catastrophic mental health
- 2847 coverage, 50/50 mental health coverage, or coverage offered under Subsection (2)(b),
- 2848 regardless of the employer's previous coverage for mental health conditions.
- 2849 (d) An insurer is exempt from the 30% index rating restriction in Section
- 2850 31A-30-106.1 and, for the first year only that catastrophic mental health coverage is chosen, the
- 2851 15% annual adjustment restriction in Section 31A-30-106.1, for any small employer with 20 or
- 2852 less enrolled employees who chooses coverage that meets or exceeds catastrophic mental
- 2853 health coverage.
- 2854 (3) An insurer shall offer a large employer mental health and substance use disorder
- 2855 benefit in compliance with Section 2705 of the Public Health Service Act, 42 U.S.C. Sec.
- 2856 300gg-5, and federal regulations adopted pursuant to that act.
- 2857 (4) (a) An insurer may provide catastrophic mental health coverage to a small employer

2858 through a managed care organization or system in a manner consistent with Chapter 8, Health
2859 Maintenance Organizations and Limited Health Plans, regardless of whether the insurance
2860 policy uses a managed care organization or system for the treatment of physical health
2861 conditions.

2862 (b) (i) Notwithstanding any other provision of this title, an insurer may:

2863 (A) establish a closed panel of providers for catastrophic mental health coverage; and

2864 (B) refuse to provide a benefit to be paid for services rendered by a nonpanel provider
2865 unless:

2866 (I) the insured is referred to a nonpanel provider with the prior authorization of the
2867 insurer; and

2868 (II) the nonpanel provider agrees to follow the insurer's protocols and treatment
2869 guidelines.

2870 (ii) If an insured receives services from a nonpanel provider in the manner permitted by
2871 Subsection (4)(b)(i)(B), the insurer shall reimburse the insured for not less than 75% of the
2872 average amount paid by the insurer for comparable services of panel providers under a
2873 noncapitated arrangement who are members of the same class of health care providers.

2874 (iii) This Subsection (4)(b) may not be construed as requiring an insurer to authorize a
2875 referral to a nonpanel provider.

2876 (c) To be eligible for catastrophic mental health coverage, a diagnosis or treatment of a
2877 mental health condition must be rendered:

2878 (i) by a mental health therapist as defined in Section 58-60-102; or

2879 (ii) in a health care facility:

2880 (A) licensed or otherwise authorized to provide mental health services pursuant to:

2881 (I) Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; or

2882 (II) Title 62A, Chapter 2, Licensure of Programs and Facilities; and

2883 (B) that provides a program for the treatment of a mental health condition pursuant to a
2884 written plan.

2885 (5) The commissioner may prohibit an insurance policy that provides mental health

2886 coverage in a manner that is inconsistent with this section.

2887 (6) The commissioner shall:

2888 (a) adopt rules, in accordance with Title 63G, Chapter 3, Utah Administrative
2889 Rulemaking Act, as necessary to ensure compliance with this section; and

2890 (b) provide general figures on the percentage of insurance policies that include:

2891 (i) no mental health coverage;

2892 (ii) 50/50 mental health coverage;

2893 (iii) catastrophic mental health coverage; and

2894 (iv) coverage that exceeds the minimum requirements of this section.

2895 (7) This section may not be construed as discouraging or otherwise preventing an
2896 insurer from providing mental health coverage in connection with an individual insurance
2897 policy.

2898 (8) This section shall be repealed in accordance with Section 63I-1-231.

2899 Section 39. Section **31A-22-802** is amended to read:

2900 **31A-22-802. Definitions.**

2901 As used in this ~~[Part 8]~~ part:

2902 (1) "Credit accident and health insurance" means insurance on a debtor to provide
2903 indemnity for payments coming due on a specific loan or other credit transaction while the
2904 debtor ~~[is disabled]~~ has a disability.

2905 (2) "Credit life insurance" means life insurance on the life of a debtor in connection
2906 with a specific loan or credit transaction.

2907 (3) "Credit transaction" means any transaction under which the payment for money
2908 loaned or for goods, services, or properties sold or leased is to be made on future dates.

2909 (4) "Creditor" means the lender of money or the vendor or lessor of goods, services, or
2910 property, for which payment is arranged through a credit transaction, or any successor to the
2911 right, title, or interest of any lender or vendor.

2912 (5) "Debtor" means a borrower of money or a purchaser, including a lessee under a
2913 lease intended as security, of goods, services, or property, for which payment is arranged

2914 through a credit transaction.

2915 (6) "Indebtedness" means the total amount payable by a debtor to a creditor in
2916 connection with a credit transaction, including principal finance charges and interest.

2917 (7) "Net indebtedness" means the total amount required to liquidate the indebtedness,
2918 exclusive of any unearned interest, any insurance on the monthly outstanding balance coverage,
2919 or any finance charge.

2920 (8) "Net written premiums" means gross written premiums minus refunds on
2921 termination.

2922 Section 40. Section **31A-23a-114** is amended to read:

2923 **31A-23a-114. Temporary individual or agency license -- Trustee for terminated**
2924 **licensee's business.**

2925 (1) (a) The commissioner may issue a temporary individual or agency license:

2926 (i) to a person listed in Subsection (1)(b):

2927 (A) if the commissioner considers that the temporary license is necessary:

2928 (I) for the servicing of an insurance business in the public interest; and

2929 (II) to provide continued service to the insureds who procured insurance in a
2930 circumstance described in Subsection (1)(b);

2931 (B) for a period not to exceed 180 days; and

2932 (C) without requiring an examination; or

2933 (ii) in any other circumstance:

2934 (A) if the commissioner considers the public interest will best be served by issuing the
2935 temporary license;

2936 (B) for a period not to exceed 180 days; and

2937 (C) without requiring an examination.

2938 (b) The commissioner may issue a temporary individual or agency license in
2939 accordance with Subsection (1)(a) to:

2940 (i) the surviving spouse or court-appointed personal representative of a licensee who
2941 dies or ~~becomes mentally or physically disabled~~ acquires a mental or physical disability to

2942 allow adequate time for:

2943 (A) the sale of the insurance business owned by the licensee;

2944 (B) recovery or return of the licensee to the business; or

2945 (C) the training and licensing of new personnel to operate the licensee's business;

2946 (ii) to a member or employee of a business entity licensed as an agency upon the death

2947 or disability of an individual designated in:

2948 (A) the business entity application; or

2949 (B) the license; or

2950 (iii) the designee of a licensed agency entering active service in the armed forces of the

2951 United States of America.

2952 (2) If a person's license is terminated under Section 31A-23a-111 or 31A-23a-113, the

2953 commissioner may appoint a trustee to provide in the public interest continuing service to the

2954 insureds who procured insurance through the person whose license is terminated:

2955 (a) at the request of the person whose license is terminated; or

2956 (b) upon the commissioner's own initiative.

2957 (3) This section does not apply if the deceased [~~or disabled~~] licensee or licensee with a

2958 disability does not or did not own any ownership interest in the accounts and associated

2959 expiration lists that were previously serviced by the licensee.

2960 (4) (a) A person issued a temporary license under Subsection (1) receives the license

2961 and shall perform the duties under the license subject to the commissioner's authority to:

2962 (i) require a temporary licensee to have a suitable sponsor who:

2963 (A) is a licensee; and

2964 (B) assumes responsibility for all acts of the temporary licensee; or

2965 (ii) impose other requirements that are:

2966 (A) designed to protect the insureds and the public; and

2967 (B) similar to the condition described in Subsection (4)(a)(i).

2968 (b) A trustee appointed under Subsection (2) shall be appointed and perform the

2969 trustee's duties subject to the terms and conditions described in Subsections (4)(b)(i) through

2970 (vi).

2971 (i) (A) A trustee appointed under Subsection (2) shall be licensed under this chapter to
2972 perform the services required by the trustor's clients.

2973 (B) When possible, the commissioner shall appoint a trustee who is no longer actively
2974 engaged on the trustee's own behalf in business as a licensee.

2975 (C) The commissioner shall only select a person to act as trustee who is trustworthy
2976 and competent to perform the necessary services.

2977 (ii) (A) If the deceased~~[, disabled]~~ person, person with a disability, or unlicensed
2978 person for whom the trustee is acting was a producer, the insurers through which the former
2979 producer's business was written shall cooperate with the trustee in allowing the trustee to
2980 service the policies written through the insurer.

2981 (B) The trustee shall abide by the terms of the agency agreement between the former
2982 producer and the issuing insurer, except that terms in those agreements terminating the
2983 agreement upon the death, disability, or license termination of the former producer do not bar
2984 the trustee from continuing to act under the agreement.

2985 (iii) (A) The commissioner shall set the trustee's compensation, which:

2986 (I) may be stated in terms of a percentage of commissions; and

2987 (II) shall be equitable.

2988 (B) The compensation shall be paid exclusively from:

2989 (I) the commissions generated by the former licensee's insurance accounts serviced by
2990 the trustee; and

2991 (II) other funds the former licensee or the licensee's successor in interest agree to pay.

2992 (C) The trustee has no special priority to commissions over the former licensee's
2993 creditors.

2994 (iv) (A) The commissioner or the state may not be held liable for errors or omissions
2995 of:

2996 (I) the former licensee; or

2997 (II) the trustee.

2998 (B) The trustee may not be held liable for errors and omissions that were caused in any
2999 material way by the negligence of the former licensee.

3000 (C) The trustee may be held liable for errors and omissions which arise solely from the
3001 trustee's negligence.

3002 (D) The trustee's compensation level shall be sufficient to allow the trustee to purchase
3003 errors and omissions coverage, if that coverage is not provided the trustee by:

3004 (I) the former licensee; or

3005 (II) the licensee's successor in interest.

3006 (v) (A) It is a breach of the trustee's fiduciary duty to capture the accounts of trustor's
3007 clients, either directly or indirectly.

3008 (B) The trustee may not purchase the accounts or expiration lists of the former
3009 licensee, unless the commissioner expressly ratifies the terms of the sale.

3010 (C) The commissioner may adopt rules that:

3011 (I) further define the trustee's fiduciary duties; and

3012 (II) explain how the trustee is to carry out the trustee's responsibilities.

3013 (vi) (A) The trust may be terminated by:

3014 (I) the commissioner; or

3015 (II) the person that requested the trust be established.

3016 (B) The trust is terminated by written notice being delivered to:

3017 (I) the trustee; and

3018 (II) the commissioner.

3019 (5) (a) The commissioner may by order:

3020 (i) limit the authority of any temporary licensee or trustee in any way the commissioner
3021 considers necessary to protect insureds and the public; and

3022 (ii) revoke a temporary license or trustee's appointment if the commissioner finds that
3023 the insureds or the public are endangered.

3024 (b) A temporary license or trustee's appointment may not continue after the owner or
3025 personal representative disposes of the business.

3026 Section 41. Section **31A-26-215** is amended to read:

3027 **31A-26-215. Temporary license -- Appointment of trustee for terminated**
3028 **licensee's business.**

3029 (1) (a) The commissioner may issue a temporary insurance adjuster license:

3030 (i) to a person listed in Subsection (1)(b):

3031 (A) if the commissioner considers that the temporary license is necessary:

3032 (I) for the servicing of an insurance business in the public interest; and

3033 (II) to provide continued service to the insureds who are being serviced in a
3034 circumstance described in Subsection (1)(b);

3035 (B) for a period not to exceed 180 days; and

3036 (C) without requiring an examination; or

3037 (ii) in any other circumstance:

3038 (A) if the commissioner considers the public interest will best be served by issuing the
3039 temporary license;

3040 (B) for a period not to exceed 180 days; and

3041 (C) without requiring an examination.

3042 (b) The commissioner may issue a temporary insurance producer license in accordance
3043 with Subsection (1)(a) to:

3044 (i) the surviving spouse or court-appointed personal representative of a licensed
3045 insurance adjuster who dies or [~~becomes mentally or physically disabled~~] acquires a mental or
3046 physical disability to allow adequate time for:

3047 (A) the sale of the insurance business owned by the adjuster;

3048 (B) recovery or return of the adjuster to the business; or

3049 (C) the training and licensing of new personnel to operate the adjuster's business;

3050 (ii) to a member or employee of a business entity licensed as an insurance adjuster

3051 upon the death or disability of an individual designated in:

3052 (A) the business entity application; or

3053 (B) the license; or

3054 (iii) the designee of a licensed insurance adjuster entering active service in the armed
3055 forces of the United States of America.

3056 (2) If a person's license is terminated under Section 31A-26-213, the commissioner
3057 may appoint a trustee to provide in the public interest continuing service to the insureds who
3058 procured insurance through the person whose license is terminated:

3059 (a) at the request of the person whose license is terminated; or

3060 (b) upon the commissioner's own initiative.

3061 (3) This section does not apply if the deceased or disabled adjuster has not owned or
3062 does not own an ownership interest in the accounts and associated expiration lists that were
3063 previously serviced by the adjuster.

3064 (4) (a) A person issued a temporary license under Subsection (1) receives the license
3065 and shall perform the duties under the license subject to the commissioner's authority to:

3066 (i) require a temporary licensee to have a suitable sponsor who:

3067 (A) is a licensed producer; and

3068 (B) assumes responsibility for all acts of the temporary licensee; or

3069 (ii) impose other requirements that are:

3070 (A) designed to protect the insureds and the public; and

3071 (B) similar to the condition described in Subsection (4)(a)(i).

3072 (b) A trustee appointed under Subsection (2) shall receive the trustee's appointment and
3073 perform the trustee's duties subject to the conditions listed in Subsections (4)(b)(i) through
3074 (xv).

3075 (i) A trustee appointed under this section shall be licensed under this chapter to
3076 perform the services required by the trustor's clients.

3077 (ii) When possible, the commissioner shall appoint a trustee who is no longer actively
3078 engaged on the trustee's own behalf in business as an adjuster.

3079 (iii) The commissioner shall only select a person to act as trustee who is trustworthy
3080 and competent to perform the necessary services.

3081 (iv) If the deceased, disabled, or unlicensed person for whom the trustee is acting is an

3082 associated adjuster, the insurers through or with which the former adjuster's business was
3083 associated shall cooperate with the trustee in allowing the trustee to service the claims
3084 associated with or through the insurer.

3085 (v) The trustee shall abide by the terms of any agreement between the former adjuster
3086 and the associated insurer, except that terms in those agreements terminating the agreement
3087 upon the death, disability, or license termination of the former agent do not bar the trustee from
3088 continuing to act under the agreement.

3089 (vi) The commissioner shall set the trustee's compensation which:

3090 (A) may be stated in terms of a percentage of commissions;

3091 (B) shall be equitable; and

3092 (C) paid exclusively from:

3093 (I) the commissions generated by the former adjuster's accounts serviced by the trustee;

3094 and

3095 (II) other funds the former adjuster or the former adjuster's successor in interest agree
3096 to pay.

3097 (vii) The trustee has no special priority to commissions over the former adjuster's
3098 creditors.

3099 (viii) The following may not be held liable for errors or omissions of the former
3100 adjuster or the trustee:

3101 (A) the commissioner; or

3102 (B) the state.

3103 (ix) The trustee may not be held liable for errors and omissions that were caused in any
3104 material way by the negligence of the former adjuster.

3105 (x) The trustee may be held liable for errors and omissions that arise solely from the
3106 trustee's negligence.

3107 (xi) The trustee's compensation level shall be sufficient to allow the trustee to purchase
3108 errors and omissions coverage, if that coverage is not provided to the trustee by:

3109 (A) the former adjuster; or

- 3110 (B) the former adjuster's successor in interest.
- 3111 (xii) It is a breach of the trustee's fiduciary duty to capture the accounts of trustor's
3112 clients, either directly or indirectly.
- 3113 (xiii) The trustee may not purchase the accounts or expiration lists of the former
3114 adjuster, unless the commissioner expressly ratifies the terms of the sale.
- 3115 (xiv) The commissioner may adopt rules that:
- 3116 (A) further define the trustee's fiduciary duties; and
- 3117 (B) explain how the trustee is to carry out the trustee's responsibilities.
- 3118 (xv) The trust may be terminated by:
- 3119 (A) the commissioner; or
- 3120 (B) the person that requested the trust be established.
- 3121 (c) A person described in Subsection (4)(b)(xv)(B) shall terminate the trust by sending
3122 written notice to:
- 3123 (i) the trustee; and
- 3124 (ii) the commissioner.
- 3125 (5) (a) The commissioner may by order limit the authority of any temporary licensee or
3126 trustee in any way considered necessary to protect:
- 3127 (i) persons being serviced; and
- 3128 (ii) the public.
- 3129 (b) The commissioner may by order revoke a temporary license or trustee's
3130 appointment if the interest of persons being serviced or the public are endangered.
- 3131 (c) A temporary license or trustee's appointment may not continue after the owner or
3132 personal representative disposes of the business.
- 3133 Section 42. Section **31A-36-111** is amended to read:
- 3134 **31A-36-111. Prohibited acts.**
- 3135 (1) An owner may not enter into a life settlement at any time before the application or
3136 issuance of a policy.
- 3137 (2) An owner may not enter into a life settlement within two years after the date of

3138 issuance of the policy to which the life settlement relates unless the owner certifies to the life
3139 settlement provider that one of the following is satisfied:

3140 (a) the policy was issued upon the owner's exercise of conversion rights arising out of a
3141 group or individual policy if:

3142 (i) the total time covered under the conversion policy plus the time covered under the
3143 prior policy is at least 24 months; and

3144 (ii) the time covered under a group policy, calculated without regard to any change in
3145 insurance carriers, is continuous and under the same group sponsorship; or

3146 (b) the owner submits to the life settlement provider independent evidence that within
3147 the two-year period:

3148 (i) the owner or insured is terminally ill;

3149 (ii) the owner or insured is chronically ill;

3150 (iii) the spouse of the owner dies;

3151 (iv) the owner divorces the owner's spouse;

3152 (v) the owner retires from full-time employment;

3153 (vi) the owner [~~becomes physically or mentally disabled~~] acquires a physical or mental
3154 disability and a physician determines that the disability precludes the owner from maintaining
3155 full-time employment;

3156 (vii) a final judgment or order is entered or issued by a court of competent jurisdiction,
3157 on the application of a creditor of the owner:

3158 (A) adjudging the owner bankrupt or insolvent;

3159 (B) approving a petition for reorganization of the owner; or

3160 (C) appointing a receiver, trustee, or liquidator for all or a substantial part of the
3161 owner's assets;

3162 (viii) the owner experiences a significant decrease in income that is unexpected and
3163 impairs the owner's reasonable ability to pay the policy premium; or

3164 (ix) the owner or insured disposes of ownership interests in a closely held corporation,
3165 pursuant to the terms of a buyout or other similar agreement in effect at the time the policy is

3166 initially issued.

3167 (3) An insurer may not, as a condition of responding to a request for verification of
3168 coverage or effecting the transfer of a policy pursuant to a life settlement, require any of the
3169 following to sign a form, disclosure, consent, or waiver that is not filed with the commissioner
3170 for use in connection with a life settlement in this state:

3171 (a) an owner;

3172 (b) an insured;

3173 (c) a life settlement provider; or

3174 (d) a life settlement producer.

3175 (4) (a) Upon receipt of a properly completed request for change of ownership or
3176 beneficiary of a policy, an insurer shall respond in writing within 30 calendar days of the day of
3177 receipt with written acknowledgment:

3178 (i) confirming that the change is effective; or

3179 (ii) specifying the reasons why the requested change cannot be processed.

3180 (b) An insurer may not:

3181 (i) unreasonably delay effecting a change of ownership or beneficiary; and

3182 (ii) otherwise seek to interfere with a life settlement lawfully entered into in this state.

3183 (5) A person may not issue, solicit, or market the purchase of a policy for the primary
3184 purpose of or with a primary emphasis on settling the policy.

3185 (6) (a) Unless disclosed to an owner before the execution of a life settlement by the
3186 owner, a life settlement producer may not knowingly with respect to the life settlement solicit
3187 an offer from, effectuate the life settlement with, or make a sale to any of the following that is
3188 controlling, controlled by, or under common control with the life settlement producer:

3189 (i) a life settlement provider;

3190 (ii) a life settlement purchaser;

3191 (iii) a financing entity; or

3192 (iv) a related provider trust.

3193 (b) Unless disclosed to an owner before the execution of a life settlement by the owner,

3194 with respect to the life settlement, a life settlement provider may not knowingly enter into the
3195 life settlement with the owner, if, in connection with the life settlement, anything of value will
3196 be paid to a life settlement producer that is controlling, controlled by, or under common control
3197 with:

- 3198 (i) the life settlement provider;
- 3199 (ii) the life settlement purchaser;
- 3200 (iii) a financing entity; or
- 3201 (iv) a related provider trust.

3202 Section 43. Section **34-38-14** is amended to read:

3203 **34-38-14. Employee not a person with a disability.**

3204 An employee or prospective employee whose drug or alcohol test result is confirmed as
3205 positive in accordance with this chapter may not, because of those results alone, be defined as a
3206 person with a [~~disability~~] disability for purposes of Title 34A, Chapter 5, Utah
3207 Antidiscrimination Act.

3208 Section 44. Section **34-41-106** is amended to read:

3209 **34-41-106. Employee not a person with a disability.**

3210 An employee, volunteer, prospective employee, or prospective volunteer whose drug
3211 test results are verified or confirmed as positive in accordance with the provisions of this
3212 chapter shall not, by virtue of those results alone, be defined as [~~disabled~~] a person with a
3213 disability for purposes of:

- 3214 (1) Title 34A, Chapter 5, Utah Antidiscrimination Act; or
- 3215 (2) the Americans with Disabilities Act of 1990, 42 U.S.C. Sec. 12101 through 12213.

3216 Section 45. Section **34A-2-107** is amended to read:

3217 **34A-2-107. Appointment of workers' compensation advisory council --**
3218 **Composition -- Terms of members -- Duties -- Compensation.**

3219 (1) The commissioner shall appoint a workers' compensation advisory council
3220 composed of:

- 3221 (a) the following voting members:

- 3222 (i) five employer representatives; and
- 3223 (ii) five employee representatives; and
- 3224 (b) the following nonvoting members:
 - 3225 (i) a representative of the Workers' Compensation Fund;
 - 3226 (ii) a representative of a private insurance carrier;
 - 3227 (iii) a representative of health care providers;
 - 3228 (iv) the Utah insurance commissioner or the insurance commissioner's designee; and
 - 3229 (v) the commissioner or the commissioner's designee.

3230 (2) Employers and employees shall consider nominating members of groups who
3231 historically may have been excluded from the council, such as women, minorities, and
3232 individuals with disabilities.

3233 (3) (a) Except as required by Subsection (3)(b), as terms of current council members
3234 expire, the commissioner shall appoint each new member or reappointed member to a two-year
3235 term beginning July 1 and ending June 30.

3236 (b) Notwithstanding the requirements of Subsection (3)(a), the commissioner shall, at
3237 the time of appointment or reappointment, adjust the length of terms to ensure that the terms of
3238 council members are staggered so that approximately half of the council is appointed every two
3239 years.

3240 (4) (a) When a vacancy occurs in the membership for any reason, the replacement shall
3241 be appointed for the unexpired term.

3242 (b) The commissioner shall terminate the term of a council member who ceases to be
3243 representative as designated by the member's original appointment.

3244 (5) (a) The council shall confer at least quarterly for the purpose of advising the
3245 commission, the division, and the Legislature on:

- 3246 (i) the Utah workers' compensation and occupational disease laws;
- 3247 (ii) the administration of the laws described in Subsection (5)(a)(i);
- 3248 (iii) rules related to the laws described in Subsection (5)(a)(i); and
- 3249 (iv) advising the Legislature in accordance with Subsection (5)(b).

3250 (b) (i) The council and the commission shall jointly study during 2009 the premium
3251 assessment under Section 59-9-101 on an admitted insurer writing workers' compensation
3252 insurance in this state and on a self-insured employer under Section 34A-2-202 as to:
3253 (A) whether or not the premium assessment should be changed; or
3254 (B) whether or not changes should be made to how the premium assessment is used.
3255 (ii) The council and commission shall jointly report the results of the study described in
3256 this Subsection (5)(b) to the Business and Labor Interim Committee by no later than the 2009
3257 November interim meeting.

3258 (6) Regarding workers' compensation, rehabilitation, and reemployment of employees
3259 who ~~are disabled~~ acquire a disability because of an industrial injury or occupational disease
3260 the council shall:

3261 (a) offer advice on issues requested by:
3262 (i) the commission;
3263 (ii) the division; and
3264 (iii) the Legislature; and
3265 (b) make recommendations to:
3266 (i) the commission; and
3267 (ii) the division.

3268 (7) The commissioner or the commissioner's designee shall serve as the chair of the
3269 council and call the necessary meetings.

3270 (8) The commission shall provide staff support to the council.

3271 (9) A member may not receive compensation or benefits for the member's service, but
3272 may receive per diem and travel expenses in accordance with:

3273 (a) Section 63A-3-106;
3274 (b) Section 63A-3-107; and
3275 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and
3276 63A-3-107.

3277 Section 46. Section **34A-2-413** is amended to read:

3278 **34A-2-413. Permanent total disability -- Amount of payments -- Rehabilitation.**

3279 (1) (a) In the case of a permanent total disability resulting from an industrial accident
3280 or occupational disease, the employee shall receive compensation as outlined in this section.

3281 (b) To establish entitlement to permanent total disability compensation, the employee
3282 must prove by a preponderance of evidence that:

3283 (i) the employee sustained a significant impairment or combination of impairments as a
3284 result of the industrial accident or occupational disease that gives rise to the permanent total
3285 disability entitlement;

3286 (ii) the employee [~~is permanently totally disabled~~] has a permanent, total disability; and

3287 (iii) the industrial accident or occupational disease is the direct cause of the employee's
3288 permanent total disability.

3289 (c) To establish that an employee [~~is permanently totally disabled~~] has a permanent,
3290 total disability the employee must prove by a preponderance of the evidence that:

3291 (i) the employee is not gainfully employed;

3292 (ii) the employee has an impairment or combination of impairments that limit the
3293 employee's ability to do basic work activities;

3294 (iii) the industrial or occupationally caused impairment or combination of impairments
3295 prevent the employee from performing the essential functions of the work activities for which
3296 the employee has been qualified until the time of the industrial accident or occupational disease
3297 that is the basis for the employee's permanent total disability claim; and

3298 (iv) the employee cannot perform other work reasonably available, taking into
3299 consideration the employee's:

3300 (A) age;

3301 (B) education;

3302 (C) past work experience;

3303 (D) medical capacity; and

3304 (E) residual functional capacity.

3305 (d) Evidence of an employee's entitlement to disability benefits other than those

3306 provided under this chapter and Chapter 3, Utah Occupational Disease Act, if relevant:

3307 (i) may be presented to the commission;

3308 (ii) is not binding; and

3309 (iii) creates no presumption of an entitlement under this chapter and Chapter 3, Utah

3310 Occupational Disease Act.

3311 (e) In determining under Subsections (1)(b) and (c) whether an employee cannot

3312 perform other work reasonably available, the following may not be considered:

3313 (i) whether the employee is incarcerated in a facility operated by or contracting with a

3314 federal, state, county, or municipal government to house a criminal offender in either a secure

3315 or nonsecure setting; or

3316 (ii) whether the employee is not legally eligible to be employed because of a reason

3317 unrelated to the impairment or combination of impairments.

3318 (2) For permanent total disability compensation during the initial 312-week

3319 entitlement, compensation is 66-2/3% of the employee's average weekly wage at the time of the

3320 injury, limited as follows:

3321 (a) compensation per week may not be more than 85% of the state average weekly

3322 wage at the time of the injury;

3323 (b) (i) subject to Subsection (2)(b)(ii), compensation per week may not be less than the

3324 sum of \$45 per week and:

3325 (A) \$5 for a dependent spouse; and

3326 (B) \$5 for each dependent child under the age of 18 years, up to a maximum of four

3327 dependent minor children; and

3328 (ii) the amount calculated under Subsection (2)(b)(i) may not exceed:

3329 (A) the maximum established in Subsection (2)(a); or

3330 (B) the average weekly wage of the employee at the time of the injury; and

3331 (c) after the initial 312 weeks, the minimum weekly compensation rate under

3332 Subsection (2)(b) is 36% of the current state average weekly wage, rounded to the nearest

3333 dollar.

3334 (3) This Subsection (3) applies to claims resulting from an accident or disease arising
3335 out of and in the course of the employee's employment on or before June 30, 1994.

3336 (a) The employer or its insurance carrier is liable for the initial 312 weeks of permanent
3337 total disability compensation except as outlined in Section 34A-2-703 as in effect on the date
3338 of injury.

3339 (b) The employer or its insurance carrier may not be required to pay compensation for
3340 any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410
3341 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation
3342 payable over the initial 312 weeks at the applicable permanent total disability compensation
3343 rate under Subsection (2).

3344 (c) The Employers' Reinsurance Fund shall for an overpayment of compensation
3345 described in Subsection (3)(b), reimburse the overpayment:

3346 (i) to the employer or its insurance carrier; and

3347 (ii) out of the Employers' Reinsurance Fund's liability to the employee.

3348 (d) After an employee receives compensation from the employee's employer, its
3349 insurance carrier, or the Employers' Reinsurance Fund for any combination of disabilities
3350 amounting to 312 weeks of compensation at the applicable permanent total disability
3351 compensation rate, the Employers' Reinsurance Fund shall pay all remaining permanent total
3352 disability compensation.

3353 (e) Employers' Reinsurance Fund payments shall commence immediately after the
3354 employer or its insurance carrier satisfies its liability under this Subsection (3) or Section
3355 34A-2-703.

3356 (4) This Subsection (4) applies to claims resulting from an accident or disease arising
3357 out of and in the course of the employee's employment on or after July 1, 1994.

3358 (a) The employer or its insurance carrier is liable for permanent total disability
3359 compensation.

3360 (b) The employer or its insurance carrier may not be required to pay compensation for
3361 any combination of disabilities of any kind, as provided in this section and Sections 34A-2-410

3362 through 34A-2-412 and Part 5, Industrial Noise, in excess of the amount of compensation
3363 payable over the initial 312 weeks at the applicable permanent total disability compensation
3364 rate under Subsection (2).

3365 (c) The employer or its insurance carrier may recoup the overpayment of compensation
3366 described in Subsection (4) by reasonably offsetting the overpayment against future liability
3367 paid before or after the initial 312 weeks.

3368 (5) (a) A finding by the commission of permanent total disability is not final, unless
3369 otherwise agreed to by the parties, until:

3370 (i) an administrative law judge reviews a summary of reemployment activities
3371 undertaken pursuant to Chapter 8a, Utah Injured Worker Reemployment Act;

3372 (ii) the employer or its insurance carrier submits to the administrative law judge:

3373 (A) a reemployment plan as prepared by a qualified rehabilitation provider reasonably
3374 designed to return the employee to gainful employment; or

3375 (B) notice that the employer or its insurance carrier will not submit a plan; and

3376 (iii) the administrative law judge, after notice to the parties, holds a hearing, unless
3377 otherwise stipulated, to:

3378 (A) consider evidence regarding rehabilitation; and

3379 (B) review any reemployment plan submitted by the employer or its insurance carrier
3380 under Subsection (5)(a)(ii).

3381 (b) Before commencing the procedure required by Subsection (5)(a), the administrative
3382 law judge shall order:

3383 (i) the initiation of permanent total disability compensation payments to provide for the
3384 employee's subsistence; and

3385 (ii) the payment of any undisputed disability or medical benefits due the employee.

3386 (c) Notwithstanding Subsection (5)(a), an order for payment of benefits described in
3387 Subsection (5)(b) is considered a final order for purposes of Section 34A-2-212.

3388 (d) The employer or its insurance carrier shall be given credit for any disability
3389 payments made under Subsection (5)(b) against its ultimate disability compensation liability

3390 under this chapter or Chapter 3, Utah Occupational Disease Act.

3391 (e) An employer or its insurance carrier may not be ordered to submit a reemployment
3392 plan. If the employer or its insurance carrier voluntarily submits a plan, the plan is subject to
3393 Subsections (5)(e)(i) through (iii).

3394 (i) The plan may include, but not require an employee to pay for:

3395 (A) retraining;

3396 (B) education;

3397 (C) medical and disability compensation benefits;

3398 (D) job placement services; or

3399 (E) incentives calculated to facilitate reemployment.

3400 (ii) The plan shall include payment of reasonable disability compensation to provide
3401 for the employee's subsistence during the rehabilitation process.

3402 (iii) The employer or its insurance carrier shall diligently pursue the reemployment
3403 plan. The employer's or insurance carrier's failure to diligently pursue the reemployment plan
3404 is cause for the administrative law judge on the administrative law judge's own motion to make
3405 a final decision of permanent total disability.

3406 (f) If a preponderance of the evidence shows that successful rehabilitation is not
3407 possible, the administrative law judge shall order that the employee be paid weekly permanent
3408 total disability compensation benefits.

3409 (g) If a preponderance of the evidence shows that pursuant to a reemployment plan, as
3410 prepared by a qualified rehabilitation provider and presented under Subsection (5)(e), an
3411 employee could immediately or without unreasonable delay return to work but for the
3412 following, an administrative law judge shall order that the employee be denied the payment of
3413 weekly permanent total disability compensation benefits:

3414 (i) incarceration in a facility operated by or contracting with a federal, state, county, or
3415 municipal government to house a criminal offender in either a secure or nonsecure setting; or

3416 (ii) not being legally eligible to be employed because of a reason unrelated to the
3417 impairment or combination of impairments.

3418 (6) (a) The period of benefits commences on the date the employee [~~became~~
3419 ~~permanently totally disabled~~] acquired the permanent, total disability, as determined by a final
3420 order of the commission based on the facts and evidence, and ends:

- 3421 (i) with the death of the employee; or
- 3422 (ii) when the employee is capable of returning to regular, steady work.

3423 (b) An employer or its insurance carrier may provide or locate for a permanently totally
3424 disabled employee reasonable, medically appropriate, part-time work in a job earning at least
3425 minimum wage, except that the employee may not be required to accept the work to the extent
3426 that it would disqualify the employee from Social Security disability benefits.

3427 (c) An employee shall:

- 3428 (i) fully cooperate in the placement and employment process; and
- 3429 (ii) accept the reasonable, medically appropriate, part-time work.

3430 (d) In a consecutive four-week period when an employee's gross income from the work
3431 provided under Subsection (6)(b) exceeds \$500, the employer or insurance carrier may reduce
3432 the employee's permanent total disability compensation by 50% of the employee's income in
3433 excess of \$500.

3434 (e) If a work opportunity is not provided by the employer or its insurance carrier, [~~a~~
3435 ~~permanently totally disabled employee~~] an employee with a permanent, total disability may
3436 obtain medically appropriate, part-time work subject to the offset provisions of Subsection
3437 (6)(d).

3438 (f) (i) The commission shall establish rules regarding the part-time work and offset.

3439 (ii) The adjudication of disputes arising under this Subsection (6) is governed by Part
3440 8, Adjudication.

3441 (g) The employer or its insurance carrier has the burden of proof to show that
3442 medically appropriate part-time work is available.

3443 (h) The administrative law judge may:

3444 (i) excuse an employee from participation in any work:

3445 (A) that would require the employee to undertake work exceeding the employee's:

- 3446 (I) medical capacity; or
3447 (II) residual functional capacity; or
3448 (B) for good cause; or
3449 (ii) allow the employer or its insurance carrier to reduce permanent total disability
3450 benefits as provided in Subsection (6)(d) when reasonable, medically appropriate, part-time
3451 work is offered, but the employee fails to fully cooperate.
- 3452 (7) When an employee is rehabilitated or the employee's rehabilitation is possible but
3453 the employee has some loss of bodily function, the award shall be for permanent partial
3454 disability.
- 3455 (8) As determined by an administrative law judge, an employee is not entitled to
3456 disability compensation, unless the employee fully cooperates with any evaluation or
3457 reemployment plan under this chapter or Chapter 3, Utah Occupational Disease Act. The
3458 administrative law judge shall dismiss without prejudice the claim for benefits of an employee
3459 if the administrative law judge finds that the employee fails to fully cooperate, unless the
3460 administrative law judge states specific findings on the record justifying dismissal with
3461 prejudice.
- 3462 (9) (a) The loss or permanent and complete loss of the use of the following constitutes
3463 total and permanent disability that is compensated according to this section:
- 3464 (i) both hands;
 - 3465 (ii) both arms;
 - 3466 (iii) both feet;
 - 3467 (iv) both legs;
 - 3468 (v) both eyes; or
 - 3469 (vi) any combination of two body members described in this Subsection (9)(a).
- 3470 (b) A finding of permanent total disability pursuant to Subsection (9)(a) is final.
- 3471 (10) (a) An insurer or self-insured employer may periodically reexamine a permanent
3472 total disability claim, except those based on Subsection (9), for which the insurer or
3473 self-insured employer had or has payment responsibility to determine whether the employee

3474 [~~remains permanently totally disabled~~] continues to have a permanent, total disability.

3475 (b) Reexamination may be conducted no more than once every three years after an
3476 award is final, unless good cause is shown by the employer or its insurance carrier to allow
3477 more frequent reexaminations.

3478 (c) The reexamination may include:

3479 (i) the review of medical records;

3480 (ii) employee submission to one or more reasonable medical evaluations;

3481 (iii) employee submission to one or more reasonable rehabilitation evaluations and
3482 retraining efforts;

3483 (iv) employee disclosure of Federal Income Tax Returns;

3484 (v) employee certification of compliance with Section 34A-2-110; and

3485 (vi) employee completion of one or more sworn affidavits or questionnaires approved
3486 by the division.

3487 (d) The insurer or self-insured employer shall pay for the cost of a reexamination with
3488 appropriate employee reimbursement pursuant to rule for reasonable travel allowance and per
3489 diem as well as reasonable expert witness fees incurred by the employee in supporting the
3490 employee's claim for permanent total disability benefits at the time of reexamination.

3491 (e) If an employee fails to fully cooperate in the reasonable reexamination of a
3492 permanent total disability finding, an administrative law judge may order the suspension of the
3493 employee's permanent total disability benefits until the employee cooperates with the
3494 reexamination.

3495 (f) (i) If the reexamination of a permanent total disability finding reveals evidence that
3496 reasonably raises the issue of an employee's continued entitlement to permanent total disability
3497 compensation benefits, an insurer or self-insured employer may petition the Division of
3498 Adjudication for a rehearing on that issue. The insurer or self-insured employer shall include
3499 with the petition, documentation supporting the insurer's or self-insured employer's belief that
3500 the employee [~~is~~] no longer [~~permanently totally disabled~~] has a permanent, total disability.

3501 (ii) If the petition under Subsection (10)(f)(i) demonstrates good cause, as determined

3502 by the Division of Adjudication, an administrative law judge shall adjudicate the issue at a
3503 hearing.

3504 (iii) Evidence of an employee's participation in medically appropriate, part-time work
3505 may not be the sole basis for termination of an employee's permanent total disability
3506 entitlement, but the evidence of the employee's participation in medically appropriate, part-time
3507 work under Subsection (6) may be considered in the reexamination or hearing with other
3508 evidence relating to the employee's status and condition.

3509 (g) In accordance with Section 34A-1-309, the administrative law judge may award
3510 reasonable attorney fees to an attorney retained by an employee to represent the employee's
3511 interests with respect to reexamination of the permanent total disability finding, except if the
3512 employee does not prevail, the attorney fees shall be set at \$1,000. The attorney fees awarded
3513 shall be paid by the employer or its insurance carrier in addition to the permanent total
3514 disability compensation benefits due.

3515 (h) During the period of reexamination or adjudication, if the employee fully
3516 cooperates, each insurer, self-insured employer, or the Employers' Reinsurance Fund shall
3517 continue to pay the permanent total disability compensation benefits due the employee.

3518 (11) If any provision of this section, or the application of any provision to any person
3519 or circumstance, is held invalid, the remainder of this section is given effect without the invalid
3520 provision or application.

3521 Section 47. Section **34A-2-703** is amended to read:

3522 **34A-2-703. Payments from Employers' Reinsurance Fund.**

3523 If an employee, who has at least a 10% whole person permanent impairment from any
3524 cause or origin, subsequently incurs an additional impairment by an accident arising out of and
3525 in the course of the employee's employment during the period of July 1, 1988, to June 30,
3526 1994, inclusive, and if the additional impairment results in permanent total disability, the
3527 employer or its insurance carrier and the Employers' Reinsurance Fund are liable for the
3528 payment of benefits as follows:

3529 (1) The employer or its insurance carrier is liable for the first \$20,000 of medical

3530 benefits and the initial 156 weeks of permanent total disability compensation as provided in
3531 this chapter or Chapter 3, Utah Occupational Disease Act.

3532 (2) Reasonable medical benefits in excess of the first \$20,000 shall be paid in the first
3533 instance by the employer or its insurance carrier. Then, as provided in Subsection (5), the
3534 Employers' Reinsurance Fund shall reimburse the employer or its insurance carrier for 50% of
3535 those expenses.

3536 (3) After the initial 156-week period under Subsection (1), permanent total disability
3537 compensation payable to an employee under this chapter or Chapter 3, Utah Occupational
3538 Disease Act, becomes the liability of and shall be paid by the Employers' Reinsurance Fund.

3539 (4) If it is determined that the employee is permanently and totally disabled, the
3540 employer or its insurance carrier shall be given credit for all prior payments of temporary total,
3541 temporary partial, and permanent partial disability compensation made as a result of the
3542 industrial accident. Any overpayment by the employer or its insurance carrier shall be
3543 reimbursed by the Employers' Reinsurance Fund under Subsection (5).

3544 (5) (a) Upon receipt of a duly verified petition, the Employers' Reinsurance Fund shall
3545 reimburse the employer or its insurance carrier for the Employers' Reinsurance Fund's share of
3546 medical benefits and compensation paid to or on behalf of an employee. A request for
3547 Employers' Reinsurance Fund reimbursements shall be accompanied by satisfactory evidence
3548 of payment of the medical or disability compensation for which the reimbursement is
3549 requested. Each request is subject to review as to reasonableness by the administrator. The
3550 administrator may determine the manner of reimbursement.

3551 (b) A decision of the administrator under Subsection (5)(a) may be appealed in
3552 accordance with Part 8, Adjudication.

3553 (6) If, at the time an employee is determined to [~~be permanently and totally disabled~~]
3554 have a permanent, total disability, the employee has other actionable workers' compensation
3555 claims, the employer or insurance carrier that is liable for the last industrial accident resulting
3556 in permanent total disability shall be liable for the benefits payable by the employer as provided
3557 in this section and Section 34A-2-413. The employee's entitlement to benefits for prior

3558 actionable claims shall then be determined separately on the facts of those claims. Any
3559 previous permanent partial disability arising out of those claims shall then be considered to be
3560 impairments that may give rise to Employers' Reinsurance Fund liability under this section.

3561 Section 48. Section **34A-2-902** is amended to read:

3562 **34A-2-902. Workers' compensation claims by emergency medical services**
3563 **providers -- Time limits.**

3564 (1) For all purposes of establishing a workers' compensation claim, the "date of
3565 accident" is presumed to be the date on which an emergency medical services provider first
3566 tests positive for a disease, as defined in Section 78B-8-401. However, for purposes of
3567 establishing the rate of workers' compensation benefits under Subsection 34A-2-702(5), if a
3568 positive test for a disease occurs within three months after termination of employment, the last
3569 date of employment is presumed to be the "date of accident."

3570 (2) The time limits prescribed by Section 34A-2-417 do not apply to an employee
3571 whose disability is due to a disease, so long as the employee who claims to have suffered a
3572 significant exposure in the service of his employer gives notice, as required by Section
3573 34A-3-108, of the "date of accident."

3574 (3) Any claim for workers' compensation benefits or medical expenses shall be filed
3575 with the Division of Adjudication of the Labor Commission within one year after the date on
3576 which the employee first [~~becomes disabled~~] acquires a disability or requires medical treatment
3577 for a disease, or within one year after the termination of employment as an emergency medical
3578 services provider, whichever occurs later.

3579 Section 49. Section **34A-2-903** is amended to read:

3580 **34A-2-903. Failure to be tested -- Time limit for death benefits.**

3581 (1) An emergency medical services provider who refuses or fails to be tested in
3582 accordance with Section 34A-2-901 is not entitled to any of the presumptions provided by this
3583 part.

3584 (2) Death benefits payable under Section 34A-2-702 are payable only if it can be
3585 established by competent evidence that death was a consequence of or result of the disease and,

3586 notwithstanding Subsection 34A-2-702(5), that death occurred within six years from the date
3587 the employee first [~~became disabled~~] acquired a disability or required medical treatment for the
3588 disease that caused [~~his~~] the employee's death.

3589 Section 50. Section **34A-3-104** is amended to read:

3590 **34A-3-104. Employer liability for compensation.**

3591 (1) Every employer is liable for the payment of disability and medical benefits to every
3592 employee who [~~becomes disabled~~] acquires a disability, or death benefits to the dependents of
3593 any employee who dies, by reason of an occupational disease under the terms of this chapter.

3594 (2) Compensation shall not be paid when the last day of injurious exposure of the
3595 employee to the hazards of the occupational disease occurred [~~prior to~~] before 1941.

3596 Section 51. Section **34A-3-107** is amended to read:

3597 **34A-3-107. Benefits -- Disability compensation, death, medical, hospital, and**
3598 **burial expenses -- Procedure and payments.**

3599 (1) The benefits to which [~~a disabled~~] an employee with a disability or the employee's
3600 dependents are entitled under this chapter shall be based upon the employee's average weekly
3601 wage at the time the cause of action arises and shall be computed in accordance with and in all
3602 ways shall be equivalent to the benefits for disability and death provided in Chapter 2,
3603 Workers' Compensation Act.

3604 (2) The [~~disabled~~] employee with a disability is entitled to medical, hospital, and burial
3605 expenses equivalent to those provided in Chapter 2.

3606 (3) The procedure and payment of benefits under this chapter shall be equivalent to and
3607 consistent with Chapter 2, including Section 34A-2-703.

3608 Section 52. Section **34A-4-101** is amended to read:

3609 **CHAPTER 4. HOSPITAL AND MEDICAL SERVICE FOR MINERS WITH A**
3610 **DISABILITY**

3611 **34A-4-101. Who entitled.**

3612 (1) Certain [~~disabled~~] miners with a disability meeting the requirements of Section
3613 34A-4-102 shall be entitled to, and shall receive, the free hospital and medical service provided

3614 for in this chapter.

3615 (2) Notwithstanding Subsection (1), in the event occupational diseases are made
3616 compensable under Chapter 2, Workers' Compensation Act, or 3, Utah Occupational Disease
3617 Act, no employer or insurance carrier shall be permitted to evade payment under Chapter 2 or 3
3618 by compelling a [~~disabled~~] miner with a disability to avail [~~himself~~] the miner of the benefits
3619 provided for in this chapter.

3620 Section 53. Section **34A-4-102** is amended to read:

3621 **34A-4-102. Application for benefits.**

3622 To be entitled to the free hospital and medical service provided for in Section
3623 34A-4-101, a [~~disabled~~] miner with a disability applying for benefits shall be required to
3624 establish under oath the following facts, which shall be conditions precedent to the granting of
3625 the free service provided for in this chapter:

3626 (1) that [~~he~~] the miner is and has been a resident of this state for a period of two years
3627 immediately preceding the filing of [~~his~~] the miner's application;

3628 (2) that [~~he~~] the miner has been employed in the mines of this state for a period of at
3629 least five years and that the disability from which [~~he~~] the miner is suffering and for which [~~he~~]
3630 the miner is in need of hospital and medical treatment is due to such employment;

3631 (3) that [~~he~~] the miner is physically incapable of entering remunerative employment
3632 and holding a job;

3633 (4) that [~~his~~] the miner's disability is such that hospital and medical attention is
3634 necessary; and

3635 (5) that [~~he~~] the miner is financially unable to secure and pay for hospital and medical
3636 service.

3637 Section 54. Section **34A-8a-102** is amended to read:

3638 **34A-8a-102. Definitions.**

3639 [~~(2)~~] (1) "Division" means the Division of Industrial Accidents.

3640 [~~(3)~~] (2) (a) "Gainful employment" means employment that:

3641 (i) is reasonably attainable in view of an industrial injury or occupational disease; and

3642 (ii) offers to an injured worker, as reasonably feasible, an opportunity for earnings.

3643 (b) Factors considered in determining gainful employment include an injured worker's:

3644 (i) education;

3645 (ii) experience; and

3646 (iii) physical and mental impairment and condition.

3647 [~~4~~] (3) "Initial written report" means a report required under Section 34A-8a-301.

3648 [~~5~~] (4) "Injured worker" means an employee who sustains an industrial injury or

3649 occupational disease for which benefits are provided under Chapter 2, Workers' Compensation

3650 Act, or Chapter 3, Utah Occupational Disease Act.

3651 [~~1~~] "~~Disabled injured worker~~" (5) "Injured worker with a disability" means an injured

3652 worker who:

3653 (a) because of the injury or disease that is the basis of the employee being an injured

3654 worker:

3655 (i) is or will be unable to return to work in the injured worker's usual and customary

3656 occupation; or

3657 (ii) is unable to perform work for which the injured worker has previous training and

3658 experience; and

3659 (b) reasonably can be expected to attain gainful employment after an evaluation

3660 provided for in accordance with this chapter.

3661 (6) "Parties" means:

3662 (a) [~~a disabled injured worker~~] an injured worker with a disability;

3663 (b) the employer of the [~~disabled injured worker~~] injured worker with a disability;

3664 (c) the employer's workers' compensation insurance carrier; and

3665 (d) a rehabilitation or reemployment professional for the employer or the employer's

3666 workers' compensation insurance carrier.

3667 (7) "Reemployment plan" means a written:

3668 (a) description or rationale for the manner and means by which it is proposed [~~a~~

3669 ~~disabled injured worker~~] an injured worker with a disability may return to gainful employment;

3670 and

3671 (b) definition of the voluntary responsibilities of:

3672 (i) the ~~[disabled injured worker]~~ injured worker with a disability;

3673 (ii) the employer; and

3674 (iii) one or more other parties involved with the implementation of the reemployment

3675 plan.

3676 Section 55. Section **34A-8a-301** is amended to read:

3677 **34A-8a-301. Initial report on injured worker.**

3678 (1) An employer or the employer's workers' compensation insurance carrier shall

3679 prepare an initial written report assessing an injured worker's need or lack of need for

3680 vocational assistance in reemployment if:

3681 (a) it appears that the injured worker is or will be ~~[a disabled injured worker]~~ an injured
3682 worker with a disability; or

3683 (b) the period of the injured worker's temporary total disability compensation period
3684 exceeds 90 days.

3685 (2) (a) Subject to Subsection (2)(b), an employer or the employer's workers'
3686 compensation insurance carrier shall:

3687 (i) serve the initial written report required by Subsection (1) on the injured worker; and

3688 (ii) file the initial written report required by Subsection (1) with the division.

3689 (b) An employer or the employer's workers' compensation insurance carrier shall

3690 comply with Subsection (2)(a) by no later than 30 days after the earlier of the day on which:

3691 (i) it appears that the injured worker is or will be ~~[a disabled injured worker]~~ an injured
3692 worker with a disability; or

3693 (ii) the 90-day period described in Subsection (1)(b) ends.

3694 (3) With the initial written report required by Subsection (1), an employer or the

3695 employer's workers' compensation insurance carrier shall provide an injured worker

3696 information regarding reemployment.

3697 Section 56. Section **34A-8a-302** is amended to read:

3698 **34A-8a-302. Evaluation of injured worker -- Reemployment plan.**

3699 (1) Subject to the other provisions of this section, if an injured worker is [~~a disabled~~
3700 ~~injured worker~~] an injured worker with a disability, the employer or the employer's workers'
3701 compensation insurance carrier shall, within 10 days after the day on which the employer or
3702 workers' compensation insurance carrier serves the initial written report on the injured worker,
3703 refer the [~~disabled injured worker~~] injured worker with a disability to:

- 3704 (a) the Utah State Office of Rehabilitation; or
- 3705 (b) at the employer's or workers' compensation insurance carrier's option, a private
3706 rehabilitation or reemployment service.

3707 (2) An employer or the employer's workers' compensation insurance carrier shall make
3708 the referral required by Subsection (1) for the purpose of:

- 3709 (a) providing an evaluation; and
- 3710 (b) developing a reemployment plan.

3711 (3) The commission may authorize an employer or the employer's workers'
3712 compensation insurance carrier to:

- 3713 (a) not make a referral required by Subsection (1); or
- 3714 (b) make a referral during a different time period than required by Subsection (1).

3715 Section 57. Section **34A-8a-303** is amended to read:

3716 **34A-8a-303. Reemployment objectives.**

3717 (1) The commission through the division shall administer this chapter with the
3718 objective of assisting in returning [~~a disabled injured worker~~] an injured worker with a
3719 disability to gainful employment in the following order of employment priority:

- 3720 (a) same job, same employer;
- 3721 (b) modified job, same employer;
- 3722 (c) same job, new employer;
- 3723 (d) modified job, new employer;
- 3724 (e) new job, new employer; or
- 3725 (f) retraining in a new occupation.

3726 (2) Nothing in this chapter or its application is intended to:
3727 (a) modify or in any way affect an existing employee-employer relationship; or
3728 (b) provide an employee with a guarantee or right to employment or continued
3729 employment with an employer.

3730 Section 58. Section **39-1-59** is amended to read:

3731 **39-1-59. Compensation for injury or death.**

3732 If any officer or enlisted person of the National Guard is wounded, injured, or otherwise
3733 ~~[disabled]~~ acquires a disability, or is killed or dies of wounds or injuries received while serving
3734 on state active duty, under orders of competent authority and not as a result of ~~[his]~~ the person's
3735 own misconduct, the person, the surviving spouse, children, or any dependent relatives, shall
3736 receive from the state relief as the Legislature determines. However, in these cases the
3737 member, surviving spouse, children, or any dependent relatives, upon investigation by a board
3738 of inquiry appointed by the commander in chief, the findings and recommendations of which
3739 shall be filed with the state auditor for the action of the Board of Examiners, shall receive
3740 temporary compensation from the state, out of funds appropriated for the maintenance of the
3741 National Guard, as determined by the Board of Examiners until the next regular session of the
3742 Legislature. This compensation may not exceed the rates of pay provided for officers and
3743 enlisted persons in this chapter.

3744 Section 59. Section **41-6a-1011** is amended to read:

3745 **41-6a-1011. Pedestrian vehicles.**

3746 (1) As used in this section:
3747 (a) (i) "Pedestrian vehicle" means a self-propelled conveyance designed, manufactured,
3748 and intended for the exclusive use of a person with a physical disability.
3749 (ii) A "pedestrian vehicle" may not:
3750 (A) exceed 48 inches in width;
3751 (B) have an engine or motor with more than 300 cubic centimeters displacement or
3752 with more than 12 brake horsepower; and
3753 (C) be capable of developing a speed in excess of 30 miles per hour.

3754 (b) "Physical disability" means any bodily impairment which precludes a person from
3755 walking or otherwise moving about as a pedestrian.

3756 (2) (a) A pedestrian vehicle operated by a ~~[physically disabled]~~ person with a physical
3757 disability is exempt from vehicle registration, inspection, and operator license requirements.

3758 (b) Authority to operate a pedestrian vehicle on public highways or sidewalks shall be
3759 granted according to rules promulgated by the commissioner of public safety.

3760 (3) (a) A ~~[physically disabled]~~ person with a physical disability may operate a
3761 pedestrian vehicle with a motor of not more than .5 brake horsepower capable of developing a
3762 speed of not more than eight miles per hour:

3763 (i) on the sidewalk; and

3764 (ii) in all places where pedestrians are allowed.

3765 (b) A permit, license, registration, authority, application, or restriction may not be
3766 required or imposed on a ~~[physically disabled person operating]~~ person with a physical
3767 disability who operates a pedestrian vehicle under this Subsection (3).

3768 (c) The provisions of this Subsection (3) supercede the provision of Subsection (2)(b).
3769 Section 60. Section **41-22-2** is amended to read:

3770 **41-22-2. Definitions.**

3771 As used in this chapter:

3772 (1) "Advisory council" means the Off-highway Vehicle Advisory Council appointed by
3773 the Board of Parks and Recreation.

3774 (2) "All-terrain type I vehicle" means any motor vehicle 52 inches or less in width,
3775 having an unladen dry weight of 1,500 pounds or less, traveling on three or more low pressure
3776 tires, having a seat designed to be straddled by the operator, and designed for or capable of
3777 travel over unimproved terrain.

3778 (3) (a) "All-terrain type II vehicle" means any other motor vehicle, not defined in
3779 Subsection (2), (10), or (21), designed for or capable of travel over unimproved terrain.

3780 (b) "All-terrain type II vehicle" does not include golf carts, any vehicle designed to
3781 carry a ~~[disabled]~~ person with a disability, any vehicle not specifically designed for recreational

3782 use, or farm tractors as defined under Section 41-1a-102.

3783 (4) "Board" means the Board of Parks and Recreation.

3784 (5) "Cross-country" means across natural terrain and off an existing highway, road,
3785 route, or trail.

3786 (6) "Dealer" means a person engaged in the business of selling off-highway vehicles at
3787 wholesale or retail.

3788 (7) "Division" means the Division of Parks and Recreation.

3789 (8) "Low pressure tire" means any pneumatic tire six inches or more in width designed
3790 for use on wheels with rim diameter of 14 inches or less and utilizing an operating pressure of
3791 10 pounds per square inch or less as recommended by the vehicle manufacturer.

3792 (9) "Manufacturer" means a person engaged in the business of manufacturing
3793 off-highway vehicles.

3794 (10) "Motorcycle" means every motor vehicle having a saddle for the use of the
3795 operator and designed to travel on not more than two tires.

3796 (11) (a) "Motor vehicle" means every vehicle which is self-propelled.

3797 (b) "Motor vehicle" includes an off-highway vehicle.

3798 ~~[(13)]~~ (12) "Off-highway implement of husbandry" means every all-terrain type I
3799 vehicle, motorcycle, or snowmobile that is used by the owner or ~~[his]~~ the owner's agent for
3800 agricultural operations.

3801 ~~[(12)]~~ (13) "Off-highway vehicle" means any snowmobile, all-terrain type I vehicle,
3802 all-terrain type II vehicle, or motorcycle.

3803 (14) "Operate" means to control the movement of or otherwise use an off-highway
3804 vehicle.

3805 (15) "Operator" means the person who is in actual physical control of an off-highway
3806 vehicle.

3807 (16) "Organized user group" means an off-highway vehicle organization incorporated
3808 as a nonprofit corporation in the state under Title 16, Chapter 6a, Utah Revised Nonprofit
3809 Corporation Act, for the purpose of promoting the interests of off-highway vehicle recreation.

3810 (17) "Owner" means a person, other than a person with a security interest, having a
3811 property interest or title to an off-highway vehicle and entitled to the use and possession of that
3812 vehicle.

3813 (18) "Public land" means land owned or administered by any federal or state agency or
3814 any political subdivision of the state.

3815 (19) "Register" means the act of assigning a registration number to an off-highway
3816 vehicle.

3817 (20) "Roadway" is used as defined in Section 41-6a-102.

3818 (21) "Snowmobile" means any motor vehicle designed for travel on snow or ice and
3819 steered and supported in whole or in part by skis, belts, cleats, runners, or low pressure tires.

3820 (22) "Street or highway" means the entire width between boundary lines of every way
3821 or place of whatever nature, when any part of it is open to the use of the public for vehicular
3822 travel.

3823 (23) "Street-legal all-terrain vehicle" or "street-legal ATV" has the same meaning as
3824 defined in Section 41-6a-102.

3825 Section 61. Section **49-11-403** is amended to read:

3826 **49-11-403. Purchase of public service credit not otherwise qualifying for benefit.**

3827 (1) A member, a participating employer, or a member and a participating employer
3828 jointly may purchase service credit equal to the period of the member's employment in the
3829 following:

3830 (a) United States federal employment;

3831 (b) employment in a private school based in the United States, if the member received
3832 an employer paid retirement benefit for the employment;

3833 (c) public employment in another state or territory of the United States which qualifies
3834 the member for membership in the public plan or system covering the employment, but only if
3835 the member does not qualify for any retirement benefits based on the employment;

3836 (d) forfeited service credit in this state if the member does not qualify for an allowance
3837 based on the service credit;

- 3838 (e) full-time public service while on an approved leave of absence;
- 3839 (f) the period of time for which disability benefits were paid if:
- 3840 (i) the member was receiving:
- 3841 (A) long-term disability benefits;
- 3842 (B) short-term disability benefits; or
- 3843 (C) worker's compensation disability benefits; and
- 3844 (ii) the member's employer had not entered into a benefit protection contract under
- 3845 Section 49-11-404 during the period the member [~~was disabled~~] had a disability due to sickness
- 3846 or accident;
- 3847 (g) employment covered by a Teachers Insurance and Annuity Association of America
- 3848 retirement plan if the member forfeits any retirement benefit from that retirement plan for the
- 3849 period of employment to be purchased under this Subsection (1)(g); or
- 3850 (h) employment in a charter school located within the state if the member forfeits any
- 3851 retirement benefit under any other retirement system or plan for the period of employment to be
- 3852 purchased under this Subsection (1)(h).
- 3853 (2) A member shall:
- 3854 (a) have at least four years of service credit before a purchase can be made under this
- 3855 section; and
- 3856 (b) forfeit service credit and any defined contribution balance based on employer
- 3857 contributions under any other retirement system or plan based on the period of employment for
- 3858 which service credit is being purchased.
- 3859 (3) (a) To purchase credit under this section, the member, a participating employer, or a
- 3860 member and a participating employer jointly shall make payment to the system under which the
- 3861 member is currently covered.
- 3862 (b) The amount of the payment shall be determined by the office based on a formula
- 3863 that is:
- 3864 (i) recommended by the actuary; and
- 3865 (ii) adopted by the board.

3866 (4) The purchase may be made through payroll deductions or through a lump sum
3867 deposit based upon the present value of future payments.

3868 (5) Total payment must be completed prior to the member's effective date of retirement
3869 or service credit will be prorated in accordance with the amount paid.

3870 (6) (a) For a purchase made before July 1, 2010, if any of the factors used to determine
3871 the cost of a service credit purchase change at or before the member's retirement date, the cost
3872 of the purchase shall be recalculated at the time of retirement.

3873 (b) For a purchase made before July 1, 2010, if the recalculated cost exceeds the
3874 amount paid for the purchase, the member, a participating employer, or a member and a
3875 participating employer jointly may:

3876 (i) pay the increased cost, plus interest, to receive the full amount of service credit; or

3877 (ii) not pay the increased cost and have the purchased service credit prorated.

3878 (c) For a purchase made on or after July 1, 2010:

3879 (i) the purchase shall be made in accordance with rules:

3880 (A) adopted by the board based on recommendations by the board's actuary; and

3881 (B) in effect at the time the purchase is completed; and

3882 (ii) the cost of the service credit purchase shall not be recalculated at the time of
3883 retirement.

3884 (7) If the recalculated cost under Subsection (6)(a) is less than the amount paid for the
3885 purchase, the office shall refund the excess payment to the member or participating employer
3886 who paid for the purchase.

3887 (8) (a) The board may adopt rules under which a member may make the necessary
3888 payments to the office for purchases under this title as permitted by federal law.

3889 (b) The office may reject any payments if the office determines the tax status of the
3890 system, plans, or programs would be jeopardized by allowing the payment.

3891 (9) Account balances created under Section 49-22-303, 49-22-401, 49-23-302, or
3892 49-23-401 may not be used to purchase service credit for a benefit under Sections 49-22-304,
3893 49-22-305, 49-23-303, and 49-23-304.

3894 Section 62. Section ~~49-11-404~~ is amended to read:

3895 **49-11-404. Benefit protection contract authorized -- Annual report required.**

3896 (1) (a) A participating employer may establish a salary protection program under which
3897 its employees are paid during periods of disability.

3898 (b) If a salary protection program is established, a participating employer may enter
3899 into benefit protection contracts with the office.

3900 (c) A salary protection program shall:

3901 (i) pay benefits based on the [~~disabled member's~~] rate of compensation of the member
3902 with a disability at the time of disability;

3903 (ii) pay benefits over the period of the disability;

3904 (iii) not include settlement or lump sum payments of any type;

3905 (iv) be substantially equivalent to the long-term disability programs offered under
3906 Chapter 21, Public Employees' Long-Term Disability Act; and

3907 (v) comply with requirements adopted by the board.

3908 (2) A benefit protection contract shall allow:

3909 (a) the [~~disabled~~] member with a disability to be considered an active member in a
3910 system and continue to accrue service credit and salary credit based on the member's rate of pay
3911 in effect at the time disability commences;

3912 (b) the office to require participating employer contributions to be paid before granting
3913 service credit and salary credit to the member;

3914 (c) the [~~disabled~~] member with a disability to remain eligible during the contract period
3915 for any benefits provided by the system that covers the member; and

3916 (d) the benefit for the [~~disabled~~] member with a disability to be improved by the annual
3917 cost-of-living increase factor applied to retired members of the system that covered the member
3918 on the date the member is eligible to receive benefits under a benefit protection contract.

3919 (3) (a) The office shall establish the manner and times when employer contributions
3920 are paid.

3921 (b) A failure to make the required payments is cause for the office to cancel a contract.

3922 (c) Service credit and salary credit granted and accrued up to the time of cancellation
3923 may not be forfeited.

3924 (4) For an employee covered under Chapter 22, New Public Employees' Tier II
3925 Contributory Retirement Act, or Chapter 23, New Public Safety and Firefighter Tier II
3926 Contributory Retirement Act, a benefit protection contract shall allow:

3927 (a) for the defined benefit portion for a member covered under Chapter 22, Part 3, Tier
3928 II Hybrid Retirement System, or Chapter 23, Part 3, Tier II Hybrid Retirement System:

3929 (i) the ~~disabled~~ member with a disability to be considered an active member in a
3930 system and continue to accrue service credit and salary credit based on the member's rate of pay
3931 in effect at the time disability commences;

3932 (ii) the office to require participating employer contributions to be paid before granting
3933 service credit and salary credit to the member;

3934 (iii) the ~~disabled~~ member with a disability to remain eligible during the contract
3935 period for any benefits provided by the system that covers the member; and

3936 (iv) the benefit for the ~~disabled~~ member with a disability to be improved by the
3937 annual cost-of-living increase factor applied to retired members of the system that covered the
3938 member on the date the member is eligible to receive benefits under a benefit protection
3939 contract; and

3940 (b) for the defined contribution portion for a member covered under Chapter 22, Part 3,
3941 Tier II Hybrid Retirement System or Chapter 23, Part 3, Tier II Hybrid Retirement System or
3942 for a participant covered under Chapter 22, Part 4, Tier II Defined Contribution Plan or Chapter
3943 23, Part 4, Tier II Defined Contribution Plan, the office to require participating employers to
3944 continue making the nonelective contributions on behalf of the ~~disabled~~ member with a
3945 disability or participant in the amounts specified in Subsection 49-22-303(1)(a), 49-22-401(1),
3946 49-23-302(1)(a), or 49-23-401(1).

3947 (5) A participating employer that has entered into a benefit protection contract under
3948 this section shall submit an annual report to the office which identifies:

3949 (a) the employees receiving long-term disability benefits under policies initiated by the

3950 participating employer and approved under the benefit protection contract;

3951 (b) the employees that have applied for long-term disability benefits and who are
3952 waiting approval; and

3953 (c) the insurance carriers that are actively providing long-term disability benefits.

3954 (6) If an employer fails to provide the annual report required under Subsection (5), the
3955 benefits that would have accrued under the benefit protection contract shall be forfeited.

3956 (7) The board may adopt rules to implement and administer this section.

3957 Section 63. Section **49-12-601** is amended to read:

3958 **49-12-601. Disability retirement -- Medical examinations -- Reemployment of**
3959 **retirant with a disability -- Cancellation of benefit -- Service credit -- Retirant with a**
3960 **disability engaging in gainful employment -- Reduction of allowance -- Refusal to submit**
3961 **to medical examination.**

3962 (1) Only members of this system who became eligible for a disability retirement
3963 allowance before January 1, 1983, are covered under this section.

3964 (2) (a) The board may, upon the recommendation of the administrator, require any
3965 retirant who has been retired for disability and who has not attained the age of 60 years, to
3966 undergo a medical examination by a physician or surgeon, appointed by the board, at the place
3967 of residence of the retirant or other place mutually agreed upon.

3968 (b) Upon the basis of the examination, the board shall determine whether the [~~disabled~~]
3969 retirant with a disability is still incapacitated, physically or mentally, for service under this
3970 chapter.

3971 (c) If the board determines that the retirant is not incapacitated, the retirement
3972 allowance shall be cancelled and the retirant shall be reinstated immediately to a position of the
3973 same class as that held by the retirant when retired for disability.

3974 (d) If any employing unit is unable to reinstate the retirant, the board shall continue the
3975 disability retirement allowance of the retirant until employment is available.

3976 (3) (a) If a [~~disabled~~] retirant with a disability under this system reenters covered
3977 service and is eligible for membership in the retirement system, the retirement allowance shall

3978 be cancelled and the retirant shall immediately become a member of the retirement system.

3979 (b) (i) The member's individual account shall be credited with an amount which is the
3980 actuarial equivalent, at the time of reentry, based on a disabled life, of that portion of the
3981 member's retirement allowance which was derived from the member's accumulated
3982 contributions.

3983 (ii) The amount credited may not exceed the amount of accumulated contributions
3984 standing at the time of retirement.

3985 (c) Each member shall receive credit for the service in the member's account at the
3986 time of retirement.

3987 (4) If the retirement allowance of any [~~disabled~~] retirant with a disability is cancelled
3988 for any cause other than reentry into service, the retirant shall be paid the accumulated
3989 contributions less the amounts prescribed by Subsection (6).

3990 (5) (a) If any member retired for disability engages in a gainful occupation prior to
3991 attaining age 60, the administrator shall reduce the amount of the retirement allowance to an
3992 amount which, when added to the compensation earned monthly by the retirant in that
3993 occupation, may not exceed the amount of the final average monthly salary on the basis of
3994 which the current service retirement allowance was determined.

3995 (b) If the earning capacity of the retirant is further altered, the administrator may
3996 further alter the retirement allowance as provided in this Subsection (5).

3997 (c) In no event, however, may the retirement benefit be reduced below that portion of
3998 the retirant's allowance derived from the retirant's own accumulated contributions.

3999 (d) When the retirant reaches age 60, the retirement allowance shall be made equal to
4000 the amount upon which the retirant was originally retired and may not again be modified for
4001 any cause.

4002 (6) (a) If any member who retired for disability under age 60, refuses to submit to a
4003 medical examination, the retirement allowance may be discontinued until the retirant
4004 withdraws that refusal.

4005 (b) If the refusal continues for one year the disability status may be cancelled and

4006 membership terminated.

4007 (c) (i) The retirant's accumulated contribution account shall be the actuarial equivalent
4008 on the date of the retirant's change of status, based on a disabled life, of that portion of the
4009 disability retirement allowance which was derived from the retirant's accumulated
4010 contributions.

4011 (ii) The amount credited may not exceed the amount of the retirant's accumulated
4012 contributions at the time of disability retirement.

4013 Section 64. Section **49-14-502** is amended to read:

4014 **49-14-502. Death of active member in Division B -- Payment of benefits.**

4015 (1) If an active member of this system enrolled in Division B under Section 49-14-301
4016 dies, benefits are payable as follows:

4017 (a) If the death is classified by the office as a line-of-duty death, the spouse at the time
4018 of death shall receive a lump sum of \$1,500 and an allowance equal to 37.5% of the member's
4019 final average monthly salary.

4020 (b) If the death is not classified by the office as a line-of-duty death, benefits are
4021 payable as follows:

4022 (i) If the member has accrued two or more years of public safety service credit at the
4023 time of death, the death is considered a line-of-duty death and the benefit shall be paid as
4024 provided under Subsection (1)(a).

4025 (ii) If the member has accrued less than two years of public safety service credit at the
4026 time of death, the spouse at the time of death shall receive a refund of the member's member
4027 contributions, plus 50% of the member's most recent 12 months' compensation.

4028 (c) (i) If the member has accrued two or more years of public safety service credit at
4029 the time of death, each of the member's unmarried children to age 18 or dependent unmarried
4030 [~~mentally or physically disabled~~] children with a mental or physical disability shall receive a
4031 monthly allowance of \$50.

4032 (ii) Payments shall be made to the surviving parent or to a duly appointed guardian, or
4033 as otherwise provided under Sections 49-11-609 and 49-11-610.

4034 (2) In the event of the death of both parents, the spouse's benefit shall be prorated and
4035 paid to each of the member's unmarried children to age 18.

4036 (3) If a benefit is not distributed under the previous subsections, and the member has
4037 designated a beneficiary, the member's member contributions shall be paid to the beneficiary.

4038 (4) The combined annual payments made to the beneficiaries of any member under this
4039 section may not exceed 75% of the member's final average monthly salary.

4040 Section 65. Section **49-14-504** is amended to read:

4041 **49-14-504. Benefits payable upon death of retired member -- Enhanced benefit**
4042 **election -- Rulemaking.**

4043 (1) If a retiree who retired under either Division A or Division B dies, the retiree's
4044 spouse at the time of death of the retiree shall receive an allowance equal to 65% of the
4045 allowance that was being paid to the retiree at the time of death.

4046 (2) (a) Notwithstanding the amount of the allowance under Subsection (1), at the time
4047 of retirement, a retiree may elect to increase the spousal death benefit to 75% of an allowance
4048 computed in accordance with Section 49-14-402.

4049 (b) If an election is made under Subsection (2)(a), the member's allowance shall be
4050 reduced to an amount payable monthly for life to reflect the actuarial equivalent necessary to
4051 pay for the increased spousal death benefit above 65%.

4052 (3) (a) For a retiree whose retirement date is before July 1, 2009, the office shall
4053 provide an optional spousal death benefit to bring the total spousal death benefit up to 75% of
4054 an allowance computed in accordance with Section 49-14-402.

4055 (b) A retiree may elect to purchase the optional spousal death benefit until July 1,
4056 2010.

4057 (c) If an election is made under Subsection (3)(b), the retiree's allowance shall be
4058 reduced to an amount payable monthly for life to reflect the actuarial equivalent necessary to
4059 pay for the increased spousal death benefit above 65%.

4060 (d) The board shall make rules to administer the death benefit under this Subsection
4061 (3).

4062 (4) If the retiree retired solely under Division B and dies leaving unmarried children
4063 under the age of 18 or dependent unmarried [~~mentally or physically disabled~~] children with a
4064 mental or physical disability, the children shall qualify for a benefit as prescribed for children
4065 under Subsection 49-14-502(1)(c) which is payable on the first day of the month following the
4066 month in which the retiree died.

4067 Section 66. Section **49-15-502** is amended to read:

4068 **49-15-502. Death of active member in Division B -- Payment of benefits.**

4069 (1) If an active member of this system enrolled in Division B under Section 49-15-301
4070 dies, benefits are payable as follows:

4071 (a) If the death is classified by the office as a line-of-duty death, the spouse at the time
4072 of death shall receive a lump sum of \$1,500 and an allowance equal to 37.5% of the member's
4073 final average monthly salary.

4074 (b) If the death is not classified by the office as a line-of-duty death, and the member
4075 has accrued two or more years of public safety service credit at the time of death, the death is
4076 considered line-of-duty and the benefit shall be paid as provided under Subsection (1)(a).

4077 (c) If the death is not classified by the office as a line-of-duty death, and the member
4078 has accrued less than two years of public safety service credit at the time of death, the spouse at
4079 the time of death shall receive a refund of the member's member contributions, plus 50% of the
4080 member's most recent 12 months' compensation.

4081 (d) (i) If the member has accrued two or more years of public safety service credit at
4082 the time of death, each of the member's unmarried children to age 18 or dependent unmarried
4083 [~~mentally or physically disabled~~] children with a mental or physical disability shall receive an
4084 allowance of \$50.

4085 (ii) Payments shall be made to the surviving parent or to a duly appointed guardian, or
4086 as otherwise provided under Section 49-11-609 or 49-11-610.

4087 (2) In the event of the death of both parents, the spouse's benefit shall be prorated and
4088 paid to each of the member's unmarried children to age 18.

4089 (3) If a benefit is not distributed under the previous subsections, and the member has

4090 designated a beneficiary, the member's member contributions shall be paid to the beneficiary.

4091 (4) The combined payments to beneficiaries of any member under this section may not
4092 exceed 75% of the member's final average monthly salary.

4093 Section 67. Section **49-15-504** is amended to read:

4094 **49-15-504. Benefits payable upon death of retired member -- Enhanced benefit**
4095 **election -- Rulemaking.**

4096 (1) If a retiree who retired under either Division A or Division B dies, the retiree's
4097 spouse at the time of death of the retiree shall receive an allowance equal to 65% of the
4098 allowance that was being paid to the retiree at the time of death.

4099 (2) (a) Notwithstanding the amount of the allowance under Subsection (1), at the time
4100 of retirement, a retiree may elect to increase the spousal death benefit to 75% of an allowance
4101 computed in accordance with Section 49-15-402.

4102 (b) If an election is made under Subsection (2)(a), the member's allowance shall be
4103 reduced to an amount payable monthly for life to reflect the actuarial equivalent necessary to
4104 pay for the increased spousal death benefit above 65%.

4105 (3) (a) For a retiree whose retirement date is before July 1, 2009, the office shall
4106 provide an optional spousal death benefit to bring the total spousal death benefit up to 75% of
4107 an allowance computed in accordance with Section 49-15-402.

4108 (b) A retiree may elect to purchase the optional spousal death benefit until July 1,
4109 2010.

4110 (c) If an election is made under Subsection (3)(b), the retiree's allowance shall be
4111 reduced to an amount payable monthly for life to reflect the actuarial equivalent necessary to
4112 pay for the increased spousal death benefit above 65%.

4113 (d) The board shall make rules to administer the death benefit under this Subsection
4114 (3).

4115 (4) If the retiree retired solely under Division B and dies leaving unmarried children
4116 under the age of 18 or dependent unmarried [~~mentally or physically disabled~~] children with a
4117 mental or physical disability, the children shall qualify for a benefit as prescribed under

4118 Subsection 49-15-502(1)(d) which is payable on the first day of the month following the month
4119 in which the retiree died.

4120 Section 68. Section **49-16-201** is amended to read:

4121 **49-16-201. System membership -- Eligibility.**

4122 (1) A firefighter service employee who performs firefighter service for an employer
4123 participating in this system is eligible for service credit in this system upon the earliest of:

4124 (a) July 1, 1971, if the firefighter service employee was employed by the participating
4125 employer on July 1, 1971, and the participating employer was participating in this system on
4126 that date;

4127 (b) the date the participating employer begins participating in this system if the
4128 firefighter service employee was employed by the participating employer on that date; or

4129 (c) the date the firefighter service employee is hired to perform firefighter services for a
4130 participating employer, if the firefighter initially enters employment before July 1, 2011.

4131 (2) (a) (i) A participating employer that has public safety service and firefighter service
4132 employees that require cross-training and duty shall enroll the dual purpose employees in the
4133 system in which the greatest amount of time is actually worked.

4134 (ii) The employees shall either be full-time public safety service or full-time firefighter
4135 service employees of the participating employer.

4136 (b) (i) [~~Prior to~~] Before transferring a dual purpose employee from one system to
4137 another, the participating employer shall receive written permission from the office.

4138 (ii) The office may request documentation to verify the appropriateness of the transfer.

4139 (3) (a) A person hired by a regularly constituted fire department on or after July 1,
4140 1971, who does not perform firefighter service is not eligible for service credit in this system.

4141 (b) The nonfirefighter service employee shall become a member of the system for
4142 which the nonfirefighter service employee qualifies for service credit.

4143 (c) The service credit exclusion under this Subsection (3) may not be interpreted to
4144 prohibit the assignment of a [~~disabled or partially disabled~~] firefighter with a disability or
4145 partial disability to a nonfirefighter service position.

4146 (d) If Subsection (3)(c) applies, the firefighter service employee remains eligible for
4147 service credit in this system.

4148 (4) An allowance or other benefit may not be granted under this system that is based
4149 upon the same service for benefits received under some other system.

4150 (5) Service as a volunteer firefighter is not eligible for service credit in this system.

4151 (6) An employer that maintains a regularly constituted fire department is eligible to
4152 participate in this system.

4153 (7) Beginning July 1, 2011, a person initially entering employment with a participating
4154 employer may not participate in this system.

4155 Section 69. Section **49-16-502** is amended to read:

4156 **49-16-502. Death of active member in Division B -- Payment of benefits.**

4157 (1) If an active member of this system enrolled in Division B under Section 49-16-301
4158 dies, benefits are payable as follows:

4159 (a) If the death is classified by the office as a line-of-duty death, benefits are payable as
4160 follows:

4161 (i) If the member has accrued less than 20 years of firefighter service credit, the spouse
4162 at the time of death shall receive a lump sum of \$1,500 and an allowance equal to 37.5% of the
4163 member's final average monthly salary.

4164 (ii) If the member has accrued 20 or more years of firefighter service credit, the
4165 member shall be considered to have retired with an allowance calculated under Subsection
4166 49-16-402 and the spouse at the time of death shall receive the death benefit payable to a
4167 spouse under Section 49-16-504.

4168 (b) If the death is not classified by the office as a line-of-duty death, the benefits are
4169 payable as follows:

4170 (i) If the member has accrued five or more years of firefighter service credit, the death
4171 is considered line-of-duty and the same benefits are payable as established under Subsection
4172 (1)(a).

4173 (ii) If the member has accrued less than five years of firefighter service credit, the

4174 spouse at the time of death shall receive a refund of the member's contributions, plus 50% of
4175 the member's most recent 12 months compensation.

4176 (c) If the member has accrued five or more years of firefighter service credit, the
4177 member's unmarried children until they reach age 21 or dependent unmarried [~~mentally or~~
4178 ~~physically disabled~~] children with a mental or physical disability, shall receive a monthly
4179 allowance of \$75.

4180 (2) (a) In the event of the death of the member and spouse, the spouse's benefits are
4181 equally divided and paid to each unmarried child until the child reaches age 21.

4182 (b) The payments shall be made to the surviving parent or duly appointed guardian or
4183 as provided under Sections 49-11-609 and 49-11-610.

4184 (3) If a benefit is not distributed under the previous subsections, and the member has
4185 designated a beneficiary, the member's member contributions shall be paid to the beneficiary.

4186 (4) The combined monthly payments made to the beneficiaries of any member under
4187 this section may not exceed 75% of the member's final average monthly salary.

4188 Section 70. Section **49-16-504** is amended to read:

4189 **49-16-504. Benefits payable upon death of retired member.**

4190 (1) If a retiree who retired under either Division A or Division B dies, the retiree's
4191 spouse at the time of death shall receive an allowance equal to 75% of the allowance that was
4192 being paid to the retiree at the time of death.

4193 (2) If the retiree retired solely under Division B and dies leaving unmarried children
4194 under the age of 21 or dependent unmarried [~~mentally or physically disabled~~] children with a
4195 mental or physical disability, the children shall qualify for a benefit as prescribed under
4196 Subsection 49-16-502(1)(c) which is payable on the first day of the month following the month
4197 in which the retiree died.

4198 Section 71. Section **49-16-602** is amended to read:

4199 **49-16-602. Disability retirement -- Disability allowance eligibility -- Conversion to**
4200 **service retirement -- Examinations -- Reemployment.**

4201 (1) A member of this system who applies and is qualified for disability retirement shall

4202 receive a disability retirement benefit until the earlier of:

4203 (a) the date the member of this system [~~is no longer disabled~~] no longer has a
4204 disability;

4205 (b) the date the member of this system has accumulated 20 years of firefighter service
4206 credit, including years earned while [~~disabled~~] the member of this system had a disability; or

4207 (c) the date the member of this system has received disability retirement benefits for
4208 the following time periods:

4209 (i) if the member is under age 60 on the date of disability, the disability retirement
4210 benefit is payable until age 65;

4211 (ii) if the member is 60 or 61 years of age on the date of disability, the disability
4212 retirement benefit is payable for five years;

4213 (iii) if the member is 62 or 63 years of age on the date of disability, the disability
4214 retirement benefit is payable for four years;

4215 (iv) if the member is 64 or 65 years of age on the date of disability, the disability
4216 retirement benefit is payable for three years;

4217 (v) if the member is 66, 67, or 68 years of age on the date of disability, the disability
4218 retirement benefit is payable for two years; and

4219 (vi) if the member is 69 years of age or older on the date of disability, the disability
4220 retirement benefit is payable for one year.

4221 (2) (a) (i) The [~~disability~~] retiree with a disability shall receive service credit in this
4222 system during the period of disability.

4223 (ii) If the [~~disability~~] retiree with a disability is employed by a participating employer
4224 during the period of disability, the [~~disability~~] retiree with a disability may not receive service
4225 credit for that employment.

4226 (b) The disability retirement shall be converted to a service retirement at the time the
4227 disability retirement benefits terminate.

4228 (3) The office shall approve or disapprove applications for disability retirement
4229 benefits based upon:

4230 (a) the evaluation and recommendations of one or more treating physicians along with
4231 medical records relating to the condition;

4232 (b) the evaluation and recommendations of one or more independent physicians
4233 selected by the office; and

4234 (c) receipt of documentation by the office from the participating employer that the
4235 member is mentally or physically unable to perform firefighter service.

4236 (4) (a) A ~~[disability]~~ retiree with a disability who receives benefits under this section
4237 shall, upon request of the executive director, submit to a medical examination by one or more
4238 physicians as directed by the office.

4239 (b) If, after an examination, the examiners report that the ~~[disability]~~ retiree with a
4240 disability is physically and mentally able and capable of resuming firefighter service
4241 employment, the ~~[disability]~~ retiree with a disability shall be reinstated by the participating
4242 employer for which the ~~[disability]~~ retiree with a disability last worked at the ~~[disability~~
4243 ~~retiree's]~~ former classification and rank of the retiree with a disability, and the disability
4244 retirement benefit shall terminate.

4245 (c) A ~~[disability]~~ retiree with a disability may not be required to submit to an
4246 examination under this Subsection (4) more than once every year.

4247 (d) A ~~[disability]~~ retiree with a disability who returns to firefighter service employment
4248 with a participating employer in this system shall immediately begin accruing service credit
4249 that shall be added to that service credit that has been previously accrued, including service
4250 credit while disabled.

4251 (5) A ~~[disability]~~ retiree with a disability is not subject to medical examinations after
4252 reaching age 55.

4253 (6) Refusal or neglect of a member to submit to an examination as requested by the
4254 office either before or after a decision regarding disability benefits has been made is sufficient
4255 cause for denial, suspension, or discontinuance of benefits and if the refusal or neglect
4256 continues for one year, the ~~[member's or disability retiree's]~~ rights of the member or retiree with
4257 a disability to disability retirement benefits may be revoked by the office.

4258 (7) (a) A ~~[disability]~~ retiree with a disability who receives benefits under this part shall
4259 file a sworn statement with the office on or before March 15 of each year for the first five years
4260 a ~~[disability]~~ retiree with a disability receives benefits.

4261 (b) The sworn statement shall indicate whether or not the ~~[disability]~~ retiree with a
4262 disability engaged in any employment during the preceding year and, if so, the amount of
4263 earnings received during the calendar year.

4264 (c) If the total amount received in one year by a ~~[disability]~~ retiree with a disability for
4265 disability retirement benefits and gross earnings from other employment exceeds 125% of the
4266 ~~[disability retiree's]~~ final average salary of the retiree with a disability, the office shall offset the
4267 disability retirement benefit paid the following year by the amount in excess of 125% of the
4268 ~~[disability retiree's]~~ final average salary of the retiree with a disability.

4269 (d) (i) If a ~~[disability]~~ retiree with a disability refuses or neglects to file a sworn
4270 statement as required under this Subsection (7), the executive director may suspend payment of
4271 any and all benefits pending receipt of the statement.

4272 (ii) Upon filing the statement, the ~~[disability retiree's]~~ payments of the retiree with a
4273 disability shall be resumed.

4274 (8) The disability retirement benefit shall be improved by the annual cost-of-living
4275 increase factor applied to retirees of the system that covered the firefighter service employee at
4276 the time of disability.

4277 (9) A line of duty disability allowance paid on or after January 1, 2002, under Section
4278 49-16-601 is exempt from taxation to the extent permitted under federal law.

4279 (10) (a) An active member of this system with five or more years of firefighter service
4280 credit shall be eligible for a line-of-duty death or disability benefit resulting from heart disease,
4281 lung disease, or respiratory tract disease.

4282 (b) An active member of this system who receives a line-of-duty disability benefit for
4283 more than six months due to violence or illness other than heart disease, lung disease, or
4284 respiratory tract disease, and then returns to paid firefighter service, is not eligible for a
4285 line-of-duty death or disability benefit due to those diseases for two years after the member

4286 returned to paid firefighter service unless clear and convincing evidence is presented that the
4287 heart, lung, or respiratory tract disease was directly a result of firefighter service.

4288 (11) Disability retirement benefits shall be considered an allowance for purposes of
4289 Section 49-11-701.

4290 Section 72. Section **49-21-102** is amended to read:

4291 **49-21-102. Definitions.**

4292 As used in this chapter:

4293 (1) "Date of disability" means the date on which a period of continuous disability
4294 commences, and may not commence on or before the last day of actual work.

4295 [~~3~~] (2) (a) "Eligible employee" means:

4296 (i) any regular full-time employee as defined under Section 49-12-102 or 49-13-102,
4297 public safety service employee as defined under Section 49-14-102 or 49-15-102, or judge as
4298 defined under Section 49-17-102 or 49-18-102, whose employer provides coverage under this
4299 chapter, or the governor of the state; and

4300 (ii) an employee who is covered by a retirement program offered by the Teachers'
4301 Insurance and Annuity Association of America, if the employee's employer provides coverage
4302 under this chapter; and

4303 (b) "Eligible employee" does not include any employee that is exempt from coverage
4304 under Section 49-21-201.

4305 [~~2~~] (3) "Elimination period" means the three months at the beginning of each
4306 continuous period of total disability for which no benefit will be paid. The elimination period
4307 begins on the nearest first day of the month from the date of disability. The elimination period
4308 may include a one-time trial return to work period of less than 15 consecutive calendar days.

4309 (4) "Maximum benefit period" means the maximum period of time the monthly
4310 disability income benefit will be paid under Section 49-21-403 for any continuous period of
4311 total disability.

4312 (5) "Monthly disability benefit" means the monthly payments and accrual of service
4313 credit under Section 49-21-401.

4314 (6) "Objective medical impairment" means an impairment resulting from an injury or
4315 illness which is diagnosed by a physician and which is based on accepted objective medical
4316 tests or findings rather than subjective complaints.

4317 (7) "Physician" means a licensed physician.

4318 (8) "Regular monthly salary" means the amount certified by the participating employer
4319 as the monthly salary of the eligible employee, unless there is a discrepancy between the
4320 certified amount and the amount actually paid, in which case the office shall determine the
4321 regular monthly salary.

4322 (9) "Regular occupation" means either the primary duties performed by the eligible
4323 employee for the 12 months preceding the date of disability, or a permanent assignment of duty
4324 to the eligible employee.

4325 (10) "Rehabilitative employment" means any occupation or employment for wage or
4326 profit, for which the eligible employee is reasonably qualified to perform based on education,
4327 training, or experience.

4328 (11) (a) "Total disability" [~~or "totally disabled"~~] means the complete inability, due to
4329 objective medical impairment, whether physical or mental, to engage in the eligible employee's
4330 regular occupation during the elimination period and the first 24 months of disability benefits.

4331 (b) "Total disability" means, after the elimination period and the first 24 months of
4332 disability benefits, the complete inability, based solely on physical objective medical
4333 impairment, to engage in any gainful occupation which is reasonable, considering the eligible
4334 employee's education, training, and experience.

4335 Section 73. Section **49-21-401** is amended to read:

4336 **49-21-401. Disability benefits -- Application -- Eligibility.**

4337 (1) An eligible employee shall apply for long-term disability benefits under this chapter
4338 by:

4339 (a) completing an application form prepared by the office;

4340 (b) signing a consent form allowing the office access to the eligible employee's medical
4341 records; and

4342 (c) providing any documentation or information reasonably requested by the office.

4343 (2) (a) If an eligible employee is unable to apply on the employee's own behalf, the
4344 application may be made by a person who is:

4345 (i) the attorney for an eligible employee; or

4346 (ii) appointed as a conservator or guardian of the eligible employee.

4347 (b) A person described in Subsection (2)(a), may not make an application for a
4348 deceased employee.

4349 (3) Upon request by the office, the participating employer of the eligible employee
4350 shall provide to the office documentation and information concerning the eligible employee.

4351 (4) The office shall review all relevant information and determine whether or not the
4352 eligible employee ~~[is totally disabled]~~ has a total disability.

4353 (5) If the office determines that the eligible employee ~~[is totally disabled]~~ has a total
4354 disability due to accidental bodily injury or physical illness which is not the result of the
4355 performance of an employment duty, the eligible employee shall receive a monthly disability
4356 benefit equal to two-thirds of the eligible employee's regular monthly salary, for each month
4357 the total disability continues beyond the elimination period, not to exceed the maximum benefit
4358 period.

4359 (6) If the office determines that the eligible employee ~~[is totally disabled]~~ has a total
4360 disability due to psychiatric illness, the eligible employee shall receive:

4361 (a) a maximum of two years of monthly disability benefits equal to two-thirds of the
4362 eligible employee's regular monthly salary for each month the total disability continues beyond
4363 the elimination period;

4364 (b) a maximum of \$10,000 for psychiatric expenses, including rehabilitation expenses
4365 preauthorized by the office's consultants, paid during the period of monthly disability benefits;
4366 and

4367 (c) payment of monthly disability benefits according to contractual provisions for a
4368 period not to exceed five years if the eligible employee is institutionalized due to psychiatric
4369 illness.

4370 (7) If the office determines that the eligible employee [~~is totally disabled~~] has a total
4371 disability due to a physical injury resulting from external force or violence as a result of the
4372 performance of an employment duty, the eligible employee shall receive a monthly disability
4373 benefit equal to 100% of the eligible employee's regular monthly salary, for each month the
4374 total disability continues beyond the elimination period, not to exceed the maximum benefit
4375 period.

4376 (8) (a) Successive periods of disability are considered as a continuous period of
4377 disability if the period of disability:

4378 (i) results from the same or related causes;

4379 (ii) is separated by less than six months of continuous full-time work at the individual's
4380 usual place of employment; and

4381 (iii) commences while the individual is an eligible employee covered by this chapter.

4382 (b) The inability to work for a period of less than 15 consecutive calendar days is not
4383 considered as a period of disability.

4384 (c) If Subsection (8)(a) or (b) does not apply, successive periods of disability are
4385 considered as separate periods of disability.

4386 (9) The office may, at any time, have any eligible employee claiming to have a
4387 disability examined by a physician chosen by the office to determine if the eligible employee
4388 [~~is totally disabled~~] has a total disability.

4389 (10) A claim brought by an eligible employee for long-term disability benefits under
4390 the Public Employee's Long-Term Disability Program is barred if it is not commenced within
4391 one year from the eligible employee's date of disability, unless the office determines that under
4392 the surrounding facts and circumstances, the eligible employee's failure to comply with the
4393 time limitations was reasonable.

4394 (11) Medical or psychiatric conditions which existed prior to eligibility may not be a
4395 basis for disability benefits until the eligible employee has had one year of continuous
4396 eligibility in the Public Employees Long-Term Disability Program.

4397 (12) If there is a valid benefit protection contract, service credit shall accrue during the

4398 period of total disability, unless the disabled eligible employee is exempted from a system, or is
4399 otherwise ineligible for service credit.

4400 (13) Regardless of any medical evidence provided by the employee to support the
4401 application for disability, an employee is not eligible for long-term disability benefits during
4402 any period in which the employee:

4403 (a) makes a claim that the employee is able to work; or

4404 (b) has a pending action in a court or before any state or local administrative body in
4405 which the employee has made a claim that the employee is able to work.

4406 (14) Notwithstanding the provisions of Section 49-11-618, upon written request by an
4407 employer, information obtained under this part may, upon an order of a court or an
4408 administrative law judge, be released to an employer who is a party in an action under
4409 Subsection (13).

4410 Section 74. Section **49-21-403** is amended to read:

4411 **49-21-403. Termination of disability benefits -- Calculation of retirement benefit.**

4412 (1) An eligible employee covered by this chapter and eligible for service credit under a
4413 system, or a participant in the Tier II Defined Contribution Plan, created in Chapter 22, Part 4,
4414 Tier II Defined Contribution Plan, or Chapter 23, Part 4, Tier II Defined Contribution Plan,
4415 including an eligible employee who relinquishes rights to retirement benefits under Section
4416 49-11-619, who applies and is qualified for a monthly disability benefit shall receive a monthly
4417 disability benefit until the earlier of:

4418 (a) the date of the eligible employee's death;

4419 (b) the date the eligible employee [is] no longer [~~disabled~~] has a disability;

4420 (c) the date the eligible employee has accumulated:

4421 (i) 20 years of service credit if the eligible employee is covered by Chapter 14, Public
4422 Safety Contributory Retirement Act, or Chapter 15, Public Safety Noncontributory Retirement
4423 Act;

4424 (ii) 25 years of service credit if the eligible employee is covered by Chapter 17, Judges'
4425 Contributory Retirement Act, or Chapter 18, Judges' Noncontributory Retirement Act;

4426 (iii) 30 years of service credit if the eligible employee is covered by Chapter 12, Public
4427 Employees' Contributory Retirement Act, or Chapter 13, Public Employees' Noncontributory
4428 Retirement Act;

4429 (iv) 35 years of service credit if the eligible employee is covered by the defined benefit
4430 portion under Chapter 22, Part 3, Tier II Hybrid Retirement System, or is covered by the
4431 defined contribution plan under Chapter 22, Part 4, Tier II Defined Contribution Plan; or

4432 (v) 25 years of service credit if the eligible employee is covered by the defined benefit
4433 portion under Chapter 23, Part 3, Tier II Hybrid Retirement System, or is covered by the
4434 defined contribution plan under Chapter 23, Part 4, Tier II Defined Contribution Plan; or

4435 (d) the date the eligible employee has received a monthly disability benefit for the
4436 following applicable time periods:

4437 (i) if the eligible employee is under age 60, the monthly disability benefit is payable
4438 until age 65;

4439 (ii) if the eligible employee is 60 or 61 years of age on the date of disability, the
4440 monthly disability benefit is payable for five years;

4441 (iii) if the eligible employee is 62 or 63 years of age on the date of disability, the
4442 monthly disability benefit is payable for four years;

4443 (iv) if the eligible employee is 64 or 65 years of age on the date of disability, the
4444 monthly disability benefit is payable for three years;

4445 (v) if the eligible employee is 66, 67, or 68 years of age on the date of disability, the
4446 monthly disability benefit is payable for two years; and

4447 (vi) if the eligible employee is 69 years of age or older on the date of disability, the
4448 monthly disability benefit is payable for one year.

4449 (2) (a) Upon termination of a monthly disability benefit, an eligible employee eligible
4450 for service credit under a system may retire under the requirements of the system which
4451 covered the eligible employee on the date of disability.

4452 (b) The final average salary used in the calculation of the allowance shall be based on
4453 the annual rate of pay on the date of disability, improved by the annual cost-of-living increase

4454 factor applied to retirees of the system which covered the eligible employee on the date of
4455 disability.

4456 (3) An eligible employee who is eligible for service credit in a system, but has
4457 relinquished rights to an allowance under Section 49-11-619, may receive the benefits the
4458 eligible employee would have received by being eligible for service credit in the system
4459 covering the eligible employee on the date of disability, except for the accrual of service credit,
4460 in accordance with this title.

4461 (4) An eligible employee receiving a monthly disability benefit who has service credit
4462 from two or more systems may not combine service credits under Section 49-11-405 in
4463 qualifying for retirement, unless the eligible employee would receive a greater allowance by
4464 combining the service credits.

4465 (5) A monthly disability benefit payable to an eligible employee who is not eligible for
4466 service credit under a system shall terminate at the earliest of:

4467 (a) the date the eligible employee would be eligible for an unreduced allowance;

4468 (b) the date the eligible employee has received a monthly disability benefit for the
4469 applicable time period as set forth in Subsection (1)(c); or

4470 (c) the date the eligible employee receives a reduced allowance.

4471 Section 75. Section **49-22-402** is amended to read:

4472 **49-22-402. Defined contribution distributions for members with a disability.**

4473 For a person [~~who is disabled and~~] with a disability who receives contributions under
4474 Subsection 49-11-404(4)(b), the [~~disabled~~] member with a disability may begin receiving
4475 distributions from the defined contributions made by the participating employer on behalf of
4476 the [~~disabled~~] member with a disability when the person would have been eligible to retire if
4477 the person was covered by the defined benefit portion of the Tier II hybrid retirement system
4478 under Part 3, Tier II Hybrid Retirement System.

4479 Section 76. Section **53-3-807** is amended to read:

4480 **53-3-807. Expiration -- Address and name change -- Extension for a person with**
4481 **a disability.**

4482 (1) (a) An identification card issued on or after July 1, 2006, expires on the birth date
4483 of the applicant in the fifth year following the issuance of the identification card.

4484 (b) A limited-term identification card expires on:

4485 (i) the expiration date of the period of time of the individual's authorized stay in the
4486 United States or on the birth date of the applicant in the fifth year following the issuance of the
4487 limited-term identification card, whichever is sooner; or

4488 (ii) on the birth date of the applicant in the first year following the year that the
4489 limited-term identification card was issued if there is no definite end to the individual's period
4490 of authorized stay.

4491 (2) If a person has applied for and received an identification card and subsequently
4492 moves from the address shown on the application or on the card, the person shall within 10
4493 days notify the division in a manner specified by the division of the person's new address.

4494 (3) If a person has applied for and received an identification card and subsequently
4495 changes the person's name under Title 42, Chapter 1, Change of Name, the person:

4496 (a) shall surrender the card to the division; and

4497 (b) may apply for a new card in the person's new name by:

4498 (i) furnishing proper documentation to the division as provided in Section 53-3-804;
4499 and

4500 (ii) paying the fee required under Section 53-3-105.

4501 (4) (a) Except as provided in Subsection (4)(c), if a person has applied for and received
4502 an identification card and is currently required to register as a sex offender under Section
4503 77-27-21.5:

4504 (i) the person's identification card expires annually on the next birth date of the
4505 cardholder, on and after July 1, 2006;

4506 (ii) the person shall surrender the person's identification card to the division on or
4507 before the cardholder's next birth date beginning on July 1, 2006; and

4508 (iii) the person may apply for an identification card with an expiration date identified in
4509 Subsection (8)(~~b~~) by:

4510 (A) furnishing proper documentation to the division as provided in Section 53-3-804;

4511 and

4512 (B) paying the fee for an identification card required under Section 53-3-105.

4513 (b) Except as provided in Subsection (4)(c), if a person has applied for and received an

4514 identification card and is subsequently convicted of any offense listed in Subsection

4515 77-27-21.5(1)(n), the person shall surrender the card to the division on the person's next birth

4516 date following the conviction and may apply for a new card with an expiration date identified

4517 in Subsection (8)~~(b)~~ by:

4518 (i) furnishing proper documentation to the division as provided in Section 53-3-804;

4519 and

4520 (ii) paying the fee required under Section 53-3-105.

4521 (c) A person who is unable to comply with the provisions of Subsection (4)(a) or (4)(b)

4522 because the person is in the custody of the Department of Corrections or Division of Juvenile

4523 Justice Services, confined in a correctional facility not operated by or under contract with the

4524 Department of Corrections, or committed to a state mental facility, shall comply with the

4525 provisions of Subsection (4)(a) or (b) within 10 days of being released from confinement.

4526 (5) A person older than 21 years of age with a disability, as defined under the

4527 Americans with Disabilities Act of 1990, Pub. L. 101-336, may extend the expiration date on

4528 an identification card for five years if the person with a disability or an agent of the person with

4529 a disability:

4530 (a) requests that the division send the application form to obtain the extension or

4531 requests an application form in person at the division's offices;

4532 (b) completes the application;

4533 (c) certifies that the extension is for a person 21 years of age or older with a disability;

4534 and

4535 (d) returns the application to the division together with the identification card fee

4536 required under Section 53-3-105.

4537 (6) (a) (i) An identification card may only be extended once, except as prohibited under

4538 Subsection (6)(b).

4539 (ii) After an extension an application for an identification card must be applied for in
4540 person at the division's offices.

4541 (b) An identification card issued to a person required to register as a sex offender under
4542 Section 77-27-21.5 may not be extended.

4543 (7) An identification card issued prior to July 1, 2006 to a person 65 years of age or
4544 older does not expire, but continues in effect until the death of that person.

4545 (8) Notwithstanding the provisions of this section, an identification card expires on the
4546 birth date of the applicant in the first year following the year that the identification card was
4547 issued if the applicant is required to register as a sex offender under Section 77-27-21.5.

4548 (9) A person who knowingly fails to surrender an identification card under Subsection
4549 (4) is guilty of a class A misdemeanor.

4550 Section 77. Section **53-10-208.1** is amended to read:

4551 **53-10-208.1. Magistrates and court clerks to supply information.**

4552 Every magistrate or clerk of a court responsible for court records in this state shall,
4553 within 30 days of the disposition and on forms and in the manner provided by the division,
4554 furnish the division with information pertaining to:

4555 (1) all dispositions of criminal matters, including:

4556 (a) guilty pleas;

4557 (b) convictions;

4558 (c) dismissals;

4559 (d) acquittals;

4560 (e) pleas held in abeyance;

4561 (f) judgments of not guilty by reason of insanity for a violation of:

4562 (i) a felony offense;

4563 (ii) Title 76, Chapter 5, Offenses Against the Person; or

4564 (iii) Title 76, Chapter 10, Part 5, Weapons;

4565 (g) judgments of guilty [~~and mentally ill~~] with a mental illness;

- 4566 (h) finding of mental incompetence to stand trial for a violation of:
4567 (i) a felony offense;
4568 (ii) Title 76, Chapter 5, Offenses Against the Person; or
4569 (iii) Title 76, Chapter 10, Part 5, Weapons; or
4570 (i) probations granted; and
4571 (2) orders of civil commitment under the terms of Section 62A-15-631;
4572 (3) the issuance, recall, cancellation, or modification of all warrants of arrest or
4573 commitment as described in Rule 6, Utah Rules of Criminal Procedure and Section 78B-6-303,
4574 within one day of the action and in a manner provided by the division; and
4575 (4) protective orders issued after notice and hearing, pursuant to:
4576 (a) Title 77, Chapter 36, Cohabitant Abuse Procedures Act; or
4577 (b) Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act.
4578 Section 78. Section **53A-1a-704** is amended to read:
4579 **53A-1a-704. Scholarship program created -- Qualifications.**
4580 (1) The Carson Smith Scholarship Program is created to award scholarships to students
4581 with disabilities to attend a private school.
4582 (2) To qualify for a scholarship:
4583 (a) the student's custodial parent or legal guardian shall reside within Utah;
4584 (b) the student shall have one or more of the following disabilities:
4585 (i) [~~mental retardation~~] an intellectual disability;
4586 (ii) a hearing impairment;
4587 (iii) a speech or language impairment;
4588 (iv) a visual impairment;
4589 (v) a serious emotional disturbance;
4590 (vi) an orthopedic impairment;
4591 (vii) autism;
4592 (viii) traumatic brain injury;
4593 (ix) other health impairment;

4594 (x) specific learning disabilities; or
4595 (xi) a developmental delay, provided the student is at least five years of age, pursuant
4596 to Subsection (2)(c), and is younger than eight years of age;
4597 (c) the student shall be at least five years of age before September 2 of the year in
4598 which admission to a private school is sought and under 19 years of age on the last day of the
4599 school year as determined by the private school, or, if the individual has not graduated from
4600 high school, will be under 22 years of age on the last day of the school year as determined by
4601 the private school; and
4602 (d) except as provided in Subsection (3), the student shall:
4603 (i) be enrolled in a Utah public school in the school year prior to the school year the
4604 student will be enrolled in a private school;
4605 (ii) have an IEP; and
4606 (iii) have obtained acceptance for admission to an eligible private school.
4607 (3) The requirements of Subsection (2)(d) do not apply in the following circumstances:
4608 (a) the student is enrolled or has obtained acceptance for admission to an eligible
4609 private school that has previously served students with disabilities; and
4610 (b) an assessment team is able to readily determine with reasonable certainty:
4611 (i) that the student has a disability listed in Subsection (2)(b) and would qualify for
4612 special education services, if enrolled in a public school; and
4613 (ii) for the purpose of establishing the scholarship amount, the appropriate level of
4614 special education services which should be provided to the student.
4615 (4) (a) To receive a scholarship, the parent of a student shall submit an application for
4616 the scholarship to the school district within which the student is enrolled:
4617 (i) at least 60 days before the date of the first scholarship payment; and
4618 (ii) that contains an acknowledgment by the parent that the selected school is qualified
4619 and capable of providing the level of special education services required for the student.
4620 (b) The board may waive the 60-day application deadline.
4621 (5) (a) The scholarship application form shall contain the following statement:

4622 "I acknowledge that:

4623 (1) A private school may not provide the same level of special education services that
4624 are provided in a public school;

4625 (2) I will assume full financial responsibility for the education of my scholarship
4626 student if I accept this scholarship;

4627 (3) Acceptance of this scholarship has the same effect as a parental refusal to consent
4628 to services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education Act, 20
4629 U.S.C. Sec. 1400 et seq.; and

4630 (4) My child may return to a public school at any time."

4631 (b) Upon acceptance of the scholarship, the parent assumes full financial responsibility
4632 for the education of the scholarship student.

4633 (c) Acceptance of a scholarship has the same effect as a parental refusal to consent to
4634 services pursuant to Section 614(a)(1) of the Individuals with Disabilities Education Act, 20
4635 U.S.C. Sec. 1400 et seq.

4636 (d) The creation of the scholarship program or granting of a scholarship does not:

4637 (i) imply that a public school did not provide a free and appropriate public education
4638 for a student; or

4639 (ii) constitute a waiver or admission by the state.

4640 (6) (a) A scholarship shall remain in force for three years.

4641 (b) A scholarship shall be extended for an additional three years, if:

4642 (i) the student is evaluated by an assessment team; and

4643 (ii) the assessment team determines that the student would qualify for special education
4644 services, if enrolled in a public school.

4645 (c) The assessment team shall determine the appropriate level of special education
4646 services which should be provided to the student for the purpose of setting the scholarship
4647 amount.

4648 (d) A scholarship shall be extended for successive three-year periods as provided in
4649 Subsections (6)(a) and (b):

- 4650 (i) until the student graduates from high school; or
 - 4651 (ii) if the student does not graduate from high school, until the student is age 22.
 - 4652 (7) A student's parent, at any time, may remove the student from a private school and
 - 4653 place the student in another eligible private school and retain the scholarship.
 - 4654 (8) A scholarship student may not participate in a dual enrollment program pursuant to
 - 4655 Section 53A-11-102.5.
 - 4656 (9) The parents or guardians of a scholarship student have the authority to choose the
 - 4657 private school that will best serve the interests and educational needs of that student, which
 - 4658 may be a sectarian or nonsectarian school, and to direct the scholarship resources available for
 - 4659 that student solely as a result of their genuine and independent private choices.
 - 4660 (10) (a) A school district or charter school shall notify in writing the parents or
 - 4661 guardians of students enrolled in the school district or charter school who have an IEP of the
 - 4662 availability of a scholarship to attend a private school through the Carson Smith Scholarship
 - 4663 Program.
 - 4664 (b) The notice described under Subsection (10)(a) shall:
 - 4665 (i) be provided no later than 30 days after the student initially qualifies for an IEP;
 - 4666 (ii) be provided annually no later than February 1 to all students who have an IEP; and
 - 4667 (iii) include the address of the Internet website maintained by the board that provides
 - 4668 prospective applicants with detailed program information and application forms for the Carson
 - 4669 Smith Scholarship Program.
 - 4670 (c) A school district, school within a school district, or charter school that has an
 - 4671 enrolled student who has an IEP shall post the address of the Internet website maintained by the
 - 4672 board that provides prospective applicants with detailed program information and application
 - 4673 forms for the Carson Smith Scholarship Program on the school district's or school's website, if
 - 4674 the school district or school has one.
- 4675 Section 79. Section **53A-3-204** is amended to read:
- 4676 **53A-3-204. Duties of president.**
- 4677 (1) The president of each local school board shall preside at all meetings of the board,

4678 appoint all committees, and sign all warrants ordered by the board to be drawn upon the
4679 business administrator for school money.

4680 (2) If the president is absent or [~~disabled~~] acquires a disability, these duties are
4681 performed by the vice president.

4682 Section 80. Section **53A-9-103** is amended to read:

4683 **53A-9-103. Authorized components.**

4684 Career ladders may include the following components:

4685 (1) (a) An extended contract year for teachers, providing for additional paid
4686 nonteaching days beyond the regular school year for curriculum development and other
4687 professional development activities.

4688 (b) School boards may approve individual exceptions to the extended year contract.

4689 (2) At the option of the local school board, an extended contract year for teachers,
4690 providing for additional paid workdays beyond the regular school year for teaching
4691 assignments in programs for:

4692 (a) summer school;

4693 (b) remedial [~~disabled~~] education;

4694 (c) students with a disability;

4695 (d) specialized education;

4696 (e) applied technology;

4697 (f) gifted and talented; and

4698 (g) adult education [~~programs~~].

4699 (3) A fair and consistent procedure:

4700 (a) for selecting teachers who will be given additional responsibilities; and

4701 (b) which incorporates clearly stated job descriptions and qualifications for each level
4702 on the career ladder.

4703 (4) (a) A program of differentiated staffing that provides additional compensation and,
4704 as appropriate, additional extensions of the contract year, for those who assume additional
4705 instruction-related responsibilities such as:

- 4706 (i) assisting students and mentoring beginning teachers;
- 4707 (ii) curriculum and lesson plan development;
- 4708 (iii) helping established teachers improve their teaching skills;
- 4709 (iv) volunteer training;
- 4710 (v) planning;
- 4711 (vi) facilities and productivity improvements; and
- 4712 (vii) educational assignments directed at establishing positive relationships with the
4713 community, businesses, and parents.
- 4714 (b) Administrative and extracurricular activities are not considered additional
4715 instruction-related activities under this Subsection (4).
- 4716 (5) (a) A well defined program of evaluation and mentoring for beginning teachers,
4717 consistent with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b), designed to assist
4718 those teachers during provisional years of teaching to acquire and demonstrate the skills
4719 required of capable, successful teachers.
- 4720 (b) Continuation in teaching from year to year shall be contingent upon satisfactory
4721 teaching performance.
- 4722 (6) A clear and concise explanation of the evaluation system components, including the
4723 respective roles of parents, teachers, administrators, and the school board in the development of
4724 the evaluation system and provisions for frequent, comprehensive evaluations of teachers with
4725 less than three years' teaching experience and periodic evaluations of other teachers consistent
4726 with Subsections 53A-1a-104(7) and 53A-6-102(2)(a) and (b).
- 4727 (7) (a) A program of advancement on the career ladder contingent upon effective
4728 teaching performance, evidence of which may include formal evaluation and assessment of
4729 student progress.
- 4730 (b) Student progress shall play a significant role in teacher evaluation.
- 4731 (c) Other criteria may include formal preparation and successful teaching experience.
- 4732 (8) An assessment of implementation costs.
- 4733 (9) A plan for periodic review of the career ladder, including the makeup of the

4734 reviewing entity, procedures to be followed during review, and the time schedule for the
4735 review.

4736 Section 81. Section **53A-15-205** is amended to read:

4737 **53A-15-205. Disability Determination Services Advisory Council -- Membership**
4738 **-- Duties -- Requirements for DDDS.**

4739 (1) As used in this section, "council" means the Disability Determination Services
4740 Advisory Council created in Subsection (2).

4741 (2) There is created the Disability Determination Services Advisory Council to act as
4742 an advisory council to the State Board of Education regarding the Division of Disability
4743 Determination Services (DDDS) established under Chapter 24, Part 5, Division of Disability
4744 Determination Services.

4745 (3) The council is composed of the following members:

4746 (a) the administrator of DDDS;

4747 (b) a representative of the United States Department of Health and Human Services,
4748 Social Security Administration, appointed by the board; and

4749 (c) nine persons, appointed by the board in accordance with Subsections (5) and (6),
4750 who represent a cross section of:

4751 (i) persons with disabilities;

4752 (ii) advocates for persons with disabilities;

4753 (iii) health care providers;

4754 (iv) representatives of allied state and local agencies; and

4755 (v) representatives of the general public.

4756 (4) The members appointed under Subsections (3)(a) and (3)(b) serve as nonvoting
4757 members of the council.

4758 (5) In appointing the members described in Subsection (3)(c), the board shall:

4759 (a) solicit nominations from organizations and agencies that represent the interests of
4760 members described in that subsection; and

4761 (b) make every effort to create a balance in terms of geography, sex, race, ethnicity,

4762 and type of both mental and physical disabilities.

4763 (6) (a) In making initial appointments of members described in Subsection (3)(c), the
4764 board shall appoint three members for two-year terms, three members for four-year terms, and
4765 three members for six-year terms. All subsequent appointments are for four years.

4766 (b) The board shall fill any vacancy that occurs on the council for any reason by
4767 appointing a person for the unexpired term of the vacated member.

4768 (c) Council members are eligible for one reappointment and serve until their successors
4769 are appointed.

4770 (7) Five voting members of the council constitute a quorum. The action of a majority
4771 of a quorum represents the action of the council.

4772 (8) Members of the council serve without compensation but may be reimbursed for
4773 expenses incurred in the performance of their official duties.

4774 (9) (a) The council shall annually elect a chairperson from among the membership
4775 described, and shall adopt bylaws governing its activities.

4776 (b) The chairperson shall set the meeting agenda.

4777 (10) The council shall:

4778 (a) advise DDDS and the Social Security Administration regarding its practices and
4779 policies on the determination of claims for Social Security disability benefits;

4780 (b) participate in the development of new internal practices and procedures of DDDS
4781 and policies of the Social Security Administration regarding the evaluation of disability claims;

4782 (c) recommend changes to practices and policies to ensure that DDDS is responsive to
4783 ~~[disabled]~~ individuals with a disability;

4784 (d) review the DDDS budget to ensure that it is adequate to effectively evaluate
4785 disability claims and to meet the needs of persons with disabilities who have claims pending
4786 with DDDS; and

4787 (e) review and recommend changes to policies and practices of allied state and federal
4788 agencies, health care providers, and private community organizations.

4789 (11) The council shall annually report to the board, the governor, and the Legislative

4790 Health and Human Services Interim Committee regarding its activities.

4791 (12) (a) To assist the council in its duties, DDDS shall provide the necessary staff
4792 assistance to enable the council to make timely and effective recommendations.

4793 (b) Staff assistance may include:

4794 (i) distributing meeting agendas;

4795 (ii) advising the chairpersons of the council regarding relevant items for council
4796 discussion; and

4797 (iii) providing reports, documents, budgets, memorandums, statutes, and regulations
4798 regarding the management of DDDS.

4799 (c) Staff assistance shall include maintaining minutes.

4800 Section 82. Section **53A-17a-112** is amended to read:

4801 **53A-17a-112. Preschool special education appropriation -- Extended year**
4802 **program appropriation -- Appropriation for special education programs in state**
4803 **institutions.**

4804 (1) (a) Money appropriated to the State Board of Education for the preschool special
4805 education program shall be allocated to school districts to provide a free, appropriate public
4806 education to preschool students with a disability, ages three through five.

4807 (b) The money shall be distributed on the basis of [~~a school district's previous year~~
4808 ~~December 1 disabled preschool child count~~] the school district's count of preschool children
4809 with a disability for December 1 of the previous year, as mandated by federal law.

4810 (2) Money appropriated for the extended school year program for [~~the severely~~
4811 ~~disabled~~] children with a severe disability shall be limited to students with severe disabilities
4812 with education program goals identifying significant regression and recoupment disability as
4813 approved by the State Board of Education.

4814 (3) (a) Money appropriated for self-contained regular special education programs may
4815 not be used to supplement other school programs.

4816 (b) Money in any of the other restricted line item appropriations may not be reduced
4817 more than 2% to be used for purposes other than those specified by the appropriation, unless

4818 otherwise provided by law.

4819 (4) (a) The State Board of Education shall compute preschool funding by a factor of
4820 1.47 times the current December 1 child count of eligible preschool aged three, four, and
4821 five-year-olds times the WPU value, limited to 8% growth over the prior year December 1
4822 count.

4823 (b) The board shall develop guidelines to implement the funding formula for preschool
4824 special education, and establish prevalence limits for distribution of the money.

4825 Section 83. Section **53A-17a-127** is amended to read:

4826 **53A-17a-127. Eligibility for state-supported transportation -- Approved bus**
4827 **routes -- Additional local tax.**

4828 (1) A student eligible for state-supported transportation means:

4829 (a) a student enrolled in kindergarten through grade six who lives at least 1-1/2 miles
4830 from school;

4831 (b) a student enrolled in grades seven through 12 who lives at least two miles from
4832 school; and

4833 (c) a student enrolled in a special program offered by a school district and approved by
4834 the State Board of Education for trainable, motor, [~~multiple-disabled~~] multiple-disability, or
4835 other students with severe disabilities who are incapable of walking to school or where it is
4836 unsafe for students to walk because of their disabling condition, without reference to distance
4837 from school.

4838 (2) If a school district implements double sessions as an alternative to new building
4839 construction, with the approval of the State Board of Education, those affected elementary
4840 school students residing less than 1-1/2 miles from school may be transported one way to or
4841 from school because of safety factors relating to darkness or other hazardous conditions as
4842 determined by the local school board.

4843 (3) (a) The State Board of Education shall distribute transportation money to school
4844 districts based on:

4845 (i) an allowance per mile for approved bus routes;

4846 (ii) an allowance per hour for approved bus routes; and
4847 (iii) a minimum allocation for each school district eligible for transportation funding.

4848 (b) The State Board of Education shall distribute appropriated transportation funds
4849 based on the prior year's eligible transportation costs as legally reported under Subsection
4850 53A-17a-126(3).

4851 (c) The State Board of Education shall annually review the allowance per mile and the
4852 allowance per hour and adjust the allowances to reflect current economic conditions.

4853 (4) (a) Approved bus routes for funding purposes shall be determined on fall data
4854 collected by October 1.

4855 (b) Approved route funding shall be determined on the basis of the most efficient and
4856 economic routes.

4857 (5) A Transportation Advisory Committee with representation from local school
4858 superintendents, business officials, school district transportation supervisors, and the state
4859 superintendent's staff shall serve as a review committee for addressing school transportation
4860 needs, including recommended approved bus routes.

4861 (6) (a) A local school board may provide for the transportation of students regardless of
4862 the distance from school, from:

4863 (i) general funds of the district; and
4864 (ii) a tax rate not to exceed .0003 per dollar of taxable value imposed on the district.

4865 (b) A local school board may use revenue from the tax described in Subsection
4866 (6)(a)(ii) to pay for transporting students and for the replacement of school buses.

4867 (c) (i) If a local school board levies a tax under Subsection (6)(a)(ii) of at least .0002,
4868 the state may contribute an amount not to exceed 85% of the state average cost per mile,
4869 contingent upon the Legislature appropriating funds for a state contribution.

4870 (ii) The state superintendent's staff shall distribute the state contribution according to
4871 rules enacted by the State Board of Education.

4872 (d) (i) The amount of state guarantee money which a school district would otherwise be
4873 entitled to receive under Subsection (6)(c) may not be reduced for the sole reason that the

4874 district's levy is reduced as a consequence of changes in the certified tax rate under Section
4875 59-2-924 due to changes in property valuation.

4876 (ii) Subsection (6)(d)(i) applies for a period of two years following the change in the
4877 certified tax rate.

4878 Section 84. Section **53B-23-101** is amended to read:

4879 **CHAPTER 23. INSTRUCTIONAL MATERIALS FOR STUDENTS WITH A**
4880 **DISABILITY ACT**

4881 **53B-23-101. Title.**

4882 This chapter is known as the "Instructional Materials for [~~Disabled~~] Students with a
4883 Disability Act."

4884 Section 85. Section **54-1-1.6** is amended to read:

4885 **54-1-1.6. Pro tempore commissioner -- Appointment -- Qualifications.**

4886 (1) If a commissioner [~~is temporarily disabled~~] has a temporary disability or is
4887 disqualified from sitting as a commissioner, the governor may appoint a commissioner pro
4888 tempore according to the procedures and requirements of Section 67-1-1.5.

4889 (2) Any person appointed as a commissioner pro tempore shall possess the
4890 qualifications required for public service commissioners in Section 54-1-1.5 and have previous
4891 utility regulatory experience or other comparable professional experience.

4892 (3) The governor may appoint a retired or resigned public service commissioner as a
4893 commissioner pro tempore in order to render findings, orders, or decisions on matters which
4894 the retired or resigned commissioner had fully heard before the commissioner's retirement or
4895 resignation.

4896 Section 86. Section **57-21-5** is amended to read:

4897 **57-21-5. Discriminatory practices enumerated -- Protected persons, classes**
4898 **enumerated.**

4899 (1) It is a discriminatory housing practice to do any of the following because of a
4900 person's race, color, religion, sex, national origin, familial status, source of income, or
4901 disability:

4902 (a) refuse to sell or rent after the making of a bona fide offer, refuse to negotiate for the
4903 sale or rental, or otherwise deny or make unavailable any dwelling from any person;

4904 (b) discriminate against any person in the terms, conditions, or privileges of the sale or
4905 rental of any dwelling or in providing facilities or services in connection with the dwelling; or

4906 (c) represent to any person that any dwelling is not available for inspection, sale, or
4907 rental when in fact the dwelling is available.

4908 (2) It is a discriminatory housing practice to make a representation orally or in writing
4909 or make, print, circulate, publish, post, or cause to be made, printed, circulated, published, or
4910 posted any notice, statement, or advertisement, or to use any application form for the sale or
4911 rental of a dwelling, that directly or indirectly expresses any preference, limitation, or
4912 discrimination based on race, color, religion, sex, national origin, familial status, source of
4913 income, or disability, or expresses any intent to make any such preference, limitation, or
4914 discrimination.

4915 (3) It is a discriminatory housing practice to induce or attempt to induce, for profit, any
4916 person to buy, sell, or rent any dwelling by making representations about the entry or
4917 prospective entry into the neighborhood of persons of a particular race, color, religion, sex,
4918 national origin, familial status, source of income, or disability.

4919 (4) A discriminatory housing practice includes:

4920 (a) a refusal to permit, at the expense of the [~~disabled~~] person with a disability,
4921 reasonable modifications of existing premises occupied or to be occupied by the person if the
4922 modifications are necessary to afford that person full enjoyment of the premises, except that in
4923 the case of a rental, the landlord, where it is reasonable to do so, may condition permission for
4924 a modification on the renter agreeing to restore the interior of the premises, when reasonable, to
4925 the condition that existed before the modification, reasonable wear and tear excepted;

4926 (b) a refusal to make reasonable accommodations in rules, policies, practices, or
4927 services when the accommodations may be necessary to afford the person equal opportunity to
4928 use and enjoy a dwelling; and

4929 (c) in connection with the design and construction of covered multifamily dwellings for

4930 first occupancy after March 13, 1991, a failure to design and construct those dwellings in a
4931 manner that:

4932 (i) the dwellings have at least one building entrance on an accessible route, unless it is
4933 impracticable to have one because of the terrain or unusual characteristics of the site; and

4934 (ii) with respect to dwellings with a building entrance on an accessible route:

4935 (A) the public use and common use portions of the dwelling are readily accessible to
4936 and usable by [~~disabled persons~~] a person with a disability;

4937 (B) all the doors designed to allow passage into and within the dwellings are
4938 sufficiently wide to allow passage by [~~disabled persons in wheelchairs~~] a person with a
4939 disability who is in a wheelchair; and

4940 (C) all premises within these dwellings contain the following features of adaptive
4941 design:

4942 (I) an accessible route into and through the dwelling;

4943 (II) light switches, electrical outlets, thermostats, and other environmental controls in
4944 accessible locations;

4945 (III) reinforcements in the bathroom walls to allow later installation of grab bars; and

4946 (IV) kitchens and bathrooms such that an individual in a wheelchair can maneuver
4947 about and use the space.

4948 (5) This section also applies to discriminatory housing practices because of race, color,
4949 religion, sex, national origin, familial status, source of income, or disability based upon a
4950 person's association with another person.

4951 Section 87. Section **58-15-2** is amended to read:

4952 **58-15-2. Definitions.**

4953 In addition to the definitions in Section 58-1-102, as used in this chapter:

4954 (1) "Administrator" means a person who is charged with the general administration of a
4955 health facility, regardless of whether that person has an ownership interest in the facility and
4956 whether his functions and duties are shared with one or more persons.

4957 (2) "Board" means the Health Facility Administrators Licensing Board created in

4958 Section 58-15-3.

4959 (3) "Health facility" means a skilled nursing facility, an intermediate care facility, or an
4960 intermediate care facility for ~~[the mentally retarded]~~ people with an intellectual disability.

4961 (4) "Intermediate care facility" means an institution which provides, on a regular basis,
4962 health care and services to persons who do not require the degree of care and treatment a
4963 hospital or skilled nursing facility provide, but who require health care and services in addition
4964 to room and board.

4965 (5) "Intermediate care facility for ~~[the mentally retarded]"~~ people with an intellectual
4966 disability" means an institution which provides, on a regular basis, health-related care and
4967 service to mentally retarded individuals or persons with related conditions, who do not require
4968 the degree of care and treatment a hospital or skilled nursing facility provide, but who require
4969 health-related care and services above the need for room and board.

4970 (6) "Skilled nursing facility" means an institution primarily providing inpatients with
4971 skilled nursing care and related services on a continuing basis for patients who require mental,
4972 medical, or nursing care, or service for the rehabilitation of ~~[injured, disabled, or sick persons]~~
4973 an injured person, a sick person, or a person with a disability.

4974 (7) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further
4975 defined by rule includes:

4976 (a) intentionally filing a false report or record, intentionally failing to file a report or
4977 record required by state or federal law, or wilfully impeding or obstructing the filing of a
4978 required report. These reports or records only include those which are signed in the capacity of
4979 a licensed health facility administrator; and

4980 (b) acting in a manner inconsistent with the health and safety of the patients of the
4981 health facility in which he is the administrator.

4982 Section 88. Section **58-15-3** is amended to read:

4983 **58-15-3. Health Facility Administrators Licensing Board.**

4984 (1) There is created a Health Facility Administrators Licensing Board consisting of one
4985 administrator from a skilled nursing facility, two administrators from intermediate care

4986 facilities, one administrator from an intermediate care facility for ~~[the mentally retarded]~~
4987 people with an intellectual disability, and one member from the general public.

4988 (2) The board shall be appointed and serve in accordance with Section 58-1-201.

4989 (3) The duties and responsibilities of the board shall be in accordance with Sections
4990 58-1-202 and 58-1-203. The board, in collaboration with the division, may establish
4991 continuing education requirements by rule. Board members may not receive compensation for
4992 their involvement in continuing education programs.

4993 Section 89. Section **58-17b-503** is amended to read:

4994 **58-17b-503. Exception to unprofessional conduct.**

4995 (1) For purposes of this section:

4996 (a) [~~"ICFMR"~~] "Licensed intermediate care facility for people with an intellectual
4997 disability" means an intermediate care facility for ~~[the mentally retarded]~~ people with an
4998 intellectual disability that is licensed as a nursing care facility or a small health care facility
4999 under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

5000 (b) "Nursing care facility" has the same definition as in Section 26-21-2.

5001 (c) "Unit pack" means a tamper-resistant nonreusable single-dose single-drug package
5002 with identification that indicates the lot number and expiration date for the drug.

5003 (2) Notwithstanding the provisions of Subsection 58-17b-502(5), a pharmacist may
5004 accept back and redistribute any unused drug, or a part of it, after it has left the premises of the
5005 pharmacy if:

5006 (a) the drug was prescribed to a patient in a nursing care facility, [~~an ICFMR~~] a
5007 licensed intermediate care facility for people with an intellectual disability, or state prison
5008 facility, county jail, or state hospital;

5009 (b) the drug was stored under the supervision of a licensed health care provider
5010 according to manufacturer recommendations;

5011 (c) the drug is in a unit pack or in the manufacturer's sealed container;

5012 (d) the drug was returned to the original dispensing pharmacy;

5013 (e) the drug was initially dispensed by a licensed pharmacist or licensed pharmacy

5014 intern; and

5015 (f) accepting back and redistribution of the drug complies with Federal Food and Drug
5016 Administration and Drug Enforcement Administration regulations.

5017 Section 90. Section **58-17b-701** is amended to read:

5018 **58-17b-701. Mentally incompetent or incapacitated pharmacist -- Division action**
5019 **and procedures.**

5020 (1) As used in this section:

5021 (a) "Incapacitated person" [~~has the same definition as~~] is as defined in Section
5022 75-1-201.

5023 (b) [~~"Mentally ill" has the same definition as~~] "Mental illness" is as defined in Section
5024 62A-15-602.

5025 (2) If a court of competent jurisdiction determines a pharmacist is an incapacitated
5026 person, or that the pharmacist [~~is mentally ill~~] has a mental illness and is unable to safely
5027 engage in the practice of pharmacy, the director shall immediately suspend the license of the
5028 pharmacist upon the entry of the judgment of the court, without further proceedings under Title
5029 63G, Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the
5030 court's ruling is pending. The director shall promptly notify the pharmacist, in writing, of the
5031 suspension.

5032 (3) (a) If the division and a majority of the board find reasonable cause to believe a
5033 pharmacist, who is not determined judicially to be an incapacitated person or to [~~be mentally~~
5034 ~~ill~~] have a mental illness, is incapable of practicing pharmacy with reasonable skill regarding
5035 the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any
5036 mental or physical condition, the board shall recommend that the director file a petition with
5037 the division, and cause the petition to be served upon the pharmacist with a notice of hearing
5038 on the sole issue of the capacity of the pharmacist to competently and safely engage in the
5039 practice of pharmacy.

5040 (b) The hearing shall be conducted under Section 58-1-109 and Title 63G, Chapter 4,
5041 Administrative Procedures Act, except as provided in Subsection (4).

5042 (4) (a) Every pharmacist who accepts the privilege of being licensed under this chapter
5043 gives consent to:

5044 (i) submitting at the pharmacist's own expense to an immediate mental or physical
5045 examination when directed in writing by the division, with the consent of a majority of the
5046 board, to do so; and

5047 (ii) the admissibility of the reports of the examining practitioner's testimony or
5048 examination in any proceeding regarding the license of the pharmacist, and waives all
5049 objections on the ground the reports constitute a privileged communication.

5050 (b) The examination may be ordered by the division, with the consent of a majority of
5051 the board, only upon a finding of reasonable cause to believe:

5052 (i) the pharmacist [~~is mentally ill or~~] has a mental illness, is incapacitated or otherwise
5053 unable to practice pharmacy with reasonable skill and safety; and

5054 (ii) immediate action by the division and the board is necessary to prevent harm to the
5055 pharmacist's patients or the general public.

5056 (c) (i) Failure of a pharmacist to submit to the examination ordered under this section
5057 is a ground for the division's immediate suspension of the pharmacist's license by written order
5058 of the director.

5059 (ii) The division may enter the order of suspension without further compliance with
5060 Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to
5061 submit to the examination ordered under this section was due to circumstances beyond the
5062 control of the pharmacist and was not related directly to the illness or incapacity of the
5063 pharmacist.

5064 (5) (a) A pharmacist whose license is suspended under Subsection (2) or (4) has the
5065 right to a hearing to appeal the suspension within 10 days after the license is suspended.

5066 (b) The hearing held under this Subsection (5) shall be conducted in accordance with
5067 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists
5068 for the continuance of the order of suspension in order to prevent harm to the pharmacist's
5069 patients or the general public.

5070 (6) A pharmacist whose license is revoked, suspended, or in any way restricted under
5071 this section may request the division and the board to consider, at reasonable intervals,
5072 evidence presented by the pharmacist, under procedures established by division rule, regarding
5073 any change in the pharmacist's condition, to determine whether:

5074 (a) the pharmacist is or is not able to safely and competently engage in the practice of
5075 pharmacy; and

5076 (b) the pharmacist is qualified to have the pharmacist's licensure to practice under this
5077 chapter restored completely or in part.

5078 Section 91. Section **58-26a-307** is amended to read:

5079 **58-26a-307. CPA emeritus status -- Renewal of license.**

5080 (1) A person currently licensed as a certified public accountant may, on any renewal
5081 date of that license, apply for and obtain a transfer of that license to a status of CPA emeritus
5082 registration if:

5083 (a) (i) the licensee is at least 60 years of age as of the date of renewal;

5084 (ii) the licensee [~~is disabled~~] has a disability; or

5085 (iii) the board finds other good cause for believing that the licensee will not return to
5086 the practice of public accountancy;

5087 (b) the licensee makes an application for transfer of status and registration and pays a
5088 registration fee determined by the department under Section 63J-1-504;

5089 (c) the licensee, on application for transfer, certifies that the licensee will not engage in
5090 the practice of public accountancy while in the status of CPA emeritus registration; and

5091 (d) the licensee is in good standing as a CPA and not subject to any order of
5092 revocation, suspension, or probation.

5093 (2) Each CPA emeritus registration shall be issued in accordance with a two-year
5094 renewal cycle established by rule.

5095 (3) CPA emeritus registrants may not engage in the practice of public accountancy.

5096 (4) CPA emeritus registrants are not required to fulfill the continuing professional
5097 education or peer review provisions of this chapter.

5098 (5) Each CPA emeritus registrant is responsible for renewing the registration,
5099 according to procedures that the division establishes by rule in collaboration with the board in
5100 accordance with Section 58-1-308.

5101 (6) A CPA emeritus registrant may reinstate the CPA license by:

5102 (a) submitting an application in a form prescribed by the division;

5103 (b) paying a fee determined by the department under Section 63J-1-504; and

5104 (c) showing evidence of having completed the continuing professional education
5105 requirement established by rule.

5106 Section 92. Section **58-31b-102** is amended to read:

5107 **58-31b-102. Definitions.**

5108 In addition to the definitions in Section 58-1-102, as used in this chapter:

5109 (1) "Administrative penalty" means a monetary fine or citation imposed by the division
5110 for acts or omissions determined to constitute unprofessional or unlawful conduct in
5111 accordance with a fine schedule established by rule and as a result of an adjudicative
5112 proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

5113 (2) "Applicant" means a person who applies for licensure or certification under this
5114 chapter by submitting a completed application for licensure or certification and the required
5115 fees to the department.

5116 (3) "Approved education program" means a nursing education program that meets the
5117 minimum standards for educational programs established under this chapter and by division
5118 rule in collaboration with the board.

5119 (4) "Board" means the Board of Nursing created in Section 58-31b-201.

5120 (5) "Consultation and referral plan" means a written plan jointly developed by an
5121 advanced practice registered nurse and a consulting physician that permits the advanced
5122 practice registered nurse to prescribe schedule II-III controlled substances in consultation with
5123 the consulting physician.

5124 (6) "Consulting physician" means a physician and surgeon or osteopathic physician and
5125 surgeon licensed in accordance with this title who has agreed to consult with an advanced

5126 practice registered nurse with a controlled substance license, a DEA registration number, and
5127 who will be prescribing schedule II-III controlled substances.

5128 (7) "Diagnosis" means the identification of and discrimination between physical and
5129 psychosocial signs and symptoms essential to the effective execution and management of
5130 health care.

5131 (8) "Examinee" means a person who applies to take or does take any examination
5132 required under this chapter for licensure.

5133 (9) "Licensee" means a person who is licensed or certified under this chapter.

5134 (10) "Long-term care facility" means any of the following facilities licensed by the
5135 Department of Health pursuant to Title 26, Chapter 21, Health Care Facility Licensing and
5136 Inspection Act:

5137 (a) a nursing care facility;

5138 (b) a small health care facility;

5139 (c) an intermediate care facility for ~~[the mentally retarded]~~ people with an intellectual
5140 disability;

5141 (d) an assisted living facility Type I or II; or

5142 (e) a designated swing bed unit in a general hospital.

5143 (11) "Medication aide certified" means a certified nurse aide who:

5144 (a) has a minimum of 2,000 hours experience working as a certified nurse aide;

5145 (b) has received a minimum of 60 hours of classroom and 40 hours of practical training
5146 that is approved by the division in collaboration with the board, in administering routine
5147 medications to patients or residents of long-term care facilities; and

5148 (c) is certified by the division as a medication aide certified.

5149 (12) (a) "Practice as a medication aide certified" means the limited practice of nursing
5150 under the supervision, as defined by the division by administrative rule, of a licensed nurse,
5151 involving routine patient care that requires minimal or limited specialized or general
5152 knowledge, judgment, and skill, to an individual who:

5153 (i) is ill, injured, infirm, ~~[developmentally or physically disabled, mentally disabled, or~~

5154 ~~mentally retarded, and who]~~ has a physical, mental, developmental, or intellectual disability;
5155 and

5156 (ii) is in a regulated long-term care facility.

5157 (b) "Practice as a medication aide certified":

5158 (i) includes:

5159 (A) providing direct personal assistance or care; and

5160 (B) administering routine medications to patients in accordance with a formulary and
5161 protocols to be defined by the division by rule; and

5162 (ii) does not include assisting a resident of an assisted living facility, a long term care
5163 facility, or an intermediate care facility for ~~[the mentally retarded]~~ people with an intellectual
5164 disability to self administer a medication, as regulated by the Department of Health by
5165 administrative rule.

5166 (13) "Practice of advanced practice registered nursing" means the practice of nursing
5167 within the generally recognized scope and standards of advanced practice registered nursing as
5168 defined by rule and consistent with professionally recognized preparation and education
5169 standards of an advanced practice registered nurse by a person licensed under this chapter as an
5170 advanced practice registered nurse. Advanced practice registered nursing includes:

5171 (a) maintenance and promotion of health and prevention of disease;

5172 (b) diagnosis, treatment, correction, consultation, and referral for common health
5173 problems;

5174 (c) prescription or administration of prescription drugs or devices including:

5175 (i) local anesthesia;

5176 (ii) schedule IV-V controlled substances; and

5177 (iii) schedule II-III controlled substances in accordance with a consultation and referral
5178 plan; or

5179 (d) the provision of preoperative, intraoperative, and postoperative anesthesia care and
5180 related services upon the request of a licensed health care professional by an advanced practice
5181 registered nurse specializing as a certified registered nurse anesthetist, including:

- 5182 (i) preanesthesia preparation and evaluation including:
- 5183 (A) performing a preanesthetic assessment of the patient;
- 5184 (B) ordering and evaluating appropriate lab and other studies to determine the health of
- 5185 the patient; and
- 5186 (C) selecting, ordering, or administering appropriate medications;
- 5187 (ii) anesthesia induction, maintenance, and emergence, including:
- 5188 (A) selecting and initiating the planned anesthetic technique;
- 5189 (B) selecting and administering anesthetics and adjunct drugs and fluids; and
- 5190 (C) administering general, regional, and local anesthesia;
- 5191 (iii) postanesthesia follow-up care, including:
- 5192 (A) evaluating the patient's response to anesthesia and implementing corrective
- 5193 actions; and
- 5194 (B) selecting, ordering, or administering the medications and studies listed in
- 5195 Subsection (13)(d); and
- 5196 (iv) other related services within the scope of practice of a certified registered nurse
- 5197 anesthetist, including:
- 5198 (A) emergency airway management;
- 5199 (B) advanced cardiac life support; and
- 5200 (C) the establishment of peripheral, central, and arterial invasive lines; and
- 5201 (v) for purposes of Subsection (13)(d), "upon the request of a licensed health care
- 5202 professional":
- 5203 (A) means a health care professional practicing within the scope of the health care
- 5204 professional's license, requests anesthesia services for a specific patient; and
- 5205 (B) does not require an advanced practice registered nurse specializing as a certified
- 5206 registered nurse anesthetist to enter into a consultation and referral plan or obtain additional
- 5207 authority to select, administer, or provide preoperative, intraoperative, or postoperative
- 5208 anesthesia care and services.
- 5209 (14) "Practice of nursing" means assisting individuals or groups to maintain or attain

5210 optimal health, implementing a strategy of care to accomplish defined goals and evaluating
5211 responses to care and treatment. The practice of nursing requires substantial specialized or
5212 general knowledge, judgment, and skill based upon principles of the biological, physical,
5213 behavioral, and social sciences, and includes:

- 5214 (a) initiating and maintaining comfort measures;
- 5215 (b) promoting and supporting human functions and responses;
- 5216 (c) establishing an environment conducive to well-being;
- 5217 (d) providing health counseling and teaching;
- 5218 (e) collaborating with health care professionals on aspects of the health care regimen;
- 5219 (f) performing delegated procedures only within the education, knowledge, judgment,
5220 and skill of the licensee; and
- 5221 (g) delegating nurse interventions that may be performed by others and are not in
5222 conflict with this chapter.

5223 (15) "Practice of practical nursing" means the performance of nursing acts in the
5224 generally recognized scope of practice of licensed practical nurses as defined by rule and as
5225 provided in this Subsection (15) by a person licensed under this chapter as a licensed practical
5226 nurse and under the direction of a registered nurse, licensed physician, or other specified health
5227 care professional as defined by rule. Practical nursing acts include:

- 5228 (a) contributing to the assessment of the health status of individuals and groups;
- 5229 (b) participating in the development and modification of the strategy of care;
- 5230 (c) implementing appropriate aspects of the strategy of care;
- 5231 (d) maintaining safe and effective nursing care rendered to a patient directly or
5232 indirectly; and
- 5233 (e) participating in the evaluation of responses to interventions.

5234 (16) "Practice of registered nursing" means performing acts of nursing as provided in
5235 this Subsection (16) by a person licensed under this chapter as a registered nurse within the
5236 generally recognized scope of practice of registered nurses as defined by rule. Registered
5237 nursing acts include:

- 5238 (a) assessing the health status of individuals and groups;
- 5239 (b) identifying health care needs;
- 5240 (c) establishing goals to meet identified health care needs;
- 5241 (d) planning a strategy of care;
- 5242 (e) prescribing nursing interventions to implement the strategy of care;
- 5243 (f) implementing the strategy of care;
- 5244 (g) maintaining safe and effective nursing care that is rendered to a patient directly or
- 5245 indirectly;
- 5246 (h) evaluating responses to interventions;
- 5247 (i) teaching the theory and practice of nursing; and
- 5248 (j) managing and supervising the practice of nursing.
- 5249 (17) "Routine medications":
- 5250 (a) means established medications administered to a medically stable individual as
- 5251 determined by a licensed health care practitioner or in consultation with a licensed medical
- 5252 practitioner; and
- 5253 (b) is limited to medications that are administered by the following routes:
- 5254 (i) oral;
- 5255 (ii) sublingual;
- 5256 (iii) buccal;
- 5257 (iv) eye;
- 5258 (v) ear;
- 5259 (vi) nasal;
- 5260 (vii) rectal;
- 5261 (viii) vaginal;
- 5262 (ix) skin ointments, topical including patches and transdermal;
- 5263 (x) premeasured medication delivered by aerosol/nebulizer; and
- 5264 (xi) medications delivered by metered hand-held inhalers.
- 5265 (18) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-31b-501.

5266 (19) "Unlicensed assistive personnel" means any unlicensed person, regardless of title,
 5267 to whom tasks are delegated by a licensed nurse as permitted by rule and in accordance with
 5268 the standards of the profession.

5269 (20) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-31b-502 and
 5270 as may be further defined by rule.

5271 Section 93. Section **58-31b-401** is amended to read:

5272 **58-31b-401. Grounds for denial of licensure or certification and disciplinary**
 5273 **proceedings.**

5274 (1) Grounds for refusal to issue a license to an applicant, for refusal to renew the
 5275 license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee,
 5276 to issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be
 5277 in accordance with Section 58-1-401.

5278 (2) If a court of competent jurisdiction determines a nurse is an incapacitated person as
 5279 defined in Section 75-1-201 or that the nurse [~~is mentally ill~~] has a mental illness, as defined in
 5280 Section 62A-15-602, and unable to safely engage in the practice of nursing, the director shall
 5281 immediately suspend the license of the nurse upon the entry of the judgment of the court,
 5282 without further proceedings under Title 63G, Chapter 4, Administrative Procedures Act,
 5283 regardless of whether an appeal from the court's ruling is pending. The director shall promptly
 5284 notify the nurse in writing of the suspension.

5285 (3) (a) If the division and the majority of the board find reasonable cause to believe a
 5286 nurse who is not determined judicially to be an incapacitated person or to [~~be mentally ill~~] have
 5287 a mental illness, is incapable of practicing nursing with reasonable skill regarding the safety of
 5288 patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or
 5289 physical condition, the board shall recommend that the director file a petition with the division,
 5290 and cause the petition to be served upon the nurse with a notice of hearing on the sole issue of
 5291 the capacity of the nurse to competently, safely engage in the practice of nursing.

5292 (b) The hearing shall be conducted under Section 58-1-109 and Title 63G, Chapter 4,
 5293 Administrative Procedures Act, except as provided in Subsection (4).

5294 (4) (a) Every nurse who accepts the privilege of being licensed under this chapter gives
5295 consent to:

5296 (i) submitting to an immediate mental or physical examination, at the nurse's expense
5297 and by a division-approved practitioner selected by the nurse when directed in writing by the
5298 division and a majority of the board to do so; and

5299 (ii) the admissibility of the reports of the examining practitioner's testimony or
5300 examination, and waives all objections on the ground the reports constitute a privileged
5301 communication.

5302 (b) The examination may be ordered by the division, with the consent of a majority of
5303 the board, only upon a finding of reasonable cause to believe:

5304 (i) the nurse [~~is mentally ill or~~] has a mental illness, is incapacitated, or otherwise
5305 unable to practice nursing with reasonable skill and safety; and

5306 (ii) immediate action by the division and the board is necessary to prevent harm to the
5307 nurse's patients or the general public.

5308 (c) (i) Failure of a nurse to submit to the examination ordered under this section is a
5309 ground for the division's immediate suspension of the nurse's license by written order of the
5310 director.

5311 (ii) The division may enter the order of suspension without further compliance with
5312 Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to
5313 submit to the examination ordered under this section was due to circumstances beyond the
5314 control of the nurse and was not related directly to the illness or incapacity of the nurse.

5315 (5) (a) A nurse whose license is suspended under Subsection (2), (3), or (4)(c) has the
5316 right to a hearing to appeal the suspension within 10 days after the license is suspended.

5317 (b) The hearing held under this Subsection (5) shall be conducted in accordance with
5318 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists
5319 for the continuance of the order of suspension in order to prevent harm to the nurse's patients or
5320 the general public.

5321 (6) A nurse whose license is revoked, suspended, or in any way restricted under this

5322 section may request the division and the board to consider, at reasonable intervals, evidence
5323 presented by the nurse, under procedures established by division rule, regarding any change in
5324 the nurse's condition, to determine whether:

5325 (a) the nurse is or is not able to safely and competently engage in the practice of
5326 nursing; and

5327 (b) the nurse is qualified to have the nurse's license to practice under this chapter
5328 restored completely or in part.

5329 (7) Nothing in Section 63G-2-206 may be construed as limiting the authority of the
5330 division to report current significant investigative information to the coordinated licensure
5331 information system for transmission to party states as required of the division by Article VII of
5332 the Nurse Licensure Compact in Section 58-31c-102.

5333 (8) For purposes of this section:

5334 (a) "licensed" or "license" includes "certified" or "certification" under this chapter; and

5335 (b) any terms or conditions applied to the word "nurse" in this section also apply to a
5336 medication aide certified.

5337 Section 94. Section **58-60-114** is amended to read:

5338 **58-60-114. Confidentiality -- Exemptions.**

5339 (1) A mental health therapist under this chapter may not disclose any confidential
5340 communication with a client or patient without the express consent of:

5341 (a) the client or patient;

5342 (b) the parent or legal guardian of a minor client or patient; or

5343 (c) the authorized agent of a client or patient.

5344 (2) A mental health therapist under this chapter is not subject to Subsection (1) if:

5345 (a) ~~he~~ the mental health therapist is permitted or required by state or federal law, rule,
5346 regulation, or order to report or disclose any confidential communication, including:

5347 (i) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of
5348 ~~Disabled~~ a Vulnerable Adult;

5349 (ii) reporting under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting

5350 Requirements;

5351 (iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to
5352 Warn; or

5353 (iv) reporting of a communicable disease as required under Section 26-6-6;

5354 (b) the disclosure is part of an administrative, civil, or criminal proceeding and is made
5355 under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or

5356 (c) the disclosure is made under a generally recognized professional or ethical standard
5357 that authorizes or requires the disclosure.

5358 Section 95. Section **58-60-509** is amended to read:

5359 **58-60-509. Confidentiality -- Exemptions.**

5360 (1) A licensee under this part may not disclose any confidential communication with a
5361 client or patient without the express consent of:

5362 (a) the client or patient;

5363 (b) the parent or legal guardian of a minor client or patient; or

5364 (c) the authorized agent of a client or patient.

5365 (2) A licensee under this part is not subject to Subsection (1) if:

5366 (a) ~~he~~ the licensee is permitted or required by state or federal law, rule, regulation, or
5367 order to report or disclose any confidential communication, including:

5368 (i) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a
5369 Vulnerable ~~Adults~~ Adult;

5370 (ii) reporting under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting
5371 Requirements;

5372 (iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to
5373 Warn; or

5374 (iv) reporting of a communicable disease as required under Section 26-6-6;

5375 (b) the disclosure is part of an administrative, civil, or criminal proceeding and is made
5376 under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or

5377 (c) the disclosure is made under a generally recognized professional or ethical standard

5378 that authorizes or requires the disclosure.

5379 Section 96. Section **58-61-602** is amended to read:

5380 **58-61-602. Confidentiality -- Exemptions.**

5381 (1) A psychologist under this chapter may not disclose any confidential communication
5382 with a client or patient without the express consent of:

5383 (a) the client or patient;

5384 (b) the parent or legal guardian of a minor client or patient; or

5385 (c) the authorized agent of a client or patient.

5386 (2) A psychologist under this chapter is not subject to Subsection (1) if:

5387 (a) ~~[he]~~ the psychologist is permitted or required by state or federal law, rule,
5388 regulation, or order to report or disclose any confidential communication, including:

5389 (i) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of
5390 ~~[Disabled]~~ a Vulnerable Adult;

5391 (ii) reporting under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting
5392 Requirements;

5393 (iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to
5394 Warn; or

5395 (iv) reporting of a communicable disease as required under Section 26-6-6;

5396 (b) the disclosure is part of an administrative, civil, or criminal proceeding and is made
5397 under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or

5398 (c) the disclosure is made under a generally recognized professional or ethical standard
5399 that authorizes or requires the disclosure.

5400 Section 97. Section **58-67-601** is amended to read:

5401 **58-67-601. Mentally incompetent or incapacitated physician.**

5402 (1) As used in this section:

5403 (a) "Incapacitated person" ~~[has the same definition as]~~ is as defined in Section
5404 75-1-201.

5405 (b) ~~["Mentally ill" has the same definition as]~~ "Mental illness" is as defined in Section

5406 62A-15-602.

5407 (2) If a court of competent jurisdiction determines a physician is an incapacitated
5408 person or that the physician [~~is mentally ill~~] has a mental illness and is unable to safely engage
5409 in the practice of medicine, the director shall immediately suspend the license of the physician
5410 upon the entry of the judgment of the court, without further proceedings under Title 63G,
5411 Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's
5412 ruling is pending. The director shall promptly notify the physician, in writing, of the
5413 suspension.

5414 (3) (a) If the division and a majority of the board find reasonable cause to believe a
5415 physician, who is not determined judicially to be an incapacitated person or to [~~be mentally ill~~]
5416 have a mental illness, is incapable of practicing medicine with reasonable skill regarding the
5417 safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any
5418 mental or physical condition, the board shall recommend that the director file a petition with
5419 the division, and cause the petition to be served upon the physician with a notice of hearing on
5420 the sole issue of the capacity of the physician to competently and safely engage in the practice
5421 of medicine.

5422 (b) The hearing shall be conducted under Section 58-1-109, and Title 63G, Chapter 4,
5423 Administrative Procedures Act, except as provided in Subsection (4).

5424 (4) (a) Every physician who accepts the privilege of being licensed under this chapter
5425 gives consent to:

5426 (i) submitting at the physician's own expense to an immediate mental or physical
5427 examination when directed in writing by the division and a majority of the board to do so; and

5428 (ii) the admissibility of the reports of the examining physician's testimony or
5429 examination, and waives all objections on the ground the reports constitute a privileged
5430 communication.

5431 (b) The examination may be ordered by the division, with the consent of a majority of
5432 the board, only upon a finding of reasonable cause to believe:

5433 (i) the physician [~~is mentally ill or~~] has a mental illness, is incapacitated, or otherwise

5434 unable to practice medicine with reasonable skill and safety; and

5435 (ii) immediate action by the division and the board is necessary to prevent harm to the
5436 physician's patients or the general public.

5437 (c) (i) Failure of a physician to submit to the examination ordered under this section is
5438 a ground for the division's immediate suspension of the physician's license by written order of
5439 the director.

5440 (ii) The division may enter the order of suspension without further compliance with
5441 Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to
5442 submit to the examination ordered under this section was due to circumstances beyond the
5443 control of the physician and was not related directly to the illness or incapacity of the
5444 physician.

5445 (5) (a) A physician whose license is suspended under Subsection (2) or (3) has the right
5446 to a hearing to appeal the suspension within 10 days after the license is suspended.

5447 (b) The hearing held under this subsection shall be conducted in accordance with
5448 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists
5449 for the continuance of the order of suspension in order to prevent harm to the physician's
5450 patients or the general public.

5451 (6) A physician whose license is revoked, suspended, or in any way restricted under
5452 this section may request the division and the board to consider, at reasonable intervals,
5453 evidence presented by the physician, under procedures established by division rule, regarding
5454 any change in the physician's condition, to determine whether:

5455 (a) the physician is or is not able to safely and competently engage in the practice of
5456 medicine; and

5457 (b) the physician is qualified to have the physician's license to practice under this
5458 chapter restored completely or in part.

5459 Section 98. Section **58-68-601** is amended to read:

5460 **58-68-601. Mentally incompetent or incapacitated osteopathic physician.**

5461 (1) As used in this section:

5462 (a) "Incapacitated person" [~~has the same definition as~~] is as defined in Section
5463 75-1-201.

5464 (b) [~~"Mentally ill" has the same definition as~~] "Mental illness" is as defined in Section
5465 62A-15-602.

5466 (2) If a court of competent jurisdiction determines an osteopathic physician and
5467 surgeon is an incapacitated person or that the physician or surgeon [~~is mentally ill~~] has a mental
5468 illness and is unable to safely engage in the practice of medicine, the director shall immediately
5469 suspend the license of the osteopathic physician and surgeon upon the entry of the judgment of
5470 the court, without further proceedings under Title 63G, Chapter 4, Administrative Procedures
5471 Act, regardless of whether an appeal from the court's ruling is pending. The director shall
5472 promptly notify the osteopathic physician and surgeon, in writing, of the suspension.

5473 (3) (a) If the division and a majority of the board find reasonable cause to believe an
5474 osteopathic physician and surgeon, who is not determined judicially to be an incapacitated
5475 person or to [~~be mentally ill~~] have a mental illness, is incapable of practicing osteopathic
5476 medicine with reasonable skill regarding the safety of patients, because of illness, excessive use
5477 of drugs or alcohol, or as a result of any mental or physical condition, the board shall
5478 recommend that the director file a petition with the division, and cause the petition to be served
5479 upon the osteopathic physician and surgeon with a notice of hearing on the sole issue of the
5480 capacity of the osteopathic physician and surgeon to competently and safety engage in the
5481 practice of medicine.

5482 (b) The hearing shall be conducted under Section 58-1-109, and Title 63G, Chapter 4,
5483 Administrative Procedures Act, except as provided in Subsection (4).

5484 (4) (a) Every osteopathic physician and surgeon who accepts the privilege of being
5485 licensed under this chapter gives consent to:

5486 (i) submitting at the physician's or surgeon's own expense to an immediate mental or
5487 physical examination when directed in writing by the division and a majority of the board to do
5488 so; and

5489 (ii) the admissibility of the reports of the examining physician's testimony or

5490 examination, and waives all objections on the ground the reports constitute a privileged
5491 communication.

5492 (b) The examination may be ordered by the division, with the consent of a majority of
5493 the board, only upon a finding of reasonable cause to believe:

5494 (i) the osteopathic physician and surgeon [~~is mentally ill or~~] has a mental illness, is
5495 incapacitated, or otherwise unable to practice medicine with reasonable skill and safety; and

5496 (ii) immediate action by the division and the board is necessary to prevent harm to the
5497 osteopathic physician and surgeon's patients or the general public.

5498 (c) (i) Failure of an osteopathic physician and surgeon to submit to the examination
5499 ordered under this section is a ground for the division's immediate suspension of the
5500 osteopathic physician and surgeon's license by written order of the director.

5501 (ii) The division may enter the order of suspension without further compliance with
5502 Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to
5503 submit to the examination ordered under this section was due to circumstances beyond the
5504 control of the osteopathic physician and surgeon and was not related directly to the illness or
5505 incapacity of the osteopathic physician and surgeon.

5506 (5) (a) An osteopathic physician and surgeon whose license is suspended under
5507 Subsection (2) or (3) has the right to a hearing to appeal the suspension within 10 days after the
5508 license is suspended.

5509 (b) The hearing held under this subsection shall be conducted in accordance with
5510 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists
5511 for the continuance of the order of suspension in order to prevent harm to the osteopathic
5512 physician and surgeon's patients or the general public.

5513 (6) An osteopathic physician and surgeon whose license is revoked, suspended, or in
5514 any way restricted under this section may request the division and the board to consider, at
5515 reasonable intervals, evidence presented by the osteopathic physician and surgeon, under
5516 procedures established by division rule, regarding any change in the osteopathic physician and
5517 surgeon's condition, to determine whether:

5518 (a) the physician or surgeon is or is not able to safely and competently engage in the
5519 practice of medicine; and

5520 (b) the physician or surgeon is qualified to have the physician's or surgeon's license to
5521 practice under this chapter restored completely or in part.

5522 Section 99. Section **58-69-601** is amended to read:

5523 **58-69-601. Mentally incompetent or incapacitated dentist or dental hygienist.**

5524 (1) As used in this section:

5525 (a) "Incapacitated person" [~~has the same definition as~~] is as defined in Section
5526 75-1-201.

5527 (b) [~~"Mentally ill" has the same definition as~~] "Mental illness" is as defined in Section
5528 62A-15-602.

5529 (2) If a court of competent jurisdiction determines a dentist or dental hygienist is an
5530 incapacitated person or that the dentist or hygienist [~~is mentally ill~~] has a mental illness and is
5531 unable to safely engage in the practice of dentistry or dental hygiene, the director shall
5532 immediately suspend the license of the dentist or dental hygienist upon the entry of the
5533 judgment of the court, without further proceedings under Title 63G, Chapter 4, Administrative
5534 Procedures Act, regardless of whether an appeal from the court's ruling is pending. The
5535 director shall promptly notify the dentist or dental hygienist, in writing, of the suspension.

5536 (3) (a) If the division and a majority of the board find reasonable cause to believe a
5537 dentist or dental hygienist, who is not determined judicially to be an incapacitated person or to
5538 [~~be mentally ill~~] have a mental illness, is incapable of practicing dentistry or dental hygiene
5539 with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs
5540 or alcohol, or as a result of any mental or physical condition, the board shall recommend that
5541 the director file a petition with the division, and cause the petition to be served upon the dentist
5542 or dental hygienist with a notice of hearing on the sole issue of the capacity of the dentist or
5543 dental hygienist to competently and safely engage in the practice of dentistry or dental hygiene.

5544 (b) The hearing shall be conducted under Section 58-1-109 and Title 63G, Chapter 4,
5545 Administrative Procedures Act, except as provided in Subsection (4).

5546 (4) (a) Every dentist or dental hygienist who accepts the privilege of being licensed
5547 under this chapter gives consent to:

5548 (i) submitting at the dentist or dental hygienist's own expense to an immediate mental
5549 or physical examination when directed in writing by the division and a majority of the board to
5550 do so; and

5551 (ii) the admissibility of the reports of the examining practitioner's testimony or
5552 examination, and waives all objections on the ground the reports constitute a privileged
5553 communication.

5554 (b) The examination may be ordered by the division, with the consent of a majority of
5555 the board, only upon a finding of reasonable cause to believe:

5556 (i) the dentist or dental hygienist [~~is mentally ill or~~] has a mental illness, is
5557 incapacitated, or otherwise unable to practice dentistry or dental hygiene with reasonable skill
5558 and safety; and

5559 (ii) immediate action by the division and the board is necessary to prevent harm to the
5560 dentist's or dental hygienist's patients or the general public.

5561 (c) (i) Failure of a dentist or dental hygienist to submit to the examination ordered
5562 under this section is a ground for the division's immediate suspension of the dentist's or dental
5563 hygienist's license by written order of the director.

5564 (ii) The division may enter the order of suspension without further compliance with
5565 Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to
5566 submit to the examination ordered under this section was due to circumstances beyond the
5567 control of the dentist or dental hygienist and was not related directly to the illness or incapacity
5568 of the dentist or dental hygienist.

5569 (5) (a) A dentist or dental hygienist whose license is suspended under Subsection (2) or
5570 (3) has the right to a hearing to appeal the suspension within 10 days after the license is
5571 suspended.

5572 (b) The hearing held under this subsection shall be conducted in accordance with
5573 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists

5574 for the continuance of the order of suspension in order to prevent harm to the dentist's or dental
5575 hygienist's patients or the general public.

5576 (6) A dentist or dental hygienist whose license is revoked, suspended, or in any way
5577 restricted under this section may request the division and the board to consider, at reasonable
5578 intervals, evidence presented by the dentist or dental hygienist, under procedures established by
5579 division rule, regarding any change in the dentist's or dental hygienist's condition, to determine
5580 whether:

5581 (a) the dentist or dental hygienist is or is not able to safely and competently engage in
5582 the practice of dentistry or dental hygiene; and

5583 (b) the dentist or dental hygienist is qualified to have the dentist or dental hygienist's
5584 licensure to practice under this chapter restored completely or in part.

5585 Section 100. Section **58-71-601** is amended to read:

5586 **58-71-601. Mentally incompetent or incapacitated naturopathic physician.**

5587 (1) As used in this section:

5588 (a) "Incapacitated person" [~~has the same definition as~~] is as defined in Section
5589 75-1-201.

5590 (b) [~~"Mentally ill" has the same definition as~~] "Mental illness" is as defined in Section
5591 62A-15-602.

5592 (2) If a court of competent jurisdiction determines a naturopathic physician is an
5593 incapacitated person or that the physician [~~is mentally ill and~~] has a mental illness and is unable
5594 to safely engage in the practice of medicine, the director shall immediately suspend the license
5595 of the naturopathic physician upon the entry of the judgment of the court, without further
5596 proceedings under Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether
5597 an appeal from the court's ruling is pending. The director shall promptly notify the
5598 naturopathic physician, in writing, of the suspension.

5599 (3) (a) If the division and a majority of the board find reasonable cause to believe a
5600 naturopathic physician, who is not determined judicially to be an incapacitated person or to [~~be~~
5601 ~~mentally ill~~] have a mental illness, is incapable of practicing medicine with reasonable skill

5602 regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a
5603 result of any mental or physical condition, the board shall recommend that the director file a
5604 petition with the division, and cause the petition to be served upon the naturopathic physician
5605 with a notice of hearing on the sole issue of the capacity of the naturopathic physician to
5606 competently and safely engage in the practice of medicine.

5607 (b) The hearing shall be conducted under Section 58-1-109, and Title 63G, Chapter 4,
5608 Administrative Procedures Act, except as provided in Subsection (4).

5609 (4) (a) Every naturopathic physician who accepts the privilege of being licensed under
5610 this chapter gives consent to:

5611 (i) submitting at the physician's own expense to an immediate mental or physical
5612 examination when directed in writing by the division and a majority of the board to do so; and

5613 (ii) the admissibility of the reports of the examining physician's testimony or
5614 examination, and waives all objections on the ground the reports constitute a privileged
5615 communication.

5616 (b) The examination may be ordered by the division, with the consent of a majority of
5617 the board, only upon a finding of reasonable cause to believe:

5618 (i) the naturopathic physician ~~[is mentally ill or]~~ has a mental illness, is incapacitated,
5619 or otherwise unable to practice medicine with reasonable skill and safety; and

5620 (ii) immediate action by the division and the board is necessary to prevent harm to the
5621 naturopathic physician's patients or the general public.

5622 (c) (i) Failure of a naturopathic physician to submit to the examination ordered under
5623 this section is a ground for the division's immediate suspension of the naturopathic physician's
5624 license by written order of the director.

5625 (ii) The division may enter the order of suspension without further compliance with
5626 Title 63G, Chapter 4, Administrative Procedures Act, unless the division finds the failure to
5627 submit to the examination ordered under this section was due to circumstances beyond the
5628 control of the naturopathic physician and was not related directly to the illness or incapacity of
5629 the naturopathic physician.

5630 (5) (a) A naturopathic physician whose license is suspended under Subsection (2) or
5631 (3) has the right to a hearing to appeal the suspension within 10 days after the license is
5632 suspended.

5633 (b) The hearing held under this subsection shall be conducted in accordance with
5634 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists
5635 for the continuance of the order of suspension in order to prevent harm to the naturopathic
5636 physician's patients or the general public.

5637 (6) A naturopathic physician whose license is revoked, suspended, or in any way
5638 restricted under this section may request the division and the board to consider, at reasonable
5639 intervals, evidence presented by the naturopathic physician, under procedures established by
5640 division rule, regarding any change in the naturopathic physician's condition, to determine
5641 whether:

5642 (a) the physician is or is not able to safely and competently engage in the practice of
5643 medicine; and

5644 (b) the physician is qualified to have the physician's license to practice under this
5645 chapter restored completely or in part.

5646 Section 101. Section **58-73-401** is amended to read:

5647 **58-73-401. Grounds for denial of license -- Disciplinary proceedings -- Limitation**
5648 **on division actions.**

5649 (1) Grounds for the following are in accordance with Section 58-1-401:

5650 (a) refusing to issue a license to an applicant;

5651 (b) refusing to renew the license of a licensee;

5652 (c) revoking, suspending, restricting, or placing on probation the license of a licensee;

5653 (d) issuing a public or private reprimand to a licensee; and

5654 (e) issuing a cease and desist order.

5655 (2) If a court of competent jurisdiction determines a chiropractic physician is
5656 incompetent, mentally incompetent, incapable, or ~~mentally ill~~ has a mental illness, the
5657 director shall suspend the license of that chiropractic physician, even if an appeal is pending.

5658 (3) (a) If it appears to the board there is reasonable cause to believe a chiropractic
5659 physician who has not been judicially determined to be incompetent, mentally incompetent,
5660 incapable, or [~~mentally ill~~] to have a mental illness, is unable to practice chiropractic with
5661 reasonable skill and safety to patients by reason of illness, drunkenness, excessive use of drugs,
5662 narcotics, chemicals, or any other substance, or as a result of any mental or physical condition,
5663 a petition shall be served upon that chiropractic physician for a hearing on the sole issue of the
5664 capacity of the chiropractic physician to conduct properly the practice of the chiropractic
5665 physician.

5666 (b) Every chiropractic physician licensed by this state is considered to have:

5667 (i) agreed to submit to a mental or physical examination upon receipt of a written
5668 direction given by the division with the approval of the board; and

5669 (ii) waived all objections to the admissibility of the examining chiropractic physician's
5670 or other practitioner's testimony or examination reports on the ground they constitute a
5671 privileged communication.

5672 (c) Failure of a chiropractic physician to submit to an examination under Subsection
5673 (3)(b) when directed by the division, unless the failure was due to circumstances beyond his
5674 control, constitutes grounds for immediate suspension of the chiropractic physician's license
5675 and an order of suspension of the license may be entered by the division without the taking of
5676 testimony or the presentation of evidence.

5677 (d) A chiropractic physician whose license is suspended under this section shall, at
5678 reasonable intervals, be afforded the opportunity to demonstrate [~~he~~] the chiropractic physician
5679 can resume the competent practice of chiropractic with reasonable skill and safety to patients.

5680 (e) Neither the proceedings of the board nor the action taken by it under this section
5681 may be used against a chiropractic physician in any other proceedings.

5682 (4) The terms of revocation, suspension, or probation under this chapter may include:

5683 (a) revoking the license to practice either permanently or with a stated date before
5684 which the individual may not apply for licensure;

5685 (b) suspending, limiting, or restricting the license to practice chiropractic for up to five

5686 years, including limiting the practice of the person to, or excluding from the person's practice,
5687 one or more specific branches of medicine, including any limitation on practice within the
5688 specified branches;

5689 (c) requiring the license holder to submit to care, counseling, or treatment by
5690 physicians approved by or designated by the board, as a condition for licensure;

5691 (d) requiring the license holder to participate in a program of education prescribed by
5692 the board;

5693 (e) requiring the license holder to practice under the direction of a physician designated
5694 by the board for a specified period of time; or

5695 (f) other appropriate terms and conditions determined by the division in collaboration
5696 with the board to be necessary to protect the public health, safety, or welfare.

5697 Section 102. Section **59-2-1101** is amended to read:

5698 **59-2-1101. Exemption of certain property -- Proportional payments for certain**
5699 **property -- County legislative body authority to adopt rules or ordinances.**

5700 (1) For purposes of this section:

5701 (a) "exclusive use exemption" means a property tax exemption under Subsection
5702 (3)(d), for property owned by a nonprofit entity that is used exclusively for religious,
5703 charitable, or educational purposes;

5704 (b) "government exemption" means a property tax exemption provided under
5705 Subsection (3)(a), (b), or (c); and

5706 (c) "tax relief" means an exemption, deferral, or abatement that is authorized by this
5707 part.

5708 (2) (a) Except as provided in Subsection (2)(b) or (c), tax relief may be allowed only if
5709 the claimant is the owner of the property as of January 1 of the year the exemption is claimed.

5710 (b) Notwithstanding Subsection (2)(a), a claimant shall collect and pay a proportional
5711 tax based upon the length of time that the property was not owned by the claimant if:

5712 (i) the claimant is a federal, state, or political subdivision entity described in
5713 Subsection (3)(a), (b), or (c); or

- 5714 (ii) pursuant to Subsection (3)(d):
- 5715 (A) the claimant is a nonprofit entity; and
- 5716 (B) the property is used exclusively for religious, charitable, or educational purposes.
- 5717 (c) Notwithstanding Subsection (2)(a), a claimant may be allowed a veteran's
- 5718 exemption in accordance with Sections 59-2-1104 and 59-2-1105 regardless of whether the
- 5719 claimant is the owner of the property as of January 1 of the year the exemption is claimed if the
- 5720 claimant is:
 - 5721 (i) the unmarried surviving spouse of:
 - 5722 (A) a deceased [~~disabled~~] veteran with a disability as defined in Section 59-2-1104; or
 - 5723 (B) a veteran who was killed in action or died in the line of duty as defined in Section
 - 5724 59-2-1104; or
 - 5725 (ii) a minor orphan of:
 - 5726 (A) a deceased [~~disabled~~] veteran with a disability as defined in Section 59-2-1104; or
 - 5727 (B) a veteran who was killed in action or died in the line of duty as defined in Section
 - 5728 59-2-1104.
- 5729 (3) The following property is exempt from taxation:
 - 5730 (a) property exempt under the laws of the United States;
 - 5731 (b) property of:
 - 5732 (i) the state;
 - 5733 (ii) school districts; and
 - 5734 (iii) public libraries;
 - 5735 (c) except as provided in Title 11, Chapter 13, Interlocal Cooperation Act, property of:
 - 5736 (i) counties;
 - 5737 (ii) cities;
 - 5738 (iii) towns;
 - 5739 (iv) local districts;
 - 5740 (v) special service districts; and
 - 5741 (vi) all other political subdivisions of the state;

- 5742 (d) property owned by a nonprofit entity which is used exclusively for religious,
5743 charitable, or educational purposes;
- 5744 (e) places of burial not held or used for private or corporate benefit;
- 5745 (f) farm equipment and machinery;
- 5746 (g) intangible property; and
- 5747 (h) the ownership interest of an out-of-state public agency, as defined in Section
5748 11-13-103:
- 5749 (i) if that ownership interest is in property providing additional project capacity, as
5750 defined in Section 11-13-103; and
- 5751 (ii) on which a fee in lieu of ad valorem property tax is payable under Section
5752 11-13-302.
- 5753 (4) Subject to Subsection (5), if property that is allowed an exclusive use exemption or
5754 a government exemption ceases to qualify for the exemption because of a change in the
5755 ownership of the property:
- 5756 (a) the new owner of the property shall pay a proportional tax based upon the period of
5757 time:
- 5758 (i) beginning on the day that the new owner acquired the property; and
- 5759 (ii) ending on the last day of the calendar year during which the new owner acquired
5760 the property; and
- 5761 (b) the new owner of the property and the person from whom the new owner acquires
5762 the property shall notify the county assessor, in writing, of the change in ownership of the
5763 property within 30 days from the day that the new owner acquires the property.
- 5764 (5) Notwithstanding Subsection (4)(a), the proportional tax described in Subsection
5765 (4)(a):
- 5766 (a) is subject to any exclusive use exemption or government exemption that the
5767 property is entitled to under the new ownership of the property; and
- 5768 (b) applies only to property that is acquired after December 31, 2005.
- 5769 (6) A county legislative body may adopt rules or ordinances to:

5770 (a) effectuate the exemptions, deferrals, abatements, or other relief from taxation
5771 provided in this part; and

5772 (b) designate one or more persons to perform the functions given the county under this
5773 part.

5774 Section 103. Section **59-2-1104** is amended to read:

5775 **59-2-1104. Definitions -- Veteran's exemption -- Amount of veteran's exemption.**

5776 (1) As used in this section and Section 59-2-1105:

5777 (a) "Adjusted taxable value limit" means:

5778 (i) for the year 2005, \$200,000; and

5779 (ii) for each year after 2005, the amount of the adjusted taxable value limit for the
5780 previous year, plus an amount calculated by multiplying the amount of the adjusted taxable
5781 value limit for the previous year by the actual percent change in the Consumer Price Index
5782 during the previous calendar year[;].

5783 (b) "Claimant" means:

5784 (i) a ~~disabled~~ veteran with a disability who files an application under Section
5785 59-2-1105 for a veteran's exemption;

5786 (ii) the unmarried surviving spouse:

5787 (A) of a:

5788 (I) deceased ~~disabled~~ veteran with a disability; or

5789 (II) veteran who was killed in action or died in the line of duty; and

5790 (B) who files an application under Section 59-2-1105 for a veteran's exemption; or

5791 (iii) a minor orphan:

5792 (A) of a:

5793 (I) deceased ~~disabled~~ veteran with a disability; or

5794 (II) veteran who was killed in action or died in the line of duty; and

5795 (B) who files an application under Section 59-2-1105 for a veteran's exemption[;].

5796 (c) "Consumer price index" is as described in Section 1(f)(4), Internal Revenue Code,
5797 and defined in Section 1(f)(5), Internal Revenue Code[;].

5798 (d) "Deceased [~~disabled~~] veteran with a disability" means a deceased person who was a
5799 [~~disabled~~] veteran with a disability at the time the person died[;].

5800 [(f)] (e) "Military entity" means:

5801 (i) the federal Department of Veterans Affairs; or

5802 (ii) a component of the armed forces of:

5803 (A) the United States; or

5804 (B) the state[;].

5805 [(g)] (f) "Residence" is as defined in Section 59-2-1202, except that a rented dwelling
5806 is not considered to be a residence[;].

5807 [(h)] (g) "Veteran who was killed in action or died in the line of duty" means a person
5808 who was killed in action or died in the line of duty in the military service of the United States
5809 or the state, regardless of whether that person [~~was disabled~~] had a disability at the time that
5810 person was killed in action or died in the line of duty[; ~~and~~].

5811 [(e) "~~disabled veteran~~"] (h) "Veteran with a disability" means a [~~disabled~~] person with
5812 a disability who, during military training or a military conflict, [~~was disabled~~] acquired a
5813 disability in the line of duty in the military service of the United States or the state[;].

5814 (i) "Veteran's exemption" means a property tax exemption provided for in Subsection
5815 (2).

5816 (2) (a) The amount of taxable value of the property described in Subsection (2)(b) is
5817 exempt from taxation as calculated under Subsections (2)(c) through (e) if the property
5818 described in Subsection (2)(b) is owned by:

5819 (i) a [~~disabled~~] veteran with a disability; or

5820 (ii) the unmarried surviving spouse or a minor orphan of a:

5821 (A) deceased [~~disabled~~] veteran with a disability; or

5822 (B) veteran who was killed in action or died in the line of duty.

5823 (b) Subsection (2)(a) applies to the following property:

5824 (i) the claimant's primary residence;

5825 (ii) tangible personal property that:

- 5826 (A) is held exclusively for personal use; and
- 5827 (B) is not used in a trade or business; or
- 5828 (iii) a combination of Subsections (2)(b)(i) and (ii).
- 5829 (c) Except as provided in Subsection (2)(d) or (e), the amount of taxable value of
- 5830 property described in Subsection (2)(b) that is exempt under Subsection (2)(a) is:
- 5831 (i) as described in Subsection (2)(f), if the property is owned by:
- 5832 (A) a ~~disabled~~ veteran with a disability;
- 5833 (B) the unmarried surviving spouse of a deceased ~~disabled~~ veteran with a disability;
- 5834 or
- 5835 (C) a minor orphan of a deceased ~~disabled~~ veteran with a disability; or
- 5836 (ii) equal to the total taxable value of the claimant's property described in Subsection
- 5837 (2)(b) if the property is owned by:
- 5838 (A) the unmarried surviving spouse of a veteran who was killed in action or died in the
- 5839 line of duty; or
- 5840 (B) a minor orphan of a veteran who was killed in action or died in the line of duty.
- 5841 (d) (i) Notwithstanding Subsection (2)(c)(i) and subject to Subsection (2)(d)(ii), a
- 5842 veteran's exemption may not be allowed under this Subsection (2) if the percentage of disability
- 5843 listed on the certificate described in Subsection 59-2-1105(3)(a) is less than 10%.
- 5844 (ii) A ~~disabled~~ veteran with a disability is considered to ~~be~~ have a 100% ~~disabled~~
- 5845 disability, regardless of the percentage of disability listed on a certificate described in
- 5846 Subsection 59-2-1105(3)(a), if the United States Department of Veterans' Affairs certifies the
- 5847 veteran in the classification of individual unemployability.
- 5848 (e) Notwithstanding Subsection (2)(c)(i), a claimant who is the unmarried surviving
- 5849 spouse or minor orphan of a deceased ~~disabled~~ veteran with a disability may claim a veteran's
- 5850 exemption for the total value of the property described in Subsection (2)(b) if:
- 5851 (i) the deceased ~~disabled~~ veteran with a disability served in the military service of the
- 5852 United States or the state prior to January 1, 1921; and
- 5853 (ii) the percentage of disability listed on the certificate described in Subsection

5854 59-2-1105(3)(a) for the deceased [~~disabled~~] veteran with a disability is 10% or more.

5855 (f) Except as provided in Subsection (2)(g), the amount of the taxable value of the
5856 property described in Subsection (2)(b) that is exempt under Subsection (2)(c)(i) is equal to the
5857 percentage of disability listed on the certificate described in Subsection 59-2-1105(3)(a)
5858 multiplied by the adjusted taxable value limit.

5859 (g) Notwithstanding Subsection (2)(f), the amount of the taxable value of the property
5860 described in Subsection (2)(b) that is exempt under Subsection (2)(c)(i) may not be greater than
5861 the taxable value of the property described in Subsection (2)(b).

5862 (h) For purposes of this section and Section 59-2-1105, a person who is honorably
5863 discharged from military service of the United States or the state:

5864 (i) is presumed to be a citizen of the United States; and

5865 (ii) shall not be required to provide additional proof of citizenship to establish that the
5866 veteran is a citizen of the United States.

5867 (3) The Department of Veterans' Affairs created in Section 71-8-2 shall, through an
5868 informal hearing held in accordance with Title 63G, Chapter 4, Administrative Procedures Act,
5869 resolve each dispute arising under this section concerning a veteran's status as a [~~disabled~~]
5870 veteran with a disability.

5871 Section 104. Section **59-2-1105** is amended to read:

5872 **59-2-1105. Application for veteran's exemption -- Rulemaking authority --**

5873 **Statement -- County authority to make refunds.**

5874 (1) (a) Except as provided in Subsection 59-2-1101(2)(c), a veteran's exemption may be
5875 allowed only if the interest of the claimant is on record on January 1 of the year the exemption
5876 is claimed.

5877 (b) If the claimant has an interest in real property under a contract, the veteran's
5878 exemption may be allowed if it is proved to the satisfaction of the county that the claimant is:

5879 (i) the purchaser under the contract; and

5880 (ii) obligated to pay the taxes on the property beginning January 1 of the year the
5881 exemption is claimed.

5882 (c) If the claimant is the grantor of a trust holding title to real or tangible personal
5883 property on which a veteran's exemption is claimed, the claimant may claim the portion of the
5884 veteran's exemption under Section 59-2-1104 and be treated as the owner of that portion of the
5885 property held in trust for which the claimant proves to the satisfaction of the county that:

5886 (i) title to the portion of the trust will revert in the claimant upon the exercise of a
5887 power:

5888 (A) by:

5889 (I) the claimant as grantor of the trust;

5890 (II) a nonadverse party; or

5891 (III) both the claimant and a nonadverse party; and

5892 (B) regardless of whether the power is a power:

5893 (I) to revoke;

5894 (II) to terminate;

5895 (III) to alter;

5896 (IV) to amend; or

5897 (V) to appoint;

5898 (ii) the claimant is obligated to pay the taxes on that portion of the trust property
5899 beginning January 1 of the year the claimant claims the exemption; and

5900 (iii) the claimant meets the requirements under this part for the exemption.

5901 (2) (a) (i) A claimant applying for a veteran's exemption under this section shall file an
5902 application:

5903 (A) with the county in which that person resides; and

5904 (B) except as provided in Subsection (2)(b) or (e), on or before September 1 of the year
5905 in which that claimant is applying for the veteran's exemption in accordance with this section.

5906 (ii) A county shall provide a claimant who files an application for a veteran's
5907 exemption in accordance with this section with a receipt:

5908 (A) stating that the county received the claimant's application; and

5909 (B) no later than 30 days after the day on which the claimant filed the application in

5910 accordance with this section.

5911 (b) Notwithstanding Subsection (2)(a)(i)(B) or (2)(e):

5912 (i) subject to Subsection (2)(b)(iv), for a claimant who applies for a veteran's
5913 exemption on or after January 1, 2004, a county shall extend the deadline for filing the
5914 application required by Subsection (2)(a) to September 1 of the year after the year the claimant
5915 would otherwise be required to file the application under Subsection (2)(a)(i)(B) if:

5916 (A) on or after January 1, 2004, a military entity issues a written decision that the:

5917 (I) ~~[disabled veteran is disabled]~~ veteran has a disability; or

5918 (II) deceased ~~[disabled]~~ veteran with a disability with respect to whom the claimant
5919 applies for a veteran's exemption ~~[was disabled]~~ had a disability at the time the deceased
5920 ~~[disabled]~~ veteran with a disability died; and

5921 (B) the date the written decision described in Subsection (2)(b)(i)(A) takes effect is in
5922 any year prior to the current calendar year;

5923 (ii) subject to Subsections (2)(b)(iv) and (2)(d), for a claimant who applies for a
5924 veteran's exemption on or after January 1, 2004, a county shall allow the claimant to amend the
5925 application required by Subsection (2)(a) on or before September 1 of the year after the year the
5926 claimant filed the application under Subsection (2)(a)(i)(B) if:

5927 (A) on or after January 1, 2004, a military entity issues a written decision that the
5928 percentage of disability has changed for the:

5929 (I) ~~[disabled]~~ veteran with a disability; or

5930 (II) deceased ~~[disabled]~~ veteran with a disability with respect to whom the claimant
5931 applies for a veteran's exemption; and

5932 (B) the date the written decision described in Subsection (2)(b)(ii)(A) takes effect is in
5933 any year prior to the current calendar year;

5934 (iii) subject to Subsections (2)(b)(iv) and (2)(d), for a claimant who applies for a
5935 veteran's exemption on or after January 1, 2004, a county shall extend the deadline for filing
5936 the application required by Subsection (2)(a) to September 1 of the year after the year the
5937 claimant would otherwise be required to file the application under Subsection (2)(a)(i)(B) if the

5938 county legislative body determines that:

5939 (A) the claimant or a member of the claimant's immediate family had an illness or
5940 injury that prevented the claimant from filing the application on or before the deadline for
5941 filing the application established in Subsection (2)(a)(i)(B);

5942 (B) a member of the claimant's immediate family died during the calendar year the
5943 claimant was required to file the application under Subsection (2)(a)(i)(B);

5944 (C) the claimant was not physically present in the state for a time period of at least six
5945 consecutive months during the calendar year the claimant was required to file the application
5946 under Subsection (2)(a)(i)(B); or

5947 (D) the failure of the claimant to file the application on or before the deadline for filing
5948 the application established in Subsection (2)(a)(i)(B):

5949 (I) would be against equity or good conscience; and

5950 (II) was beyond the reasonable control of the claimant; and

5951 (iv) a county may extend the deadline for filing an application or amending an
5952 application under this Subsection (2) until December 31 if the county finds that good cause
5953 exists to extend the deadline.

5954 (c) The following shall accompany the initial application for a veteran's exemption:

5955 (i) a copy of the veteran's certificate of discharge from the military service of:

5956 (A) the United States; or

5957 (B) this state; or

5958 (ii) other satisfactory evidence of eligible military service.

5959 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
5960 commission may by rule:

5961 (i) establish procedures and requirements for amending an application under
5962 Subsection (2)(b)(ii);

5963 (ii) for purposes of Subsection (2)(b)(iii), define the terms:

5964 (A) "immediate family"; or

5965 (B) "physically present"; or

5966 (iii) for purposes of Subsection (2)(b)(iii), prescribe the circumstances under which the
5967 failure of a claimant to file an application on or before the deadline for filing the application
5968 established in Subsection (2)(a)(i)(B):

5969 (A) would be against equity or good conscience; and

5970 (B) is beyond the reasonable control of a claimant.

5971 (e) If a claimant has on file with the county the application described in Subsection
5972 (2)(a), the county may not require the claimant to file another application described in
5973 Subsection (2)(a) unless:

5974 (i) the claimant applies all or a portion of an exemption allowed by this section to any
5975 tangible personal property;

5976 (ii) the percentage of disability has changed for the:

5977 (A) [~~disabled~~] veteran with a disability; or

5978 (B) deceased [~~disabled~~] veteran with a disability with respect to whom a claimant
5979 applies for a veteran's exemption under this section;

5980 (iii) the [~~disabled~~] veteran with a disability dies;

5981 (iv) the claimant's ownership interest in the claimant's primary residence changes;

5982 (v) the claimant's occupancy of the primary residence for which the claimant claims an
5983 exemption under Section 59-2-1104 changes; or

5984 (vi) the claimant who files an application for a veteran's exemption with respect to a
5985 deceased [~~disabled~~] veteran with a disability or veteran who was killed in action or died in the
5986 line of duty is a person other than the claimant who filed the application described in

5987 Subsection (2)(a) for a veteran's exemption:

5988 (A) for the calendar year immediately preceding the current calendar year; and

5989 (B) with respect to that deceased [~~disabled~~] veteran with a disability or veteran who
5990 was killed in action or died in the line of duty.

5991 (f) The county may verify that the residential property for which the claimant claims an
5992 exemption under Section 59-2-1104 is the claimant's primary residence.

5993 (3) (a) (i) Subject to Subsection (3)(a)(ii), a claimant who files an application for a

5994 veteran's exemption shall have on file with the county a statement:

5995 (A) issued by a military entity; and

5996 (B) listing the percentage of disability for the [~~disabled~~] veteran with a disability or
5997 deceased [~~disabled~~] veteran with a disability with respect to whom a claimant applies for a
5998 veteran's exemption.

5999 (ii) If a claimant has on file with the county the statement described in Subsection
6000 (3)(a)(i), the county may not require the claimant to file another statement described in
6001 Subsection (3)(a)(i) unless:

6002 (A) the claimant who files an application under this section for a veteran's exemption
6003 with respect to a deceased [~~disabled~~] veteran with a disability or veteran who was killed in
6004 action or died in the line of duty is a person other than the claimant who filed the statement
6005 described in Subsection (3)(a)(i) for a veteran's exemption:

6006 (I) for the calendar year immediately preceding the current calendar year; and

6007 (II) with respect to that deceased [~~disabled~~] veteran with a disability or veteran who
6008 was killed in action or died in the line of duty; or

6009 (B) the percentage of disability has changed for a:

6010 (I) [~~disabled~~] veteran with a disability; or

6011 (II) deceased [~~disabled~~] veteran with a disability with respect to whom the claimant
6012 applies for a veteran's exemption under this section.

6013 (b) For a claimant filing an application in accordance with Subsection (2)(b)(i), the
6014 claimant shall include with the application required by Subsection (2) a statement issued by a
6015 military entity listing the date the written decision described in Subsection (2)(b)(i)(A) takes
6016 effect.

6017 (c) For a claimant amending an application in accordance with Subsection (2)(b)(ii),
6018 the claimant shall provide to the county a statement issued by a military entity listing the date
6019 the written decision described in Subsection (2)(b)(ii)(A) takes effect.

6020 (4) (a) For purposes of this Subsection (4):

6021 (i) "Property taxes due" means the taxes due on a claimant's property:

- 6022 (A) for which a veteran's exemption is granted by a county; and
6023 (B) for the calendar year for which the veteran's exemption is granted.
6024 (ii) "Property taxes paid" is an amount equal to the sum of:
6025 (A) the amount of the property taxes the claimant paid for the calendar year for which
6026 the claimant is applying for the veteran's exemption; and
6027 (B) the veteran's exemption the county granted for the calendar year described in
6028 Subsection (4)(a)(ii)(A).
6029 (b) A county granting a veteran's exemption to a claimant shall refund to that claimant
6030 an amount equal to the amount by which the claimant's property taxes paid exceed the
6031 claimant's property taxes due, if that amount is \$1 or more.
6032 Section 105. Section **59-2-1109** is amended to read:
6033 **59-2-1109. Indigent persons -- Deferral or abatement -- Application -- County**
6034 **authority to make refunds.**
6035 (1) A person under the age of 65 years is not eligible for a deferral or abatement
6036 provided for poor people under Sections 59-2-1107 and 59-2-1108 unless:
6037 (a) the county finds that extreme hardship would prevail if the grants were not made; or
6038 (b) the person [~~is disabled~~] has a disability.
6039 (2) (a) An application for the deferral or abatement shall be filed on or before
6040 September 1 with the county in which the property is located.
6041 (b) The application shall include a signed statement setting forth the eligibility of the
6042 applicant for the deferral or abatement.
6043 (c) Both husband and wife shall sign the application if the husband and wife seek a
6044 deferral or abatement on a residence:
6045 (i) in which they both reside; and
6046 (ii) which they own as joint tenants.
6047 (d) A county may extend the deadline for filing under Subsection (2)(a) until December
6048 31 if the county finds that good cause exists to extend the deadline.
6049 (3) (a) For purposes of this Subsection (3):

- 6050 (i) "Property taxes due" means the taxes due on a person's property:
- 6051 (A) for which an abatement is granted by a county under Section 59-2-1107; and
- 6052 (B) for the calendar year for which the abatement is granted.
- 6053 (ii) "Property taxes paid" is an amount equal to the sum of:
- 6054 (A) the amount of the property taxes the person paid for the taxable year for which the
- 6055 person is applying for the abatement; and
- 6056 (B) the amount of the abatement the county grants under Section 59-2-1107.
- 6057 (b) A county granting an abatement to a person under Section 59-2-1107 shall refund
- 6058 to that person an amount equal to the amount by which the person's property taxes paid exceed
- 6059 the person's property taxes due, if that amount is \$1 or more.
- 6060 (4) For purposes of this section:
- 6061 (a) a poor person is any person:
- 6062 (i) whose total household income as defined in Section 59-2-1202 is less than the
- 6063 maximum household income certified to a homeowner's credit under Subsection 59-2-1208(1);
- 6064 (ii) who resides for not less than 10 months of each year in the residence for which the
- 6065 tax relief, deferral, or abatement is requested; and
- 6066 (iii) who is unable to meet the tax assessed on the person's residential property as the
- 6067 tax becomes due; and
- 6068 (b) "residence" includes a mobile home as defined under Section 70D-2-401.
- 6069 (5) If the claimant is the grantor of a trust holding title to real or tangible personal
- 6070 property on which an abatement or deferral is claimed, the claimant may claim the portion of
- 6071 the abatement or deferral under Section 59-2-1107 or 59-2-1108 and be treated as the owner of
- 6072 that portion of the property held in trust for which the claimant proves to the satisfaction of the
- 6073 county that:
- 6074 (a) title to the portion of the trust will revert in the claimant upon the exercise of a
- 6075 power:
- 6076 (i) by:
- 6077 (A) the claimant as grantor of the trust;

- 6078 (B) a nonadverse party; or
6079 (C) both the claimant and a nonadverse party; and
6080 (ii) regardless of whether the power is a power:
6081 (A) to revoke;
6082 (B) to terminate;
6083 (C) to alter;
6084 (D) to amend; or
6085 (E) to appoint;
- 6086 (b) the claimant is obligated to pay the taxes on that portion of the trust property
6087 beginning January 1 of the year the claimant claims the abatement or deferral; and
6088 (c) the claimant meets the requirements under this part for the abatement or deferral.
6089 (6) The commission shall adopt rules to implement this section.
6090 (7) Any poor person may qualify for:
6091 (a) the deferral of taxes under Section 59-2-1108;
6092 (b) if the person meets the requisites of this section, for the abatement of taxes under
6093 Section 59-2-1107; or
6094 (c) both:
6095 (i) the deferral described in Subsection (7)(a); and
6096 (ii) the abatement described in Subsection (7)(b).
- 6097 Section 106. Section **59-7-602** is amended to read:
6098 **59-7-602. Credit for cash contributions to sheltered workshops.**
6099 (1) For tax years beginning January 1, 1983, and thereafter, in computing the tax due
6100 the state of Utah pursuant to Section 59-7-104, there shall be a tax credit allowed for cash
6101 contributions made within the taxable year to nonprofit rehabilitation sheltered workshop
6102 facilities for ~~[the disabled]~~ people with a disability operating in Utah which are certified by the
6103 Department of Human Services as a qualifying facility. The allowable credit is an amount
6104 equal to 50% of the aggregate amount of the cash contributions to qualifying rehabilitation
6105 facilities, but in no case shall the credit allowed exceed \$1,000.

6106 (2) If a taxpayer has subtracted an amount for cash contributions to a sheltered
6107 workshop when determining federal taxable income, that amount shall be added back under
6108 Section 59-7-105 before a credit may be taken under this section.

6109 Section 107. Section **59-10-1011** is amended to read:

6110 **59-10-1011. Tutoring tax credits for dependents with a disability.**

6111 (1) For purposes of this section:

6112 (a) [~~Disabled dependent~~] "Dependent with a disability" means a person who:

6113 (i) [~~is disabled~~] has a disability under Section 53A-15-301;

6114 (ii) attends a public or private kindergarten, elementary, or secondary school; and

6115 (iii) is eligible to receive disability program money under Section 53A-17a-111.

6116 (b) (i) "Tutoring" means educational services:

6117 (A) approved by an individual education plan team;

6118 (B) provided to a [~~disabled~~] dependent with a disability; and

6119 (C) that supplement classroom instruction the [~~disabled~~] dependent with a disability

6120 described in Subsection (1)(b)(i)(B) receives at a public or private kindergarten, elementary, or
6121 secondary school in the state.

6122 (ii) "Tutoring" does not include:

6123 (A) purchases of instructional books and material; or

6124 (B) payments for attendance at extracurricular activities including sporting events,
6125 musical or dramatic events, speech activities, or driver education.

6126 (2) (a) Except as provided in Subsection (2)(b), for taxable years beginning on or after
6127 January 1, 1996, but beginning on or before December 31, 2009, a claimant allowed to claim a
6128 [~~disabled~~] dependent with a disability as a dependent under this section may claim for each
6129 [~~disabled~~] dependent with a disability a nonrefundable tutoring tax credit in an amount equal to
6130 25% of the costs paid by the claimant for tutoring the [~~disabled~~] dependent with a disability.

6131 (b) The tutoring tax credit under Subsection (2)(a) may not exceed \$100.

6132 (3) The tutoring tax credit under Subsection (2) may be claimed by a claimant only in
6133 the taxable year in which the claimant pays the tutoring costs for which the tax credit is

6134 claimed.

6135 Section 108. Section **62A-1-108.5** is amended to read:

6136 **62A-1-108.5. Mental illness and intellectual disability examinations --**

6137 **Responsibilities of the department.**

6138 (1) In accomplishing its duties to conduct mental illness and [~~mental retardation~~]
6139 intellectual disability examinations under Title 77, Utah Code of Criminal Procedure, the
6140 department shall proceed as outlined in this section and within appropriations authorized by the
6141 Legislature. The executive director may delegate the executive director's responsibilities under
6142 this section to one or more divisions within the department.

6143 (2) When the department is ordered by the court to conduct a mental illness or [~~mental~~
6144 ~~retardation~~] intellectual disability examination, the executive director shall:

6145 (a) direct that the examination be performed at the Utah State Hospital; or

6146 (b) designate at least one examiner, selected under Subsection (3), to examine the
6147 defendant in the defendant's current custody or status.

6148 (3) The department shall establish criteria, in consultation with the Commission on
6149 Criminal and Juvenile Justice, and shall contract with persons or organizations to conduct
6150 mental illness and [~~mental retardation~~] intellectual disability examinations under Subsection
6151 (2)(b). In making this selection, the department shall follow the provisions of Title 63G,
6152 Chapter 6, Utah Procurement Code.

6153 (4) Nothing in this section prohibits the executive director, at the request of defense
6154 counsel or a prosecuting attorney in a criminal proceeding under Title 77, Utah Code of
6155 Criminal Procedure, and for good cause shown, from proposing a person who has not been
6156 previously selected under Subsection (3) to contract with the department to conduct the
6157 examination. In selecting that person, the criteria of the department established under
6158 Subsection (3) and the provisions of Title 63G, Chapter 6, Utah Procurement Code, shall be
6159 met.

6160 Section 109. Section **62A-2-101** is amended to read:

6161 **62A-2-101. Definitions.**

6162 As used in this chapter:

6163 (1) "Adult day care" means nonresidential care and supervision:

6164 (a) for three or more adults for at least four but less than 24 hours a day; and

6165 (b) that meets the needs of functionally impaired adults through a comprehensive

6166 program that provides a variety of health, social, recreational, and related support services in a

6167 protective setting.

6168 (2) (a) "Boarding school" means a private school that:

6169 (i) uses a regionally accredited education program;

6170 (ii) provides a residence to the school's students:

6171 (A) for the purpose of enabling the school's students to attend classes at the school; and

6172 (B) as an ancillary service to educating the students at the school;

6173 (iii) has the primary purpose of providing the school's students with an education, as

6174 defined in Subsection (2)(b)(i); and

6175 (iv) (A) does not provide the treatment or services described in Subsection (26)(a); or

6176 (B) provides the treatment or services described in Subsection (26)(a) on a limited

6177 basis, as described in Subsection (2)(b)(ii).

6178 (b) (i) For purposes of Subsection (2)(a)(iii), "education" means a course of study for

6179 one or more of grades kindergarten through 12th grade.

6180 (ii) For purposes of Subsection (2)(a)(iv)(B), a private school provides the treatment or

6181 services described in Subsection (26)(a) on a limited basis if:

6182 (A) the treatment or services described in Subsection (26)(a) are provided only as an

6183 incidental service to a student; and

6184 (B) the school does not:

6185 (I) specifically solicit a student for the purpose of providing the treatment or services

6186 described in Subsection (26)(a); or

6187 (II) have a primary purpose of providing the services described in Subsection (26)(a).

6188 (c) "Boarding school" does not include a therapeutic school.

6189 (3) "Certified local inspector" means a person certified by the office, pursuant to

6190 Subsection 62A-2-108.3(1), to conduct an inspection described in Subsection 62A-2-108.3(4).

6191 (4) "Certified local inspector applicant" means a person for which designation as a
6192 certified local inspector is sought under Section 62A-2-108.3.

6193 (5) "Child" means a person under 18 years of age.

6194 (6) "Child placing" means receiving, accepting, or providing custody or care for any
6195 child, temporarily or permanently, for the purpose of:

6196 (a) finding a person to adopt the child;

6197 (b) placing the child in a home for adoption; or

6198 (c) foster home placement.

6199 (7) "Client" means an individual who receives or has received services from a licensee.

6200 (8) "Day treatment" means specialized treatment that is provided to:

6201 (a) a client less than 24 hours a day; and

6202 (b) four or more persons who:

6203 (i) are unrelated to the owner or provider; and

6204 (ii) have emotional, psychological, developmental, physical, or behavioral
6205 dysfunctions, impairments, or chemical dependencies.

6206 (9) "Department" means the Department of Human Services.

6207 (10) "Direct access" means that an individual has, or likely will have, contact with or
6208 access to a child or vulnerable adult that provides the individual with an opportunity for
6209 personal communication or touch.

6210 (11) "Director" means the director of the Office of Licensing.

6211 (12) "Domestic violence" is as defined in Section 77-36-1.

6212 (13) "Domestic violence treatment program" means a nonresidential program designed
6213 to provide psychological treatment and educational services to perpetrators and victims of
6214 domestic violence.

6215 (14) "Elder adult" means a person 65 years of age or older.

6216 (15) "Executive director" means the executive director of the department.

6217 (16) "Foster home" means a temporary residential living environment for the care of:

6218 (a) fewer than four foster children in the home of a licensed or certified foster parent;
6219 or

6220 (b) four or more children in the home of a licensed or certified foster parent if the
6221 children are siblings.

6222 (17) (a) "Human services program" means a:

6223 (i) foster home;

6224 (ii) therapeutic school;

6225 (iii) youth program;

6226 (iv) resource family home; or

6227 (v) facility or program that provides:

6228 (A) secure treatment;

6229 (B) inpatient treatment;

6230 (C) residential treatment;

6231 (D) residential support;

6232 (E) adult day care;

6233 (F) day treatment;

6234 (G) outpatient treatment;

6235 (H) domestic violence treatment;

6236 (I) child placing services;

6237 (J) social detoxification; or

6238 (K) any other human services that are required by contract with the department to be
6239 licensed with the department.

6240 (b) "Human services program" does not include a boarding school.

6241 (18) "Licensee" means a person or human services program licensed by the office.

6242 (19) "Local government" means a:

6243 (a) city; or

6244 (b) county.

6245 (20) "Minor" has the same meaning as "child."

6246 (21) "Office" means the Office of Licensing within the Department of Human Services.

6247 (22) "Outpatient treatment" means individual, family, or group therapy or counseling
6248 designed to improve and enhance social or psychological functioning for those whose physical
6249 and emotional status allows them to continue functioning in their usual living environment.

6250 (23) (a) "Person associated with the licensee" means a person:

6251 (i) affiliated with a licensee as an owner, director, member of the governing body,
6252 employee, agent, provider of care, or volunteer; or

6253 (ii) applying to become affiliated with a licensee in any capacity listed under
6254 Subsection (23)(a)(i).

6255 (b) Notwithstanding Subsection (23)(a), "person associated with the licensee" does not
6256 include an individual serving on the following bodies unless that individual has direct access to
6257 children or vulnerable adults:

6258 (i) a local mental health authority under Section 17-43-301;

6259 (ii) a local substance abuse authority under Section 17-43-201; or

6260 (iii) a board of an organization operating under a contract to provide:

6261 (A) mental health or substance abuse programs; or

6262 (B) services for the local mental health authority or substance abuse authority.

6263 (c) "Person associated with the licensee" does not include a guest or visitor whose
6264 access to children or vulnerable adults is directly supervised by the licensee at all times.

6265 (24) "Regular business hours" means:

6266 (a) the hours during which services of any kind are provided to a client; or

6267 (b) the hours during which a client is present at the facility of a licensee.

6268 (25) (a) "Residential support" means arranging for or providing the necessities of life
6269 as a protective service to individuals or families who [~~are disabled~~] have a disability or who are
6270 experiencing a dislocation or emergency that prevents them from providing these services for
6271 themselves or their families.

6272 (b) "Residential support" includes providing a supervised living environment for
6273 persons with:

- 6274 (i) dysfunctions or impairments that are:
- 6275 (A) emotional;
- 6276 (B) psychological;
- 6277 (C) developmental; or
- 6278 (D) behavioral; or
- 6279 (ii) chemical dependencies.
- 6280 (c) Treatment is not a necessary component of residential support.
- 6281 (d) "Residential support" does not include residential services that are performed:
- 6282 (i) exclusively under contract with the Division of Services for People with
- 6283 Disabilities; and
- 6284 (ii) in a facility that serves less than four individuals.
- 6285 (26) (a) "Residential treatment" means a 24-hour group living environment for four or
- 6286 more individuals unrelated to the owner or provider that offers room or board and specialized
- 6287 treatment, behavior modification, rehabilitation, discipline, emotional growth, or habilitation
- 6288 services for persons with emotional, psychological, developmental, or behavioral dysfunctions,
- 6289 impairments, or chemical dependencies.
- 6290 (b) "Residential treatment" does not include a:
- 6291 (i) boarding school; or
- 6292 (ii) foster home.
- 6293 (27) "Residential treatment program" means a human services program that provides:
- 6294 (a) residential treatment; or
- 6295 (b) secure treatment.
- 6296 (28) (a) "Secure treatment" means 24-hour specialized residential treatment or care for
- 6297 persons whose current functioning is such that they cannot live independently or in a less
- 6298 restrictive environment.
- 6299 (b) "Secure treatment" differs from residential treatment to the extent that it requires
- 6300 intensive supervision, locked doors, and other security measures that are imposed on residents
- 6301 with neither their consent nor control.

6302 (29) "Social detoxification" means short-term residential services for persons who are
6303 experiencing or have recently experienced drug or alcohol intoxication, that are provided
6304 outside of a health care facility licensed under Title 26, Chapter 21, Health Care Facility
6305 Licensing and Inspection Act, and that include:

6306 (a) room and board for persons who are unrelated to the owner or manager of the
6307 facility;

6308 (b) specialized rehabilitation to acquire sobriety; and

6309 (c) aftercare services.

6310 (30) "Substance abuse treatment program" means a program:

6311 (a) designed to provide:

6312 (i) specialized drug or alcohol treatment;

6313 (ii) rehabilitation; or

6314 (iii) habilitation services; and

6315 (b) that provides the treatment or services described in Subsection (30)(a) to persons

6316 with:

6317 (i) a diagnosed substance abuse disorder; or

6318 (ii) chemical dependency disorder.

6319 (31) "Therapeutic school" means a residential group living facility:

6320 (a) for four or more individuals that are not related to:

6321 (i) the owner of the facility; or

6322 (ii) the primary service provider of the facility;

6323 (b) that serves students who have a history of failing to function:

6324 (i) at home;

6325 (ii) in a public school; or

6326 (iii) in a nonresidential private school; and

6327 (c) that offers:

6328 (i) room and board; and

6329 (ii) an academic education integrated with:

- 6330 (A) specialized structure and supervision; or
- 6331 (B) services or treatment related to:
 - 6332 (I) a disability;
 - 6333 (II) emotional development;
 - 6334 (III) behavioral development;
 - 6335 (IV) familial development; or
 - 6336 (V) social development.
- 6337 (32) "Unrelated persons" means persons other than parents, legal guardians,
- 6338 grandparents, brothers, sisters, uncles, or aunts.
- 6339 (33) "Vulnerable adult" means an elder adult or an adult who has a temporary or
- 6340 permanent mental or physical impairment that substantially affects the person's ability to:
 - 6341 (a) provide personal protection;
 - 6342 (b) provide necessities such as food, shelter, clothing, or mental or other health care;
 - 6343 (c) obtain services necessary for health, safety, or welfare;
 - 6344 (d) carry out the activities of daily living;
 - 6345 (e) manage the adult's own resources; or
 - 6346 (f) comprehend the nature and consequences of remaining in a situation of abuse,
 - 6347 neglect, or exploitation.
- 6348 (34) (a) "Youth program" means a nonresidential program designed to provide
- 6349 behavioral, substance abuse, or mental health services to minors that:
 - 6350 (i) serves adjudicated or nonadjudicated youth;
 - 6351 (ii) charges a fee for its services;
 - 6352 (iii) may or may not provide host homes or other arrangements for overnight
 - 6353 accommodation of the youth;
 - 6354 (iv) may or may not provide all or part of its services in the outdoors;
 - 6355 (v) may or may not limit or censor access to parents or guardians; and
 - 6356 (vi) prohibits or restricts a minor's ability to leave the program at any time of the
 - 6357 minor's own free will.

6358 (b) "Youth program" does not include recreational programs such as Boy Scouts, Girl
6359 Scouts, 4-H, and other such organizations.

6360 Section 110. Section **62A-2-120** is amended to read:

6361 **62A-2-120. Criminal background checks -- Direct access to children or**
6362 **vulnerable adults.**

6363 (1) (a) Except as provided in Subsection (7), an applicant for an initial license or a
6364 license renewal under this chapter shall submit to the office the names and other identifying
6365 information, which may include fingerprints, of all persons associated with the licensee, as
6366 defined in Section 62A-2-101, with direct access to children or vulnerable adults.

6367 (b) The Criminal Investigations and Technical Services Division of the Department of
6368 Public Safety, or the office as authorized under Section 53-10-108, shall process the
6369 information described in Subsection (1)(a) to determine whether the individual has been
6370 convicted of any crime.

6371 (c) Except as provided in Subsection (1)(d), if an individual has not continuously lived
6372 in Utah for the five years immediately preceding the day on which the information referred to
6373 in Subsection (1)(a) is submitted to the office, the individual shall submit fingerprints for a FBI
6374 national criminal history record check. The fingerprints shall be submitted to the FBI through
6375 the Criminal Investigations and Technical Services Division.

6376 (d) An individual is not required to comply with Subsection (1)(c) if:

6377 (i) the individual continuously lived in Utah for the five years immediately preceding
6378 the day on which the information described in Subsection (1)(a) is submitted to the office,
6379 except for time spent outside of the United States and its territories; and

6380 (ii) the background check of the individual is being conducted for a purpose other than
6381 a purpose described in Subsection (1)(f).

6382 (e) If an applicant described in Subsection (1)(a) spent time outside of the United
6383 States and its territories during the five years immediately preceding the day on which the
6384 information described in Subsection (1)(a) is submitted to the office, the office shall require the
6385 applicant to submit documentation establishing whether the applicant was convicted of a crime

6386 during the time that the applicant spent outside of the United States and its territories.

6387 (f) Notwithstanding Subsections (1)(a) through (e), and except as provided in
6388 Subsection (1)(h), an applicant described in Subsection (1)(a) shall submit fingerprints for an
6389 FBI national criminal history records check, through the Criminal Investigations and Technical
6390 Services Division, if the background check of the applicant is being conducted for the purpose
6391 of:

6392 (i) licensing a prospective foster home; or

6393 (ii) approving a prospective adoptive placement of a child in state custody.

6394 (g) Except as provided in Subsection (1)(h), in addition to the other requirements of
6395 this section, if the background check of an applicant described in Subsection (1)(a) is being
6396 conducted for the purpose of licensing a prospective foster home or approving a prospective
6397 adoptive placement of a child in state custody, the office shall:

6398 (i) check the child abuse and neglect registry in each state where each prospective
6399 foster parent or prospective adoptive parent resided in the five years immediately preceding the
6400 day on which the prospective foster parent or prospective adoptive parent applied to be a foster
6401 parent or adoptive parent, to determine whether the prospective foster parent or prospective
6402 adoptive parent is listed in the registry as having a substantiated or supported finding of child
6403 abuse or neglect; and

6404 (ii) check the child abuse and neglect registry in each state where each adult living in
6405 the home of the prospective foster parent or prospective adoptive parent described in
6406 Subsection (1)(g)(i) resided in the five years immediately preceding the day on which the
6407 prospective foster parent or prospective adoptive parent applied to be a foster parent or
6408 adoptive parent, to determine whether the adult is listed in the registry as having a substantiated
6409 or supported finding of child abuse or neglect.

6410 (h) The requirements under Subsections (1)(f) and (g) do not apply to the extent that:

6411 (i) federal law or rule permits otherwise; or

6412 (ii) the requirements would prohibit the Division of Child and Family Services or a
6413 court from placing a child with:

6414 (A) a noncustodial parent under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

6415 (B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307,
6416 or 78A-6-307.5, pending completion of the background check described in Subsections (1)(f)
6417 and (g).

6418 (i) The office shall make rules, in accordance with Title 63G, Chapter 3, Utah
6419 Administrative Rulemaking Act, to implement the provisions of this Subsection (1) relating to
6420 background checks.

6421 (2) The office shall approve a person for whom identifying information is submitted
6422 under Subsection (1) to have direct access to children or vulnerable adults in the licensee
6423 program if:

6424 (a) (i) the person is found to have no criminal history record; or

6425 (ii) (A) the only convictions in the person's criminal history record are misdemeanors
6426 or infractions not involving any of the offenses described in Subsection (3); and

6427 (B) the date of the last conviction under Subsection (2)(a)(ii)(A) is more than five years
6428 before the date of the search;

6429 (b) the person is not listed in the statewide database of the Division of Aging and Adult
6430 Services created by Section 62A-3-311.1;

6431 (c) juvenile court records do not show that a court made a substantiated finding, under
6432 Section 78A-6-323, that the person committed a severe type of child abuse or neglect;

6433 (d) the person is not listed in the Licensing Information System of the Division of
6434 Child and Family Services created by Section 62A-4a-1006;

6435 (e) the person has not pled guilty or no contest to a pending charge for any:

6436 (i) felony;

6437 (ii) misdemeanor listed in Subsection (3); or

6438 (iii) infraction listed in Subsection (3); and

6439 (f) for a person described in Subsection (1)(g), the registry check described in
6440 Subsection (1)(g) does not indicate that the person is listed in a child abuse and neglect registry
6441 of another state as having a substantiated or supported finding of a severe type of child abuse or

6442 neglect as defined in Section 62A-4a-1002.

6443 (3) Except as provided in Subsection (8), unless at least 10 years have passed since the
6444 date of conviction, the office may not approve a person to have direct access to children or
6445 vulnerable adults in the licensee's human services program if that person has been convicted of
6446 an offense, whether a felony, misdemeanor, or infraction, that is:

6447 (a) identified as a sexual offense, domestic violence, lewdness, assault, or battery;

6448 (b) a violation of any pornography law, including sexual exploitation of a minor;

6449 (c) prostitution;

6450 (d) included in:

6451 (i) Title 76, Chapter 5, Offenses Against the Person;

6452 (ii) Title 76, Chapter 5a, Sexual Exploitation of Children; or

6453 (iii) Title 76, Chapter 7, Offenses Against the Family;

6454 (e) a violation of Section 76-6-103, aggravated arson;

6455 (f) a violation of Section 76-6-203, aggravated burglary;

6456 (g) a violation of Section 76-6-302, aggravated robbery; or

6457 (h) a conviction for an offense committed outside of the state that, if committed in the
6458 state, would constitute a violation of an offense described in Subsections (3)(d) through (g).

6459 (4) (a) Except as provided in Subsection (8), if a person for whom identifying
6460 information is submitted under Subsection (1) is not approved by the office under Subsection
6461 (2) or (3) to have direct access to children or vulnerable adults in the licensee program, the
6462 office shall conduct a comprehensive review of criminal and court records and related
6463 circumstances if the reason the approval is not granted is due solely to one or more of the
6464 following:

6465 (i) a conviction for:

6466 (A) any felony not listed in Subsection (3);

6467 (B) any misdemeanor or infraction, not listed in Subsection (3), within five years of the
6468 date of the search;

6469 (C) a protective order or ex parte protective order violation under Section 76-5-108 or

6470 a similar statute in another state; or
6471 (D) any felony, misdemeanor, or infraction listed in Subsection (3) if at least 10 years
6472 have passed since the date of conviction;
6473 (ii) a plea of guilty or no contest to a pending:
6474 (A) felony;
6475 (B) misdemeanor listed in Subsection (3); or
6476 (C) infraction listed in Subsection (3);
6477 (iii) the person is listed in the statewide database of the Division of Aging and Adult
6478 Services created by Section 62A-3-311.1;
6479 (iv) juvenile court records show that a court made a substantiated finding, under
6480 Section 78A-6-323, that the person committed a severe type of child abuse or neglect;
6481 (v) the person is listed in the Licensing Information System of the Division of Child
6482 and Family Services created by Section 62A-4a-1006; or
6483 (vi) the person is listed in a child abuse or neglect registry of another state as having a
6484 substantiated or supported finding of a severe type of child abuse or neglect as defined in
6485 Section 62A-4a-1002.
6486 (b) The comprehensive review under Subsection (4)(a) shall include an examination of:
6487 (i) the date of the offense or incident;
6488 (ii) the nature and seriousness of the offense or incident;
6489 (iii) the circumstances under which the offense or incident occurred;
6490 (iv) the age of the perpetrator when the offense or incident occurred;
6491 (v) whether the offense or incident was an isolated or repeated incident;
6492 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
6493 adult, including:
6494 (A) actual or threatened, nonaccidental physical or mental harm;
6495 (B) sexual abuse;
6496 (C) sexual exploitation; and
6497 (D) negligent treatment;

6498 (vii) any evidence provided by the person of rehabilitation, counseling, or psychiatric
6499 treatment received, or additional academic or vocational schooling completed, by the person;
6500 and

6501 (viii) any other pertinent information.

6502 (c) At the conclusion of the comprehensive review under Subsection (4)(a), the office
6503 shall approve the person who is the subject of the review to have direct access to children or
6504 vulnerable adults, unless it finds that approval will likely create a risk of harm to a child or
6505 vulnerable adult.

6506 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
6507 office may make rules, consistent with this chapter, defining procedures for the comprehensive
6508 review described in this Subsection (4).

6509 (5) (a) For purposes of this Subsection (5), "directly supervised" means that the person
6510 being supervised is under the uninterrupted visual and auditory surveillance of the person doing
6511 the supervising.

6512 (b) A licensee may not permit any person to have direct access to a child or a
6513 vulnerable adult unless, subject to Subsection (5)(c), that person is:

6514 (i) associated with the licensee and:

6515 (A) approved by the office to have direct access to children or vulnerable adults under
6516 this section; or

6517 (B) (I) the office has not determined whether to approve that person to have direct
6518 access to children or vulnerable adults;

6519 (II) the information described in Subsection (1)(a), relating to that person, is submitted
6520 to the department; and

6521 (III) that person is directly supervised by a person associated with the licensee who is
6522 approved by the office to have direct access to children or vulnerable adults under this section;

6523 (ii) (A) not associated with the licensee; and

6524 (B) directly supervised by a person associated with the licensee who is approved by the
6525 office to have direct access to children or vulnerable adults under this section;

6526 (iii) the parent or guardian of the child or vulnerable adult; or

6527 (iv) a person approved by the parent or guardian of the child or vulnerable adult to
6528 have direct access to the child or vulnerable adult.

6529 (c) Notwithstanding Subsection (5)(b), a person may not have direct access to a child
6530 or a vulnerable adult if that person is prohibited by court order from having that access.

6531 (6) (a) Within 30 days after receiving the identifying information for a person under
6532 Subsection (1), the office shall give written notice to the person and to the licensee or applicant
6533 with whom the person is associated of:

6534 (i) the office's decision regarding its background screening clearance and findings; and

6535 (ii) a list of any convictions found in the search.

6536 (b) With the notice described in Subsection (6)(a), the office shall also give to the
6537 person the details of any comprehensive review conducted under Subsection (4).

6538 (c) If the notice under Subsection (6)(a) states that the person is not approved to have
6539 direct access to children or vulnerable adults, the notice shall further advise the persons to
6540 whom the notice is given that either the person or the licensee or applicant with whom the
6541 person is associated, or both, may, under Subsection 62A-2-111(2), request a hearing in the
6542 department's Office of Administrative Hearings, to challenge the office's decision.

6543 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
6544 office shall make rules, consistent with this chapter:

6545 (i) defining procedures for the challenge of its background screening decision
6546 described in this Subsection (6); and

6547 (ii) expediting the process for renewal of a license under the requirements of this
6548 section and other applicable sections.

6549 (7) Notwithstanding Subsection (1)(a), this section does not apply to an applicant for
6550 an initial license, or license renewal, to operate a substance abuse program that provides
6551 services to adults only.

6552 (8) (a) Notwithstanding Subsections (2) through (4), the office may not approve or
6553 license a person as a prospective foster parent or a prospective adoptive parent if the person has

6554 been convicted of:

6555 (i) a felony involving conduct that constitutes any of the following:

6556 (A) child abuse, as described in Section 76-5-109;

6557 (B) commission of domestic violence in the presence of a child, as described in Section
6558 76-5-109.1;

6559 (C) abuse or neglect of a [~~disabled~~] child with a disability, as described in Section
6560 76-5-110;

6561 (D) endangerment of a child, as described in Section 76-5-112.5;

6562 (E) aggravated murder, as described in Section 76-5-202;

6563 (F) murder, as described in Section 76-5-203;

6564 (G) manslaughter, as described in Section 76-5-205;

6565 (H) child abuse homicide, as described in Section 76-5-208;

6566 (I) homicide by assault, as described in Section 76-5-209;

6567 (J) kidnapping, as described in Section 76-5-301;

6568 (K) child kidnapping, as described in Section 76-5-301.1;

6569 (L) aggravated kidnapping, as described in Section 76-5-302;

6570 (M) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

6571 (N) an offense described in Title 76, Chapter 5a, Sexual Exploitation of Children;

6572 (O) aggravated arson, as described in Section 76-6-103;

6573 (P) aggravated burglary, as described in Section 76-6-203;

6574 (Q) aggravated robbery, as described in Section 76-6-302; or

6575 (R) domestic violence, as described in Section 77-36-1; or

6576 (ii) an offense committed outside the state that, if committed in the state, would
6577 constitute a violation of an offense described in Subsection (8)(a)(i).

6578 (b) Notwithstanding Subsections (2) through (4), the office may not approve or license
6579 a person as a prospective foster parent or a prospective adoptive parent if, within the five years
6580 immediately preceding the day on which the person would otherwise be approved or licensed,
6581 the person has been convicted of a felony involving conduct that constitutes any of the

6582 following:

- 6583 (i) aggravated assault, as described in Section 76-5-103;
- 6584 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 6585 (iii) mayhem, as described in Section 76-5-105;
- 6586 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 6587 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 6588 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances

6589 Act;

- 6590 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance

6591 Precursor Act; or

- 6592 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

6593 (9) If any provision of this section conflicts with a provision of Section 62A-2-120.5,
6594 the conflicting provision of Section 62A-2-120.5 shall govern.

6595 Section 111. Section **62A-2-122** is amended to read:

6596 **62A-2-122. Access to vulnerable adult abuse and neglect information.**

6597 (1) For purposes of this section:

6598 (a) "Direct service worker" is as defined in Section 62A-5-101.

6599 (b) "Personal care attendant" is as defined in Section 62A-3-101.

6600 (2) With respect to a licensee, a certified local inspector applicant, a direct service
6601 worker, or a personal care attendant, the department may access the database created by Section
6602 62A-3-311.1 for the purpose of:

6603 (a) (i) determining whether a person associated with a licensee, with direct access to
6604 vulnerable adults, has a supported or substantiated finding of:

6605 (A) abuse;

6606 (B) neglect; or

6607 (C) exploitation; and

6608 (ii) informing a licensee that a person associated with the licensee has a supported or
6609 substantiated finding of:

- 6610 (A) abuse;
- 6611 (B) neglect; or
- 6612 (C) exploitation;
- 6613 (b) (i) determining whether a certified local inspector applicant has a supported or
- 6614 substantiated finding of:
 - 6615 (A) abuse;
 - 6616 (B) neglect; or
 - 6617 (C) exploitation; and
- 6618 (ii) informing a local government that a certified local inspector applicant has a
- 6619 supported or substantiated finding of:
 - 6620 (A) abuse;
 - 6621 (B) neglect; or
 - 6622 (C) exploitation;
- 6623 (c) (i) determining whether a direct service worker has a supported or substantiated
- 6624 finding of:
 - 6625 (A) abuse;
 - 6626 (B) neglect; or
 - 6627 (C) exploitation; and
- 6628 (ii) informing a direct service worker or the direct service worker's employer that the
- 6629 direct service worker has a supported or substantiated finding of:
 - 6630 (A) abuse;
 - 6631 (B) neglect; or
 - 6632 (C) exploitation; or
- 6633 (d) (i) determining whether a personal care attendant has a supported or substantiated
- 6634 finding of:
 - 6635 (A) abuse;
 - 6636 (B) neglect; or
 - 6637 (C) exploitation; and

6638 (ii) informing a person described in Subsections 62A-3-101[~~(8)~~] (9)(a)(i) through (iv)
6639 that a personal care attendant has a supported or substantiated finding of:

- 6640 (A) abuse;
- 6641 (B) neglect; or
- 6642 (C) exploitation.

6643 (3) After receiving identifying information for a person under Subsection
6644 62A-2-120(1), the department shall process the information for the purposes described in
6645 Subsection (2).

6646 (4) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative
6647 Rulemaking Act, consistent with this chapter and Title 62A, Chapter 3, Part 3, Abuse, Neglect,
6648 or Exploitation of a Vulnerable [~~Adults~~] Adult, defining the circumstances under which a
6649 person may have direct access or provide services to vulnerable adults when the person is listed
6650 in the statewide database of the Division of Aging and Adult Services created by Section
6651 62A-3-311.1 as having a supported or substantiated finding of abuse, neglect, or exploitation.

6652 Section 112. Section **62A-4a-1010** is amended to read:

6653 **CHAPTER 3. AGING AND ADULT SERVICES**

6654 **Part 3. Abuse, Neglect, or Exploitation of a Vulnerable Adult**

6655 **62A-4a-1010. Notice and opportunity for court hearing for persons listed in**
6656 **Licensing Information System.**

6657 (1) Persons whose names were listed on the Licensing Information System as of May
6658 6, 2002 and who have not been the subject of a court determination with respect to the alleged
6659 incident of abuse or neglect may at any time:

- 6660 (a) request review by the division of their case and removal of their name from the
6661 Licensing Information System pursuant to Subsection (3); or
- 6662 (b) file a petition for an evidentiary hearing and a request for a finding of
6663 unsubstantiated or without merit.

6664 (2) Subsection (1) does not apply to an individual who has been the subject of any of
6665 the following court determinations with respect to the alleged incident of abuse or neglect:

- 6666 (a) conviction;
- 6667 (b) adjudication under Title 78A, Chapter 6, Juvenile Court Act of 1996;
- 6668 (c) plea of guilty;
- 6669 (d) plea of guilty [~~and mentally ill~~] with a mental illness; or
- 6670 (e) no contest.

6671 (3) If an alleged perpetrator listed on the Licensing Information System prior to May 6,
6672 2002, requests removal of the alleged perpetrator's name from the Licensing Information
6673 System, the division shall, within 30 days:

6674 (a) (i) review the case to determine whether the incident of alleged abuse or neglect
6675 qualifies as:

- 6676 (A) a severe type of child abuse or neglect;
- 6677 (B) chronic abuse; or
- 6678 (C) chronic neglect; and

6679 (ii) if the alleged abuse or neglect does not qualify as a type of abuse or neglect
6680 described in Subsections (3)(a)(i)(A) through (C), remove the alleged perpetrator's name from
6681 the Licensing Information System; or

6682 (b) determine whether to file a petition for substantiation.

6683 (4) If the division decides to file a petition, that petition must be filed no more than 14
6684 days after the decision.

6685 (5) The juvenile court shall act on the petition as provided in Subsection 78A-6-323(3).

6686 (6) If a person whose name appears on the Licensing Information System prior to May
6687 6, 2002 files a petition pursuant to Section 78A-6-323 during the time that an alleged
6688 perpetrator's application for clearance to work with children or vulnerable adults is pending, the
6689 court shall hear the matter on an expedited basis.

6690 Section 113. Section **62A-5-101** is amended to read:

6691 **62A-5-101. Definitions.**

6692 As used in this chapter:

- 6693 (1) "Approved provider" means a person approved by the division to provide

6694 home-based services.

6695 (2) (a) "Brain injury" means an acquired injury to the brain that is neurological in
6696 nature, including a cerebral vascular accident.

6697 (b) "Brain injury" does not include a deteriorating disease.

6698 (3) "Designated [~~mental retardation~~] intellectual disability professional" means:

6699 (a) a psychologist licensed under Title 58, Chapter 61, Psychologist Licensing Act,
6700 who:

6701 (i) (A) has at least one year of specialized training in working with persons with
6702 [~~mental retardation~~] an intellectual disability; or

6703 (B) has at least one year of clinical experience with persons with [~~mental retardation~~]
6704 an intellectual disability; and

6705 (ii) is designated by the division as specially qualified, by training and experience, in
6706 the treatment of [~~mental retardation~~] an intellectual disability; or

6707 (b) a clinical social worker, certified social worker, marriage and family therapist, or
6708 professional counselor, licensed under Title 58, Chapter 60, Mental Health Professional
6709 Practice Act, who:

6710 (i) has at least two years of clinical experience with persons with [~~mental retardation~~]
6711 an intellectual disability; and

6712 (ii) is designated by the division as specially qualified, by training and experience, in
6713 the treatment of [~~mental retardation~~] an intellectual disability.

6714 (4) "Deteriorating disease" includes:

6715 (a) multiple sclerosis;

6716 (b) muscular dystrophy;

6717 (c) Huntington's chorea;

6718 (d) Alzheimer's disease;

6719 (e) ataxia; or

6720 (f) cancer.

6721 (5) "Developmental center" means the Utah State Developmental Center, established in

6722 accordance with Part 2, Utah State Developmental Center.

6723 (6) "Direct service worker" means a person who provides services to a person with a
6724 disability:

6725 (a) when the services are rendered in:

6726 (i) the physical presence of the person with a disability; or

6727 (ii) a location where the person rendering the services has access to the physical
6728 presence of the person with a disability; and

6729 (b) (i) under a contract with the division;

6730 (ii) under a grant agreement with the division; or

6731 (iii) as an employee of the division.

6732 (7) "Director" means the director of the Division of Services for People with
6733 Disabilities.

6734 (8) (a) "Disability" means a severe, chronic disability that:

6735 (i) is attributable to:

6736 (A) [~~mental retardation~~] an intellectual disability;

6737 (B) a condition that qualifies a person as a person with a related condition, as defined
6738 in 42 C.F.R. 435.1009;

6739 (C) a physical disability; or

6740 (D) a brain injury;

6741 (ii) is likely to continue indefinitely;

6742 (iii) (A) for a condition described in Subsection (8)(a)(i)(A), (B), or (C), results in a
6743 substantial functional limitation in three or more of the following areas of major life activity:

6744 (I) self-care;

6745 (II) receptive and expressive language;

6746 (III) learning;

6747 (IV) mobility;

6748 (V) self-direction;

6749 (VI) capacity for independent living; or

- 6750 (VII) economic self-sufficiency; or
6751 (B) for a condition described in Subsection (8)(a)(i)(D), results in a substantial
6752 limitation in three or more of the following areas:
- 6753 (I) memory or cognition;
 - 6754 (II) activities of daily life;
 - 6755 (III) judgment and self-protection;
 - 6756 (IV) control of emotions;
 - 6757 (V) communication;
 - 6758 (VI) physical health; or
 - 6759 (VII) employment; and
- 6760 (iv) requires a combination or sequence of special interdisciplinary or generic care,
6761 treatment, or other services that:
- 6762 (A) may continue throughout life; and
 - 6763 (B) must be individually planned and coordinated.
- 6764 (b) "Disability" does not include a condition due solely to:
- 6765 (i) mental illness;
 - 6766 (ii) personality disorder;
 - 6767 (iii) hearing impairment;
 - 6768 (iv) visual impairment;
 - 6769 (v) learning disability;
 - 6770 (vi) behavior disorder;
 - 6771 (vii) substance abuse; or
 - 6772 (viii) the aging process.
- 6773 (9) "Division" means the Division of Services for People with Disabilities.
- 6774 (10) "Eligible to receive division services" or "eligibility" means qualification, based
6775 on criteria established by the division in accordance with Subsection 62A-5-102(4), to receive
6776 services that are administered by the division.
- 6777 (11) "Endorsed program" means a facility or program that:

6778 (a) is operated:
6779 (i) by the division; or
6780 (ii) under contract with the division; or
6781 (b) provides services to a person committed to the division under Part 3, Admission to
6782 ~~[Mental Retardation Facility]~~ an Intermediate Care Facility for People with an Intellectual
6783 Disability.

6784 (12) "Licensed physician" means:

6785 (a) an individual licensed to practice medicine under:
6786 (i) Title 58, Chapter 67, Utah Medical Practice Act; or
6787 (ii) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or
6788 (b) a medical officer of the United States Government while in this state in the
6789 performance of official duties.

6790 ~~[(13) "Mental retardation" means a significant, subaverage general intellectual~~
6791 ~~functioning, that:]~~

6792 ~~[(a) exists concurrently with deficits in adaptive behavior; and]~~

6793 ~~[(b) is manifested during the developmental period as defined in the current edition of~~
6794 ~~the Diagnostic and Statistical Manual of Mental Disorders, published by the American~~
6795 ~~Psychiatric Association.:]~~

6796 ~~[(14) "Mental retardation facility" means a residential facility for a person with mental~~
6797 ~~retardation, that receives state or federal funds under Title XIX of the federal Social Security~~
6798 ~~Act, for the purpose of serving a mentally retarded person in this state.:]~~

6799 ~~[(15)]~~ (13) "Physical disability" means a medically determinable physical impairment
6800 that has resulted in the functional loss of two or more of a person's limbs.

6801 ~~[(16)]~~ (14) "Public funds" means state or federal funds that are disbursed by the
6802 division.

6803 ~~[(17)]~~ (15) "Resident" means an individual under observation, care, or treatment in [~~a~~
6804 ~~mental retardation facility]~~ an intermediate care facility for people with an intellectual
6805 disability.

6806 Section 114. Section **62A-5-103** is amended to read:
6807 **62A-5-103. Responsibility and authority of division.**
6808 (1) For purposes of this section "administer" means to:
6809 (a) plan;
6810 (b) develop;
6811 (c) manage;
6812 (d) monitor; and
6813 (e) conduct certification reviews.
6814 (2) The division has the authority and responsibility to:
6815 (a) administer an array of services and supports for persons with disabilities and their
6816 families throughout the state;
6817 (b) make rules in accordance with Title 63G, Chapter 3, Utah Administrative
6818 Rulemaking Act, that establish eligibility criteria for the services and supports described in
6819 Subsection (2)(a);
6820 (c) consistent with Section 62A-5-206, supervise the programs and facilities of the
6821 Developmental Center;
6822 (d) in order to enhance the quality of life for a person with a disability, establish either
6823 directly, or by contract with private, nonprofit organizations, programs of:
6824 (i) outreach;
6825 (ii) information and referral;
6826 (iii) prevention;
6827 (iv) technical assistance; and
6828 (v) public awareness;
6829 (e) supervise the programs and facilities operated by, or under contract with, the
6830 division;
6831 (f) cooperate with other state, governmental, and private agencies that provide services
6832 to a person with a disability;
6833 (g) subject to Subsection (3), ensure that a person with a disability is not deprived of

6834 that person's constitutionally protected rights without due process procedures designed to
6835 minimize the risk of error when a person with a disability is admitted to [~~any structured~~
6836 ~~residential mental retardation facility~~] an intermediate care facility for people with an
6837 intellectual disability, including:

- 6838 (i) the developmental center; and
- 6839 (ii) facilities within the community;
- 6840 (h) determine whether to approve providers;
- 6841 (i) monitor and sanction approved providers, as specified in the providers' contract;
- 6842 (j) subject to Section 62A-5-103.5, receive and disburse public funds;
- 6843 (k) review financial actions of a provider who is a representative payee appointed by
6844 the Social Security Administration;
- 6845 (l) establish standards and rules for the administration and operation of programs
6846 conducted by, or under contract with, the division;
- 6847 (m) approve and monitor division programs to insure compliance with the board's rules
6848 and standards;
- 6849 (n) establish standards and rules necessary to fulfill the division's responsibilities under
6850 Parts 2, Utah State Developmental Center, and 3 [~~of this chapter~~], Admission to an
6851 Intermediate Care Facility for People with an Intellectual Disability, with regard to [~~mental~~
6852 ~~retardation facilities~~] an intermediate care facility for people with an intellectual disability;
- 6853 (o) assess and collect equitable fees for a person who receives services provided under
6854 this chapter;
- 6855 (p) maintain records of, and account for, the funds described in Subsection (2)(o);
- 6856 (q) establish and apply rules to determine whether to approve, deny, or defer the
6857 division's services to a person who is:
 - 6858 (i) applying to receive the services; or
 - 6859 (ii) currently receiving the services;
 - 6860 (r) in accordance with state law, establish rules:
 - 6861 (i) relating to [~~a mental retardation facility~~] an intermediate care facility for people with

6862 an intellectual disability that is an endorsed program; and

6863 (ii) governing the admission, transfer, and discharge of a person with a disability;

6864 (s) manage funds for a person residing in a facility operated by the division:

6865 (i) upon request of a parent or guardian of the person; or

6866 (ii) under administrative or court order; and

6867 (t) fulfill the responsibilities described in Chapter 5a, Coordinating Council for Persons

6868 with Disabilities.

6869 (3) The due process procedures described in Subsection (2)(g):

6870 (a) shall include initial and periodic reviews to determine the constitutional

6871 appropriateness of the placement; and

6872 (b) with regard to facilities in the community, do not require commitment to the

6873 division.

6874 Section 115. Section **62A-5-104** is amended to read:

6875 **62A-5-104. Director -- Qualifications -- Responsibilities.**

6876 (1) The director of the division shall be appointed by the executive director.

6877 (2) The director shall have a bachelor's degree from an accredited university or college,

6878 be experienced in administration, and be knowledgeable in developmental disabilities, [~~mental~~

6879 ~~retardation~~] intellectual disability, and other disabilities.

6880 (3) The director is the administrative head of the division.

6881 (4) The director shall appoint the superintendent of the developmental center and the

6882 necessary and appropriate administrators for other facilities operated by the division with the

6883 concurrence of the executive director.

6884 Section 116. Section **62A-5-110** is amended to read:

6885 **62A-5-110. Discretionary trusts for persons with disabilities -- Impact on state**

6886 **services.**

6887 (1) For purposes of this section:

6888 (a) "Discretionary trust for a person with disabilities" means a trust:

6889 (i) that is established for the benefit of an individual who, at the time the trust is

6890 created, is under age 65 and has a disability as defined in 42 U.S.C. Sec. 1382c;
6891 (ii) under which the trustee has discretionary power to determine distributions;
6892 (iii) under which the beneficiary may not control or demand payments unless an abuse
6893 of the trustee's duties or discretion is shown;
6894 (iv) that contains the assets of the beneficiary and is established for the benefit of the
6895 beneficiary by a parent, grandparent, legal guardian, or court;
6896 (v) that is irrevocable, except that the trust document may provide that the trust be
6897 terminated if the beneficiary no longer has a disability as defined in 42 U.S.C. Sec. 1382c;
6898 (vi) that is invalid as to any portion funded by property that is or may be subject to a
6899 lien by the state; and
6900 (vii) providing that, upon the death of the beneficiary, the state will receive all amounts
6901 remaining in the trust, up to an amount equal to the total medical assistance paid on behalf of
6902 the beneficiary.
6903 (b) "Medical assistance" means the same as that term is defined in Section 26-18-2.
6904 (2) A state agency providing services or support to a person with disabilities may:
6905 (a) waive application of Subsection (1)(a)(v) with respect to that individual if it
6906 determines that application of the criteria would place an undue hardship upon that individual;
6907 and
6908 (b) define, by rule, what constitutes "undue hardship" for purposes of this section.
6909 (3) A discretionary trust for a person with disabilities is not liable for reimbursement or
6910 payment to the state or any state agency, for financial aid or services provided to that individual
6911 except:
6912 (a) to the extent that the trust property has been distributed directly to or is otherwise
6913 under the control of the [~~disabled~~] beneficiary with a disability; or
6914 (b) as provided in Subsection (1)(a)(vi).
6915 (4) Property, goods, and services that are purchased or owned by a discretionary trust
6916 for a person with disabilities and that are used or consumed by a [~~disabled~~] beneficiary with a
6917 disability shall not be considered trust property that is distributed to or under the control of the

6918 beneficiary.

6919 (5) The benefits that a person with disabilities is otherwise legally entitled to may not
6920 be reduced, impaired, or diminished in any way because of contribution to a discretionary trust
6921 for that person.

6922 (6) All state agencies shall disregard a discretionary trust for a person with disabilities,
6923 as defined in Subsection (1), as a resource when determining eligibility for services or support
6924 except as, and only to the extent that it is otherwise prohibited by federal law.

6925 (7) This section applies to all discretionary trusts that meet the requirements contained
6926 in Subsection (1) created before, on, or after July 1, 1994.

6927 Section 117. Section **62A-5-201** is amended to read:

6928 **62A-5-201. Utah State Developmental Center.**

6929 (1) [~~The facility for persons with mental retardation~~] The intermediate care facility for
6930 people with an intellectual disability located in American Fork City, Utah County, shall be
6931 known as the "Utah State Developmental Center."

6932 (2) Within appropriations authorized by the Legislature, the role and function of the
6933 developmental center is to:

6934 (a) provide care, services, and treatment to persons described in Subsection (3); and
6935 (b) provide the following services and support to persons with disabilities who do not
6936 reside at the developmental center:

- 6937 (i) psychiatric testing;
6938 (ii) specialized medical and dental treatment and evaluation;
6939 (iii) family and client special intervention;
6940 (iv) crisis management;
6941 (v) occupational, physical, speech, and audiology services; and
6942 (vi) professional services, such as education, evaluation, and consultation, for families,
6943 public organizations, providers of community and family support services, and courts.

6944 (3) Except as provided in Subsection (6), within appropriations authorized by the
6945 Legislature, and notwithstanding the provisions of Part 3, Admission to [~~Mental Retardation~~

6946 Facility] an Intermediate Care Facility for People with an Intellectual Disability, only the
6947 following persons may be residents of, be admitted to, or receive care, services, or treatment at
6948 the developmental center:

- 6949 (a) persons with [~~mental retardation~~] an intellectual disability;
- 6950 (b) persons who receive services and supports under Subsection (2)(b); and
- 6951 (c) persons who require at least one of the following services from the developmental
6952 center:

- 6953 (i) continuous medical care;
- 6954 (ii) intervention for conduct that is dangerous to self or others; or
- 6955 (iii) temporary residential assessment and evaluation.

6956 (4) (a) Except as provided in Subsection (6), the division shall, in the division's
6957 discretion:

- 6958 (i) place residents from the developmental center into appropriate less restrictive
6959 placements; and
- 6960 (ii) determine each year the number to be placed based upon the individual assessed
6961 needs of the residents.

6962 (b) The division shall confer with parents and guardians to ensure the most appropriate
6963 placement for each resident.

6964 (5) Except as provided in Subsection (7), within appropriations authorized by the
6965 Legislature, and notwithstanding the provisions of Subsection (3) and Part 3, Admission to
6966 [~~Mental Retardation Facility~~] an Intermediate Care Facility for People with an Intellectual
6967 Disability, a person who is under 18 years of age may be a resident of, admitted to, or receive
6968 care, services, or treatment at the developmental center only if the director certifies in writing
6969 that the developmental center is the most appropriate placement for that person.

6970 (6) (a) If the division determines, pursuant to Utah's [~~Home and Community-Based~~
6971 ~~Services Waiver for Individuals with Mental Retardation and Other Related Conditions~~]
6972 Community Supports Waiver (CSW) for Individuals with Intellectual Disabilities and Other
6973 Related Conditions, that a person who otherwise qualifies for placement in an [~~ICF/MR~~]

6974 intermediate care facility for people with an intellectual disability should receive services in a
6975 home or community-based setting, the division shall:

6976 (i) if the person does not have a legal representative or legal guardian:

6977 (A) inform the person of any feasible alternatives under the waiver; and

6978 (B) give the person the choice of being placed in an [~~ICF/MR~~] intermediate care
6979 facility for people with an intellectual disability or receiving services in a home or
6980 community-based setting; or

6981 (ii) if the person has a legal representative or legal guardian:

6982 (A) inform the legal representative or legal guardian of any feasible alternatives under
6983 the waiver; and

6984 (B) give the legal representative or legal guardian the choice of having the person
6985 placed in an [~~ICF/MR~~] intermediate care facility for people with an intellectual disability or
6986 receiving services in a home or community-based setting.

6987 (b) If a person chooses, under Subsection (6)(a)(i), to be placed in an [~~ICF/MR~~]
6988 intermediate care facility for people with an intellectual disability instead of receiving services
6989 in a home or community-based setting, the division shall:

6990 (i) ask the person whether the person prefers to be placed in the developmental center
6991 rather than a private [~~ICF/MR~~] intermediate care facility for people with an intellectual
6992 disability; and

6993 (ii) if the person expresses a preference to be placed in the developmental center:

6994 (A) place the person in the developmental center if the cost of placing the person in the
6995 developmental center is equal to, or less than, the cost of placing the person in a private
6996 [~~ICF/MR~~] intermediate care facility for people with an intellectual disability; or

6997 (B) (I) strongly consider the person's preference to be placed in the developmental
6998 center if the cost of placing the person in the developmental center exceeds the cost of placing
6999 the person in a private [~~ICF/MR~~] intermediate care facility for people with an intellectual
7000 disability; and

7001 (II) place the person in the developmental center or a private [~~ICF/MR~~] intermediate

7002 care facility for people with an intellectual disability.

7003 (c) If a legal representative or legal guardian chooses, under Subsection (6)(a)(ii), to
7004 have the person placed in an [~~ICF/MR~~] intermediate care facility for people with an intellectual
7005 disability instead of receiving services in a home or community-based setting, the division
7006 shall:

7007 (i) ask the legal representative or legal guardian whether the legal representative or
7008 legal guardian prefers to have the person placed in the developmental center rather than a
7009 private [~~ICF/MR~~] intermediate care facility for people with an intellectual disability; and

7010 (ii) if the legal representative or legal guardian expresses a preference to have the
7011 person placed in the developmental center:

7012 (A) place the person in the developmental center if the cost of placing the person in the
7013 developmental center is equal to, or less than, the cost of placing the person in a private
7014 [~~ICF/MR~~] intermediate care facility for people with an intellectual disability; or

7015 (B) (I) strongly consider the legal representative's or legal guardian's preference for the
7016 person's placement if the cost of placing the person in the developmental center exceeds the
7017 cost of placing the person in a private [~~ICF/MR~~] intermediate care facility for people with an
7018 intellectual disability; and

7019 (II) place the person in the developmental center or a private [~~ICF/MR~~] intermediate
7020 care facility for people with an intellectual disability.

7021 (7) The certification described in Subsection (5) is not required for a person who
7022 receives services and support under Subsection (2)(b).

7023 Section 118. Section **62A-5-206** is amended to read:

7024 **62A-5-206. Powers and duties of division.**

7025 The powers and duties of the division, with respect to the developmental center are as
7026 follows:

7027 (1) to establish rules, not inconsistent with law, for the government of the
7028 developmental center;

7029 (2) to receive, take, and hold property, both real and personal, in trust for the state for

7030 the use and benefit of the developmental center;

7031 (3) to establish rules governing the admission and discharge of persons with [~~mental~~
7032 ~~retardation~~] an intellectual disability in accordance with state law;

7033 (4) to employ necessary medical and other professional personnel to assist in
7034 establishing rules relating to the developmental center and to the treatment and training of
7035 persons with [~~mental retardation~~] an intellectual disability at the center;

7036 (5) to transfer a person who has been committed to the developmental center under
7037 Part 3 of this chapter to any other facility or program operated by or under contract with the
7038 division, after careful evaluation of the treatment needs of that person, if the facilities or
7039 programs available meet the needs indicated, and if transfer would be in the best interest of that
7040 person. A person transferred shall remain under the jurisdiction of the division;

7041 (6) the developmental center may receive a person who meets the requirements of
7042 Subsection 62A-5-201(3) from any other facility or program operated by or under contract with
7043 the division, after careful evaluation of the treatment needs of that person, if the facility or
7044 programs of the developmental center meet those needs, and if transfer would be in the best
7045 interest of that person. A person so received by the developmental center remains under the
7046 jurisdiction of the division;

7047 (7) to manage funds for a person residing in the developmental center, upon request by
7048 that person's parent or guardian, or upon administrative or court order;

7049 (8) to charge and collect a fair and equitable fee from developmental center residents,
7050 parents who have the ability to pay, or guardians where funds for that purpose are available;
7051 and

7052 (9) supervision and administration of security responsibilities for the developmental
7053 center is vested in the division. The executive director may designate, as special function
7054 officers, individuals to perform special security functions for the developmental center that
7055 require peace officer authority. Those special function officers may not become or be
7056 designated as members of the Public Safety Retirement System.

7057 Section 119. Section **62A-5-207** is amended to read:

7058 **62A-5-207. Superintendent -- Qualifications.**

7059 The superintendent of the developmental center, appointed in accordance with
7060 Subsection 62A-5-104(4), shall have a bachelor's degree from an accredited university or
7061 college, be experienced in administration, and be knowledgeable in developmental disabilities
7062 and [~~mental retardation~~] intellectual disability.

7063 Section 120. Section **62A-5-302** is amended to read:

7064 **Part 3. Admission to an Intermediate Care Facility for People with an Intellectual**
7065 **Disability**

7066 **62A-5-302. Division responsibility.**

7067 The division is responsible:

7068 (1) for the supervision, care, and treatment of persons with [~~mental retardation~~] an
7069 intellectual disability in this state who are committed to the division's jurisdiction under the
7070 provisions of this part; and

7071 (2) to evaluate and determine the most appropriate, least restrictive setting for [~~a~~
7072 ~~mentally retarded~~] an individual with an intellectual disability.

7073 Section 121. Section **62A-5-304** is amended to read:

7074 **62A-5-304. Limited admission of persons convicted of felony offenses.**

7075 A person with [~~mental retardation~~] an intellectual disability who has been convicted of
7076 a felony, or if a minor, of a crime that would constitute a felony if committed by an adult, may
7077 not be admitted to [~~a mental retardation facility~~] an intermediate care facility for people with an
7078 intellectual disability unless it is determined by the division, in accordance with the provisions
7079 of this part and other state law, that the person may benefit from treatment in that facility.

7080 Section 122. Section **62A-5-305** is amended to read:

7081 **62A-5-305. Residency requirements -- Transportation of person to another state.**

7082 (1) A person with [~~mental retardation~~] an intellectual disability who has a parent or
7083 guardian residing in this state may be admitted to [~~a mental retardation facility~~] an intermediate
7084 care facility for people with an intellectual disability in accordance with the provisions of this
7085 part.

7086 (2) If a person with [~~mental retardation~~] an intellectual disability enters Utah from
7087 another state, the division may have that person transported to the home of a relative or friend
7088 located outside of this state, or to an appropriate facility in the state where the person with
7089 [~~mental retardation~~] the intellectual disability is domiciled. This section does not prevent a
7090 person with [~~mental retardation~~] an intellectual disability who is temporarily located in this
7091 state from being temporarily admitted or committed to [~~a mental retardation facility~~] an
7092 intermediate care facility for people with an intellectual disability in this state.

7093 Section 123. Section **62A-5-308** is amended to read:

7094 **62A-5-308. Commitment -- Persons under age 18.**

7095 Beginning July 1, 1993, the director of the division or [~~his~~] the director's designee, may
7096 commit an individual under 18 years of age who has [~~mental retardation~~] an intellectual
7097 disability or symptoms of [~~mental retardation~~] an intellectual disability, to the division for
7098 observation, diagnosis, care, and treatment if that commitment is based on:

7099 (1) involuntary commitment under the provisions of Section 62A-5-312. Proceedings
7100 for involuntary commitment of an individual under 18 years of age may be commenced by
7101 filing a written petition with the juvenile court under Section 62A-5-312. The juvenile court
7102 has jurisdiction to proceed in the same manner and with the same authority as the district court;
7103 or

7104 (2) an emergency commitment in accordance with the provisions of Section
7105 62A-5-311.

7106 Section 124. Section **62A-5-309** is amended to read:

7107 **62A-5-309. Commitment -- Person 18 years or older.**

7108 Beginning July 1, 1993, the director or his designee may commit to the division an
7109 individual 18 years of age or older who has [~~mental retardation~~] an intellectual disability, for
7110 observation, diagnosis, care, and treatment if that commitment is based on:

7111 (1) involuntary commitment under the provisions of Section 62A-5-312; or

7112 (2) temporary emergency commitment under the provisions of Section 62A-5-311.

7113 Section 125. Section **62A-5-310** is amended to read:

7114 **62A-5-310. Involuntary commitment.**

7115 An individual may not be involuntarily committed to [~~a mental retardation facility~~] an
7116 intermediate care facility for people with an intellectual disability except in accordance with
7117 Sections 62A-5-311 and 62A-5-312.

7118 Section 126. Section **62A-5-311** is amended to read:

7119 **62A-5-311. Temporary emergency commitment -- Observation and evaluation.**

7120 (1) The director of the division or his designee may temporarily commit an individual
7121 to the division and therefore, as a matter of course, to [~~a mental retardation facility~~] an
7122 intermediate care facility for people with an intellectual disability for observation and
7123 evaluation upon:

7124 (a) written application by a responsible person who has reason to know that the
7125 individual is in need of commitment, stating:

7126 (i) a belief that the individual has [~~mental retardation~~] an intellectual disability and is
7127 likely to cause serious injury to self or others if not immediately committed;

7128 (ii) personal knowledge of the individual's condition; and

7129 (iii) the circumstances supporting that belief; or

7130 (b) certification by a licensed physician or designated [~~mental retardation~~] intellectual
7131 disability professional stating that the physician or designated [~~mental retardation~~] intellectual
7132 disability professional:

7133 (i) has examined the individual within a three-day period immediately preceding the
7134 certification; and

7135 (ii) is of the opinion that the individual has [~~mental retardation~~] an intellectual
7136 disability, and that because of the individual's [~~mental retardation~~] intellectual disability is
7137 likely to injure self or others if not immediately committed.

7138 (2) If the individual in need of commitment is not placed in the custody of the director
7139 or [~~his~~] the director's designee by the person submitting the application, the [~~director~~] director's
7140 or [~~his~~] the director's designee may certify, either in writing or orally that the individual is in
7141 need of immediate commitment to prevent injury to self or others.

7142 (3) Upon receipt of the application required by Subsection (1)(a) and the certifications
7143 required by [~~Subsection~~] Subsections (1)(b) and [~~Subsection~~] (2), a peace officer may take the
7144 individual named in the application and certificates into custody, and may transport the
7145 individual to a designated [~~mental-retardation facility~~] intermediate care facility for people with
7146 an intellectual disability.

7147 (4) (a) An individual committed under this section may be held for a maximum of 24
7148 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time, the
7149 individual shall be released unless proceedings for involuntary commitment have been
7150 commenced under Section 62A-5-312.

7151 (b) After proceedings for involuntary commitment have been commenced the
7152 individual shall be released unless an order of detention is issued in accordance with Section
7153 62A-5-312.

7154 (5) If an individual is committed to the division under this section on the application of
7155 any person other than the individual's legal guardian, spouse, parent, or next of kin, the director
7156 or his designee shall immediately give notice of the commitment to the individual's legal
7157 guardian, spouse, parent, or next of kin, if known.

7158 Section 127. Section **62A-5-312** is amended to read:

7159 **62A-5-312. Involuntary commitment -- Procedures -- Necessary findings**
7160 **-- Periodic review.**

7161 (1) Any responsible person who has reason to know that an individual is in need of
7162 commitment, who has a belief that the individual has [~~mental-retardation~~] an intellectual
7163 disability, and who has personal knowledge of the conditions and circumstances supporting
7164 that belief, may commence proceedings for involuntary commitment by filing a written petition
7165 with the district court, or if the subject of the petition is less than 18 years of age with the
7166 juvenile court, of the county in which the individual to be committed is physically located at
7167 the time the petition is filed. The application shall be accompanied by:

7168 (a) a certificate of a licensed physician or a designated [~~mental-retardation~~] intellectual
7169 disability professional, stating that within a seven-day period immediately preceding the

7170 certification, the physician or designated [~~mental retardation~~] intellectual disability professional
7171 examined the individual and believes that the individual [~~is mentally retarded~~] has an
7172 intellectual disability and is in need of involuntary commitment; or

7173 (b) a written statement by the petitioner [~~stating~~] that:

7174 (i) states that the individual was requested to, but refused to, submit to an examination
7175 for [~~mental retardation~~] an intellectual disability by a licensed physician or designated [~~mental~~
7176 ~~retardation~~] intellectual disability professional, and that the individual refuses to voluntarily go
7177 to the division or [~~a mental retardation facility~~] an intermediate care facility for people with an
7178 intellectual disability recommended by the division for treatment[~~-. That statement shall be~~];

7179 (ii) is under oath; and [~~set~~]

7180 (iii) sets forth the facts on which [~~it~~] the statement is based.

7181 (2) Before issuing a detention order, the court may require the petitioner to consult
7182 with personnel at the division or at [~~a mental retardation facility~~] an intermediate care facility
7183 for people with an intellectual disability and may direct a designated [~~mental retardation~~]
7184 intellectual disability professional to interview the petitioner and the individual to be
7185 committed, to determine the existing facts, and to report them to the court.

7186 (3) The court may issue a detention order and may direct a peace officer to immediately
7187 take the individual to [~~a mental retardation facility~~] an intermediate care facility for people with
7188 an intellectual disability to be detained for purposes of an examination if the court finds from
7189 the petition, from other statements under oath, or from reports of physicians or designated
7190 [~~mental retardation~~] intellectual disability professionals that there is a reasonable basis to
7191 believe that the individual to be committed:

7192 (a) poses an immediate danger of physical injury to self or others;

7193 (b) requires involuntary commitment pending examination and hearing;

7194 (c) the individual was requested but refused to submit to an examination by a licensed
7195 physician or designated [~~mental retardation~~] intellectual disability professional; or

7196 (d) the individual refused to voluntarily go to the division or to [~~a mental retardation~~
7197 ~~facility~~] an intermediate care facility for people with an intellectual disability recommended by

7198 the division.

7199 (4) (a) If the court issues a detention order based on an application that did not include
7200 a certification by a designated [~~mental retardation~~] intellectual disability professional or
7201 physician in accordance with Subsection (1)(a), the director or his designee shall within 24
7202 hours after issuance of the detention order, excluding Saturdays, Sundays, and legal holidays,
7203 examine the individual, report the results of the examination to the court and inform the court:

7204 (i) whether the director or his designee believes that the individual [~~is mentally~~
7205 ~~retarded~~] has an intellectual disability; and

7206 (ii) whether appropriate treatment programs are available and will be used by the
7207 individual without court proceedings.

7208 (b) If the report of the director or his designee is based on an oral report of the
7209 examiner, the examiner shall immediately send the results of the examination in writing to the
7210 clerk of the court.

7211 (5) Immediately after an individual is involuntarily committed under a detention order
7212 or under Section 62A-5-311, the director or his designee shall inform the individual, orally and
7213 in writing, of his right to communicate with an attorney. If an individual desires to
7214 communicate with an attorney, the director or his designee shall take immediate steps to assist
7215 the individual in contacting and communicating with an attorney.

7216 (6) (a) Immediately after commencement of proceedings for involuntary commitment,
7217 the court shall give notice of commencement of the proceedings to:

7218 (i) the individual to be committed;

7219 (ii) the applicant;

7220 (iii) any legal guardian of the individual;

7221 (iv) adult members of the individual's immediate family;

7222 (v) legal counsel of the individual to be committed, if any;

7223 (vi) the division; and

7224 (vii) any other person to whom the individual requests, or the court designates, notice
7225 to be given.

7226 (b) If an individual cannot or refuses to disclose the identity of persons to be notified,
7227 the extent of notice shall be determined by the court.

7228 (7) That notice shall:

7229 (a) set forth the allegations of the petition and all supporting facts;

7230 (b) be accompanied by a copy of any detention order issued under Subsection (3); and

7231 (c) state that a hearing will be held within the time provided by law, and give the time
7232 and place for that hearing.

7233 (8) The court may transfer the case and the custody of the individual to be committed
7234 to any other district court within the state, if:

7235 (a) there are no appropriate facilities for persons with ~~[mental retardation]~~ an
7236 intellectual disability within the judicial district; and

7237 (b) the transfer will not be adverse to the interests of the individual.

7238 (9) (a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, after any
7239 order or commitment under a detention order, the court shall appoint two designated ~~[mental~~
7240 ~~retardation]~~ intellectual disability professionals to examine the individual. If requested by the
7241 individual's counsel, the court shall appoint a reasonably available, qualified person designated
7242 by counsel to be one of the examining designated ~~[mental retardation]~~ intellectual disability
7243 professionals. The examinations shall be conducted:

7244 (i) separately;

7245 (ii) at the home of the individual to be committed, a hospital, ~~[a facility for person's~~
7246 ~~with mental retardation]~~ an intermediate care facility for people with an intellectual disability,
7247 or any other suitable place not likely to have a harmful effect on the individual; and

7248 (iii) within a reasonable period of time after appointment of the examiners by the court.

7249 (b) The court shall set a time for a hearing to be held within 10 court days of the
7250 appointment of the examiners. However, the court may immediately terminate the proceedings
7251 and dismiss the application if, prior to the hearing date, the examiners, the director, or his
7252 designee informs the court that:

7253 (i) the individual ~~[is not mentally retarded]~~ does not have an intellectual disability; or

7254 (ii) treatment programs are available and will be used by the individual without court
7255 proceedings.

7256 (10) (a) Each individual has the right to be represented by counsel at the commitment
7257 hearing and in all preliminary proceedings. If neither the individual nor others provide counsel,
7258 the court shall appoint counsel and allow sufficient time for counsel to consult with the
7259 individual prior to any hearing.

7260 (b) If the individual is indigent, the county in which the individual was physically
7261 located when taken into custody shall pay reasonable [~~attorneys'~~] attorney fees as determined
7262 by the court.

7263 (11) The division or a designated [~~mental retardation~~] intellectual disability
7264 professional in charge of the individual's care shall provide all documented information on the
7265 individual to be committed and to the court at the time of the hearing. The individual's attorney
7266 shall have access to all documented information on the individual at the time of and prior to the
7267 hearing.

7268 (12) (a) The court shall provide an opportunity to the individual, the petitioner, and all
7269 other persons to whom notice is required to be given to appear at the hearing, to testify, and to
7270 present and cross-examine witnesses.

7271 (b) The court may, in its discretion:

7272 (i) receive the testimony of any other person;

7273 (ii) allow a waiver of the right to appear only for good cause shown;

7274 (iii) exclude from the hearing all persons not necessary to conduct the proceedings; and

7275 (iv) upon motion of counsel, require the testimony of each examiner to be given out of
7276 the presence of any other examiner.

7277 (c) The hearing shall be conducted in as informal a manner as may be consistent with
7278 orderly procedure, and in a physical setting that is not likely to have a harmful effect on the
7279 individual. The Utah Rules of Evidence apply, and the hearing shall be a matter of court
7280 record. A verbatim record of the proceedings shall be maintained.

7281 (13) The court may order commitment if, upon completion of the hearing and

7282 consideration of the record, it finds by clear and convincing evidence that all of the following
7283 conditions are met:

7284 (a) the individual to be committed [~~is mentally retarded~~] has an intellectual disability;

7285 (b) because of the individual's [~~mental retardation~~] intellectual disability one or more
7286 of the following conditions exist:

7287 (i) the individual poses an immediate danger of physical injury to self or others;

7288 (ii) the individual lacks the capacity to provide the basic necessities of life, such as
7289 food, clothing, or shelter; or

7290 (iii) the individual is in immediate need of habilitation, rehabilitation, care, or
7291 treatment to minimize the effects of the condition which poses a threat of serious physical or
7292 psychological injury to the individual, and the individual lacks the capacity to engage in a
7293 rational decision-making process concerning the need for habilitation, rehabilitation, care, or
7294 treatment, as evidenced by an inability to weigh the possible costs and benefits of the care or
7295 treatment and the alternatives to it;

7296 (c) there is no appropriate, less restrictive alternative reasonably available; and

7297 (d) the division or the [~~mental retardation facility~~] intermediate care facility for people
7298 with an intellectual disability recommended by the division in which the individual is to be
7299 committed can provide the individual with treatment, care, habilitation, or rehabilitation that is
7300 adequate and appropriate to the individual's condition and needs.

7301 (14) In the absence of any of the required findings by the court, described in Subsection
7302 (13), the court shall dismiss the proceedings.

7303 (15) (a) The order of commitment shall designate the period for which the individual
7304 will be committed. An initial commitment may not exceed six months. Before the end of the
7305 initial commitment period, the administrator of the [~~facility for persons with mental~~
7306 ~~retardation~~] intermediate care facility for people with an intellectual disability shall commence
7307 a review hearing on behalf of the individual.

7308 (b) At the conclusion of the review hearing, the court may issue an order of
7309 commitment for up to a one-year period.

7310 (16) An individual committed under this part has the right to a rehearing, upon filing a
7311 petition with the court within 30 days after entry of the court's order. If the petition for
7312 rehearing alleges error or mistake in the court's findings, the court shall appoint one impartial
7313 licensed physician and two impartial designated [~~mental retardation~~] intellectual disability
7314 professionals who have not previously been involved in the case to examine the individual. The
7315 rehearing shall, in all other respects, be conducted in accordance with this part.

7316 (17) (a) The court shall maintain a current list of all individuals under its orders of
7317 commitment. That list shall be reviewed in order to determine those patients who have been
7318 under an order of commitment for the designated period.

7319 (b) At least two weeks prior to the expiration of the designated period of any
7320 commitment order still in effect, the court that entered the original order shall inform the
7321 director of the division of the impending expiration of the designated commitment period.

7322 (c) The staff of the division shall immediately:

7323 (i) reexamine the reasons upon which the order of commitment was based and report
7324 the results of the examination to the court;

7325 (ii) discharge the resident from involuntary commitment if the conditions justifying
7326 commitment no longer exist; and

7327 (iii) immediately inform the court of any discharge.

7328 (d) If the director of the division reports to the court that the conditions justifying
7329 commitment no longer exist, and the administrator of the [~~mental retardation facility~~]
7330 intermediate care facility for people with an intellectual disability does not discharge the
7331 individual at the end of the designated period, the court shall order the immediate discharge of
7332 the individual, unless involuntary commitment proceedings are again commenced in
7333 accordance with this section.

7334 (e) If the director of the division, or [~~his~~] the director's designee reports to the court that
7335 the conditions designated in Subsection (13) still exist, the court may extend the commitment
7336 order for up to one year. At the end of any extension, the individual must be reexamined in
7337 accordance with this section, or discharged.

7338 (18) When a resident is discharged under this subsection, the division shall provide any
7339 further support services available and required to meet the resident's needs.

7340 Section 128. Section **62A-5-313** is amended to read:

7341 **62A-5-313. Transfer -- Procedures.**

7342 (1) The director of the division, or the director's designee, may place an involuntarily
7343 committed resident in appropriate care or treatment outside the [~~mental retardation facility~~]
7344 intermediate care facility for people with an intellectual disability. During that placement, the
7345 order of commitment shall remain in effect, until the resident is discharged or the order is
7346 terminated.

7347 (2) If the resident, or the resident's parent or guardian, objects to a proposed placement
7348 under this section, the resident may appeal the decision to the executive director or the
7349 executive director's designee. Those appeals shall be conducted in accordance with the
7350 procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act. If an
7351 objection is made, the proposed placement may not take effect until the committee holds that
7352 hearing and the executive director makes a final decision on the placement.

7353 Section 129. Section **62A-5-316** is amended to read:

7354 **62A-5-316. Temporary detention.**

7355 Pending removal to [~~a mental retardation facility~~] an intermediate care facility for
7356 people with an intellectual disability, an individual taken into custody or ordered to be
7357 committed under this part may be detained in [~~his or her~~] the individual's home, or in some
7358 other suitable facility. The individual shall not, however, be detained in a nonmedical facility
7359 used for detention of individuals charged with or convicted of penal offenses, except in a
7360 situation of extreme emergency. The division shall take reasonable measures, as may be
7361 necessary, to assure proper care of an individual temporarily detained under this part.

7362 Section 130. Section **62A-5-317** is amended to read:

7363 **62A-5-317. Authority to transfer resident.**

7364 (1) The administrator of [~~a mental retardation facility, or his~~] an intermediate care
7365 facility for people with an intellectual disability, or the administrator's designee, may transfer or

7366 authorize the transfer of a resident to another [~~mental retardation facility~~] intermediate care
7367 facility for people with an intellectual disability if, before the transfer, the administrator
7368 conducts a careful evaluation of the resident and [~~his~~] the resident's treatment needs, and
7369 determines that a transfer would be in the best interest of that resident. If a resident is
7370 transferred, the administrator shall give immediate notice of the transfer to the resident's
7371 spouse, guardian, parent, or advocate or, if none of those persons are known, to the resident's
7372 nearest known relative.

7373 (2) If a resident, or [~~his~~] the resident's parent or guardian, objects to a proposed transfer
7374 under this section, the administrator shall conduct a hearing on the objection before a
7375 committee composed of persons selected by the administrator. That committee shall hear all
7376 evidence and make a recommendation to the administrator concerning the proposed transfer.
7377 The transfer may not take effect until the committee holds that hearing and the administrator
7378 renders a final decision on the proposed transfer.

7379 Section 131. Section **62A-5-318** is amended to read:

7380 **62A-5-318. Involuntary treatment with medication -- Committee -- Findings.**

7381 (1) If, after commitment, a resident elects to refuse treatment with medication, the
7382 director, the administrator of the [~~facility for persons with mental retardation~~] intermediate care
7383 facility for people with an intellectual disability, or a designee, shall submit documentation
7384 regarding the resident's proposed treatment to a committee composed of:

7385 (a) a licensed physician experienced in treating persons with [~~mental retardation and~~
7386 ~~related disabilities~~] an intellectual disability, who is not directly involved in the resident's
7387 treatment or diagnosis, and who is not biased toward any one facility;

7388 (b) a psychologist who is a designated [~~mental retardation~~] intellectual disability
7389 professional who is not directly involved in the resident's treatment or diagnosis; and

7390 (c) another designated [~~mental retardation~~] intellectual disability professional of the
7391 facility for persons with [~~mental retardation~~] an intellectual disability, or a designee.

7392 (2) Based upon the court's finding, under Subsection 62A-5-312(13), that the resident
7393 lacks the ability to engage in a rational decision-making process regarding the need for

7394 habilitation, rehabilitation, care, or treatment, as demonstrated by evidence of inability to weigh
7395 the possible costs and benefits of treatment, the committee may authorize involuntary treatment
7396 with medication if it determines that:

7397 (a) the proposed treatment is in the medical best interest of the resident, taking into
7398 account the possible side effects as well as the potential benefits of the medication; and

7399 (b) the proposed treatment is in accordance with prevailing standards of accepted
7400 medical practice.

7401 (3) In making the determination described in Subsection (2), the committee shall
7402 consider the resident's general history and present condition, the specific need for medication
7403 and its possible side effects, and any previous reaction to the same or comparable medication.

7404 (4) Any authorization of involuntary treatment under this section shall be periodically
7405 reviewed in accordance with rules promulgated by the division.

7406 Section 132. Section **62A-6-101** is amended to read:

7407 **CHAPTER 6. STERILIZATION OF A PERSON WITH A DISABILITY**

7408 **62A-6-101. Definitions.**

7409 As used in this chapter:

7410 (1) "Informed consent" means consent that is voluntary and based on an understanding
7411 by the person to be sterilized of the nature and consequences of sterilization, the reasonably
7412 foreseeable risks and benefits of sterilization, and the available alternative methods of
7413 contraception.

7414 (2) "Institutionalized" means residing in the Utah State Developmental Center, the
7415 Utah State Hospital, a residential facility for persons with a disability as defined in Sections
7416 10-9a-103 and 17-27a-103, a group home for ~~[disabled]~~ persons with a disability, a nursing
7417 home, or a foster care home or facility.

7418 (3) "Sterilization" means any medical procedure, treatment, or operation rendering an
7419 individual permanently incapable of procreation.

7420 Section 133. Section **62A-11-111** is amended to read:

7421 **62A-11-111. Lien provisions.**

7422 Provisions for collection of any lien placed as a condition of eligibility for any federally
7423 or state-funded public assistance program are as follows:

7424 (1) Any assistance granted after July 1, 1953 to the spouse of an old-age recipient who
7425 was not eligible for old-age assistance but who participated in the assistance granted to the
7426 family is recoverable in the same manner as old-age assistance granted to the old-age recipient.

7427 (2) At the time of the settlement of a lien given as a condition of eligibility for the
7428 old-age assistance program, there shall be allowed a cash exemption of \$1,000, less any
7429 additional money invested by the department in the home of an old-age recipient or recipients
7430 of other assistance programs either as payment of taxes, home and lot improvements, or to
7431 protect the interest of the state in the property for necessary improvements to make the home
7432 habitable, to be deducted from the market or appraised value of the real property. When it is
7433 necessary to sell property or to settle an estate the department may grant reasonable costs of
7434 sale and settlement of an estate as follows:

7435 (a) When the total cost of probate, including the sale of property when it is sold, and
7436 the cost of burial and last illness do not exceed \$1,000, the exemption of \$1,000 shall be the
7437 total exemption, which shall be the only amount deductible from the market or appraised value
7438 of the property.

7439 (b) ~~When~~ Subject to Subsection (2)(c), when \$1,000 is not sufficient to pay for the
7440 costs of probate, the following expenditures are authorized:

7441 (i) cost of funeral expenses not exceeding \$1,500;

7442 (ii) costs of terminal illness, provided the medical expenses have not been paid from
7443 any state or federally-funded assistance program;

7444 (iii) realty fees, if any;

7445 (iv) costs of revenue stamps, if any;

7446 (v) costs of abstract or title insurance, whichever is the least costly;

7447 (vi) ~~attorney's~~ attorney fees not exceeding the recommended fee established by the
7448 Utah State Bar~~[- When an attorney sells the property in an estate he is probating, he is entitled~~
7449 ~~only to either a real estate fee or an attorney's fee, whichever is the lesser amount];~~

7450 (vii) administrator's fee not to exceed \$150;

7451 (viii) court costs; and

7452 (ix) delinquent taxes, if any.

7453 (c) An attorney, who sells the property in an estate that the attorney is probating, is

7454 entitled to the lesser of:

7455 (i) a real estate fee; or

7456 (ii) an attorney fee.

7457 (3) The amounts listed in Subsection (2)(b) are to be considered only when the total
7458 costs of probate exceed \$1,000, and those amounts are to be deducted from the market or
7459 appraised value of the property in lieu of the exemption of \$1,000 and are not in addition to the
7460 \$1,000 exemption.

7461 (4) When both husband and wife are recipients and one or both of them own an interest
7462 in real property, the lien attaches to the interests of both for the reimbursement of assistance
7463 received by either or both spouses. Only one exemption, as provided in this section, is
7464 allowed.

7465 (5) When a lien was executed by one party on property that is owned in joint tenancy
7466 with full rights of survivorship, the execution of the lien severs the joint tenancy and a tenancy
7467 in common results, insofar as a department lien is affected, unless the recipients are husband
7468 and wife. When recipients are husband and wife who own property in joint tenancy with full
7469 rights of survivorship, the execution of a lien does not sever the joint tenancy, insofar as a
7470 department lien might be affected, and settlement of the lien shall be in accordance with the
7471 provisions of Subsection (4).

7472 (6) The amount of the lien given for old-age assistance shall be the total amount of
7473 assistance granted up to the market or appraised value of the real or personal property, less the
7474 amount of the legal maximum property limitations from the execution of the lien until
7475 settlement thereof. There shall be no exemption of any kind or nature allowed against real or
7476 personal property liens granted for old-age assistance except assistance in the form of medical
7477 care, and nursing home care, other types of congregate care, and similar plans for [physically

7478 ~~and mentally ill]~~ persons with a physical or mental disability.

7479 (7) When it is necessary to sell property or to settle an estate, the department is
7480 authorized to approve payment of the reasonable costs of sale and settlement of an estate on
7481 which a lien has been given for old-age assistance.

7482 (8) The amount of reimbursement of all liens held by the department shall be
7483 determined on the basis of the formulas described in this section, when they become due and
7484 payable.

7485 (9) All lien agreements shall be recorded with the county recorder of the county in
7486 which the real property is located, and that recording has the same effect as a judgment lien on
7487 any real property in which the recipient has any title or interest. All such real property
7488 including but not limited to, joint tenancy interests, shall, from the time a lien agreement is
7489 recorded, be and become charged with a lien for all assistance received by the recipient or his
7490 spouse as provided in this section. That lien has priority over all unrecorded encumbrances.
7491 No fees or costs shall be paid for such recording.

7492 (10) Liens shall become due and payable, and the department shall seek collection of
7493 each lien now held:

7494 (a) when the property to which the lien attaches is transferred to a third party prior to
7495 the recipient's death, provided, that if other property is purchased by the recipient to be used by
7496 ~~him]~~ the recipient as a home, the department may transfer the amount of the lien from the
7497 property sold to the property purchased;

7498 (b) upon the death of the recipient and ~~his]~~ the recipient's spouse, if any. When the
7499 heirs or devisees of the property are also recipients of public assistance, or when other hardship
7500 circumstances exist, the department may postpone settlement of the lien if that would be in the
7501 best interest of the recipient and the state;

7502 (c) when a recipient voluntarily offers to settle the lien; or

7503 (d) when property subject to a lien is no longer used by a recipient and appears to be
7504 abandoned.

7505 (11) When a lien becomes due and payable, a certificate in a form approved by the

7506 department certifying to the amount of assistance provided to the recipient and the amount of
7507 the lien, shall be mailed to the recipient, [~~his~~] the recipient's heirs, or administrators of the
7508 estate, and the same shall be allowed, approved, filed, and paid as a preferred claim, as
7509 provided in Subsection 75-3-805(1)(e) in the administration of the decedent's estate. The
7510 amount so certified constitutes the entire claim, as of the date of the certificate, against the real
7511 or personal property of the recipient[;] or [~~his~~] the recipient's spouse. Any person dealing with
7512 the recipient, heirs, or administrators, may rely upon that certificate as evidence of the amount
7513 of the existing lien against that real or personal property. That amount, however, shall increase
7514 by accruing interest until time of final settlement, at the rate of 6% per annum, commencing six
7515 months after the lien becomes due and payable, or at the termination of probate proceedings,
7516 whichever occurs later.

7517 (12) If heirs are unable to make a lump-sum settlement of the lien at the time it
7518 becomes due and payable, the department may permit settlement based upon periodic
7519 repayments in a manner prescribed by the department, with interest as provided in Subsection
7520 (11).

7521 (13) All sums so recovered, except those credited to the federal government, shall be
7522 retained by the department.

7523 (14) The department is empowered to accept voluntary conveyance of real or personal
7524 property in satisfaction of its interest therein. All property acquired by the department under
7525 the provisions of this section may be disposed of by public or private sale under rules
7526 prescribed by the department. The department is authorized to execute and deliver any
7527 document necessary to convey title to all property that comes into its possession, as though the
7528 department constituted a corporate entity.

7529 (15) Any real property acquired by the department, either by foreclosure or voluntary
7530 conveyance, is tax exempt, so long as it is so held.

7531 Section 134. Section **62A-15-605** is amended to read:

7532 **62A-15-605. Forensic Mental Health Coordinating Council -- Establishment and**
7533 **purpose.**

7534 (1) There is established the Forensic Mental Health Coordinating Council composed of
7535 the following members:

7536 (a) the director or the director's appointee;

7537 (b) the superintendent of the state hospital or the superintendent's appointee;

7538 (c) the executive director of the Department of Corrections or the executive director's
7539 appointee;

7540 (d) a member of the Board of Pardons and Parole or its appointee;

7541 (e) the attorney general or the attorney general's appointee;

7542 (f) the director of the Division of Services for People with Disabilities or the director's
7543 appointee;

7544 (g) the director of the Division of Juvenile Justice Services or the director's appointee;

7545 (h) the director of the Commission on Criminal and Juvenile Justice or the director's
7546 appointee;

7547 (i) the state court administrator or the administrator's appointee;

7548 (j) the state juvenile court administrator or the administrator's appointee;

7549 (k) a representative from a local mental health authority or an organization, excluding
7550 the state hospital that provides mental health services under contract with the Division of
7551 Substance Abuse and Mental Health or a local mental health authority, as appointed by the
7552 director of the division;

7553 (l) the executive director of the Governor's Council for People with Disabilities or the
7554 director's appointee; and

7555 (m) other persons as appointed by the members described in Subsections (1)(a) through
7556 (l).

7557 (2) A member may not receive compensation or benefits for the member's service, but
7558 may receive per diem and travel expenses in accordance with:

7559 (a) Section 63A-3-106;

7560 (b) Section 63A-3-107; and

7561 (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and

7562 63A-3-107.

7563 (3) The purpose of the Forensic Mental Health Coordinating Council is to:

7564 (a) advise the director regarding admissions to the state hospital of persons in the
7565 custody of the Department of Corrections;

7566 (b) develop policies for coordination between the division and the Department of
7567 Corrections;

7568 (c) advise the executive director of the Department of Corrections regarding issues of
7569 care for persons in the custody of the Department of Corrections who are mentally ill;

7570 (d) promote communication between and coordination among all agencies dealing with
7571 persons with [~~mental retardation, as defined in Section 62A-5-101;~~] an intellectual disability or
7572 mental illness who become involved in the civil commitment system or in the criminal or
7573 juvenile justice system;

7574 (e) study, evaluate, and recommend changes to laws and procedures relating to persons
7575 with [~~mental retardation~~] an intellectual disability or mental illness who become involved in
7576 the civil commitment system or in the criminal or juvenile justice system;

7577 (f) identify and promote the implementation of specific policies and programs to deal
7578 fairly and efficiently with persons with [~~mental retardation~~] an intellectual disability or mental
7579 illness who become involved in the civil commitment system or in the criminal or juvenile
7580 justice system; and

7581 (g) promote judicial education relating to persons with [~~mental retardation~~] an
7582 intellectual disability or mental illness who become involved in the civil commitment system
7583 or in the criminal or juvenile justice system.

7584 Section 135. Section **62A-15-608** is amended to read:

7585 **62A-15-608. Local mental health authority -- Supervision and treatment of**
7586 **persons with a mental illness.**

7587 (1) Each local mental health authority has responsibility for supervision and treatment
7588 of [~~mentally ill~~] persons with a mental illness who have been committed to its custody under
7589 the provisions of this part, whether residing in the state hospital or elsewhere.

7590 (2) The division, in administering and supervising the security responsibilities of the
7591 state hospital under its authority provided by Section 62A-15-603, shall enforce Sections
7592 62A-15-620 through 62A-15-624 to the extent they pertain to the state hospital.

7593 Section 136. Section **62A-15-610** is amended to read:

7594 **62A-15-610. Objectives of state hospital and other facilities -- Persons who may**
7595 **be admitted to state hospital.**

7596 (1) The objectives of the state hospital and other mental health facilities shall be to care
7597 for all persons within this state who are subject to the provisions of this chapter; and to furnish
7598 them with the proper attendance, medical treatment, seclusion, rest, restraint, amusement,
7599 occupation, and support that is conducive to their physical and mental well-being.

7600 (2) Only the following persons may be admitted to the state hospital:

7601 (a) persons 18 years of age and older who meet the criteria necessary for commitment
7602 under this part and who have severe mental disorders for whom no appropriate, less restrictive
7603 treatment alternative is available;

7604 (b) persons under 18 years of age who meet the criteria necessary for commitment
7605 under Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and
7606 Mental Health, and for whom no less restrictive alternative is available;

7607 (c) persons adjudicated and found to be guilty [~~and mentally ill~~] with a mental illness
7608 under Title 77, Chapter 16a, Commitment and Treatment of [~~Mentally Ill~~] Persons with a
7609 Mental Illness;

7610 (d) persons adjudicated and found to be not guilty by reason of insanity who are under
7611 a subsequent commitment order because they [~~are mentally ill~~] have a mental illness and are a
7612 danger to themselves or others, under Section 77-16a-302;

7613 (e) persons found incompetent to proceed under Section 77-15-6;

7614 (f) persons who require an examination under Title 77, Utah Code of Criminal
7615 Procedure; and

7616 (g) persons in the custody of the Department of Corrections, admitted in accordance
7617 with Section 62A-15-605.5, giving priority to those persons with severe mental disorders.

7618 Section 137. Section **62A-15-616** is amended to read:

7619 **62A-15-616. Persons entering state mentally ill.**

7620 (1) A person who enters this state while mentally ill may be returned by a local mental
7621 health authority to the home of relatives or friends of that [~~mentally ill~~] person with a mental
7622 illness, if known, or to a hospital in the state where that [~~mentally ill~~] person with a mental
7623 illness is domiciled, in accordance with Title 62A, Chapter 15, Part 8, Interstate Compact on
7624 Mental Health.

7625 (2) This section does not prevent commitment of persons who are traveling through or
7626 temporarily residing in this state.

7627 Section 138. Section **62A-15-619** is amended to read:

7628 **62A-15-619. Liability of estate of person with a mental illness.**

7629 The provisions made in this part for the support of [~~mentally ill~~] persons with a mental
7630 illness at public expense do not release the estates of those persons from liability for their care
7631 and treatment, and the division is authorized and empowered to collect from the estates of
7632 those persons any sums paid by the state in their behalf.

7633 Section 139. Section **62A-15-629** is amended to read:

7634 **62A-15-629. Temporary commitment -- Requirements and procedures.**

7635 (1) (a) An adult may be temporarily, involuntarily committed to a local mental health
7636 authority upon:

7637 (i) written application by a responsible person who has reason to know, stating a belief
7638 that the individual is likely to cause serious injury to [~~himself~~] self or others if not immediately
7639 restrained, and stating the personal knowledge of the individual's condition or circumstances
7640 which lead to that belief; and

7641 (ii) a certification by a licensed physician or designated examiner stating that the
7642 physician or designated examiner has examined the individual within a three-day period
7643 immediately preceding that certification, and that [~~he~~] the physician or designated examiner is
7644 of the opinion that the individual [~~is mentally ill~~] has a mental illness and, because of [~~his~~] the
7645 individual's mental illness, is likely to injure [~~himself~~] self or others if not immediately

7646 restrained.

7647 (b) Application and certification as described in Subsection (1)(a) authorizes any peace
7648 officer to take the individual into the custody of a local mental health authority and transport
7649 the individual to that authority's designated facility.

7650 (2) If a duly authorized peace officer observes a person involved in conduct that gives
7651 the officer probable cause to believe that the person [~~is mentally ill~~] has a mental illness, as
7652 defined in Section 62A-15-602, and because of that apparent mental illness and conduct, there
7653 is a substantial likelihood of serious harm to that person or others, pending proceedings for
7654 examination and certification under this part, the officer may take that person into protective
7655 custody. The peace officer shall transport the person to be transported to the designated facility
7656 of the appropriate local mental health authority pursuant to this section, either on the basis of
7657 [~~his~~] the peace officer's own observation or on the basis of a mental health officer's observation
7658 that has been reported to [~~him~~] the peace officer by that mental health officer. Immediately
7659 thereafter, the officer shall place the person in the custody of the local mental health authority
7660 and make application for commitment of that person to the local mental health authority. The
7661 application shall be on a prescribed form and shall include the following:

7662 (a) a statement by the officer that [~~he~~] the officer believes, on the basis of personal
7663 observation or on the basis of a mental health officer's observation reported to [~~him~~] the officer
7664 by the mental health officer, that the person is, as a result of a mental illness, a substantial and
7665 immediate danger to [~~himself~~] self or others;

7666 (b) the specific nature of the danger;

7667 (c) a summary of the observations upon which the statement of danger is based; and

7668 (d) a statement of facts which called the person to the attention of the officer.

7669 (3) A person committed under this section may be held for a maximum of 24 hours,
7670 excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the
7671 person shall be released unless application for involuntary commitment has been commenced
7672 pursuant to Section 62A-15-631. If that application has been made, an order of detention may
7673 be entered under Subsection 62A-15-631(3). If no order of detention is issued, the patient shall

7674 be released unless he has made voluntary application for admission.

7675 (4) Transportation of [~~mentally ill~~] persons with a mental illness pursuant to
7676 Subsections (1) and (2) shall be conducted by the appropriate municipal, or city or town, law
7677 enforcement authority or, under the appropriate law enforcement's authority, by ambulance to
7678 the extent that Subsection (5) applies. However, if the designated facility is outside of that
7679 authority's jurisdiction, the appropriate county sheriff shall transport the person or cause the
7680 person to be transported by ambulance to the extent that Subsection (5) applies.

7681 (5) Notwithstanding Subsections (2) and (4), a peace officer shall cause a person to be
7682 transported by ambulance if the person meets any of the criteria in Section 26-8a-305. In
7683 addition, if the person requires physical medical attention, the peace officer shall direct that
7684 transportation be to an appropriate medical facility for treatment.

7685 Section 140. Section **62A-15-631** is amended to read:

7686 **62A-15-631. Involuntary commitment under court order -- Examination --**
7687 **Hearing -- Power of court -- Findings required -- Costs.**

7688 (1) Proceedings for involuntary commitment of an individual who is 18 years of age or
7689 older may be commenced by filing a written application with the district court of the county in
7690 which the proposed patient resides or is found, by a responsible person who has reason to know
7691 of the condition or circumstances of the proposed patient which lead to the belief that the
7692 individual [~~is mentally ill~~] has a mental illness and should be involuntarily committed. That
7693 application shall be accompanied by:

7694 (a) a certificate of a licensed physician or a designated examiner stating that within a
7695 seven-day period immediately preceding the certification the physician or designated examiner
7696 has examined the individual, and that [~~he~~] the physician or designated examiner is of the
7697 opinion that the individual is mentally ill and should be involuntarily committed; or

7698 (b) a written statement by the applicant that:

7699 (i) the individual has been requested to, but has refused to, submit to an examination of
7700 mental condition by a licensed physician or designated examiner[~~.-That application shall be~~];

7701 (ii) is sworn to under oath; and [~~shall state~~]

7702 (iii) states the facts upon which the application is based.

7703 (2) [~~Prior to~~] Before issuing a judicial order, the court may require the applicant to
7704 consult with the appropriate local mental health authority, or may direct a mental health
7705 professional from that local mental health authority to interview the applicant and the proposed
7706 patient to determine the existing facts and report them to the court.

7707 (3) If the court finds from the application, from any other statements under oath, or
7708 from any reports from a mental health professional that there is a reasonable basis to believe
7709 that the proposed patient has a mental illness which poses a substantial danger, as defined in
7710 Section 62A-15-602, to [~~himself~~] self, others, or property requiring involuntary commitment
7711 pending examination and hearing; or, if the proposed patient has refused to submit to an
7712 interview with a mental health professional as directed by the court or to go to a treatment
7713 facility voluntarily, the court may issue an order, directed to a mental health officer or peace
7714 officer, to immediately place the proposed patient in the custody of a local mental health
7715 authority or in a temporary emergency facility as provided in Section 62A-15-634 to be
7716 detained for the purpose of examination. Within 24 hours of the issuance of the order for
7717 examination, a local mental health authority or its designee shall report to the court, orally or in
7718 writing, whether the patient is, in the opinion of the examiners, mentally ill, whether the patient
7719 has agreed to become a voluntary patient under Section 62A-15-625, and whether treatment
7720 programs are available and acceptable without court proceedings. Based on that information,
7721 the court may, without taking any further action, terminate the proceedings and dismiss the
7722 application. In any event, if the examiner reports orally, [~~he~~] the examiner shall immediately
7723 send the report in writing to the clerk of the court.

7724 (4) Notice of commencement of proceedings for involuntary commitment, setting forth
7725 the allegations of the application and any reported facts, together with a copy of any official
7726 order of detention, shall be provided by the court to a proposed patient [~~prior to~~] before, or
7727 upon, placement in the custody of a local mental health authority or, with respect to any
7728 individual presently in the custody of a local mental health authority whose status is being
7729 changed from voluntary to involuntary, upon the filing of an application for that purpose with

7730 the court. A copy of that order of detention shall be maintained at the place of detention.

7731 (5) Notice of commencement of those proceedings shall be provided by the court as
7732 soon as practicable to the applicant, any legal guardian, any immediate adult family members,
7733 legal counsel for the parties involved, and any other persons whom the proposed patient or the
7734 court shall designate. That notice shall advise those persons that a hearing may be held within
7735 the time provided by law. If the patient has refused to permit release of information necessary
7736 for provisions of notice under this subsection, the extent of notice shall be determined by the
7737 court.

7738 (6) Proceedings for commitment of an individual under the age of 18 years to the
7739 division may be commenced by filing a written application with the juvenile court in
7740 accordance with the provisions of Part 7, Commitment of Persons Under Age 18 to Division of
7741 Substance Abuse and Mental Health.

7742 (7) The district court may, in its discretion, transfer the case to any other district court
7743 within this state, provided that the transfer will not be adverse to the interest of the proposed
7744 patient.

7745 (8) (a) Within 24 hours, excluding Saturdays, Sundays, and legal holidays, of the
7746 issuance of a judicial order, or after commitment of a proposed patient to a local mental health
7747 authority under court order for detention or examination, the court shall appoint two designated
7748 examiners to examine the proposed patient. If requested by the proposed patient's counsel, the
7749 court shall appoint, as one of the examiners, a reasonably available qualified person designated
7750 by counsel. The examinations, to be conducted separately, shall be held at the home of the
7751 proposed patient, a hospital or other medical facility, or at any other suitable place that is not
7752 likely to have a harmful effect on the patient's health.

7753 (b) The examiner shall inform the patient if not represented by an attorney that, if
7754 desired, the patient does not have to say anything, the nature and reasons for the examination,
7755 that it was ordered by the court, that any information volunteered could form part of the basis
7756 for his or her involuntary commitment, and that findings resulting from the examination will be
7757 made available to the court.

7758 (c) A time shall be set for a hearing to be held within 10 calendar days of the
7759 appointment of the designated examiners, unless those examiners or a local mental health
7760 authority or its designee informs the court prior to that hearing date that the patient is not
7761 mentally ill, that ~~[he]~~ the patient has agreed to become a voluntary patient under Section
7762 62A-15-625, or that treatment programs are available and acceptable without court
7763 proceedings, in which event the court may, without taking any further action, terminate the
7764 proceedings and dismiss the application.

7765 (9) (a) ~~[Prior to]~~ Before the hearing, an opportunity to be represented by counsel shall
7766 be afforded to every proposed patient, and if neither the patient nor others provide counsel, the
7767 court shall appoint counsel and allow ~~[him]~~ counsel sufficient time to consult with the patient
7768 ~~[prior to]~~ before the hearing. In the case of an indigent patient, the payment of reasonable
7769 ~~[attorneys']~~ attorney fees for counsel, as determined by the court, shall be made by the county
7770 in which the patient resides or was found.

7771 (b) The proposed patient, the applicant, and all other persons to whom notice is
7772 required to be given shall be afforded an opportunity to appear at the hearing, to testify, and to
7773 present and cross-examine witnesses. The court may, in its discretion, receive the testimony of
7774 any other person. The court may allow a waiver of the patient's right to appear only for good
7775 cause shown, and that cause shall be made a matter of court record.

7776 (c) The court is authorized to exclude all persons not necessary for the conduct of the
7777 proceedings and may, upon motion of counsel, require the testimony of each examiner to be
7778 given out of the presence of any other examiners.

7779 (d) The hearing shall be conducted in as informal a manner as may be consistent with
7780 orderly procedure, and in a physical setting that is not likely to have a harmful effect on the
7781 mental health of the proposed patient.

7782 (e) The court shall consider all relevant historical and material information which is
7783 offered, subject to the rules of evidence, including reliable hearsay under Rule 1102, Utah
7784 Rules of Evidence.

7785 (f) (i) A local mental health authority or its designee, or the physician in charge of the

7786 patient's care shall, at the time of the hearing, provide the court with the following information:

7787 (A) the detention order;

7788 (B) admission notes;

7789 (C) the diagnosis;

7790 (D) any doctors' orders;

7791 (E) progress notes;

7792 (F) nursing notes; and

7793 (G) medication records pertaining to the current commitment.

7794 (ii) That information shall also be supplied to the patient's counsel at the time of the
7795 hearing, and at any time prior to the hearing upon request.

7796 (10) The court shall order commitment of an individual who is 18 years of age or older
7797 to a local mental health authority if, upon completion of the hearing and consideration of the
7798 information presented in accordance with Subsection (9)(e), the court finds by clear and
7799 convincing evidence that:

7800 (a) the proposed patient has a mental illness;

7801 (b) because of the proposed patient's mental illness [~~he~~] the proposed patient poses a
7802 substantial danger, as defined in Section 62A-15-602, of physical injury to [~~others or himself~~]
7803 self or others, which may include the inability to provide the basic necessities of life such as
7804 food, clothing, and shelter, if allowed to remain at liberty;

7805 (c) the patient lacks the ability to engage in a rational decision-making process
7806 regarding the acceptance of mental treatment as demonstrated by evidence of inability to weigh
7807 the possible risks of accepting or rejecting treatment;

7808 (d) there is no appropriate less-restrictive alternative to a court order of commitment;
7809 and

7810 (e) the local mental health authority can provide the individual with treatment that is
7811 adequate and appropriate to [~~his~~] the individual's conditions and needs. In the absence of the
7812 required findings of the court after the hearing, the court shall forthwith dismiss the
7813 proceedings.

7814 (11) (a) The order of commitment shall designate the period for which the individual
7815 shall be treated. When the individual is not under an order of commitment at the time of the
7816 hearing, that period may not exceed six months without benefit of a review hearing. Upon
7817 such a review hearing, to be commenced prior to the expiration of the previous order, an order
7818 for commitment may be for an indeterminate period, if the court finds by clear and convincing
7819 evidence that the required conditions in Subsection (10) will last for an indeterminate period.

7820 (b) The court shall maintain a current list of all patients under its order of commitment.
7821 That list shall be reviewed to determine those patients who have been under an order of
7822 commitment for the designated period. At least two weeks prior to the expiration of the
7823 designated period of any order of commitment still in effect, the court that entered the original
7824 order shall inform the appropriate local mental health authority or its designee. The local
7825 mental health authority or its designee shall immediately reexamine the reasons upon which the
7826 order of commitment was based. If the local mental health authority or its designee determines
7827 that the conditions justifying that commitment no longer exist, it shall discharge the patient
7828 from involuntary commitment and immediately report that to the court. Otherwise, the court
7829 shall immediately appoint two designated examiners and proceed under Subsections (8)
7830 through (10).

7831 (c) The local mental health authority or its designee responsible for the care of a patient
7832 under an order of commitment for an indeterminate period, shall at six-month intervals
7833 reexamine the reasons upon which the order of indeterminate commitment was based. If the
7834 local mental health authority or its designee determines that the conditions justifying that
7835 commitment no longer exist, that local mental health authority or its designee shall discharge
7836 the patient from its custody and immediately report the discharge to the court. If the local
7837 mental health authority or its designee determines that the conditions justifying that
7838 commitment continue to exist, the local mental health authority or its designee shall send a
7839 written report of those findings to the court. The patient and his counsel of record shall be
7840 notified in writing that the involuntary commitment will be continued, the reasons for that
7841 decision, and that the patient has the right to a review hearing by making a request to the court.

7842 Upon receiving the request, the court shall immediately appoint two designated examiners and
7843 proceed under Subsections (8) through (10).

7844 (12) In the event that the designated examiners are unable, because a proposed patient
7845 refuses to submit to an examination, to complete that examination on the first attempt, the
7846 court shall fix a reasonable compensation to be paid to those designated examiners for their
7847 services.

7848 (13) Any person committed as a result of an original hearing or a person's legally
7849 designated representative who is aggrieved by the findings, conclusions, and order of the court
7850 entered in the original hearing has the right to a new hearing upon a petition filed with the court
7851 within 30 days of the entry of the court order. The petition must allege error or mistake in the
7852 findings, in which case the court shall appoint three impartial designated examiners previously
7853 unrelated to the case to conduct an additional examination of the patient. The new hearing
7854 shall, in all other respects, be conducted in the manner otherwise permitted.

7855 (14) Costs of all proceedings under this section shall be paid by the county in which the
7856 proposed patient resides or is found.

7857 Section 141. Section **62A-15-632** is amended to read:

7858 **62A-15-632. Circumstances under which conditions justifying initial involuntary**
7859 **commitment shall be considered to continue to exist.**

7860 (1) After a person has been involuntarily committed to the custody of a local mental
7861 health authority under Subsection 62A-15-631(10), the conditions justifying commitment
7862 under that subsection shall be considered to continue to exist, for purposes of continued
7863 treatment under Subsection 62A-15-631(11) or conditional release under Section 62A-15-637,
7864 if the court finds that the patient is still mentally ill, and that absent an order of involuntary
7865 commitment and without continued treatment [~~he~~] the patient will suffer severe and abnormal
7866 mental and emotional distress as indicated by recent past history, and will experience
7867 deterioration in [~~his~~] the patient's ability to function in the least restrictive environment, thereby
7868 making [~~him~~] the patient a substantial danger to [~~himself~~] self or others.

7869 (2) A patient whose treatment is continued or who is conditionally released under the

7870 terms of this section, shall be maintained in the least restrictive environment available [~~which~~]
7871 that can provide [~~him~~] the patient with the treatment that is adequate and appropriate.

7872 Section 142. Section **62A-15-644** is amended to read:

7873 **62A-15-644. Additional powers of director -- Reports and records of division.**

7874 (1) In addition to specific authority granted by other provisions of this part, the director
7875 has authority to prescribe the form of applications, records, reports, and medical certificates
7876 provided for under this part, and the information required to be contained therein, and to adopt
7877 rules that are not inconsistent with the provisions of this part that [~~he~~] the director finds to be
7878 reasonably necessary for the proper and efficient commitment of [~~mentally ill~~] persons with a
7879 mental illness.

7880 (2) The division shall require reports relating to the admission, examination, diagnosis,
7881 release, or discharge of any patient and investigate complaints made by any patient or by any
7882 person on behalf of a patient.

7883 (3) A local mental health authority shall keep a record of the names and current status
7884 of all persons involuntarily committed to it under this chapter.

7885 Section 143. Section **62A-15-706** is amended to read:

7886 **62A-15-706. Parent advocate.**

7887 The division shall establish the position of a parent advocate to assist parents of
7888 [~~mentally ill~~] children with a mental illness who are subject to the procedures required by this
7889 part.

7890 Section 144. Section **62A-15-902** is amended to read:

7891 **62A-15-902. Design and operation -- Security.**

7892 (1) The forensic mental health facility is a secure treatment facility.

7893 (2) (a) The forensic mental health facility accommodates the following populations:

7894 (i) prison inmates displaying mental illness, as defined in Section 62A-15-602,
7895 necessitating treatment in a secure mental health facility;

7896 (ii) criminally adjudicated persons found guilty [~~and mentally ill~~] with a mental illness
7897 or guilty [~~and mentally ill~~] with a mental illness at the time of the offense undergoing

- 7898 evaluation for mental illness under Title 77, Chapter 16a, Commitment and Treatment of
7899 ~~[Mentally III]~~ Persons with a Mental Illness;
- 7900 (iii) criminally adjudicated persons undergoing evaluation for competency or found
7901 guilty ~~[and mentally III]~~ with a mental illness or guilty ~~[and mentally III]~~ with a mental illness
7902 at the time of the offense under Title 77, Chapter 16a, Commitment and Treatment of
7903 ~~[Mentally III]~~ Persons with a Mental Illness, who also have ~~[mental retardation]~~ an intellectual
7904 disability;
- 7905 (iv) persons undergoing evaluation for competency or found by a court to be
7906 incompetent to proceed in accordance with Title 77, Chapter 15, Inquiry into Sanity of
7907 Defendant, or not guilty by reason of insanity under Title 77, Chapter 14, Defenses;
- 7908 (v) persons who are civilly committed to the custody of a local mental health authority
7909 in accordance with Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health
7910 Facilities, and who may not be properly supervised by the Utah State Hospital because of a lack
7911 of necessary security, as determined by the superintendent or the superintendent's designee; and
- 7912 (vi) persons ordered to commit themselves to the custody of the Division of Substance
7913 Abuse and Mental Health for treatment at the Utah State Hospital as a condition of probation or
7914 stay of sentence pursuant to Title 77, Chapter 18, The Judgment.
- 7915 (b) Placement of an offender in the forensic mental health facility under any category
7916 described in Subsection (2)(a)(ii), (iii), (iv), or (vi) shall be made on the basis of the offender's
7917 status as established by the court at the time of adjudication.
- 7918 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
7919 department shall make rules providing for the allocation of beds to the categories described in
7920 Subsection (2)(a).
- 7921 (3) The department shall:
- 7922 (a) own and operate the forensic mental health facility;
- 7923 (b) provide and supervise administrative and clinical staff; and
- 7924 (c) provide security staff who are trained as psychiatric technicians.
- 7925 (4) Pursuant to Subsection 62A-15-603(3) the executive director shall designate

7926 individuals to perform security functions for the state hospital.

7927 Section 145. Section **63M-9-103** is amended to read:

7928 **63M-9-103. Definitions.**

7929 As used in this chapter:

7930 (1) "Children and youth at risk" means:

7931 (a) [~~disabled~~] persons, age 18 to 22, who have a disability; or

7932 (b) persons in the custody of the Division of Juvenile Justice Services within the
7933 Department of Human Services age 18 to 21; and

7934 (c) minors who may at times require appropriate and uniquely designed intervention to:

7935 (i) achieve literacy;

7936 (ii) advance through the schools;

7937 (iii) achieve commensurate with their ability; and

7938 (iv) participate in society in a meaningful way as competent, productive, caring, and
7939 responsible citizens.

7940 (2) "Council" means the Families, Agencies, and Communities Together State Council
7941 established under Section 63M-9-201.

7942 (3) "Local interagency council" means a council established under Section 63M-9-301.

7943 (4) "Steering committee" means the Families, Agencies, and Communities Together
7944 Steering Committee established under Section 63M-9-202.

7945 (5) (a) "Child and family centered service delivery system" means services provided to
7946 children and youth at risk and their families that may be delivered by teams and within a
7947 supportive community environment.

7948 (b) "Community" includes, when available, parents of children and youth at risk;
7949 directors of geographical service delivery areas designated by state agencies; local government
7950 elected officials; appointed county officials who are responsible for providing substance abuse,
7951 mental health, or public health services; educators; school districts; parent-teacher
7952 organizations; child and family advocacy groups; religious and community-based service
7953 organizations; individuals; and private sector entities who come together to develop, adopt, and

7954 administer a plan for a collaborative service delivery system for children and youth at risk.

7955 (c) "Community resources" means time, money, services, and other contributions
7956 provided by individuals, private sector entities, religious organizations, community-based
7957 service organizations, school districts, municipal governments, and county governments.

7958 (d) "Individualized and coordinated service plan" means a plan for services and
7959 supports that is comprehensive in its scope, is the product of a collaborative process between
7960 public and private service providers, and is specifically tailored to the unique needs of each
7961 child or youth served under this chapter.

7962 (e) "Performance monitoring system" means a process to regularly collect and analyze
7963 performance information including performance indicators and performance goals:

7964 (i) "performance indicators" means actual performance information regarding a
7965 program or activity; and

7966 (ii) "performance goals" means a target level of performance or an expected level of
7967 performance against which actual performance is measured.

7968 (f) "Plan for a collaborative service delivery system," "plan," or "plans" means a
7969 written document describing how a community proposes to deliver services and supports to
7970 children and youth at risk that effectively bring to bear all needed resources, including
7971 community resources, to enable them to achieve the outcomes described in Subsection (1)(c).

7972 Section 146. Section **64-9b-1** is amended to read:

7973 **64-9b-1. Legislative findings.**

7974 (1) The Legislature finds that it is in the best interest of the state [~~of Utah~~] for the
7975 department to:

7976 (a) develop job opportunities to further enhance the rehabilitation of inmates of the
7977 Utah state prison;

7978 (b) establish and actively work toward the goal that all inmates shall be productively
7979 involved in a treatment, education, or work program, or a combination of these programs, as
7980 appropriate, except for inmates who the department determines [~~are physically or mentally~~
7981 ~~disabled~~] have a physical or mental disability, or pose a danger to the public, so that they are

7982 unable to engage in these activities; and

7983 (c) submit a comprehensive management plan outlining the department's plan to meet
7984 this goal to the Legislature on or before November 1 of each even-numbered year, and the plan
7985 shall include:

7986 (i) a cost-effective analysis of current inmate education, treatment, and work programs;
7987 and

7988 (ii) a study of the feasibility of expanding inmate work programs, particularly in regard
7989 to programs that:

7990 (A) are not capital intensive;

7991 (B) do not unfairly compete with existing Utah industry; and

7992 (C) are designed to increase the motivation, develop the work capabilities, and foster
7993 the cooperation of inmates.

7994 (2) The Legislature further finds that a proper means to accomplish this is through a
7995 liberal application of this [act] chapter.

7996 Section 147. Section **67-19-27** is amended to read:

7997 **67-19-27. Leave of absence with pay for employees with a disability who are**
7998 **covered under other civil service systems.**

7999 (1) As used in this section:

8000 (a) (i) "Law enforcement officer" means a sworn and certified peace officer who is an
8001 employee of a law enforcement agency that is part of or administered by the state, and whose
8002 primary and principal duties consist of the prevention and detection of crime and the
8003 enforcement of criminal statutes of this state.

8004 (ii) "Law enforcement officer" specifically includes the following:

8005 (A) the commissioner of public safety and any member of the Department of Public
8006 Safety certified as a peace officer;

8007 (B) all persons specified in Sections 23-20-1.5 and 79-4-501;

8008 (C) investigators for the Motor Vehicle Enforcement Division;

8009 (D) special agents or investigators employed by the attorney general;

8010 (E) employees of the Department of Natural Resources designated as peace officers by
8011 law;

8012 (F) the executive director of the Department of Corrections and any correctional
8013 enforcement or investigative officer designated by the executive director and approved by the
8014 commissioner of public safety and certified by the division; and

8015 (G) correctional enforcement, investigative, or adult probation and parole officers
8016 employed by the Department of Corrections serving on or before July 1, 1993.

8017 (b) "State correctional officer" means a correctional officer as defined in Section
8018 53-13-104 who is employed by the Department of Corrections.

8019 (2) (a) Each law enforcement officer, state correctional officer, operator license
8020 examiner, commercial license examiner, or Driver License Division hearing examiner who is
8021 injured in the course of employment shall be given a leave of absence with full pay during the
8022 period the employee ~~[is temporarily disabled]~~ has a temporary disability.

8023 (b) This compensation is in lieu of all other compensation provided by law except
8024 hospital and medical services that are provided by law.

8025 (3) Each law enforcement officer or state correctional officer who ~~[is 100% disabled]~~
8026 has a 100% disability through a criminal act upon ~~[his]~~ the law enforcement officer's person
8027 while in the lawful discharge of ~~[his]~~ the law enforcement officer's duties, shall be given a
8028 leave of absence with full compensation until ~~[he]~~ the law enforcement officer retires or
8029 reaches the retirement age of 62 years.

8030 Section 148. Section **68-3-12.5** is amended to read:

8031 **68-3-12.5. Definitions for Utah Code.**

8032 (1) The definitions listed in this section apply to the Utah Code, unless:

8033 (a) the definition is inconsistent with the manifest intent of the Legislature or repugnant
8034 to the context of the statute; or

8035 (b) a different definition is expressly provided for the respective title, chapter, part,
8036 section, or subsection.

8037 (2) "Adjudicative proceeding" means:

8038 (a) an action by a board, commission, department, officer, or other administrative unit
8039 of the state that determines the legal rights, duties, privileges, immunities, or other legal
8040 interests of one or more identifiable persons, including an action to grant, deny, revoke,
8041 suspend, modify, annul, withdraw, or amend an authority, right, or license; and

8042 (b) judicial review of an action described in Subsection (2)(a).

8043 (3) "Administrator" includes "executor" when the subject matter justifies the use.

8044 (4) "Advisory board," "advisory commission," and "advisory council" mean a board,
8045 commission, committee, or council that:

8046 (a) is created by, and whose duties are provided by, statute or executive order;

8047 (b) performs its duties only under the supervision of another person as provided by
8048 statute; and

8049 (c) provides advice and makes recommendations to another person that makes policy
8050 for the benefit of the general public.

8051 (5) "County executive" means:

8052 (a) the county commission, in the county commission or expanded county commission
8053 form of government established under Title 17, Chapter 52, Changing Forms of County
8054 Government;

8055 (b) the county executive, in the county executive-council optional form of government
8056 authorized by Section 17-52-504; or

8057 (c) the county manager, in the council-manager optional form of government
8058 authorized by Section 17-52-505.

8059 (6) "County legislative body" means:

8060 (a) the county commission, in the county commission or expanded county commission
8061 form of government established under Title 17, Chapter 52, Changing Forms of County
8062 Government;

8063 (b) the county council, in the county executive-council optional form of government
8064 authorized by Section 17-52-504; and

8065 (c) the county council, in the council-manager optional form of government authorized

8066 by Section 17-52-505.

8067 (7) "Depose" means to make a written statement made under oath or affirmation.

8068 (8) "Executor" includes "administrator" when the subject matter justifies the use.

8069 (9) "Guardian" includes a person who:

8070 (a) qualifies as a guardian of a minor or incapacitated person pursuant to testamentary

8071 or court appointment; or

8072 (b) is appointed by a court to manage the estate of a minor or incapacitated person.

8073 (10) "Highway" includes:

8074 (a) a public bridge;

8075 (b) a county way;

8076 (c) a county road;

8077 (d) a common road; and

8078 (e) a state road.

8079 (11) "Intellectual disability" means a significant, subaverage general intellectual

8080 functioning that:

8081 (a) exists concurrently with deficits in adaptive behavior; and

8082 (b) is manifested during the developmental period as defined in the current edition of

8083 the Diagnostic and Statistical Manual of Mental Disorders, published by the American

8084 Psychiatric Association.

8085 (12) "Intermediate care facility for people with an intellectual disability" means an

8086 intermediate care facility for the mentally retarded, as defined in Title XIX of the Social

8087 Security Act.

8088 [~~(11)~~] (13) "Land" includes:

8089 (a) land;

8090 (b) a tenement;

8091 (c) a hereditament;

8092 (d) a water right;

8093 (e) a possessory right; and

- 8094 (f) a claim.
- 8095 [~~(12)~~] (14) "Month" means a calendar month, unless otherwise expressed.
- 8096 [~~(13)~~] (15) "Oath" includes "affirmation."
- 8097 [~~(14)~~] (16) "Person" means:
 - 8098 (a) an individual;
 - 8099 (b) an association;
 - 8100 (c) an institution;
 - 8101 (d) a corporation;
 - 8102 (e) a company;
 - 8103 (f) a trust;
 - 8104 (g) a limited liability company;
 - 8105 (h) a partnership;
 - 8106 (i) a political subdivision;
 - 8107 (j) a government office, department, division, bureau, or other body of government;
 - 8108 and
 - 8109 (k) any other organization or entity.
- 8110 [~~(15)~~] (17) "Personal property" includes:
 - 8111 (a) money;
 - 8112 (b) goods;
 - 8113 (c) chattels;
 - 8114 (d) effects;
 - 8115 (e) evidences of a right in action;
 - 8116 (f) a written instrument by which a pecuniary obligation, right, or title to property is
 - 8117 created, acknowledged, transferred, increased, defeated, discharged, or diminished; and
 - 8118 (g) a right or interest in an item described in Subsections [~~(15)~~] (17)(a) through (f).
- 8119 [~~(16)~~] (18) "Personal representative," "executor," and "administrator" include:
 - 8120 (a) an executor;
 - 8121 (b) an administrator;

- 8122 (c) a successor personal representative;
- 8123 (d) a special administrator; and
- 8124 (e) a person who performs substantially the same function as a person described in
- 8125 Subsections [~~(16)~~] (18)(a) through (d) under the law governing the person's status.
- 8126 [~~(17)~~] (19) "Policy board," "policy commission," or "policy council" means a board,
- 8127 commission, or council that:
- 8128 (a) is authorized to make policy for the benefit of the general public;
- 8129 (b) is created by, and whose duties are provided by, the constitution or statute; and
- 8130 (c) performs its duties according to its own rules without supervision other than under
- 8131 the general control of another person as provided by statute.
- 8132 [~~(18)~~] (20) "Population" is shown by the most recent state or national census, unless
- 8133 expressly provided otherwise.
- 8134 [~~(19)~~] (21) "Process" means a writ or summons issued in the course of a judicial
- 8135 proceeding.
- 8136 [~~(20)~~] (22) "Property" includes both real and personal property.
- 8137 [~~(21)~~] (23) "Real estate" or "real property" includes:
- 8138 (a) land;
- 8139 (b) a tenement;
- 8140 (c) a hereditament;
- 8141 (d) a water right;
- 8142 (e) a possessory right; and
- 8143 (f) a claim.
- 8144 [~~(22)~~] (24) "Review board," "review commission," and "review council" mean a board,
- 8145 commission, committee, or council that:
- 8146 (a) is authorized to approve policy made for the benefit of the general public by another
- 8147 body or person;
- 8148 (b) is created by, and whose duties are provided by, statute; and
- 8149 (c) performs its duties according to its own rules without supervision other than under

8150 the general control of another person as provided by statute.

8151 ~~[(23)]~~ (25) "Road" includes:

8152 (a) a public bridge;

8153 (b) a county way;

8154 (c) a county road;

8155 (d) a common road; and

8156 (e) a state road.

8157 ~~[(24)]~~ (26) "Signature" includes a name, mark, or sign written with the intent to
8158 authenticate an instrument or writing.

8159 ~~[(25)]~~ (27) "State," when applied to the different parts of the United States, includes a
8160 state, district, or territory of the United States.

8161 ~~[(26)]~~ (28) "Swear" includes "affirm."

8162 ~~[(27)]~~ (29) "Testify" means to make an oral statement under oath or affirmation.

8163 ~~[(28)]~~ (30) "United States" includes each state, district, and territory of the United
8164 States of America.

8165 ~~[(29)]~~ (31) "Utah Code" means the 1953 recodification of the Utah Code, as amended,
8166 unless the text expressly references a portion of the 1953 recodification of the Utah Code as it
8167 existed:

8168 (a) on the day on which the 1953 recodification of the Utah Code was enacted; or

8169 (b) (i) after the day described in Subsection ~~[(29)]~~ (31)(a); and

8170 (ii) before the most recent amendment to the referenced portion of the 1953
8171 recodification of the Utah Code.

8172 ~~[(30)]~~ (32) "Vessel," when used with reference to shipping, includes a steamboat, canal
8173 boat, and every structure adapted to be navigated from place to place.

8174 ~~[(31)]~~ (33) "Will" includes a codicil.

8175 ~~[(32)]~~ (34) "Writ" means an order or precept in writing, issued in the name of:

8176 (a) the state;

8177 (b) a court; or

8178 (c) a judicial officer.
8179 [~~(33)~~] (35) "Writing" includes:
8180 (a) printing;
8181 (b) handwriting; and
8182 (c) information stored in an electronic or other medium if the information is retrievable
8183 in a perceivable format.

8184 Section 149. Section **71-10-1** is amended to read:

8185 **71-10-1. Definitions.**

8186 As used in this chapter:

8187 (1) "Active duty" means active military duty and does not include active duty for
8188 training, initial active duty for training, or inactive duty for training.

8189 [~~(3)~~] (2) "Government entity" means the state, any county, municipality, local district,
8190 special service district, or any other political subdivision or administrative unit of the state,
8191 including state institutions of education.

8192 [~~(4)~~] (3) "Preference eligible" means:

8193 (a) any individual who has served on active duty in the armed forces for more than 180
8194 consecutive days, or was a member of a reserve component who served in a campaign or
8195 expedition for which a campaign medal has been authorized and who has been separated under
8196 honorable conditions;

8197 (b) a [~~disabled veteran with any~~] veteran with a disability, regardless of the percentage
8198 of disability;

8199 (c) the spouse or unmarried widow or widower of a veteran;

8200 (d) a purple heart recipient; or

8201 (e) a retired member of the armed forces who retired below the rank of major or its
8202 equivalent.

8203 [~~(5)~~] (4) "Veteran" means:

8204 (a) an individual who has served on active duty in the armed forces for more than 180
8205 consecutive days, or was a member of a reserve component who served in a campaign or

8206 expedition for which a campaign medal has been authorized and who has been separated or
8207 retired under honorable conditions; or

8208 (b) any individual incurring an actual service-related injury or disability in the line of
8209 duty whether or not that person completed 180 consecutive days of active duty.

8210 [~~(2) "Disabled veteran"~~] (5) "Veteran with a disability" means an individual who has:

8211 (a) been separated or retired from the armed forces under honorable conditions; and

8212 (b) established the existence of a service-connected disability or is receiving

8213 compensation, disability retirement benefits, or pension because of a public statute

8214 administered by the federal Department of Veterans Affairs or a military department.

8215 Section 150. Section **71-10-2** is amended to read:

8216 **71-10-2. Veteran's preference.**

8217 (1) Each government entity shall grant a veteran's preference upon initial hiring to each
8218 preference eligible veteran or preference eligible spouse according to the procedures and
8219 requirements of this chapter.

8220 (2) The personnel officer of any government entity shall add to the score of a
8221 preference eligible who receives a passing score on an examination, or any rating or ranking
8222 mechanism used in selecting an individual for any career service position with the government
8223 entity:

8224 (a) [~~five percent~~] 5% of the total possible score, if [~~he~~] the preference eligible is a
8225 veteran;

8226 (b) [~~10 percent~~] 10% of the total possible score, if [~~he~~] the preference eligible is a
8227 [~~disabled~~] veteran with a disability or a purple heart recipient; or

8228 (c) in the case of a preference eligible spouse, widow, or widower, the same percentage
8229 the qualifying veteran is, or would have been, entitled to.

8230 (3) A preference eligible who applies for a position that does not require an
8231 examination, or where examination results are other than a numeric score, shall be given
8232 preference in interviewing and hiring for the position.

8233 Section 151. Section **71-11-2** is amended to read:

8234 **71-11-2. Definitions.**

8235 As used in this chapter:

8236 (1) "Administrator" means a Veterans' Nursing Home Administrator selected in
8237 accordance with Section 71-11-5.

8238 (2) "Board" means any Veterans' Nursing Home Advisory Board.

8239 (3) "Department" means the Department of Veterans' Affairs created in Section 71-8-2.

8240 (4) "Executive director" means the executive director of the Department of Veterans'
8241 Affairs.

8242 (5) "Home" means any Utah Veterans' Nursing Home.

8243 (6) "Veteran" [~~shall have the same meaning as found~~] is as defined in Subsection
8244 71-10-1[(5)] (4).

8245 Section 152. Section **72-10-601** is amended to read:

8246 **72-10-601. Definitions.**

8247 As used in this part:

8248 (1) "City" means a municipality of the first class, as defined under Section 10-2-301,
8249 that:

8250 (a) is authorized by statute to operate an airport; and

8251 (b) operates an airport with greater than 10 million annual passengers.

8252 (2) "Division" means the Criminal Investigation and Technical Services Division of the
8253 Department of Public Safety, established in Section 53-10-103.

8254 (3) "Ground transportation service" means transporting passengers for hire or as a
8255 courtesy in connection with a business over public streets pursuant to a license with the city.

8256 (4) (a) "Ground transportation service provider" means a driver who provides ground
8257 transportation service where the pickup or drop-off of a passenger occurs at an airport under a
8258 city's authority.

8259 (b) "Ground transportation service provider" includes:

8260 (i) a taxicab driver;

8261 (ii) a limousine or luxury car driver;

- 8262 (iii) a bus or minibus driver, except a driver of a transit vehicle, as defined in Section
- 8263 17B-2a-802;
- 8264 (iv) a courtesy vehicle or hotel vehicle driver;
- 8265 (v) a special transportation vehicle driver who transports [~~disabled~~] persons with a
- 8266 disability; and
- 8267 (vi) a van driver.

8268 Section 153. Section **75-2-801** is amended to read:

8269 **75-2-801. Disclaimer of property interests -- Time -- Form -- Effect -- Waiver and**
8270 **bar -- Remedy not exclusive -- Application.**

8271 (1) A person, or the representative of a person, to whom an interest in or with respect
8272 to property or an interest therein devolves by whatever means may disclaim it in whole or in
8273 part by delivering or filing a written disclaimer under this section. The right to disclaim exists
8274 notwithstanding:

8275 (a) any limitation on the interest of the disclaimant in the nature of a spendthrift
8276 provision or similar restriction; or

8277 (b) any restriction or limitation on the right to disclaim contained in the governing
8278 instrument. For purposes of this subsection, the "representative of a person" includes a
8279 personal representative of a decedent, a conservator of a [~~disabled~~] person with a disability, a
8280 guardian of a minor or incapacitated person, and an agent acting on behalf of the person within
8281 the authority of a power of attorney.

8282 (2) The following rules govern the time when a disclaimer shall be filed or delivered:

8283 (a) If the property or interest has devolved to the disclaimant under a testamentary
8284 instrument or by the laws of intestacy, the disclaimer shall be filed, if of a present interest, not
8285 later than nine months after the death of the deceased owner or deceased donee of a power of
8286 appointment and, if of a future interest, not later than nine months after the event determining
8287 that the taker of the property or interest is finally ascertained and his interest is indefeasibly
8288 vested. The disclaimer shall be filed in the district court of the county in which proceedings for
8289 the administration of the estate of the deceased owner or deceased donee of the power have

8290 been commenced. A copy of the disclaimer shall be delivered in person or mailed by registered
8291 or certified mail, return receipt requested, to any personal representative or other fiduciary of
8292 the decedent or donee of the power.

8293 (b) If a property or interest has devolved to the disclaimant under a nontestamentary
8294 instrument or contract, the disclaimer shall be delivered or filed, if of a present interest, not
8295 later than nine months after the effective date of the nontestamentary instrument or contract
8296 and, if of a future interest, not later than nine months after the event determining that the taker
8297 of the property or interest is finally ascertained and his interest is indefeasibly vested. If the
8298 person entitled to disclaim does not know of the existence of the interest, the disclaimer shall
8299 be delivered or filed not later than nine months after the person learns of the existence of the
8300 interest. The effective date of a revocable instrument or contract is the date on which the
8301 maker no longer has power to revoke it or to transfer to himself the maker or another the
8302 entire legal and equitable ownership of the interest. The disclaimer or a copy thereof shall be
8303 delivered in person or mailed by registered or certified mail, return receipt requested, to the
8304 person who has legal title to or possession of the interest disclaimed.

8305 (c) A surviving joint tenant or tenant by the entireties may disclaim as a separate
8306 interest any property or interest therein devolving to him by right of survivorship. A surviving
8307 joint tenant or tenant by the entireties may disclaim the entire interest in any property or interest
8308 therein that is the subject of a joint tenancy or tenancy by the entireties devolving to him the
8309 surviving joint tenant or tenant by the entireties, if the joint tenancy or tenancy by the entireties
8310 was created by act of a deceased joint tenant or tenant by the entireties, the survivor did not
8311 join in creating the joint tenancy or tenancy by the entireties, and has not accepted a benefit
8312 under it.

8313 (d) If real property or an interest therein is disclaimed, a copy of the disclaimer may be
8314 recorded in the office of the county recorder of the county in which the property or interest
8315 disclaimed is located.

8316 (3) The disclaimer shall:

8317 (a) describe the property or interest disclaimed;

8318 (b) declare the disclaimer and extent thereof; and

8319 (c) be signed by the disclaimant.

8320 (4) The effects of a disclaimer are:

8321 (a) If property or an interest therein devolves to a disclaimant under a testamentary
8322 instrument, under a power of appointment exercised by a testamentary instrument, or under the
8323 laws of intestacy, and the decedent has not provided for another disposition of that interest,
8324 should it be disclaimed, or of disclaimed, or failed interests in general, the disclaimed interest
8325 devolves as if the disclaimant had predeceased the decedent, but if by law or under the
8326 testamentary instrument the descendants of the disclaimant would share in the disclaimed
8327 interest per capita at each generation or otherwise were the disclaimant to predecease the
8328 decedent, then the disclaimed interest passes per capita at each generation, or passes as directed
8329 by the governing instrument, to the descendants of the disclaimant who survive the decedent.
8330 A future interest that takes effect in possession or enjoyment after the termination of the estate
8331 or interest disclaimed takes effect as if the disclaimant had predeceased the decedent. A
8332 disclaimer relates back for all purposes to the date of death of the decedent.

8333 (b) If property or an interest therein devolves to a disclaimant under a nontestamentary
8334 instrument or contract and the instrument or contract does not provide for another disposition
8335 of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the
8336 disclaimed interest devolves as if the disclaimant has predeceased the effective date of the
8337 instrument or contract, but if by law or under the nontestamentary instrument or contract the
8338 descendants of the disclaimant would share in the disclaimed interest per capita at each
8339 generation or otherwise were the disclaimant to predecease the effective date of the instrument,
8340 then the disclaimed interest passes per capita at each generation, or passes as directed by the
8341 governing instrument, to the descendants of the disclaimant who survive the effective date of
8342 the instrument. A disclaimer relates back for all purposes to that date. A future interest that
8343 takes effect in possession or enjoyment at or after the termination of the disclaimed interest
8344 takes effect as if the disclaimant had died before the effective date of the instrument or contract
8345 that transferred the disclaimed interest.

8346 (c) The disclaimer or the written waiver of the right to disclaim is binding upon the
8347 disclaimant or person waiving and all persons claiming through or under either of them.

8348 (5) The right to disclaim property or an interest therein is barred by:

8349 (a) an assignment, conveyance, encumbrance, pledge, or transfer of the property or
8350 interest, or a contract therefor;

8351 (b) a written waiver of the right to disclaim;

8352 (c) an acceptance of the property or interest or a benefit under it; or

8353 (d) a sale of the property or interest under judicial sale made before the disclaimer is
8354 made.

8355 (6) This section does not abridge the right of a person to waive, release, disclaim, or
8356 renounce property or an interest therein under any other statute.

8357 (7) An interest in property that exists on July 1, 1998, as to which, if a present interest,
8358 the time for filing a disclaimer under this section has not expired or, if a future interest, the
8359 interest has not become indefeasibly vested or the taker finally ascertained, may be disclaimed
8360 within nine months after July 1, 1998.

8361 Section 154. Section **75-5-303** is amended to read:

8362 **75-5-303. Procedure for court appointment of a guardian of an incapacitated**
8363 **person.**

8364 (1) The incapacitated person or any person interested in the incapacitated person's
8365 welfare may petition for a finding of incapacity and appointment of a guardian.

8366 (2) Upon the filing of a petition, the court shall set a date for hearing on the issues of
8367 incapacity; and unless the allegedly incapacitated person has counsel of the person's own
8368 choice, it shall appoint an attorney to represent the person in the proceeding the cost of which
8369 shall be paid by the person alleged to be incapacitated, unless the court determines that the
8370 petition is without merit, in which case the attorney fees and court costs shall be paid by the
8371 person filing the petition.

8372 (3) The person alleged to be incapacitated may be examined by a physician appointed
8373 by the court who shall submit a report in writing to the court and may be interviewed by a

8374 visitor sent by the court. The visitor also may interview the person seeking appointment as
8375 guardian, visit the present place of abode of the person alleged to be incapacitated and the place
8376 it is proposed that the person will be detained or reside if the requested appointment is made,
8377 and submit a report in writing to the court.

8378 (4) (a) The person alleged to be incapacitated shall be present at the hearing in person
8379 and see or hear all evidence bearing upon the person's condition. If the person seeking the
8380 guardianship requests a waiver of presence of the person alleged to be incapacitated, the court
8381 shall order an investigation by a court visitor, the costs of which shall be paid by the person
8382 seeking the guardianship.

8383 (b) The investigation by a court visitor is not required if there is clear and convincing
8384 evidence from a physician that the person alleged to be incapacitated [~~suffers from: (a)~~] has:

8385 (i) fourth stage Alzheimer's Disease; [~~(b)~~]

8386 (ii) extended comatosis; or [~~(c) profound mental retardation.~~]

8387 (iii) (A) an intellectual disability; and

8388 (B) an intelligence quotient score under 20 to 25.

8389 (c) The person alleged to be incapacitated is entitled to be represented by counsel, to
8390 present evidence, to cross-examine witnesses, including the court-appointed physician and the
8391 visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if
8392 the person alleged to be incapacitated or the person's counsel so requests.

8393 Section 155. Section **75-5-316** is amended to read:

8394 **75-5-316. Expedited guardianship proceedings.**

8395 (1) (a) With regard to persons who are residents of the Utah State Developmental
8396 Center, the expedited process provided by this section may be applied to obtain a limited
8397 guardianship.

8398 (b) For purposes of this section:

8399 (i) "Limited guardianship" means a guardianship solely for the purpose of granting
8400 consent for medical care and for participation in approval of the ward's individualized program
8401 plan.

8402 (ii) "Ward" means a resident of the Utah State Developmental Center who is the
8403 subject of guardianship proceedings under this section.

8404 (2) Any person interested in the incapacitated person's welfare may file a petition for a
8405 finding of incapacity and appointment of a guardian. That person may seek the limited
8406 guardianship pro se, using the forms described in this section. Any fee for filing a petition for a
8407 limited guardianship shall be waived if the guardian is proceeding under this section.

8408 (3) Upon filing a petition for limited guardianship under this section, the court shall set
8409 a date for hearing.

8410 (4) The ward has the right to be present at the hearing and to see and hear all evidence
8411 relating to his condition.

8412 (5) At that hearing the court shall review the affidavit of the superintendent of the Utah
8413 State Developmental Center, described in Subsection (11), and determine whether notice has
8414 been given to the appropriate persons described in Subsection (6).

8415 (6) If the proposed guardian is not a parent or relative of the ward, personal notice shall
8416 be given to the ward's spouse, parents, and any adult children of the ward. Personal notice
8417 shall also be given to other persons as the court may direct.

8418 (7) The court may, in its discretion, appoint a guardian ad litem to represent the ward in
8419 the hearing, and may request independent evaluation by a physician appointed by the court.
8420 The physician shall submit his findings to the court in writing.

8421 (8) The court may grant the petition for a limited guardianship and sign the Order of
8422 Appointment if the court finds that:

8423 (a) the appropriate parties have been given notice;

8424 (b) the ward is incapacitated, based on the affidavit of the superintendent of the Utah
8425 State Developmental Center and any affidavit or testimony of persons entitled to receive notice
8426 or requested to present evidence under this section; and

8427 (c) it is necessary and desirable to establish the guardianship.

8428 (9) Venue for these expedited guardianship proceedings shall be the same as that
8429 described in Section 75-5-302.

8430 (10) A petition for a limited guardianship shall include the following information:

8431 (a) the interest of the petitioner;

8432 (b) the name, age, residence, and address of the ward;

8433 (c) verification that the ward is a resident of the Utah State Developmental Center;

8434 (d) the name and address of the nearest relative of the ward; and

8435 (e) the reason for appointment of guardianship.

8436 (11) The petitioner shall also provide the court with an affidavit of the superintendent
8437 of the Utah State Developmental Center that includes the following information:

8438 (a) that the ward is a resident of the Utah State Developmental Center;

8439 (b) the date the ward was originally admitted to the Utah State Developmental Center;

8440 (c) the diagnosis of the ward, including a description of the ward's disabling condition,
8441 the level of ~~[retardation]~~ the ward's intellectual disability, and any medical or physical
8442 conditions of the ward;

8443 (d) that the Utah State Developmental Center is certified as an ~~[Intermediate Care~~
8444 ~~Facility for the Mentally Retarded under Title XIX of the Social Security Act]~~ intermediate
8445 care facility for people with an intellectual disability;

8446 (e) that because of that certification, the Utah State Developmental Center receives
8447 financial participation from the United States Government for its operation and maintenance
8448 costs; and

8449 (f) that federal regulations under Title XIX require the ward to have a guardian
8450 appointed for the sole purpose of giving consent for medical and dental care and of
8451 participation in and approval of the ward's individual program plan.

8452 (12) If the court finds that, under the requirements of this section the proposed limited
8453 guardian should be appointed, it shall enter an order establishing that limited guardianship in
8454 substantially the following form:

8455 The court finds that:

8456 (a) appointment of a limited guardianship for (named ward) is necessary and desirable
8457 as a means of providing continuing care and supervision and to ensure his welfare;

- 8458 (b) the ward is incapacitated;
- 8459 (c) (named guardian) is appointed as the limited guardian of (named ward); and
- 8460 (d) the guardianship is a limited guardianship solely for the purpose of:
- 8461 (i) granting permission for medical and dental care on behalf of the ward; and
- 8462 (ii) participation in the development and approval of the ward's individual program
- 8463 plan.

8464 (13) Appointment of guardianship under this section places no additional responsibility
8465 or liability on the guardian with regard to the ward. The limited guardianship is solely for
8466 consent for medical care and approval of the ward's individualized program plan, and shall not
8467 be construed to increase or create liability or responsibility for the guardian.

8468 Section 156. Section **75-5-408** is amended to read:

8469 **75-5-408. Permissible court orders.**

8470 (1) The court has the following powers which may be exercised directly or through a
8471 conservator in respect to the estate and affairs of protected persons:

8472 (a) While a petition for appointment of a conservator or other protective order is
8473 pending and after preliminary hearing and without notice to others, the court has power to
8474 preserve and apply the property of the person to be protected as may be required for ~~[his]~~ the
8475 person's benefit or the benefit of ~~[his]~~ the person's dependents.

8476 (b) After hearing and upon determining that a basis for an appointment or other
8477 protective order exists with respect to a minor without other disability, the court has all those
8478 powers over the estate and affairs of the minor which are or might be necessary for the best
8479 interests of the minor, ~~[his]~~ the minor's family, and the members of ~~[his]~~ the minor's household.

8480 (c) After hearing and upon determining that a basis for an appointment or other
8481 protective order exists with respect to a person for reasons other than minority, the court has,
8482 for the benefit of the person and members of ~~[his]~~ the person's household, all the powers over
8483 ~~[his]~~ the person's estate and affairs ~~[which he]~~ that the person could exercise if present and not
8484 under disability, except the power to make a will. These powers include~~[, but are not limited~~
8485 ~~to]~~ the power to make gifts, to convey or release ~~[his]~~ the person's contingent and expectant

8486 interests in property including marital property rights and any right of survivorship incident to
8487 joint tenancy or tenancy by the entirety, to exercise or release [~~his~~] the person's powers as
8488 trustee, personal representative, custodian for minors, conservator, or donee of a power of
8489 appointment, to enter into contracts, to create revocable or irrevocable trusts of property of the
8490 estate [~~which~~] that may extend beyond [~~his~~] the person's disability or life, to exercise options of
8491 the [~~disabled~~] person with a disability to purchase securities or other property, to exercise [~~his~~]
8492 the person's rights to elect options and change beneficiaries under insurance and annuity
8493 policies and to surrender the policies for their cash value, to exercise [~~his~~] the person's right to
8494 an elective share in the estate of [~~his~~] the person's deceased spouse, and to renounce any
8495 interest by testate or intestate succession or by inter vivos transfer.

8496 (d) The court may exercise, or direct the exercise of, its authority to exercise or release
8497 powers of appointment of which the protected person is donee, to renounce interests, to make
8498 gifts in trust or otherwise exceeding 20% of any year's income of the estate, or to change
8499 beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing,
8500 that it is in the best interests of the protected person, and that [~~he~~] the person either is incapable
8501 of consenting or has consented to the proposed exercise of power.

8502 (2) An order made pursuant to this section determining that a basis for appointment of
8503 a conservator or other protective order exists has no effect on the capacity of the protected
8504 person.

8505 Section 157. Section **75-5-425** is amended to read:

8506 **75-5-425. Distributive duties and powers of conservator.**

8507 (1) A conservator may expend or distribute income or principal of the estate without
8508 court authorization or confirmation for the support, education, care, or benefit of the protected
8509 person and his dependents in accordance with the following principles:

8510 (a) The conservator is to consider recommendations relating to the appropriate standard
8511 of support, education, and benefit for the protected person made by a parent or guardian, if any.
8512 He may not be surcharged for sums paid to persons or organizations actually furnishing
8513 support, education, or care to the protected person pursuant to the recommendations of a parent

8514 or guardian of the protected person unless he knows that the parent or guardian is deriving
8515 personal financial benefit therefrom, including relief from any personal duty of support, or
8516 unless the recommendations are clearly not in the best interests of the protected person.

8517 (b) The conservator is to expend or distribute sums reasonably necessary for the
8518 support, education, care or benefit of the protected person with due regard to:

8519 (i) the size of the estate, the probable duration of the conservatorship and the likelihood
8520 that the protected person, at some future time, may be fully able to manage ~~[his]~~ the protected
8521 person's affairs and the estate which has been conserved for ~~[him]~~ the protected person;

8522 (ii) the accustomed standard of living of the protected person and members of ~~[his]~~ the
8523 protected person's household; and

8524 (iii) other funds or sources used for the support of the protected person.

8525 (c) The conservator may expend funds of the estate for the support of persons legally
8526 dependent on the protected person and others who are members of the protected person's
8527 household who are unable to support themselves and who are in need of support.

8528 (d) Funds expended under this Subsection (1) may be paid by the conservator to any
8529 person, including the protected person to reimburse for expenditures which the conservator
8530 might have made, or in advance for services to be rendered to the protected person when it is
8531 reasonable to expect that they will be performed and where advance payments are customary or
8532 reasonably necessary under the circumstances.

8533 (2) If the estate is ample to provide for the purposes implicit in the distributions
8534 authorized by Subsection (1), a conservator for a protected person other than a minor has power
8535 to make gifts to charity and other objects as the protected person might have been expected to
8536 make, in amounts which do not exceed in total for any year 20% of the income from the estate.

8537 (3) When a person who is a minor and who has not been adjudged ~~[disabled]~~ to have a
8538 disability under Subsection 75-5-401~~[(1)(b)]~~(2)(a) attains ~~[his]~~ the age of majority, ~~[his]~~ the
8539 person's conservator, after meeting all prior claims and expenses of administration, shall pay
8540 over and distribute all funds and properties to the former protected person as soon as possible.

8541 (4) When the conservator is satisfied that a protected person's disability (other than

8542 minority) has ceased, the conservator, after meeting all prior claims and expenses of
8543 administration, shall pay over and distribute all funds and properties to the former protected
8544 person as soon as possible.

8545 (5) If a protected person dies, the conservator shall deliver to the court for safekeeping
8546 any will of the deceased protected person [~~which~~] that may have come into [~~his~~] the
8547 conservator's possession, inform the executor or a beneficiary named in the will that [~~he~~] the
8548 conservator has done so, and retain the estate for delivery to a duly appointed personal
8549 representative of the decedent or other persons entitled to it. If after 40 days from the death of
8550 the protected person no other person has been appointed personal representative and no
8551 application or petition for appointment is before the court, the conservator may apply to
8552 exercise the powers and duties of a personal representative so that [~~he~~] the conservator may
8553 proceed to administer and distribute the decedent's estate without additional or further
8554 appointment. Upon application for an order granting the powers of a personal representative to
8555 a conservator, after notice as provided in Section 75-3-310, the court may order the conferral of
8556 the power upon determining that there is no objection and endorse the letters of the conservator
8557 to note that the formerly protected person is deceased and that the conservator has acquired all
8558 of the powers and duties of a personal representative. The making and entry of an order under
8559 this section shall have the effect of an order of appointment of a personal representative as
8560 provided in Section 75-3-308 and Chapter 3, Parts 6 through 10, except that the estate in the
8561 name of the conservator, after administration, may be distributed to the decedent's successors
8562 without prior retransfer to the conservator as personal representative.

8563 Section 158. Section **75-5-501** is amended to read:

8564 **75-5-501. Power of attorney not affected by disability or lapse of time -- Agent**
8565 **responsibilities.**

8566 (1) Whenever a principal designates another [~~his~~] as the principal's attorney-in-fact or
8567 agent by a power of attorney in writing and the writing contains the words "This power of
8568 attorney shall not be affected by disability of the principal," or "This power of attorney shall
8569 become effective upon the disability of the principal," or similar words showing the intent of

8570 the principal that the authority conferred shall be exercisable notwithstanding [~~his~~] the
8571 principal's disability, the authority of the attorney-in-fact or agent is exercisable by [~~him~~] the
8572 attorney-in-fact or agent as provided in the power on behalf of the principal notwithstanding:

8573 (a) later disability or incapacity of the principal at law or later uncertainty as to whether
8574 the principal is dead or alive; or

8575 (b) the lapse of time since the execution of the instrument, unless the instrument states
8576 a time of termination.

8577 (2) If an attorney-in-fact or agent determines that the principal has become
8578 incapacitated or [~~disabled~~] has acquired a disability and the power of attorney by its terms
8579 remains in effect or becomes effective as a result of a principal's incapacity or disability, the
8580 attorney-in-fact or agent shall:

8581 (a) notify all interested persons of [~~his~~] the attorney-in-fact's or agent's status as the
8582 power of attorney holder within 30 days of the principal's incapacitation, and provide them
8583 with [~~his~~] the attorney-in-fact's or agent's name and address;

8584 (b) provide to any interested persons upon written request, a copy of the power of
8585 attorney;

8586 (c) provide to any interested persons upon written request, an annual accounting of the
8587 assets to which the power of attorney applies, unless the power of attorney specifically directs
8588 that the attorney-in-fact or agent is not required to do so; and

8589 (d) notify all interested persons upon the death of the principal.

8590 (3) All interested persons shall be notified within 10 days if the attorney-in-fact or
8591 agent changes. The notification shall be made by the new attorney-in-fact or agent who shall
8592 then be accountable to the interested persons in accordance with Subsection (2).

8593 (4) All acts done by the attorney-in-fact or agent pursuant to the power during any
8594 period of disability or incompetence or uncertainty as to whether the principal is dead or alive
8595 have the same effect and inure to the benefit of and bind the principal or [~~his~~] the principal's
8596 heirs, devisees, and personal representative as if the principal were alive, competent, and [~~not~~
8597 ~~disabled~~] did not have a disability, except as provided in Section 75-5-503.

8598 (5) A conservator may be appointed for a principal even though the principal has a
8599 valid power of attorney in place. If a conservator thereafter is appointed for the principal, the
8600 attorney-in-fact or agent, during the continuance of the appointment, shall account to the
8601 conservator rather than the principal. The conservator, pursuant to court order as provided in
8602 Subsection 75-5-408(1)(d), has the same power the principal would have had, if [~~he were not~~
8603 ~~disabled or~~ the principle did not have a disability or was not incompetent, to revoke, suspend,
8604 or terminate all or any part of the power of attorney or agency.

8605 (6) For the purposes of this section, "interested person" means any person entitled to a
8606 part of the principal's estate from the principal's will or through the intestacy laws, whichever is
8607 applicable.

8608 Section 159. Section **76-3-203.5** is amended to read:

8609 **76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.**

8610 (1) As used in this section:

8611 (a) "Felony" means any violation of a criminal statute of the state, any other state, the
8612 United States, or any district, possession, or territory of the United States for which the
8613 maximum punishment the offender may be subjected to exceeds one year in prison.

8614 (b) "Habitual violent offender" means a person convicted within the state of any violent
8615 felony and who on at least two previous occasions has been convicted of a violent felony and
8616 committed to either prison in Utah or an equivalent correctional institution of another state or
8617 of the United States either at initial sentencing or after revocation of probation.

8618 (c) "Violent felony" means:

8619 (i) any of the following offenses, or any attempt, solicitation, or conspiracy to commit
8620 any of the following offenses punishable as a felony:

8621 (A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief,
8622 Title 76, Chapter 6, Part 1, Property Destruction;

8623 (B) assault by prisoner, Section 76-5-102.5;

8624 (C) disarming a police officer, Section 76-5-102.8;

8625 (D) aggravated assault, Section 76-5-103;

- 8626 (E) aggravated assault by prisoner, Section 76-5-103.5;
- 8627 (F) mayhem, Section 76-5-105;
- 8628 (G) stalking, Subsection 76-5-106.5(2) or (3);
- 8629 (H) threat of terrorism, Section 76-5-107.3;
- 8630 (I) child abuse, Subsection 76-5-109(2)(a) or (b);
- 8631 (J) commission of domestic violence in the presence of a child, Section 76-5-109.1;
- 8632 (K) abuse or neglect of [~~disabled~~] a child with a disability, Section 76-5-110;
- 8633 (L) abuse, neglect, or exploitation of a vulnerable adult, Section 76-5-111;
- 8634 (M) endangerment of a child or vulnerable adult, Section 76-5-112.5;
- 8635 (N) criminal homicide offenses under Title 76, Chapter 5, Part 2, Criminal Homicide;
- 8636 (O) kidnapping, child kidnapping, and aggravated kidnapping under Title 76, Chapter
- 8637 5, Part 3, Kidnapping, Trafficking, and Smuggling;
- 8638 (P) rape, Section 76-5-402;
- 8639 (Q) rape of a child, Section 76-5-402.1;
- 8640 (R) object rape, Section 76-5-402.2;
- 8641 (S) object rape of a child, Section 76-5-402.3;
- 8642 (T) forcible sodomy, Section 76-5-403;
- 8643 (U) sodomy on a child, Section 76-5-403.1;
- 8644 (V) forcible sexual abuse, Section 76-5-404;
- 8645 (W) aggravated sexual abuse of a child or sexual abuse of a child, Section 76-5-404.1;
- 8646 (X) aggravated sexual assault, Section 76-5-405;
- 8647 (Y) sexual exploitation of a minor, Section 76-5a-3;
- 8648 (Z) aggravated burglary and burglary of a dwelling under Title 76, Chapter 6, Part 2,
- 8649 Burglary and Criminal Trespass;
- 8650 (AA) aggravated robbery and robbery under Title 76, Chapter 6, Part 3, Robbery;
- 8651 (BB) theft by extortion under Subsection 76-6-406(2)(a) or (b);
- 8652 (CC) tampering with a witness under Subsection 76-8-508(1);
- 8653 (DD) retaliation against a witness, victim, or informant under Section 76-8-508.3;

8654 (EE) tampering with a juror under Subsection 76-8-508.5(2)(c);
8655 (FF) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any threat
8656 or by use of force theft by extortion has been committed pursuant to Subsections
8657 76-6-406(2)(a), (b), and (i);
8658 (GG) possession, use, or removal of explosive, chemical, or incendiary devices under
8659 Subsections 76-10-306(3) through (6);
8660 (HH) unlawful delivery of explosive, chemical, or incendiary devices under Section
8661 76-10-307;
8662 (II) purchase or possession of a dangerous weapon or handgun by a restricted person
8663 under Section 76-10-503;
8664 (JJ) unlawful discharge of a firearm under Section 76-10-508;
8665 (KK) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);
8666 (LL) bus hijacking under Section 76-10-1504; and
8667 (MM) discharging firearms and hurling missiles under Section 76-10-1505; or
8668 (ii) any felony violation of a criminal statute of any other state, the United States, or
8669 any district, possession, or territory of the United States which would constitute a violent
8670 felony as defined in this Subsection (1) if committed in this state.
8671 (2) If a person is convicted in this state of a violent felony by plea or by verdict and the
8672 trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender
8673 under this section, the penalty for a:
8674 (a) third degree felony is as if the conviction were for a first degree felony;
8675 (b) second degree felony is as if the conviction were for a first degree felony; or
8676 (c) first degree felony remains the penalty for a first degree penalty except:
8677 (i) the convicted person is not eligible for probation; and
8678 (ii) the Board of Pardons and Parole shall consider that the convicted person is a
8679 habitual violent offender as an aggravating factor in determining the length of incarceration.
8680 (3) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall
8681 provide notice in the information or indictment that the defendant is subject to punishment as a

8682 habitual violent offender under this section. Notice shall include the case number, court, and
8683 date of conviction or commitment of any case relied upon by the prosecution.

8684 (b) (i) The defendant shall serve notice in writing upon the prosecutor if the defendant
8685 intends to deny that:

8686 (A) the defendant is the person who was convicted or committed;

8687 (B) the defendant was represented by counsel or had waived counsel; or

8688 (C) the defendant's plea was understandingly or voluntarily entered.

8689 (ii) The notice of denial shall be served not later than five days prior to trial and shall
8690 state in detail the defendant's contention regarding the previous conviction and commitment.

8691 (4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to
8692 a jury, the jury may not be told until after it returns its verdict on the underlying felony charge,
8693 of the:

8694 (i) defendant's previous convictions for violent felonies, except as otherwise provided
8695 in the Utah Rules of Evidence; or

8696 (ii) allegation against the defendant of being a habitual violent offender.

8697 (b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of
8698 being an habitual violent offender by the same jury, if practicable, unless the defendant waives
8699 the jury, in which case the allegation shall be tried immediately to the court.

8700 (c) (i) [~~Prior to~~] Before or at the time of sentencing the trier of fact shall determine if
8701 this section applies.

8702 (ii) The trier of fact shall consider any evidence presented at trial and the prosecution
8703 and the defendant shall be afforded an opportunity to present any necessary additional
8704 evidence.

8705 (iii) [~~Prior to~~] Before sentencing under this section, the trier of fact shall determine
8706 whether this section is applicable beyond a reasonable doubt.

8707 (d) If any previous conviction and commitment is based upon a plea of guilty or no
8708 contest, there is a rebuttable presumption that the conviction and commitment were regular and
8709 lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the

8710 conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution
8711 to establish by a preponderance of the evidence that the defendant was then represented by
8712 counsel or had lawfully waived the right to have counsel present, and that the defendant's plea
8713 was understandingly and voluntarily entered.

8714 (e) If the trier of fact finds this section applicable, the court shall enter that specific
8715 finding on the record and shall indicate in the order of judgment and commitment that the
8716 defendant has been found by the trier of fact to be a habitual violent offender and is sentenced
8717 under this section.

8718 (5) (a) The sentencing enhancement provisions of Section 76-3-407 supersede the
8719 provisions of this section.

8720 (b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in
8721 Subsection (1)(c) shall include any felony sexual offense violation of Title 76, Chapter 5, Part
8722 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.

8723 (6) The sentencing enhancement described in this section does not apply if:

8724 (a) the offense for which the person is being sentenced is:

8725 (i) a grievous sexual offense;

8726 (ii) child kidnapping, Section 76-5-301.1;

8727 (iii) aggravated kidnapping, Section 76-5-302; or

8728 (iv) forcible sexual abuse, Section 76-5-404; and

8729 (b) applying the sentencing enhancement provided for in this section would result in a
8730 lower maximum penalty than the penalty provided for under the section that describes the
8731 offense for which the person is being sentenced.

8732 Section 160. Section **76-3-406** is amended to read:

8733 **76-3-406. Crimes for which probation, suspension of sentence, lower category of**
8734 **offense, or hospitalization may not be granted.**

8735 Notwithstanding Sections 76-3-201 and 77-18-1 and Title 77, Chapter 16a,
8736 Commitment and Treatment of ~~[Mentally III]~~ Persons with a Mental Illness, except as provided
8737 in Section 76-5-406.5, probation shall not be granted, the execution or imposition of sentence

8738 shall not be suspended, the court shall not enter a judgment for a lower category of offense, and
 8739 hospitalization shall not be ordered, the effect of which would in any way shorten the prison
 8740 sentence for any person who commits a capital felony or a first degree felony involving:

- 8741 (1) Section 76-5-202, aggravated murder;
- 8742 (2) Section 76-5-203, murder;
- 8743 (3) Section 76-5-301.1, child kidnaping;
- 8744 (4) Section 76-5-302, aggravated kidnaping;
- 8745 (5) Section 76-5-402, rape, if the person is sentenced under Subsection 76-5-402(3)(b),
 8746 (3)(c), or (4);
- 8747 (6) Section 76-5-402.1, rape of a child;
- 8748 (7) Section 76-5-402.2, object rape, if the person is sentenced under Subsection 76-
 8749 5-402.2 (1)(b), (1)(c), or (2);
- 8750 (8) Section 76-5-402.3, object rape of a child;
- 8751 (9) Section 76-5-403, forcible sodomy, if the person is sentenced under Subsection
 8752 76-5-403(4)(b), (4)(c), or (5);
- 8753 (10) Section 76-5-403.1, sodomy on a child;
- 8754 (11) Section 76-5-404, forcible sexual abuse, if the person is sentenced under
 8755 Subsection 76-5-404(2)(b) or (3);
- 8756 (12) Subsections 76-5-404.1(4) and (5), aggravated sexual abuse of a child;
- 8757 (13) Section 76-5-405, aggravated sexual assault; or
- 8758 (14) any attempt to commit a felony listed in Subsection (6), (8), or (10).

8759 Section 161. Section **76-5-109** is amended to read:

8760 **76-5-109. Child abuse -- Child abandonment.**

- 8761 (1) As used in this section:
- 8762 (a) "Child" means a human being who is under 18 years of age.
- 8763 (b) (i) "Child abandonment" means that a parent or legal guardian of a child:
- 8764 (A) intentionally ceases to maintain physical custody of the child;
- 8765 (B) intentionally fails to make reasonable arrangements for the safety, care, and

- 8766 physical custody of the child; and
- 8767 (C) (I) intentionally fails to provide the child with food, shelter, or clothing;
- 8768 (II) manifests an intent to permanently not resume physical custody of the child; or
- 8769 (III) for a period of at least 30 days:
- 8770 (Aa) intentionally fails to resume physical custody of the child; and
- 8771 (Bb) fails to manifest a genuine intent to resume physical custody of the child.
- 8772 (ii) "Child abandonment" does not include:
- 8773 (A) safe relinquishment of a child pursuant to the provisions of Section 62A-4a-802; or
- 8774 (B) giving legal consent to a court order for termination of parental rights:
- 8775 (I) in a legal adoption proceeding; or
- 8776 (II) in a case where a petition for the termination of parental rights, or the termination
- 8777 of a guardianship, has been filed.
- 8778 (c) "Child abuse" means any offense described in Subsection (2), (3), or (4) or in
- 8779 Section 76-5-109.1.
- 8780 (d) "Enterprise" is as defined in Section 76-10-1602.
- 8781 (e) "Physical injury" means an injury to or condition of a child which impairs the
- 8782 physical condition of the child, including:
- 8783 (i) a bruise or other contusion of the skin;
- 8784 (ii) a minor laceration or abrasion;
- 8785 (iii) failure to thrive or malnutrition; or
- 8786 (iv) any other condition which imperils the child's health or welfare and which is not a
- 8787 serious physical injury as defined in Subsection (1)(f).
- 8788 (f) (i) "Serious physical injury" means any physical injury or set of injuries that:
- 8789 (A) seriously impairs the child's health;
- 8790 (B) involves physical torture;
- 8791 (C) causes serious emotional harm to the child; or
- 8792 (D) involves a substantial risk of death to the child.
- 8793 (ii) "Serious physical injury" includes:

- 8794 (A) fracture of any bone or bones;
- 8795 (B) intracranial bleeding, swelling or contusion of the brain, whether caused by blows,
8796 shaking, or causing the child's head to impact with an object or surface;
- 8797 (C) any burn, including burns inflicted by hot water, or those caused by placing a hot
8798 object upon the skin or body of the child;
- 8799 (D) any injury caused by use of a dangerous weapon as defined in Section 76-1-601;
- 8800 (E) any combination of two or more physical injuries inflicted by the same person,
8801 either at the same time or on different occasions;
- 8802 (F) any damage to internal organs of the body;
- 8803 (G) any conduct toward a child that results in severe emotional harm, severe
8804 developmental delay or [~~retardation~~] intellectual disability, or severe impairment of the child's
8805 ability to function;
- 8806 (H) any injury that creates a permanent disfigurement or protracted loss or impairment
8807 of the function of a bodily member, limb, or organ;
- 8808 (I) any conduct that causes a child to cease breathing, even if resuscitation is successful
8809 following the conduct; or
- 8810 (J) any conduct that results in starvation or failure to thrive or malnutrition that
8811 jeopardizes the child's life.
- 8812 (2) Any person who inflicts upon a child serious physical injury or, having the care or
8813 custody of such child, causes or permits another to inflict serious physical injury upon a child is
8814 guilty of an offense as follows:
- 8815 (a) if done intentionally or knowingly, the offense is a felony of the second degree;
- 8816 (b) if done recklessly, the offense is a felony of the third degree; or
- 8817 (c) if done with criminal negligence, the offense is a class A misdemeanor.
- 8818 (3) Any person who inflicts upon a child physical injury or, having the care or custody
8819 of such child, causes or permits another to inflict physical injury upon a child is guilty of an
8820 offense as follows:
- 8821 (a) if done intentionally or knowingly, the offense is a class A misdemeanor;

- 8822 (b) if done recklessly, the offense is a class B misdemeanor; or
- 8823 (c) if done with criminal negligence, the offense is a class C misdemeanor.
- 8824 (4) A person who commits child abandonment, or encourages or causes another to
- 8825 commit child abandonment, or an enterprise that encourages, commands, or causes another to
- 8826 commit child abandonment, is:
- 8827 (a) except as provided in Subsection (4)(b), guilty of a felony of the third degree; or
- 8828 (b) guilty of a felony of the second degree, if, as a result of the child abandonment:
- 8829 (i) the child suffers a serious physical injury; or
- 8830 (ii) the person or enterprise receives, directly or indirectly, any benefit.
- 8831 (5) (a) In addition to the penalty described in Subsection (4)(b), the court may order the
- 8832 person or enterprise described in Subsection (4)(b)(ii) to pay the costs of investigating and
- 8833 prosecuting the offense and the costs of securing any forfeiture provided for under Subsection
- 8834 (5)(b).
- 8835 (b) Any tangible or pecuniary benefit received under Subsection (4)(b)(ii) is subject to
- 8836 criminal or civil forfeiture pursuant to Title 24, Chapter 1, Utah Uniform [~~Forfeitures~~
- 8837 Forfeiture Procedures Act.
- 8838 (6) A parent or legal guardian who provides a child with treatment by spiritual means
- 8839 alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices
- 8840 of an established church or religious denomination of which the parent or legal guardian is a
- 8841 member or adherent shall not, for that reason alone, be considered to have committed an
- 8842 offense under this section.
- 8843 (7) A parent or guardian of a child does not violate this section by selecting a treatment
- 8844 option for the medical condition of the child, if the treatment option is one that a reasonable
- 8845 parent or guardian would believe to be in the best interest of the child.
- 8846 (8) A person is not guilty of an offense under this section for conduct that constitutes:
- 8847 (a) reasonable discipline or management of a child, including withholding privileges;
- 8848 (b) conduct described in Section 76-2-401; or
- 8849 (c) the use of reasonable and necessary physical restraint or force on a child:

- 8850 (i) in self-defense;
- 8851 (ii) in defense of others;
- 8852 (iii) to protect the child; or
- 8853 (iv) to remove a weapon in the possession of a child for any of the reasons described in
- 8854 Subsections (8)(c)(i) through (iii).

8855 Section 162. Section **76-5-110** is amended to read:

8856 **76-5-110. Abuse or neglect of a child with a disability.**

8857 (1) As used in this section:

8858 (a) "Abuse" means:

- 8859 (i) inflicting physical injury, as that term is defined in Section 76-5-109;
- 8860 (ii) having the care or custody of a [~~disabled~~] child with a disability, causing or
- 8861 permitting another to inflict physical injury, as that term is defined in Section 76-5-109; or
- 8862 (iii) unreasonable confinement.

8863 (b) "Caretaker" means:

- 8864 (i) any parent, legal guardian, or other person having under that person's care and
- 8865 custody a [~~disabled~~] child with a disability; or
- 8866 (ii) any person, corporation, or public institution that has assumed by contract or court
- 8867 order the responsibility to provide food, shelter, clothing, medical, and other necessities to a
- 8868 [~~disabled~~] child with a disability.

8869 (c) [~~"Disabled child"~~] "Child with a disability" means any person under 18 years of age

8870 who is impaired because of mental illness, mental deficiency, physical illness or disability, or

8871 other cause, to the extent that the person is unable to care for the person's own personal safety

8872 or to provide necessities such as food, shelter, clothing, and medical care.

8873 (d) "Neglect" means failure by a caretaker to provide care, nutrition, clothing, shelter,

8874 supervision, or medical care.

8875 (2) Any caretaker who intentionally, knowingly, or recklessly abuses or neglects a

8876 [~~disabled~~] child with a disability is guilty of a third degree felony.

8877 (3) (a) A parent or legal guardian who provides a child with treatment by spiritual

8878 means alone through prayer, in lieu of medical treatment, in accordance with the tenets and
8879 practices of an established church or religious denomination of which the parent or legal
8880 guardian is a member or adherent shall not, for that reason alone, be considered to be in
8881 violation under this section.

8882 (b) Subject to Subsection 78A-6-117(2)(n)(iii), the exception under Subsection (3)(a)
8883 does not preclude a court from ordering medical services from a physician licensed to engage
8884 in the practice of medicine to be provided to the child where there is substantial risk of harm to
8885 the child's health or welfare if the treatment is not provided.

8886 (c) A caretaker of a [~~disabled~~] child with a disability does not violate this section by
8887 selecting a treatment option for a [~~disabled child's~~] medical condition of a child with a
8888 disability, if the treatment option is one that a reasonable caretaker would believe to be in the
8889 best interest of the [~~disabled~~] child with a disability.

8890 Section 163. Section **77-13-1** is amended to read:

8891 **77-13-1. Kinds of pleas.**

8892 (1) There are five kinds of pleas to an indictment or information:

8893 (a) not guilty;

8894 (b) guilty;

8895 (c) no contest;

8896 (d) not guilty by reason of insanity; and

8897 (e) guilty [~~and mentally ill~~] with a mental illness at the time of the offense.

8898 (2) An alternative plea of not guilty or not guilty by reason of insanity may be entered.

8899 Section 164. Section **77-16a-101** is amended to read:

8900 **CHAPTER 16a. COMMITMENT AND TREATMENT OF PERSONS WITH A**
8901 **MENTAL ILLNESS**

8902 **77-16a-101. Definitions.**

8903 As used in this chapter:

8904 (1) "Board" means the Board of Pardons and Parole established under Section 77-27-2.

8905 (2) "Department" means the Department of Human Services.

8906 (3) "Executive director" means the executive director of the Department of Human
8907 Services.

8908 (4) "Mental health facility" means the Utah State Hospital or other facility that
8909 provides mental health services under contract with the division, a local mental health
8910 authority, or organization that contracts with a local mental health authority.

8911 (5) [~~"Mentally ill" means the same as that term is~~] "Mental illness" is as defined in
8912 Section 76-2-305.

8913 (6) [~~"Mentally ill offender"~~] "Offender with a mental illness" means an individual who
8914 has been adjudicated guilty [~~and mentally ill~~] with a mental illness, including an individual
8915 who [~~is mentally retarded~~] has an intellectual disability.

8916 [~~(7) "Mentally retarded" means the same as the term "mental retardation", defined in~~
8917 ~~Section 62A-5-101.~~]

8918 [~~(8)~~] (7) "UDC" means the Department of Corrections.

8919 Section 165. Section **77-16a-102** is amended to read:

8920 **77-16a-102. Jury instructions.**

8921 (1) If a defendant asserts a defense of not guilty by reason of insanity, the court shall
8922 instruct the jury that it may find the defendant:

8923 (a) guilty;

8924 (b) guilty [~~and mentally ill~~] with a mental illness at the time of the offense;

8925 (c) guilty of a lesser offense;

8926 (d) guilty of a lesser offense [~~and mentally ill~~] with a mental illness at the time of the
8927 offense;

8928 (e) not guilty by reason of insanity; or

8929 (f) not guilty.

8930 (2) (a) When a defendant asserts a mental defense pursuant to Section 76-2-305 or
8931 asserts special mitigation reducing the level of an offense pursuant to Subsection
8932 76-5-205.5(1)(a), or when the evidence raises the issue and either party requests the instruction,
8933 the jury shall be instructed that if it finds a defendant guilty by proof beyond a reasonable doubt

8934 of any charged offense or lesser included offense, it shall also return a special verdict indicating
8935 whether it finds that the defendant [~~was mentally ill~~] had a mental illness at the time of the
8936 offense.

8937 (b) If the jury finds the defendant guilty of the charged offense by proof beyond a
8938 reasonable doubt, and by special verdict finds the defendant [~~was mentally ill~~] had a mental
8939 illness at the time of the offense, it shall return the general verdict of "guilty [~~and mentally ill~~]
8940 with a mental illness at the time of the offense."

8941 (c) If the jury finds the defendant guilty of a lesser offense by proof beyond a
8942 reasonable doubt, and by special verdict finds the defendant [~~was mentally ill~~] had a mental
8943 illness at the time of the offense, it shall return the general verdict of "guilty of a lesser offense
8944 [~~and mentally ill~~] with a mental illness at the time of the offense."

8945 (d) If the jury finds the defendant guilty of the charged offense or a lesser included
8946 offense and does not find that the defendant [~~was mentally ill~~] had a mental illness at the time
8947 of the offense, the jury shall return a verdict of "guilty" of that offense, along with the special
8948 verdict form indicating that the jury did not find that the defendant [~~mentally ill~~] had a mental
8949 illness at the time of the offense.

8950 (e) The special verdict shall be returned by the jury at the same time as the general
8951 verdict, to indicate the basis for its general verdict.

8952 (3) In determining whether a defendant should be found guilty [~~and mentally ill~~] with a
8953 mental illness at the time of the offense, the jury shall be instructed that the standard of proof
8954 applicable to a finding of mental illness is by a preponderance of the evidence. The jury shall
8955 also be instructed that the standard of preponderance of the evidence does not apply to the
8956 elements establishing a defendant's guilt, and that the proof of the elements establishing a
8957 defendant's guilt of any offense must be proven beyond a reasonable doubt.

8958 (4) (a) When special mitigation based on extreme emotional distress is at issue
8959 pursuant to Subsection 76-5-205.5(1)(b), the jury shall, in addition to its general verdict, return
8960 a special verdict.

8961 (b) The special verdict shall be returned by the jury at the same time as the general

8962 verdict, to indicate the basis for its general verdict.

8963 Section 166. Section **77-16a-103** is amended to read:

8964 **77-16a-103. Plea of guilty with a mental illness at the time of the offense.**

8965 (1) Upon a plea of guilty [~~and mentally ill~~] with a mental illness at the time of the
8966 offense being tendered by a defendant to any charge, the court shall hold a hearing within a
8967 reasonable time to determine whether the defendant [~~is~~] currently [~~mentally ill~~] has a mental
8968 illness.

8969 (2) The court may order the department to examine the defendant, and may receive the
8970 testimony of any public or private expert witness offered by the defendant or the prosecutor.
8971 The defendant may be placed in the Utah State Hospital for that examination only upon
8972 approval by the executive director.

8973 (3) (a) A defendant who tenders a plea of guilty [~~and mentally ill~~] with a mental illness
8974 at the time of the offense shall be examined first by the trial judge, in compliance with the
8975 standards for taking pleas of guilty. The defendant shall be advised that a plea of guilty [~~and~~
8976 ~~mentally ill~~] with a mental illness at the time of the offense is a plea of guilty and not a
8977 contingent plea.

8978 (b) If the defendant is later found not to [~~be currently mentally ill~~] have a current
8979 mental illness, that plea remains a valid plea of guilty [~~and mentally ill~~] with a mental illness at
8980 the time of the offense, and the defendant shall be sentenced as any other offender.

8981 (4) If the court concludes that the defendant [~~is currently mentally ill his~~] currently has
8982 a mental illness, the defendant's plea shall be accepted and [~~he~~] the defendant shall be
8983 sentenced in accordance with Section 77-16a-104.

8984 (5) (a) When the offense is a state offense, expenses of examination, observation, and
8985 treatment for the defendant shall be paid by the department.

8986 (b) Travel expenses shall be paid by the county where prosecution is commenced.

8987 (c) Expenses of examination for defendants charged with violation of a municipal or
8988 county ordinance shall be paid by the municipality or county that commenced the prosecution.

8989 Section 167. Section **77-16a-104** is amended to read:

8990 **77-16a-104. Verdict of guilty with a mental illness -- Hearing to determine**
8991 **present mental state.**

8992 (1) Upon a verdict of guilty [~~and mentally ill~~] with a mental illness for the offense
8993 charged, or any lesser offense, the court shall conduct a hearing to determine the defendant's
8994 present mental state.

8995 (2) The court may order the department to examine the defendant to determine [~~his~~] the
8996 defendant's mental condition, and may receive the evidence of any public or private expert
8997 witness offered by the defendant or the prosecutor. The defendant may be placed in the Utah
8998 State Hospital for that examination only upon approval of the executive director.

8999 (3) If the court finds by clear and convincing evidence that the defendant [~~is currently~~
9000 ~~mentally ill, it~~] currently has a mental illness, the court shall impose any sentence that could be
9001 imposed under law upon a defendant who [~~is not mentally ill~~] does not have a mental illness
9002 and who is convicted of the same offense, and:

9003 (a) commit [~~him~~] the defendant to the department, in accordance with the provisions of
9004 Section 77-16a-202, if:

9005 (i) the court gives the department the opportunity to provide an evaluation and
9006 recommendation under Subsection (4); and

9007 (ii) the court finds by clear and convincing evidence that:

9008 (A) because of [~~his~~] the defendant's mental illness the defendant poses an immediate
9009 physical danger to self or others, including jeopardizing [~~his~~] the defendant's own or others'
9010 safety, health, or welfare if placed in a correctional or probation setting, or lacks the ability to
9011 provide the basic necessities of life, such as food, clothing, and shelter, if placed on probation;
9012 and

9013 (B) the department is able to provide the defendant with treatment, care, custody, and
9014 security that is adequate and appropriate to the defendant's conditions and needs;

9015 (b) order probation in accordance with Section 77-16a-201; or

9016 (c) if the court determines that commitment to the department under Subsection (3)(a)
9017 or probation under Subsection (3)(b) is not appropriate, the court shall place the defendant in

9018 the custody of UDC or a county jail as allowed by law.

9019 (4) In order to insure that the requirements of Subsection (3)(a) are met, the court shall,
9020 [~~prior to~~] before making a determination, notify the executive director of the proposed
9021 placement and provide the department with an opportunity to evaluate the defendant and make
9022 a recommendation to the court regarding placement prior to commitment.

9023 (5) If the court finds that the defendant [~~is not currently mentally ill, it~~] does not
9024 currently have a mental illness, the court shall sentence the defendant as it would any other
9025 defendant.

9026 (6) Expenses for examinations ordered under this section shall be paid in accordance
9027 with Subsection 77-16a-103(5).

9028 Section 168. Section **77-16a-201** is amended to read:

9029 **77-16a-201. Probation.**

9030 (1) (a) In felony cases, when the court proposes to place on probation a defendant who
9031 has pled or is found guilty [~~and mentally ill~~] with a mental illness at the time of the offense, it
9032 shall request UDC to provide a presentence investigation report regarding whether probation is
9033 appropriate for that defendant and, if so, recommending a specific treatment program. If the
9034 defendant is placed on probation, that treatment program shall be made a condition of
9035 probation, and the defendant shall remain under the jurisdiction of the sentencing court.

9036 (b) The court may not place an offender who has been convicted of the felony offenses
9037 listed in Section 76-3-406 on probation, regardless of whether [~~he is or has been mentally ill~~]
9038 the offender has, or had, a mental illness.

9039 (2) The period of probation for a felony offense committed by a person who has been
9040 found guilty [~~and mentally ill~~] with a mental illness at the time of the offense may be for no
9041 less than five years. Probation for those offenders may not be subsequently reduced by the
9042 sentencing court without consideration of an updated report on the mental health status of the
9043 defendant.

9044 (3) (a) Treatment ordered by the court under this section may be provided by or under
9045 contract with the department, a mental health facility, a local mental health authority, or, with

9046 the approval of the sentencing court, any other public or private mental health provider.

9047 (b) The entity providing treatment under this section shall file a report with the
9048 defendant's probation officer at least every six months during the term of probation.

9049 (c) Any request for termination of probation regarding a defendant who is receiving
9050 treatment under this section shall include a current mental health report prepared by the
9051 treatment provider.

9052 (4) Failure to continue treatment or any other condition of probation, except by
9053 agreement with the entity providing treatment and the sentencing court, is a basis for initiating
9054 probation violation hearings.

9055 (5) The court may not release [~~a mentally ill offender~~] an offender with a mental illness
9056 into the community, as a part of probation, if it finds by clear and convincing evidence that [~~he~~]
9057 the offender:

9058 (a) poses an immediate physical danger to [~~himself~~] self or others, including
9059 jeopardizing [~~his~~] the offender's own or others' safety, health, or welfare if released into the
9060 community; or

9061 (b) lacks the ability to provide the basic necessities of life, such as food, clothing, and
9062 shelter, if released into the community.

9063 (6) [~~A mentally ill offender~~] An offender with a mental illness who is not eligible for
9064 release into the community under the provisions of Subsection (5) may be placed by the court,
9065 on probation, in an appropriate mental health facility.

9066 Section 169. Section **77-16a-202** is amended to read:

9067 **77-16a-202. Person found guilty with a mental illness -- Commitment to**
9068 **department -- Admission to Utah State Hospital.**

9069 (1) In sentencing and committing [~~a mentally ill~~] an offender with a mental illness to
9070 the department under Subsection 77-16a-104(3)(a), the court shall:

9071 (a) sentence the offender to a term of imprisonment and order that he be committed to
9072 the department and admitted to the Utah State Hospital for care and treatment until transferred
9073 to UDC in accordance with Sections 77-16a-203 and 77-16a-204, making provision for

9074 readmission to the Utah State Hospital whenever the requirements and conditions of Section
9075 77-16a-204 are met; or

9076 (b) sentence the offender to a term of imprisonment and order that ~~he~~ the offender be
9077 committed to the department for care and treatment for no more than 18 months, or until the
9078 offender's condition has been stabilized to the point that commitment to the department and
9079 admission to the Utah State Hospital is no longer necessary to ensure adequate mental health
9080 treatment, whichever occurs first. At the expiration of that time, the court may recall the
9081 sentence and commitment, and resentence the offender. A commitment and retention of
9082 jurisdiction under this Subsection (1)(b) shall be specified in the sentencing order. If that
9083 specification is not included in the sentencing order, the offender shall be committed in
9084 accordance with Subsection (1)(a).

9085 (2) The court may not retain jurisdiction, under Subsection (1)(b), over the sentence of
9086 ~~a mentally ill~~ an offender with a mental illness who has been convicted of a capital felony. In
9087 capital cases, the court shall make the findings required by this section after the capital
9088 sentencing proceeding mandated by Section 76-3-207.

9089 (3) When an offender is committed to the department and admitted to the Utah State
9090 Hospital under Subsection (1)(b), the department shall provide the court with reports of the
9091 offender's mental health status every six months. Those reports shall be prepared in accordance
9092 with the requirements of Section 77-16a-203. Additionally, the court may appoint an
9093 independent examiner to assess the mental health status of the offender.

9094 (4) The period of commitment to the department and admission to the Utah State
9095 Hospital, and any subsequent retransfers to the Utah State Hospital made pursuant to Section
9096 77-16a-204 may not exceed the maximum sentence imposed by the court. Upon expiration of
9097 that sentence, the administrator of the facility where the offender is located may initiate civil
9098 proceedings for involuntary commitment in accordance with Title 62A, Chapter 5, Services
9099 ~~to~~ for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health
9100 Act.

9101 Section 170. Section **77-16a-203** is amended to read:

9102 **77-16a-203. Review of offenders with a mental illness committed to department --**
9103 **Recommendations for transfer to Department of Corrections.**

9104 (1) (a) The executive director shall designate a review team of at least three qualified
9105 staff members, including at least one licensed psychiatrist, to evaluate the mental condition of
9106 each [~~mentally ill~~] offender with a mental illness committed to it in accordance with Section
9107 77-16a-202, at least once every six months.

9108 (b) If the offender [~~is mentally retarded~~] has an intellectual disability, the review team
9109 shall include at least one individual who is a designated [~~mental retardation~~] intellectual
9110 disability professional, as defined in Section 62A-5-101.

9111 (2) At the conclusion of its evaluation, the review team described in Subsection (1)
9112 shall make a report to the executive director:

9113 (a) regarding the offender's:

9114 (i) current mental condition;

9115 (ii) progress since commitment; and

9116 (iii) prognosis; and

9117 (b) that includes a recommendation regarding whether the [~~mentally ill~~] offender with a
9118 mental illness should be:

9119 (i) transferred to UDC; or

9120 (ii) remain in the custody of the department.

9121 (3) (a) The executive director shall notify the UDC medical administrator, and the
9122 board's mental health adviser that [~~a mentally ill~~] an offender with a mental illness is eligible
9123 for transfer to UDC if the review team finds that the offender:

9124 (i) [~~is~~] no longer [~~mentally ill~~] has a mental illness; or

9125 (ii) [~~is still mentally ill~~] has a mental illness and may continue to be a danger to
9126 [~~himself~~] self or others, but can be controlled if adequate care, medication, and treatment are
9127 provided by UDC; and

9128 (iii) the offender's condition has been stabilized to the point that commitment to the
9129 department and admission to the Utah State Hospital are no longer necessary to ensure

9130 adequate mental health treatment.

9131 (b) The administrator of the mental health facility where the offender is located shall
9132 provide the UDC medical administrator with a copy of the reviewing staff's recommendation
9133 and:

- 9134 (i) all available clinical facts;
- 9135 (ii) the diagnosis;
- 9136 (iii) the course of treatment received at the mental health facility;
- 9137 (iv) the prognosis for remission of symptoms;
- 9138 (v) the potential for recidivism;
- 9139 (vi) an estimation of the offender's dangerousness, either to ~~himself~~ self or others;
- 9140 and
- 9141 (vii) recommendations for future treatment.

9142 Section 171. Section **77-16a-204** is amended to read:

9143 **77-16a-204. UDC acceptance of transfer of persons found guilty with a mental**
9144 **illness -- Retransfer from UDC to department for admission to the Utah State Hospital.**

9145 (1) The UDC medical administrator shall designate a transfer team of at least three
9146 qualified staff members, including at least one licensed psychiatrist, to evaluate the
9147 recommendation made by the department's review team pursuant to Section 77-16a-203. If the
9148 offender ~~[is mentally retarded]~~ has an intellectual disability, the transfer team shall include at
9149 least one person who has expertise in testing and diagnosis of ~~[mentally retarded individuals]~~
9150 people with intellectual disabilities.

9151 (2) The transfer team shall concur in the recommendation if ~~[it]~~ the transfer team
9152 determines that UDC can provide the ~~[mentally ill]~~ offender with a mental illness with
9153 adequate mental health treatment.

9154 (3) The UDC transfer team and medical administrator shall recommend the facility in
9155 which the offender should be placed and the treatment to be provided in order for ~~[his]~~ the
9156 offender's mental condition to remain stabilized to the director of the Division of Institutional
9157 Operations, within the Department of Corrections.

9158 (4) In the event that the department and UDC do not agree on the transfer of [a
9159 ~~mentally ill~~] an offender with a mental illness, the administrator of the mental health facility
9160 where the offender is located shall notify the mental health adviser for the board, in writing, of
9161 the dispute. The mental health adviser shall be provided with copies of all reports and
9162 recommendations. The board's mental health adviser shall make a recommendation to the
9163 board on the transfer and the board shall issue its decision within 30 days.

9164 (5) UDC shall notify the board whenever [~~a mentally ill~~] an offender with a mental
9165 illness is transferred from the department to UDC.

9166 (6) When [~~a mentally ill~~] an offender with a mental illness sentenced under Section
9167 77-16a-202, who has been transferred from the department to UDC, and accepted by UDC, is
9168 evaluated and it is determined that the offender's mental condition has deteriorated or that the
9169 offender has become mentally unstable, the offender may be readmitted to the Utah State
9170 Hospital in accordance with the findings and procedures described in Section 62A-15-605.5.

9171 (7) Any person readmitted to the Utah State Hospital pursuant to Subsection (6) shall
9172 remain in the custody of UDC, and the state hospital shall act solely as the agent of UDC.

9173 (8) [~~A mentally ill~~] An offender with a mental illness who has been readmitted to the
9174 Utah State Hospital pursuant to Subsection (6) shall be transferred back to UDC in accordance
9175 with the provisions of Section 77-16a-203.

9176 Section 172. Section **77-16a-205** is amended to read:

9177 **77-16a-205. Parole.**

9178 (1) When [~~a mentally ill~~] an offender with a mental illness who has been committed to
9179 the department becomes eligible to be considered for parole, the board shall request a
9180 recommendation from the executive director and from UDC before placing the offender on
9181 parole.

9182 (2) Before setting a parole date, the board shall request that its mental health adviser
9183 prepare a report regarding the [~~mentally ill~~] offender with a mental illness, including:

9184 (a) all available clinical facts;

9185 (b) the diagnosis;

9186 (c) the course of treatment received at the mental health facility;

9187 (d) the prognosis for remission of symptoms;

9188 (e) potential for recidivism;

9189 (f) an estimation of the ~~[mentally ill offender's]~~ dangerousness of the offender with a
9190 mental illness either to ~~[himself]~~ self or others; and

9191 (g) recommendations for future treatment.

9192 (3) Based on the report described in Subsection (2), the board may place the ~~[mentally~~
9193 ~~ill]~~ offender with a mental illness on parole. The board may require mental health treatment as
9194 a condition of parole. If treatment is ordered, failure to continue treatment, except by
9195 agreement with the treatment provider, and the board, is a basis for initiation of parole
9196 violation hearings by the board.

9197 (4) UDC, through Adult Probation and Parole, shall monitor the status of ~~[a mentally~~
9198 ~~ill]~~ an offender with a mental illness who has been placed on parole. UDC may provide
9199 treatment by contracting with the department, a local mental health authority, any other public
9200 or private provider, or in-house staff.

9201 (5) The period of parole may be no less than five years, or until expiration of the
9202 defendant's sentence, whichever occurs first. The board may not subsequently reduce the
9203 period of parole without considering an updated report on the offender's current mental
9204 condition.

9205 Section 173. Section **77-16a-302** is amended to read:

9206 **77-16a-302. Persons found not guilty by reason of insanity -- Disposition.**

9207 (1) Upon a verdict of not guilty by reason of insanity, the court shall conduct a hearing
9208 within 10 days to determine whether the defendant ~~[is]~~ currently ~~[mentally ill]~~ has a mental
9209 illness. The defense counsel and prosecutors may request further evaluations and present
9210 testimony from those examiners.

9211 (2) After the hearing and upon consideration of the record, the court shall order the
9212 defendant committed to the department if it finds by clear and convincing evidence that:

9213 (a) the defendant ~~[is still mentally ill]~~ has a mental illness; and

9214 (b) because of that mental illness the defendant presents a substantial danger to
9215 ~~[himself]~~ self or others.

9216 (3) The period of commitment described in Subsection (2) may not exceed the period
9217 for which the defendant could be incarcerated had ~~[he]~~ the defendant been convicted and
9218 received the maximum sentence for the crime of which ~~[he]~~ the defendant was accused. At the
9219 time that period expires, involuntary civil commitment proceedings may be instituted in
9220 accordance with Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

9221 Section 174. Section **77-16a-304** is amended to read:

9222 **77-16a-304. Review after commitment.**

9223 (1) (a) The executive director, or the executive director's designee, shall establish a
9224 review team of at least three qualified staff members to review the defendant's mental condition
9225 at least every six months.

9226 (b) The team described in Subsection (1)(a) shall include:

9227 (i) at least one psychiatrist; and

9228 (ii) if the defendant ~~[is mentally retarded]~~ has an intellectual disability, at least one
9229 staff member who is a designated ~~[mental retardation]~~ intellectual disability professional~~[-as~~
9230 ~~defined in Section 62A-5-101]~~.

9231 (2) If the review team described in Subsection (1) finds that the defendant has
9232 recovered from the defendant's mental illness, or, that the defendant ~~[is]~~ still ~~[mentally ill]~~ has a
9233 mental illness but does not present a substantial danger to ~~[himself]~~ self or others, the executive
9234 director, or the executive director's designee, shall:

9235 (a) notify the court that committed the defendant that the defendant is a candidate for
9236 discharge; and

9237 (b) provide the court with a report stating the facts that form the basis for the
9238 recommendation.

9239 (3) (a) The court shall conduct a hearing within 10 business days after receipt of the
9240 executive director's, or the executive director's designee's, notification.

9241 (b) The court clerk shall provide notice of the date and time of the hearing to:

9242 (i) the prosecuting attorney;
 9243 (ii) the defendant's attorney; and
 9244 (iii) any victim of the crime for which the defendant was found not guilty by reason of
 9245 insanity.

9246 (4) (a) The court shall order that the defendant be discharged from commitment if the
 9247 court finds that the defendant:

9248 (i) ~~[is]~~ no longer ~~[mentally ill]~~ has a mental illness; or
 9249 (ii) ~~[is mentally ill]~~ has a mental illness, but no longer presents a substantial danger to
 9250 ~~[himself]~~ self or others.

9251 (b) The court shall order the person conditionally released in accordance with Section
 9252 77-16a-305 if the court finds that the defendant:

9253 (i) ~~[is still mentally ill]~~ has a mental illness;
 9254 (ii) is a substantial danger to ~~[himself]~~ self or others; and
 9255 (iii) can be controlled adequately if conditionally released with treatment as a condition
 9256 of release.

9257 (c) The court shall order that the commitment be continued if the court finds that the
 9258 defendant:

9259 (i) has not recovered from ~~[his]~~ the defendant's mental illness;
 9260 (ii) is a substantial danger to ~~[himself]~~ self or others; and
 9261 (iii) cannot adequately be controlled if conditionally released on supervision.

9262 (d) (i) Except as provided in Subsection (4)(d)(ii), the court may not discharge a
 9263 defendant whose mental illness is in remission as a result of medication or hospitalization if it
 9264 can be determined within reasonable medical probability that without continued medication or
 9265 hospitalization the defendant's mental illness will reoccur, making the defendant a substantial
 9266 danger to ~~[himself]~~ self or others.

9267 (ii) Notwithstanding Subsection (4)(d)(i), the defendant described in Subsection
 9268 (4)(d)(i) may be a candidate for conditional release, in accordance with Section 77-16a-305.

9269 Section 175. Section **77-16a-306** is amended to read:

9270 **77-16a-306. Continuing review -- Discharge.**

9271 (1) Each entity that provides treatment for a defendant committed to the department as
 9272 not guilty by reason of insanity under this part shall review the status of each defendant at least
 9273 once every six months. If the treatment provider finds that a defendant has recovered from
 9274 ~~[his] the defendant's~~ mental illness, or ~~[if still mentally ill]~~, if the defendant has a mental
 9275 illness, no longer presents a substantial danger to ~~[himself]~~ self or others, it shall notify the
 9276 executive director of its findings.

9277 (2) Upon receipt of notification under Subsection (1), the executive director shall
 9278 designate a review team, in accordance with Section 77-16a-304, to evaluate the defendant. If
 9279 that review team concurs with the treatment provider's assessment, the executive director shall
 9280 notify the court, the defendant's attorney, and the prosecuting attorney that the defendant is a
 9281 candidate for discharge. The court shall conduct a hearing, in accordance with Section
 9282 77-16a-302, within 10 business days after receipt of that notice.

9283 (3) The court may not discharge an individual whose mental illness is in remission as a
 9284 result of medication or hospitalization if it can be determined within reasonable medical
 9285 probability that without continued medication or hospitalization the defendant's mental illness
 9286 will reoccur, making the defendant a substantial danger to ~~[himself]~~ self or others.

9287 Section 176. Section **77-18-1** is amended to read:

9288 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation --**
 9289 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and**
 9290 **conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic**
 9291 **monitoring.**

9292 (1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea
 9293 in abeyance agreement, the court may hold the plea in abeyance as provided in Title 77,
 9294 Chapter 2a, Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

9295 (2) (a) On a plea of guilty, guilty ~~[and mentally ill]~~ with a mental illness, no contest, or
 9296 conviction of any crime or offense, the court may, after imposing sentence, suspend the
 9297 execution of the sentence and place the defendant on probation. The court may place the

9298 defendant:

9299 (i) on probation under the supervision of the Department of Corrections except in cases
9300 of class C misdemeanors or infractions;

9301 (ii) on probation with an agency of local government or with a private organization; or
9302 (iii) on bench probation under the jurisdiction of the sentencing court.

9303 (b) (i) The legal custody of all probationers under the supervision of the department is
9304 with the department.

9305 (ii) The legal custody of all probationers under the jurisdiction of the sentencing court
9306 is vested as ordered by the court.

9307 (iii) The court has continuing jurisdiction over all probationers.

9308 (3) (a) The department shall establish supervision and presentence investigation
9309 standards for all individuals referred to the department. These standards shall be based on:

9310 (i) the type of offense;

9311 (ii) the demand for services;

9312 (iii) the availability of agency resources;

9313 (iv) the public safety; and

9314 (v) other criteria established by the department to determine what level of services
9315 shall be provided.

9316 (b) Proposed supervision and investigation standards shall be submitted to the Judicial
9317 Council and the Board of Pardons and Parole on an annual basis for review and comment prior
9318 to adoption by the department.

9319 (c) The Judicial Council and the department shall establish procedures to implement
9320 the supervision and investigation standards.

9321 (d) The Judicial Council and the department shall annually consider modifications to
9322 the standards based upon criteria in Subsection (3)(a) and other criteria as they consider
9323 appropriate.

9324 (e) The Judicial Council and the department shall annually prepare an impact report
9325 and submit it to the appropriate legislative appropriations subcommittee.

9326 (4) Notwithstanding other provisions of law, the department is not required to
9327 supervise the probation of persons convicted of class B or C misdemeanors or infractions or to
9328 conduct presentence investigation reports on class C misdemeanors or infractions. However,
9329 the department may supervise the probation of class B misdemeanants in accordance with
9330 department standards.

9331 (5) (a) [~~Prior to~~] Before the imposition of any sentence, the court may, with the
9332 concurrence of the defendant, continue the date for the imposition of sentence for a reasonable
9333 period of time for the purpose of obtaining a presentence investigation report from the
9334 department or information from other sources about the defendant.

9335 (b) The presentence investigation report shall include a victim impact statement
9336 according to guidelines set in Section 77-38a-203 describing the effect of the crime on the
9337 victim and the victim's family.

9338 (c) The presentence investigation report shall include a specific statement of pecuniary
9339 damages, accompanied by a recommendation from the department regarding the payment of
9340 restitution with interest by the defendant in accordance with Title 77, Chapter 38a, Crime
9341 Victims Restitution Act.

9342 (d) The presentence investigation report shall include:

9343 (i) findings from any screening and any assessment of the offender conducted under
9344 Section 77-18-1.1; and

9345 (ii) recommendations for treatment of the offender.

9346 (e) The contents of the presentence investigation report are protected and are not
9347 available except by court order for purposes of sentencing as provided by rule of the Judicial
9348 Council or for use by the department.

9349 (6) (a) The department shall provide the presentence investigation report to the
9350 defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the
9351 court for review, three working days prior to sentencing. Any alleged inaccuracies in the
9352 presentence investigation report, which have not been resolved by the parties and the
9353 department prior to sentencing, shall be brought to the attention of the sentencing judge, and

9354 the judge may grant an additional 10 working days to resolve the alleged inaccuracies of the
9355 report with the department. If after 10 working days the inaccuracies cannot be resolved, the
9356 court shall make a determination of relevance and accuracy on the record.

9357 (b) If a party fails to challenge the accuracy of the presentence investigation report at
9358 the time of sentencing, that matter shall be considered to be waived.

9359 (7) At the time of sentence, the court shall receive any testimony, evidence, or
9360 information the defendant or the prosecuting attorney desires to present concerning the
9361 appropriate sentence. This testimony, evidence, or information shall be presented in open court
9362 on record and in the presence of the defendant.

9363 (8) While on probation, and as a condition of probation, the court may require that the
9364 defendant:

9365 (a) perform any or all of the following:

9366 (i) pay, in one or several sums, any fine imposed at the time of being placed on
9367 probation;

9368 (ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;

9369 (iii) provide for the support of others for whose support the defendant is legally liable;

9370 (iv) participate in available treatment programs, including any treatment program in
9371 which the defendant is currently participating, if the program is acceptable to the court;

9372 (v) serve a period of time, not to exceed one year, in a county jail designated by the
9373 department, after considering any recommendation by the court as to which jail the court finds
9374 most appropriate;

9375 (vi) serve a term of home confinement, which may include the use of electronic
9376 monitoring;

9377 (vii) participate in compensatory service restitution programs, including the
9378 compensatory service program provided in Section 76-6-107.1;

9379 (viii) pay for the costs of investigation, probation, and treatment services;

9380 (ix) make restitution or reparation to the victim or victims with interest in accordance
9381 with Title 77, Chapter 38a, Crime Victims Restitution Act; and

- 9382 (x) comply with other terms and conditions the court considers appropriate; and
9383 (b) if convicted on or after May 5, 1997:
- 9384 (i) complete high school classwork and obtain a high school graduation diploma, a
9385 GED certificate, or a vocational certificate at the defendant's own expense if the defendant has
9386 not received the diploma, GED certificate, or vocational certificate prior to being placed on
9387 probation; or
- 9388 (ii) provide documentation of the inability to obtain one of the items listed in
9389 Subsection (8)(b)(i) because of:
- 9390 (A) a diagnosed learning disability; or
9391 (B) other justified cause.
- 9392 (9) The department shall collect and disburse the account receivable as defined by
9393 Section 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:
- 9394 (a) the parole period and any extension of that period in accordance with Subsection
9395 77-27-6(4); and
- 9396 (b) the probation period in cases for which the court orders supervised probation and
9397 any extension of that period by the department in accordance with Subsection (10).
- 9398 (10) (a) (i) Probation may be terminated at any time at the discretion of the court or
9399 upon completion without violation of 36 months probation in felony or class A misdemeanor
9400 cases, or 12 months in cases of class B or C misdemeanors or infractions.
- 9401 (ii) (A) If, upon expiration or termination of the probation period under Subsection
9402 (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section
9403 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench
9404 probation for the limited purpose of enforcing the payment of the account receivable.
- 9405 (B) In accordance with Section 77-18-6, the court shall record in the registry of civil
9406 judgments any unpaid balance not already recorded and immediately transfer responsibility to
9407 collect the account to the Office of State Debt Collection.
- 9408 (iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its
9409 own motion, the court may require the defendant to show cause why the defendant's failure to

9410 pay should not be treated as contempt of court.

9411 (b) (i) The department shall notify the sentencing court, the Office of State Debt
9412 Collection, and the prosecuting attorney in writing in advance in all cases when termination of
9413 supervised probation will occur by law.

9414 (ii) The notification shall include a probation progress report and complete report of
9415 details on outstanding accounts receivable.

9416 (11) (a) (i) Any time served by a probationer outside of confinement after having been
9417 charged with a probation violation and prior to a hearing to revoke probation does not
9418 constitute service of time toward the total probation term unless the probationer is exonerated
9419 at a hearing to revoke the probation.

9420 (ii) Any time served in confinement awaiting a hearing or decision concerning
9421 revocation of probation does not constitute service of time toward the total probation term
9422 unless the probationer is exonerated at the hearing.

9423 (b) The running of the probation period is tolled upon the filing of a violation report
9424 with the court alleging a violation of the terms and conditions of probation or upon the issuance
9425 of an order to show cause or warrant by the court.

9426 (12) (a) (i) Probation may not be modified or extended except upon waiver of a hearing
9427 by the probationer or upon a hearing and a finding in court that the probationer has violated the
9428 conditions of probation.

9429 (ii) Probation may not be revoked except upon a hearing in court and a finding that the
9430 conditions of probation have been violated.

9431 (b) (i) Upon the filing of an affidavit alleging with particularity facts asserted to
9432 constitute violation of the conditions of probation, the court that authorized probation shall
9433 determine if the affidavit establishes probable cause to believe that revocation, modification, or
9434 extension of probation is justified.

9435 (ii) If the court determines there is probable cause, it shall cause to be served on the
9436 defendant a warrant for the defendant's arrest or a copy of the affidavit and an order to show
9437 cause why the defendant's probation should not be revoked, modified, or extended.

9438 (c) (i) The order to show cause shall specify a time and place for the hearing and shall
9439 be served upon the defendant at least five days prior to the hearing.

9440 (ii) The defendant shall show good cause for a continuance.

9441 (iii) The order to show cause shall inform the defendant of a right to be represented by
9442 counsel at the hearing and to have counsel appointed if the defendant is indigent.

9443 (iv) The order shall also inform the defendant of a right to present evidence.

9444 (d) (i) At the hearing, the defendant shall admit or deny the allegations of the affidavit.

9445 (ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney
9446 shall present evidence on the allegations.

9447 (iii) The persons who have given adverse information on which the allegations are
9448 based shall be presented as witnesses subject to questioning by the defendant unless the court
9449 for good cause otherwise orders.

9450 (iv) The defendant may call witnesses, appear and speak in the defendant's own behalf,
9451 and present evidence.

9452 (e) (i) After the hearing the court shall make findings of fact.

9453 (ii) Upon a finding that the defendant violated the conditions of probation, the court
9454 may order the probation revoked, modified, continued, or that the entire probation term
9455 commence anew.

9456 (iii) If probation is revoked, the defendant shall be sentenced or the sentence previously
9457 imposed shall be executed.

9458 (13) The court may order the defendant to commit himself or herself to the custody of
9459 the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as
9460 a condition of probation or stay of sentence, only after the superintendent of the Utah State
9461 Hospital or the superintendent's designee has certified to the court that:

9462 (a) the defendant is appropriate for and can benefit from treatment at the state hospital;

9463 (b) treatment space at the hospital is available for the defendant; and

9464 (c) persons described in Subsection 62A-15-610(2)(g) are receiving priority for
9465 treatment over the defendants described in this Subsection (13).

9466 (14) Presentence investigation reports are classified protected in accordance with Title
9467 63G, Chapter 2, Government Records Access and Management Act. Notwithstanding Sections
9468 63G-2-403 and 63G-2-404, the State Records Committee may not order the disclosure of a
9469 presentence investigation report. Except for disclosure at the time of sentencing pursuant to
9470 this section, the department may disclose the presentence investigation only when:

- 9471 (a) ordered by the court pursuant to Subsection 63G-2-202(7);
- 9472 (b) requested by a law enforcement agency or other agency approved by the department
9473 for purposes of supervision, confinement, and treatment of the offender;
- 9474 (c) requested by the Board of Pardons and Parole;
- 9475 (d) requested by the subject of the presentence investigation report or the subject's
9476 authorized representative; or
- 9477 (e) requested by the victim of the crime discussed in the presentence investigation
9478 report or the victim's authorized representative, provided that the disclosure to the victim shall
9479 include only information relating to statements or materials provided by the victim, to the
9480 circumstances of the crime including statements by the defendant, or to the impact of the crime
9481 on the victim or the victim's household.

9482 (15) (a) The court shall consider home confinement as a condition of probation under
9483 the supervision of the department, except as provided in Sections 76-3-406 and 76-5-406.5.

9484 (b) The department shall establish procedures and standards for home confinement,
9485 including electronic monitoring, for all individuals referred to the department in accordance
9486 with Subsection (16).

9487 (16) (a) If the court places the defendant on probation under this section, it may order
9488 the defendant to participate in home confinement through the use of electronic monitoring as
9489 described in this section until further order of the court.

9490 (b) The electronic monitoring shall alert the department and the appropriate law
9491 enforcement unit of the defendant's whereabouts.

9492 (c) The electronic monitoring device shall be used under conditions which require:

9493 (i) the defendant to wear an electronic monitoring device at all times; and

9494 (ii) that a device be placed in the home of the defendant, so that the defendant's
9495 compliance with the court's order may be monitored.

9496 (d) If a court orders a defendant to participate in home confinement through electronic
9497 monitoring as a condition of probation under this section, it shall:

9498 (i) place the defendant on probation under the supervision of the Department of
9499 Corrections;

9500 (ii) order the department to place an electronic monitoring device on the defendant and
9501 install electronic monitoring equipment in the residence of the defendant; and

9502 (iii) order the defendant to pay the costs associated with home confinement to the
9503 department or the program provider.

9504 (e) The department shall pay the costs of home confinement through electronic
9505 monitoring only for those persons who have been determined to be indigent by the court.

9506 (f) The department may provide the electronic monitoring described in this section
9507 either directly or by contract with a private provider.

9508 Section 177. Section **77-18-1.1** is amended to read:

9509 **77-18-1.1. Screening, assessment, and treatment.**

9510 (1) As used in this section:

9511 (a) "Assessment" has the same meaning as in Section 41-6a-501.

9512 (b) "Convicted" means:

9513 (i) a conviction by entry of a plea of guilty or nolo contendere, guilty [~~and mentally ill~~]
9514 with a mental illness, or no contest; and

9515 (ii) conviction of any crime or offense.

9516 (c) "Screening" has the same meaning as in Section 41-6a-501.

9517 (d) "Substance abuse treatment" means treatment obtained through a substance abuse
9518 program that is licensed by the Office of Licensing within the Department of Human Services.

9519 (2) On or after July 1, 2009, the courts of the judicial districts where the Drug Offender
9520 Reform Act under Section 63M-7-305 is implemented shall, in coordination with the local
9521 substance abuse authority regarding available resources, order offenders convicted of a felony

9522 to:

- 9523 (a) participate in a screening prior to sentencing;
- 9524 (b) participate in an assessment prior to sentencing if the screening indicates an
9525 assessment to be appropriate; and
- 9526 (c) participate in substance abuse treatment if:
 - 9527 (i) the assessment indicates treatment to be appropriate;
 - 9528 (ii) the court finds treatment to be appropriate for the offender; and
 - 9529 (iii) the court finds the offender to be an appropriate candidate for community-based
9530 supervision.

9531 (3) The findings from any screening and any assessment conducted under this section
9532 shall be part of the presentence investigation report submitted to the court [~~prior to~~] before
9533 sentencing of the offender.

9534 (4) Monies appropriated by the Legislature to assist in the funding of the screening,
9535 assessment, substance abuse treatment, and supervision provided under this section are not
9536 subject to any requirement regarding matching funds from a state or local governmental entity.

9537 Section 178. Section **77-18-8.3** is amended to read:

9538 **77-18-8.3. Special condition of sentence during incarceration -- Penalty.**

9539 (1) At the time of sentence, the court may order the defendant to be prohibited from
9540 directly or indirectly engaging in any profit or benefit generating activity relating to the
9541 publication of facts or circumstances pertaining to the defendant's involvement in the criminal
9542 act for which the defendant is convicted.

9543 (2) The court's order may prohibit the defendant from contracting with any person,
9544 firm, corporation, partnership, association, or other legal entity with respect to the commission
9545 and reenactment of the defendant's criminal conduct, by way of a movie, book, magazine
9546 article, tape recording, phonograph record, radio, or television presentations, live entertainment
9547 of any kind, or from the expression of the defendant's thoughts, feelings, opinions, or emotions
9548 regarding the criminal conduct.

9549 (3) The court may order that the prohibition includes any event undertaken and

9550 experienced by the defendant while avoiding apprehension from the authorities or while facing
9551 criminal charges.

9552 (4) The court may order that any action taken by the defendant by way of execution of
9553 power of attorney, creation of corporate entities, or other action to avoid compliance with the
9554 court's order may be found to be contempt.

9555 (5) The Department of Corrections shall notify the attorney general of any alleged
9556 violation of the court's order under this section.

9557 (6) The Board of Pardons and Parole and any county jail administrator may consider
9558 the court's finding in any incarceration release decision concerning the incarcerated defendant.

9559 (7) For purposes of this section:

9560 (a) "convicted" means a conviction by entry of a plea of guilty or nolo contendere,
9561 guilty [~~and mentally ill~~] with a mental illness, no contest, and conviction of any crime or
9562 offense; and

9563 (b) "defendant" means the convicted defendant, the defendant's assignees, and
9564 representatives acting on the defendant's authority.

9565 Section 179. Section **77-18-8.5** is amended to read:

9566 **77-18-8.5. Special condition of probation -- Penalty.**

9567 (1) In accordance with Subsections 77-18-1(2) and (8), the court may place the
9568 defendant on probation and as a condition of probation, the court may order the defendant to be
9569 prohibited from directly or indirectly engaging in any profit or benefit generating activity
9570 relating to the publication of facts or circumstances pertaining to the defendant's involvement
9571 in the criminal act for which the defendant is convicted.

9572 (2) The court's order may prohibit the defendant from contracting with any person,
9573 firm, corporation, partnership, association, or other legal entity with respect to the commission
9574 and reenactment of the defendant's criminal conduct, by way of a movie, book, magazine
9575 article, tape recording, phonograph record, radio, or television presentations, live entertainment
9576 of any kind, or from the expression of the defendant's thoughts, feelings, opinions, or emotions
9577 regarding the criminal conduct.

9578 (3) The court may order that the prohibition includes any event undertaken and
9579 experienced by the defendant while avoiding apprehension from the authorities or while facing
9580 criminal charges.

9581 (4) The court may order that any action taken by the defendant by way of execution of
9582 power of attorney, creation of corporate entities, or other action to avoid compliance with the
9583 court's order shall be found to be in contempt.

9584 (5) Adult Probation and Parole shall notify the attorney general of any alleged violation
9585 of the court's order under this section.

9586 (6) The violation of the court's order shall be considered a violation of probation.

9587 (7) For purposes of this section:

9588 (a) "convicted" means a conviction by entry of a plea of guilty or nolo contendere,
9589 guilty [~~and mentally ill~~] with a mental illness, no contest, and conviction of any crime or
9590 offense; and

9591 (b) "defendant" means the convicted defendant, the defendant's assignees, and
9592 representatives acting on the defendant's authority.

9593 Section 180. Section **77-27-2** is amended to read:

9594 **77-27-2. Board of Pardons and Parole -- Creation -- Compensation -- Functions.**

9595 (1) There is created the Board of Pardons and Parole. The board shall consist of five
9596 full-time members and not more than five pro tempore members to be appointed by the
9597 governor with the consent of the Senate as provided in this section. The members of the board
9598 shall be resident citizens of the state. The governor shall establish salaries for the members of
9599 the board within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer
9600 Compensation.

9601 (2) (a) (i) The full-time board members shall serve terms of five years. The terms of
9602 the full-time members shall be staggered so one board member is appointed for a term of five
9603 years on March 1 of each year.

9604 (ii) The pro tempore members shall serve terms of five years, beginning on March 1 of
9605 the year of appointment, with no more than one pro tempore member term beginning or

9606 expiring in the same calendar year. If a pro tempore member vacancy occurs, the board may
9607 submit the names of not fewer than three or more than five persons to the governor for
9608 appointment to fill the vacancy.

9609 (b) All vacancies occurring on the board for any cause shall be filled by the governor
9610 with the consent of the Senate pursuant to this section for the unexpired term of the vacating
9611 member.

9612 (c) The governor may at any time remove any member of the board for inefficiency,
9613 neglect of duty, malfeasance or malfeasance in office, or for cause upon a hearing.

9614 (d) A member of the board may not hold any other office in the government of the
9615 United States, this state or any other state, or of any county government or municipal
9616 corporation within a state. A member may not engage in any occupation or business
9617 inconsistent with the member's duties.

9618 (e) A majority of the board constitutes a quorum for the transaction of business,
9619 including the holding of hearings at any time or any location within or without the state, or for
9620 the purpose of exercising any duty or authority of the board. Action taken by a majority of the
9621 board regarding whether parole, pardon, commutation, termination of sentence, or remission of
9622 fines or forfeitures may be granted or restitution ordered in individual cases is deemed the
9623 action of the board. A majority vote of the five full-time members of the board is required for
9624 adoption of rules or policies of general applicability as provided by statute. However, a
9625 vacancy on the board does not impair the right of the remaining board members to exercise any
9626 duty or authority of the board as long as a majority of the board remains.

9627 (f) Any investigation, inquiry, or hearing that the board has authority to undertake or
9628 hold may be conducted by any board member or an examiner appointed by the board. When
9629 any of these actions are approved and confirmed by the board and filed in its office, they are
9630 considered to be the action of the board and have the same effect as if originally made by the
9631 board.

9632 (g) When a full-time board member is absent or in other extraordinary circumstances
9633 the chair may, as dictated by public interest and efficient administration of the board, assign a

9634 pro tempore member to act in the place of a full-time member. Pro tempore members shall
9635 receive a per diem rate of compensation as established by the Division of Finance and all actual
9636 and necessary expenses incurred in attending to official business.

9637 (h) The chair may request staff and administrative support as necessary from the
9638 Department of Corrections.

9639 (3) (a) Except as provided in Subsection (3)(b), the Commission on Criminal and
9640 Juvenile Justice shall:

9641 (i) recommend five applicants to the governor for a full-time member appointment to
9642 the Board of Pardons and Parole; and

9643 (ii) consider applicants' knowledge of the criminal justice system, state and federal
9644 criminal law, judicial procedure, corrections policies and procedures, and behavioral sciences.

9645 (b) The procedures and requirements of Subsection (3)(a) do not apply if the governor
9646 appoints a sitting board member to a new term of office.

9647 (4) (a) The board shall appoint an individual to serve as its mental health adviser and
9648 may appoint other staff necessary to aid it in fulfilling its responsibilities under Title 77,
9649 Chapter 16a, Commitment and Treatment of ~~[Mentally III]~~ Persons with a Mental Illness. The
9650 adviser shall prepare reports and recommendations to the board on all persons adjudicated as
9651 guilty ~~[and mentally ill]~~ with a mental illness, in accordance with Title 77, Chapter 16a.

9652 (b) The mental health adviser shall possess the qualifications necessary to carry out the
9653 duties imposed by the board and may not be employed by the Department of Corrections or the
9654 Utah State Hospital.

9655 (i) The Board of Pardons and Parole may review outside employment by the mental
9656 health advisor.

9657 (ii) The Board of Pardons and Parole shall develop rules governing employment with
9658 entities other than the board by the mental health advisor for the purpose of prohibiting a
9659 conflict of interest.

9660 (c) The mental health adviser shall:

9661 (i) act as liaison for the board with the Department of Human Services and local mental

- 9662 health authorities;
- 9663 (ii) educate the members of the board regarding the needs and special circumstances of
- 9664 [~~mentally ill~~] persons with a mental illness in the criminal justice system;
- 9665 (iii) in cooperation with the Department of Corrections, monitor the status of persons
- 9666 in the prison who have been found guilty [~~and mentally ill~~] with a mental illness;
- 9667 (iv) monitor the progress of other persons under the board's jurisdiction who [~~are~~
- 9668 ~~mentally ill~~] have a mental illness;
- 9669 (v) conduct hearings as necessary in the preparation of reports and recommendations;
- 9670 and
- 9671 (vi) perform other duties as assigned by the board.

9672 Section 181. Section **77-27-5.3** is amended to read:

9673 **77-27-5.3. Meritless and bad faith litigation.**

9674 (1) For purposes of this section:

9675 (a) "Convicted" means a conviction by entry of a plea of guilty or nolo contendere,

9676 guilty [~~and mentally ill~~] with a mental illness, no contest, and conviction of any crime or

9677 offense.

9678 (b) "Prisoner" means a person who has been convicted of a crime and is incarcerated

9679 for that crime or is being held in custody for trial or sentencing.

9680 (2) In any case filed in state or federal court in which a prisoner submits a claim that

9681 the court finds to be without merit and brought or asserted in bad faith, the Board of Pardons

9682 and Parole and any county jail administrator may consider that finding in any early release

9683 decisions concerning the prisoner.

9684 Section 182. Section **77-27-10.5** is amended to read:

9685 **77-27-10.5. Special condition of parole -- Penalty.**

9686 (1) In accordance with Section 77-27-5, the Board of Pardons and Parole may release

9687 the defendant on parole and as a condition of parole, the board may order the defendant to be

9688 prohibited from directly or indirectly engaging in any profit or benefit generating activity

9689 relating to the publication of facts or circumstances pertaining to the defendant's involvement

9690 in the criminal act for which the defendant is convicted.

9691 (2) The order may prohibit the defendant from contracting with any person, firm,
9692 corporation, partnership, association, or other legal entity with respect to the commission and
9693 reenactment of the defendant's criminal conduct, by way of a movie, book, magazine article,
9694 tape recording, phonograph record, radio, or television presentations, live entertainment of any
9695 kind, or from the expression of the defendant's thoughts, feelings, opinions, or emotions
9696 regarding the criminal conduct.

9697 (3) The board may order that the prohibition includes any event undertaken and
9698 experienced by the defendant while avoiding apprehension from the authorities or while facing
9699 criminal charges.

9700 (4) The board may order that any action taken by the defendant by way of execution of
9701 power of attorney, creation of corporate entities, or other action to avoid compliance with the
9702 board's order shall be grounds for revocation of parole as provided in Section 77-27-11.

9703 (5) Adult Probation and Parole shall notify the board of any alleged violation of the
9704 board's order under this section.

9705 (6) The violation of the board's order shall be considered a violation of parole.

9706 (7) For purposes of this section:

9707 (a) "convicted" means a conviction by entry of a plea of guilty or nolo contendere,
9708 guilty [~~and mentally ill~~] with a mental illness, no contest, and conviction of any crime or
9709 offense; and

9710 (b) "defendant" means the convicted defendant, the defendant's assignees, and
9711 representatives acting on the defendant's authority.

9712 Section 183. Section **77-33-5** is amended to read:

9713 **77-33-5. Rendition procedure inapplicable to person confined as insane or having**
9714 **a mental illness or under sentence of death.**

9715 This act does not apply to any person in this state confined as insane or [~~mentally ill~~] as
9716 having a mental illness or under sentence of death.

9717 Section 184. Section **77-38-302** is amended to read:

9718 **77-38-302. Definitions.**

9719 As used in this part:

9720 (1) "Conviction" means an adjudication by a federal or state court resulting from a trial
9721 or plea, including a plea of no contest, nolo contendere, a finding of not guilty due to insanity,
9722 or not guilty but [~~mentally ill~~] having a mental illness regardless of whether the sentence was
9723 imposed or suspended.

9724 (2) "Fund" means the Crime Victim Reparations Fund created in Section 51-9-404.

9725 (3) "Memorabilia" means any tangible property of a person convicted of a first degree
9726 or capital felony, the value of which is enhanced by the notoriety gained from the conviction.

9727 (4) "Profit" means any income or benefit over and above the fair market value of the
9728 property that is received upon the sale or transfer of memorabilia.

9729 Section 185. Section **78A-2-302** is amended to read:

9730 **78A-2-302. Impecunious litigants -- Affidavit.**

9731 (1) For purposes of Sections 78A-2-302 through 78A-2-309:

9732 (a) "Convicted" means a conviction by entry of a plea of guilty or nolo contendere,
9733 guilty [~~and mentally ill~~] with a mental illness, no contest, and conviction of any crime or
9734 offense.

9735 (b) "Prisoner" means a person who has been convicted of a crime and is incarcerated
9736 for that crime or is being held in custody for trial or sentencing.

9737 (2) As provided in this chapter, any person may institute, prosecute, defend, and appeal
9738 any cause in any court in this state without prepayment of fees and costs or security, by taking
9739 and subscribing, before any officer authorized to administer an oath, an affidavit of
9740 impecuniosity demonstrating financial inability to pay fees and costs or give security.

9741 (3) The affidavit shall contain complete information on the party's:

9742 (a) identity and residence;

9743 (b) amount of income, including government financial support, alimony, child support;

9744 (c) assets owned, including real and personal property;

9745 (d) business interests;

9746 (e) accounts receivable;

9747 (f) securities, checking and savings account balances;

9748 (g) debts; and

9749 (h) monthly expenses.

9750 (4) If the party is a prisoner, he shall also disclose the amount of money held in his
9751 prisoner trust account at the time the affidavit is executed as provided in Section 78A-2-305.

9752 (5) In addition to the financial disclosures, the affidavit shall state the following:

9753 I, A B, do solemnly swear or affirm that due to my poverty I am unable to bear the
9754 expenses of the action or legal proceedings which I am about to commence or the appeal which
9755 I am about to take, and that I believe I am entitled to the relief sought by the action, legal
9756 proceedings, or appeal.

9757 Section 186. Section **78A-6-103** is amended to read:

9758 **78A-6-103. Jurisdiction of juvenile court -- Original -- Exclusive.**

9759 (1) Except as otherwise provided by law, the juvenile court has exclusive original
9760 jurisdiction in proceedings concerning:

9761 (a) a child who has violated any federal, state, or local law or municipal ordinance or a
9762 person younger than 21 years of age who has violated any law or ordinance before becoming
9763 18 years of age, regardless of where the violation occurred, excluding offenses in Subsection
9764 78A-7-106(2);

9765 (b) a person 21 years of age or older who has failed or refused to comply with an order
9766 of the juvenile court to pay a fine or restitution, if the order was imposed [~~prior to~~] before the
9767 person's 21st birthday; however, the continuing jurisdiction is limited to causing compliance
9768 with existing orders;

9769 (c) a child who is an abused child, neglected child, or dependent child, as those terms
9770 are defined in Section 78A-6-105;

9771 (d) a protective order for a child pursuant to the provisions of Title 78B, Chapter 7,
9772 Part 2, Child Protective Orders, which the juvenile court may transfer to the district court if the
9773 juvenile court has entered an ex parte protective order and finds that:

- 9774 (i) the petitioner and the respondent are the natural parent, adoptive parent, or step
9775 parent of the child who is the object of the petition;
- 9776 (ii) the district court has a petition pending or an order related to custody or parent-time
9777 entered under Title 30, Chapter 3, Divorce, Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act,
9778 or Title 78B, Chapter 15, Utah Uniform Parentage Act, in which the petitioner and the
9779 respondent are parties; and
- 9780 (iii) the best interests of the child will be better served in the district court;
- 9781 (e) appointment of a guardian of the person or other guardian of a minor who comes
9782 within the court's jurisdiction under other provisions of this section;
- 9783 (f) the emancipation of a minor in accordance with Part 8, Emancipation;
- 9784 (g) the termination of the legal parent-child relationship in accordance with Part 5,
9785 Termination of Parental Rights Act, including termination of residual parental rights and
9786 duties;
- 9787 (h) the treatment or commitment of a [~~mentally retarded~~] minor who has an intellectual
9788 disability;
- 9789 (i) a minor who is a habitual truant from school;
- 9790 (j) the judicial consent to the marriage of a child under age 16 upon a determination of
9791 voluntariness or where otherwise required by law, employment, or enlistment of a child when
9792 consent is required by law;
- 9793 (k) any parent or parents of a child committed to a secure youth corrections facility, to
9794 order, at the discretion of the court and on the recommendation of a secure facility, the parent
9795 or parents of a child committed to a secure facility for a custodial term, to undergo group
9796 rehabilitation therapy under the direction of a secure facility therapist, who has supervision of
9797 that parent's or parents' child, or any other therapist the court may direct, for a period directed
9798 by the court as recommended by a secure facility;
- 9799 (l) a minor under Title 55, Chapter 12, Interstate Compact for Juveniles;
- 9800 (m) the treatment or commitment of a [~~mentally ill~~] child with a mental illness. The
9801 court may commit a child to the physical custody of a local mental health authority in

9802 accordance with the procedures and requirements of Title 62A, Chapter 15, Part 7,
9803 Commitment of Persons Under Age 18 to Division of Substance Abuse and Mental Health, but
9804 not directly to the Utah State Hospital;

9805 (n) the commitment of a child in accordance with Section 62A-15-301;

9806 (o) de novo review of final agency actions resulting from an informal adjudicative
9807 proceeding as provided in Section 63G-4-402; and

9808 (p) adoptions conducted in accordance with the procedures described in Title 78B,
9809 Chapter 6, Part 1, Utah Adoption Act, when the juvenile court has previously entered an order
9810 terminating the rights of a parent and finds that adoption is in the best interest of the child.

9811 (2) Notwithstanding Section 78A-7-106 and Subsection 78A-5-102(9), the juvenile
9812 court has exclusive jurisdiction over the following offenses committed by a child:

9813 (a) Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

9814 (b) Section 73-18-12, reckless operation; and

9815 (c) class B and C misdemeanors, infractions, or violations of ordinances that are part of
9816 a single criminal episode filed in a petition that contains an offense over which the court has
9817 jurisdiction.

9818 (3) The juvenile court has jurisdiction over an ungovernable or runaway child who is
9819 referred to it by the Division of Child and Family Services or by public or private agencies that
9820 contract with the division to provide services to that child where, despite earnest and persistent
9821 efforts by the division or agency, the child has demonstrated that the child:

9822 (a) is beyond the control of the child's parent, guardian, lawful custodian, or school
9823 authorities to the extent that the child's behavior or condition endangers the child's own welfare
9824 or the welfare of others; or

9825 (b) has run away from home.

9826 (4) This section does not restrict the right of access to the juvenile court by private
9827 agencies or other persons.

9828 (5) The juvenile court has jurisdiction of all magistrate functions relative to cases
9829 arising under Section 78A-6-702.

9830 (6) The juvenile court has jurisdiction to make a finding of substantiated,
9831 unsubstantiated, or without merit, in accordance with Section 78A-6-323.

9832 (7) The juvenile court has jurisdiction of matters transferred to it by another trial court
9833 pursuant to Subsection 78A-7-106(7).

9834 Section 187. Section **78A-6-117 (Superseded 07/01/11)** is amended to read:

9835 **78A-6-117 (Superseded 07/01/11). Adjudication of jurisdiction of juvenile court --**
9836 **Disposition of cases -- Enumeration of possible court orders -- Considerations of court --**
9837 **Obtaining DNA sample.**

9838 (1) (a) When a minor is found to come within the provisions of Section 78A-6-103, the
9839 court shall so adjudicate. The court shall make a finding of the facts upon which it bases its
9840 jurisdiction over the minor. However, in cases within the provisions of Subsection
9841 78A-6-103(1), findings of fact are not necessary.

9842 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of
9843 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided
9844 to the school superintendent of the district in which the minor resides or attends school. Notice
9845 shall be made to the district superintendent within three days of the adjudication and shall
9846 include:

9847 (i) the specific offenses for which the minor was adjudicated; and

9848 (ii) if available, if the victim:

9849 (A) resides in the same school district as the minor; or

9850 (B) attends the same school as the minor.

9851 (2) Upon adjudication the court may make the following dispositions by court order:

9852 (a) (i) The court may place the minor on probation or under protective supervision in
9853 the minor's own home and upon conditions determined by the court, including compensatory
9854 service as provided in Subsection (2)(m)(iii).

9855 (ii) The court may place the minor in state supervision with the probation department
9856 of the court, under the legal custody of:

9857 (A) the minor's parent or guardian;

9858 (B) the Division of Juvenile Justice Services; or

9859 (C) the Division of Child and Family Services.

9860 (iii) If the court orders probation or state supervision, the court shall direct that notice
9861 of its order be provided to designated persons in the local law enforcement agency and the
9862 school or transferee school, if applicable, that the minor attends. The designated persons may
9863 receive the information for purposes of the minor's supervision and student safety.

9864 (iv) Any employee of the local law enforcement agency and the school that the minor
9865 attends who discloses the court's order of probation is not:

9866 (A) civilly liable except when the disclosure constitutes fraud or willful misconduct as
9867 provided in Section 63G-7-202; and

9868 (B) civilly or criminally liable except when the disclosure constitutes a knowing
9869 violation of Section 63G-2-801.

9870 (b) The court may place the minor in the legal custody of a relative or other suitable
9871 person, with or without probation or protective supervision, but the juvenile court may not
9872 assume the function of developing foster home services.

9873 (c) (i) The court may:

9874 (A) vest legal custody of the minor in the Division of Child and Family Services,
9875 Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health;
9876 and

9877 (B) order the Department of Human Services to provide dispositional
9878 recommendations and services.

9879 (ii) For minors who may qualify for services from two or more divisions within the
9880 Department of Human Services, the court may vest legal custody with the department.

9881 (iii) (A) A minor who is committed to the custody of the Division of Child and Family
9882 Services on grounds other than abuse or neglect is subject to the provisions of Title 78A,
9883 Chapter 6, Part 4, Minors in Custody on Grounds Other than Abuse or Neglect, and Title 62A,
9884 Chapter 4a, Part 2a, Minors in Custody on Grounds Other than Abuse or Neglect.

9885 (B) [~~Prior to~~] Before the court entering an order to place a minor in the custody of the

9886 Division of Child and Family Services on grounds other than abuse or neglect, the court shall
9887 provide the division with notice of the hearing no later than five days before the time specified
9888 for the hearing so the division may attend the hearing.

9889 (C) [~~Prior to~~] Before committing a child to the custody of the Division of Child and
9890 Family Services, the court shall make a finding as to what reasonable efforts have been
9891 attempted to prevent the child's removal from the child's home.

9892 (d) (i) The court may commit a minor to the Division of Juvenile Justice Services for
9893 secure confinement.

9894 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect,
9895 or dependency under Subsection 78A-6-103(1)(c) may not be committed to the Division of
9896 Juvenile Justice Services.

9897 (e) The court may commit a minor, subject to the court retaining continuing
9898 jurisdiction over the minor, to the temporary custody of the Division of Juvenile Justice
9899 Services for observation and evaluation for a period not to exceed 45 days, which period may
9900 be extended up to 15 days at the request of the director of the Division of Juvenile Justice
9901 Services.

9902 (f) (i) The court may commit a minor to a place of detention or an alternative to
9903 detention for a period not to exceed 30 days subject to the court retaining continuing
9904 jurisdiction over the minor. This commitment may be stayed or suspended upon conditions
9905 ordered by the court.

9906 (ii) This Subsection (2)(f) applies only to a minor adjudicated for:

9907 (A) an act which if committed by an adult would be a criminal offense; or

9908 (B) contempt of court under Section 78A-6-1101.

9909 (g) The court may vest legal custody of an abused, neglected, or dependent minor in
9910 the Division of Child and Family Services or any other appropriate person in accordance with
9911 the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and
9912 Dependency Proceedings.

9913 (h) The court may place a minor on a ranch or forestry camp, or similar facility for care

9914 and also for work, if possible, if the person, agency, or association operating the facility has
9915 been approved or has otherwise complied with all applicable state and local laws. A minor
9916 placed in a forestry camp or similar facility may be required to work on fire prevention,
9917 forestation and reforestation, recreational works, forest roads, and on other works on or off the
9918 grounds of the facility and may be paid wages, subject to the approval of and under conditions
9919 set by the court.

9920 (i) (i) The court may order a minor to repair, replace, or otherwise make restitution for
9921 damage or loss caused by the minor's wrongful act, including costs of treatment as stated in
9922 Section 78A-6-321 and impose fines in limited amounts.

9923 (ii) The court may also require a minor to reimburse an individual, entity, or
9924 governmental agency who offered and paid a reward to a person or persons for providing
9925 information resulting in a court adjudication that the minor is within the jurisdiction of the
9926 juvenile court due to the commission of a criminal offense.

9927 (iii) If a minor is returned to this state under the Interstate Compact on Juveniles, the
9928 court may order the minor to make restitution for costs expended by any governmental entity
9929 for the return.

9930 (j) The court may issue orders necessary for the collection of restitution and fines
9931 ordered by the court, including garnishments, wage withholdings, and executions.

9932 (k) (i) The court may through its probation department encourage the development of
9933 employment or work programs to enable minors to fulfill their obligations under Subsection
9934 (2)(i) and for other purposes considered desirable by the court.

9935 (ii) Consistent with the order of the court, the probation officer may permit a minor
9936 found to be within the jurisdiction of the court to participate in a program of work restitution or
9937 compensatory service in lieu of paying part or all of the fine imposed by the court.

9938 (l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in
9939 addition to any other disposition authorized by this section:

9940 (A) restrain the minor from driving for periods of time the court considers necessary;
9941 and

9942 (B) take possession of the minor's driver license.

9943 (ii) The court may enter any other disposition under Subsection (2)(1)(i); however, the
9944 suspension of driving privileges for an offense under Section 78A-6-606 are governed only by
9945 Section 78A-6-606.

9946 (m) (i) When a minor is found within the jurisdiction of the juvenile court under
9947 Section 78A-6-103 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug
9948 Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court
9949 shall, in addition to any fines or fees otherwise imposed, order that the minor perform a
9950 minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory
9951 completion of an approved substance abuse prevention or treatment program may be credited
9952 by the court as compensatory service hours.

9953 (ii) When a minor is found within the jurisdiction of the juvenile court under Section
9954 78A-6-103 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court
9955 may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order
9956 that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory
9957 service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an
9958 approved substance abuse prevention or treatment program may be credited by the court as
9959 compensatory service hours.

9960 (iii) When a minor is found within the jurisdiction of the juvenile court under Section
9961 78A-6-103 because of a violation of Section 76-6-106 or 76-6-206 using graffiti, the court may
9962 order the minor to clean up graffiti created by the minor or any other person at a time and place
9963 within the jurisdiction of the court. Compensatory service required under this section may be
9964 performed in the presence and under the direct supervision of the minor's parent or legal
9965 guardian. The parent or legal guardian shall report completion of the order to the court. The
9966 minor or the minor's parent or legal guardian, if applicable, shall be responsible for removal
9967 costs as determined under Section 76-6-107, unless waived by the court for good cause. The
9968 court may also require the minor to perform other alternative forms of restitution or repair to
9969 the damaged property pursuant to Subsection 77-18-1(8).

9970 (A) For a first adjudication, the court may require the minor to clean up graffiti for not
9971 less than eight hours.

9972 (B) For a second adjudication, the court may require the minor to clean up graffiti for
9973 not less than 16 hours.

9974 (C) For a third adjudication, the court may require the minor to clean up graffiti for not
9975 less than 24 hours.

9976 (n) (i) Subject to Subsection (2)(n)(iii), the court may order that a minor:

9977 (A) be examined or treated by a physician, surgeon, psychiatrist, or psychologist; or

9978 (B) receive other special care.

9979 (ii) For purposes of receiving the examination, treatment, or care described in

9980 Subsection (2)(n)(i), the court may place the minor in a hospital or other suitable facility.

9981 (iii) In determining whether to order the examination, treatment, or care described in

9982 Subsection (2)(n)(i), the court shall consider:

9983 (A) the desires of the minor;

9984 (B) if the minor is under the age of 18, the desires of the parents or guardian of the
9985 minor; and

9986 (C) whether the potential benefits of the examination, treatment, or care outweigh the
9987 potential risks and side-effects, including behavioral disturbances, suicidal ideation, brain
9988 function impairment, or emotional or physical harm resulting from the compulsory nature of
9989 the examination, treatment, or care.

9990 (o) (i) The court may appoint a guardian for the minor if it appears necessary in the
9991 interest of the minor, and may appoint as guardian a public or private institution or agency in
9992 which legal custody of the minor is vested.

9993 (ii) In placing a minor under the guardianship or legal custody of an individual or of a
9994 private agency or institution, the court shall give primary consideration to the welfare of the
9995 minor. When practicable, the court may take into consideration the religious preferences of the
9996 minor and of a child's parents.

9997 (p) (i) In support of a decree under Section 78A-6-103, the court may order reasonable

9998 conditions to be complied with by a minor's parents or guardian, a minor, a minor's custodian,
9999 or any other person who has been made a party to the proceedings. Conditions may include:

10000 (A) parent-time by the parents or one parent;

10001 (B) restrictions on the minor's associates;

10002 (C) restrictions on the minor's occupation and other activities; and

10003 (D) requirements to be observed by the parents or custodian.

10004 (ii) A minor whose parents or guardians successfully complete a family or other
10005 counseling program may be credited by the court for detention, confinement, or probation time.

10006 (q) The court may order the child to be committed to the physical custody of a local
10007 mental health authority, in accordance with the procedures and requirements of Title 62A,
10008 Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and
10009 Mental Health.

10010 (r) (i) The court may make an order committing a minor within the court's jurisdiction
10011 to the Utah State Developmental Center if the minor has [~~mental retardation~~] an intellectual
10012 disability in accordance with the provisions of Title 62A, Chapter 5, Part 3, Admission to
10013 [~~Mental Retardation Facility~~] an Intermediate Care Facility for People with an Intellectual
10014 Disability.

10015 (ii) The court shall follow the procedure applicable in the district courts with respect to
10016 judicial commitments to the Utah State Developmental Center when ordering a commitment
10017 under Subsection (2)(r)(i).

10018 (s) The court may terminate all parental rights upon a finding of compliance with the
10019 provisions of Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

10020 (t) The court may make any other reasonable orders for the best interest of the minor or
10021 as required for the protection of the public, except that a child may not be committed to jail or
10022 prison.

10023 (u) The court may combine the dispositions listed in this section if they are compatible.

10024 (v) Before depriving any parent of custody, the court shall give due consideration to the
10025 rights of parents concerning their child. The court may transfer custody of a minor to another

10026 person, agency, or institution in accordance with the requirements and procedures of Title 78A,
10027 Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

10028 (w) Except as provided in Subsection (2)(y)(i), an order under this section for
10029 probation or placement of a minor with an individual or an agency shall include a date certain
10030 for a review of the case by the court. A new date shall be set upon each review.

10031 (x) In reviewing foster home placements, special attention shall be given to making
10032 adoptable children available for adoption without delay.

10033 (y) (i) The juvenile court may enter an order of permanent custody and guardianship
10034 with an individual or relative of a child where the court has previously acquired jurisdiction as
10035 a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an
10036 order for child support on behalf of the child against the natural or adoptive parents of the
10037 child.

10038 (ii) Orders under Subsection (2)(y)(i):

10039 (A) shall remain in effect until the child reaches majority;

10040 (B) are not subject to review under Section 78A-6-118; and

10041 (C) may be modified by petition or motion as provided in Section 78A-6-1103.

10042 (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and
10043 permanent orders of custody and guardianship do not expire with a termination of jurisdiction
10044 of the juvenile court.

10045 (3) In addition to the dispositions described in Subsection (2), when a minor comes
10046 within the court's jurisdiction, the minor may be given a choice by the court to serve in the
10047 National Guard in lieu of other sanctions, provided:

10048 (a) the minor meets the current entrance qualifications for service in the National
10049 Guard as determined by a recruiter, whose determination is final;

10050 (b) the minor is not under the jurisdiction of the court for any act that:

10051 (i) would be a felony if committed by an adult;

10052 (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

10053 (iii) was committed with a weapon; and

10054 (c) the court retains jurisdiction over the minor under conditions set by the court and
10055 agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

10056 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction
10057 of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by
10058 designated employees of the court or, if the minor is in the legal custody of the Division of
10059 Juvenile Justice Services, then by designated employees of the division under Subsection
10060 53-10-404(5)(b).

10061 (b) The responsible agency shall ensure that employees designated to collect the saliva
10062 DNA specimens receive appropriate training and that the specimens are obtained in accordance
10063 with accepted protocol.

10064 (c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA
10065 Specimen Restricted Account created in Section 53-10-407.

10066 (d) Payment of the reimbursement is second in priority to payments the minor is
10067 ordered to make for restitution under this section and treatment under Section 78A-6-321.

10068 Section 188. Section **78A-6-117 (Effective 07/01/11)** is amended to read:

10069 **78A-6-117 (Effective 07/01/11). Adjudication of jurisdiction of juvenile court --**
10070 **Disposition of cases -- Enumeration of possible court orders -- Considerations of court --**
10071 **Obtaining DNA sample.**

10072 (1) (a) When a minor is found to come within the provisions of Section 78A-6-103, the
10073 court shall so adjudicate. The court shall make a finding of the facts upon which it bases its
10074 jurisdiction over the minor. However, in cases within the provisions of Subsection
10075 78A-6-103(1), findings of fact are not necessary.

10076 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of
10077 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided
10078 to the school superintendent of the district in which the minor resides or attends school. Notice
10079 shall be made to the district superintendent within three days of the adjudication and shall
10080 include:

10081 (i) the specific offenses for which the minor was adjudicated; and

- 10082 (ii) if available, if the victim:
- 10083 (A) resides in the same school district as the minor; or
- 10084 (B) attends the same school as the minor.
- 10085 (2) Upon adjudication the court may make the following dispositions by court order:
- 10086 (a) (i) The court may place the minor on probation or under protective supervision in
- 10087 the minor's own home and upon conditions determined by the court, including compensatory
- 10088 service as provided in Subsection (2)(m)(iii).
- 10089 (ii) The court may place the minor in state supervision with the probation department
- 10090 of the court, under the legal custody of:
- 10091 (A) the minor's parent or guardian;
- 10092 (B) the Division of Juvenile Justice Services; or
- 10093 (C) the Division of Child and Family Services.
- 10094 (iii) If the court orders probation or state supervision, the court shall direct that notice
- 10095 of its order be provided to designated persons in the local law enforcement agency and the
- 10096 school or transferee school, if applicable, that the minor attends. The designated persons may
- 10097 receive the information for purposes of the minor's supervision and student safety.
- 10098 (iv) Any employee of the local law enforcement agency and the school that the minor
- 10099 attends who discloses the court's order of probation is not:
- 10100 (A) civilly liable except when the disclosure constitutes fraud or willful misconduct as
- 10101 provided in Section 63G-7-202; and
- 10102 (B) civilly or criminally liable except when the disclosure constitutes a knowing
- 10103 violation of Section 63G-2-801.
- 10104 (b) The court may place the minor in the legal custody of a relative or other suitable
- 10105 person, with or without probation or protective supervision, but the juvenile court may not
- 10106 assume the function of developing foster home services.
- 10107 (c) (i) The court may:
- 10108 (A) vest legal custody of the minor in the Division of Child and Family Services,
- 10109 Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health;

10110 and

10111 (B) order the Department of Human Services to provide dispositional
10112 recommendations and services.

10113 (ii) For minors who may qualify for services from two or more divisions within the
10114 Department of Human Services, the court may vest legal custody with the department.

10115 (iii) (A) A minor who is committed to the custody of the Division of Child and Family
10116 Services on grounds other than abuse or neglect is subject to the provisions of Title 78A,
10117 Chapter 6, Part 4, Minors in Custody on Grounds Other than Abuse or Neglect, and Title 62A,
10118 Chapter 4a, Part 2a, Minors in Custody on Grounds Other than Abuse or Neglect.

10119 (B) Prior to the court entering an order to place a minor in the custody of the Division
10120 of Child and Family Services on grounds other than abuse or neglect, the court shall provide
10121 the division with notice of the hearing no later than five days before the time specified for the
10122 hearing so the division may attend the hearing.

10123 (C) Prior to committing a child to the custody of the Division of Child and Family
10124 Services, the court shall make a finding as to what reasonable efforts have been attempted to
10125 prevent the child's removal from the child's home.

10126 (d) (i) The court may commit a minor to the Division of Juvenile Justice Services for
10127 secure confinement.

10128 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect,
10129 or dependency under Subsection 78A-6-103(1)(c) may not be committed to the Division of
10130 Juvenile Justice Services.

10131 (e) The court may commit a minor, subject to the court retaining continuing
10132 jurisdiction over the minor, to the temporary custody of the Division of Juvenile Justice
10133 Services for observation and evaluation for a period not to exceed 45 days, which period may
10134 be extended up to 15 days at the request of the director of the Division of Juvenile Justice
10135 Services.

10136 (f) (i) The court may commit a minor to a place of detention or an alternative to
10137 detention for a period not to exceed 30 days subject to the court retaining continuing

10138 jurisdiction over the minor. This commitment may be stayed or suspended upon conditions
10139 ordered by the court.

10140 (ii) This Subsection (2)(f) applies only to a minor adjudicated for:

10141 (A) an act which if committed by an adult would be a criminal offense; or

10142 (B) contempt of court under Section 78A-6-1101.

10143 (g) The court may vest legal custody of an abused, neglected, or dependent minor in
10144 the Division of Child and Family Services or any other appropriate person in accordance with
10145 the requirements and procedures of Title 78A, Chapter 6, Part 3, Abuse, Neglect, and
10146 Dependency Proceedings.

10147 (h) The court may place a minor on a ranch or forestry camp, or similar facility for care
10148 and also for work, if possible, if the person, agency, or association operating the facility has
10149 been approved or has otherwise complied with all applicable state and local laws. A minor
10150 placed in a forestry camp or similar facility may be required to work on fire prevention,
10151 forestation and reforestation, recreational works, forest roads, and on other works on or off the
10152 grounds of the facility and may be paid wages, subject to the approval of and under conditions
10153 set by the court.

10154 (i) (i) The court may order a minor to repair, replace, or otherwise make restitution for
10155 damage or loss caused by the minor's wrongful act, including costs of treatment as stated in
10156 Section 78A-6-321 and impose fines in limited amounts.

10157 (ii) The court may also require a minor to reimburse an individual, entity, or
10158 governmental agency who offered and paid a reward to a person or persons for providing
10159 information resulting in a court adjudication that the minor is within the jurisdiction of the
10160 juvenile court due to the commission of a criminal offense.

10161 (iii) If a minor is returned to this state under the Interstate Compact on Juveniles, the
10162 court may order the minor to make restitution for costs expended by any governmental entity
10163 for the return.

10164 (j) The court may issue orders necessary for the collection of restitution and fines
10165 ordered by the court, including garnishments, wage withholdings, and executions.

10166 (k) (i) The court may through its probation department encourage the development of
10167 employment or work programs to enable minors to fulfill their obligations under Subsection
10168 (2)(i) and for other purposes considered desirable by the court.

10169 (ii) Consistent with the order of the court, the probation officer may permit a minor
10170 found to be within the jurisdiction of the court to participate in a program of work restitution or
10171 compensatory service in lieu of paying part or all of the fine imposed by the court.

10172 (l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in
10173 addition to any other disposition authorized by this section:

10174 (A) restrain the minor from driving for periods of time the court considers necessary;
10175 and

10176 (B) take possession of the minor's driver license.

10177 (ii) The court may enter any other disposition under Subsection (2)(l)(i). However, the
10178 suspension of driving privileges for an offense under Section 78A-6-606 is governed only by
10179 Section 78A-6-606.

10180 (m) (i) When a minor is found within the jurisdiction of the juvenile court under
10181 Section 78A-6-103 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug
10182 Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court
10183 shall, in addition to any fines or fees otherwise imposed, order that the minor perform a
10184 minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory
10185 completion of an approved substance abuse prevention or treatment program may be credited
10186 by the court as compensatory service hours.

10187 (ii) When a minor is found within the jurisdiction of the juvenile court under Section
10188 78A-6-103 because of a violation of Section 32B-4-409 or Subsection 76-9-701(1), the court
10189 may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order
10190 that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory
10191 service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an
10192 approved substance abuse prevention or treatment program may be credited by the court as
10193 compensatory service hours.

10194 (iii) When a minor is found within the jurisdiction of the juvenile court under Section
10195 78A-6-103 because of a violation of Section 76-6-106 or 76-6-206 using graffiti, the court may
10196 order the minor to clean up graffiti created by the minor or any other person at a time and place
10197 within the jurisdiction of the court. Compensatory service required under this section may be
10198 performed in the presence and under the direct supervision of the minor's parent or legal
10199 guardian. The parent or legal guardian shall report completion of the order to the court. The
10200 minor or the minor's parent or legal guardian, if applicable, shall be responsible for removal
10201 costs as determined under Section 76-6-107, unless waived by the court for good cause. The
10202 court may also require the minor to perform other alternative forms of restitution or repair to
10203 the damaged property pursuant to Subsection 77-18-1(8).

10204 (A) For a first adjudication, the court may require the minor to clean up graffiti for not
10205 less than eight hours.

10206 (B) For a second adjudication, the court may require the minor to clean up graffiti for
10207 not less than 16 hours.

10208 (C) For a third adjudication, the court may require the minor to clean up graffiti for not
10209 less than 24 hours.

10210 (n) (i) Subject to Subsection (2)(n)(iii), the court may order that a minor:

10211 (A) be examined or treated by a physician, surgeon, psychiatrist, or psychologist; or

10212 (B) receive other special care.

10213 (ii) For purposes of receiving the examination, treatment, or care described in
10214 Subsection (2)(n)(i), the court may place the minor in a hospital or other suitable facility.

10215 (iii) In determining whether to order the examination, treatment, or care described in
10216 Subsection (2)(n)(i), the court shall consider:

10217 (A) the desires of the minor;

10218 (B) if the minor is under the age of 18, the desires of the parents or guardian of the
10219 minor; and

10220 (C) whether the potential benefits of the examination, treatment, or care outweigh the
10221 potential risks and side-effects, including behavioral disturbances, suicidal ideation, brain

10222 function impairment, or emotional or physical harm resulting from the compulsory nature of
10223 the examination, treatment, or care.

10224 (o) (i) The court may appoint a guardian for the minor if it appears necessary in the
10225 interest of the minor, and may appoint as guardian a public or private institution or agency in
10226 which legal custody of the minor is vested.

10227 (ii) In placing a minor under the guardianship or legal custody of an individual or of a
10228 private agency or institution, the court shall give primary consideration to the welfare of the
10229 minor. When practicable, the court may take into consideration the religious preferences of the
10230 minor and of a child's parents.

10231 (p) (i) In support of a decree under Section 78A-6-103, the court may order reasonable
10232 conditions to be complied with by a minor's parents or guardian, a minor, a minor's custodian,
10233 or any other person who has been made a party to the proceedings. Conditions may include:

10234 (A) parent-time by the parents or one parent;

10235 (B) restrictions on the minor's associates;

10236 (C) restrictions on the minor's occupation and other activities; and

10237 (D) requirements to be observed by the parents or custodian.

10238 (ii) A minor whose parents or guardians successfully complete a family or other
10239 counseling program may be credited by the court for detention, confinement, or probation time.

10240 (q) The court may order the child to be committed to the physical custody of a local
10241 mental health authority, in accordance with the procedures and requirements of Title 62A,
10242 Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and
10243 Mental Health.

10244 (r) (i) The court may make an order committing a minor within the court's jurisdiction
10245 to the Utah State Developmental Center if the minor has [~~mental retardation~~] an intellectual
10246 disability in accordance with the provisions of Title 62A, Chapter 5, Part 3, Admission to
10247 [~~Mental Retardation Facility~~] an Intermediate Care Facility for People with an Intellectual
10248 Disability.

10249 (ii) The court shall follow the procedure applicable in the district courts with respect to

10250 judicial commitments to the Utah State Developmental Center when ordering a commitment
10251 under Subsection (2)(r)(i).

10252 (s) The court may terminate all parental rights upon a finding of compliance with the
10253 provisions of Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

10254 (t) The court may make any other reasonable orders for the best interest of the minor or
10255 as required for the protection of the public, except that a child may not be committed to jail or
10256 prison.

10257 (u) The court may combine the dispositions listed in this section if they are compatible.

10258 (v) Before depriving any parent of custody, the court shall give due consideration to the
10259 rights of parents concerning their child. The court may transfer custody of a minor to another
10260 person, agency, or institution in accordance with the requirements and procedures of Title 78A,
10261 Chapter 6, Part 3, Abuse, Neglect, and Dependency Proceedings.

10262 (w) Except as provided in Subsection (2)(y)(i), an order under this section for
10263 probation or placement of a minor with an individual or an agency shall include a date certain
10264 for a review of the case by the court. A new date shall be set upon each review.

10265 (x) In reviewing foster home placements, special attention shall be given to making
10266 adoptable children available for adoption without delay.

10267 (y) (i) The juvenile court may enter an order of permanent custody and guardianship
10268 with an individual or relative of a child where the court has previously acquired jurisdiction as
10269 a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an
10270 order for child support on behalf of the child against the natural or adoptive parents of the
10271 child.

10272 (ii) Orders under Subsection (2)(y)(i):

10273 (A) shall remain in effect until the child reaches majority;

10274 (B) are not subject to review under Section 78A-6-118; and

10275 (C) may be modified by petition or motion as provided in Section 78A-6-1103.

10276 (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and
10277 permanent orders of custody and guardianship do not expire with a termination of jurisdiction

10278 of the juvenile court.

10279 (3) In addition to the dispositions described in Subsection (2), when a minor comes
10280 within the court's jurisdiction, the minor may be given a choice by the court to serve in the
10281 National Guard in lieu of other sanctions, provided:

10282 (a) the minor meets the current entrance qualifications for service in the National
10283 Guard as determined by a recruiter, whose determination is final;

10284 (b) the minor is not under the jurisdiction of the court for any act that:

10285 (i) would be a felony if committed by an adult;

10286 (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

10287 (iii) was committed with a weapon; and

10288 (c) the court retains jurisdiction over the minor under conditions set by the court and
10289 agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

10290 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction
10291 of the court as described in Subsection 53-10-403(3). The specimen shall be obtained by
10292 designated employees of the court or, if the minor is in the legal custody of the Division of
10293 Juvenile Justice Services, then by designated employees of the division under Subsection
10294 53-10-404(5)(b).

10295 (b) The responsible agency shall ensure that employees designated to collect the saliva
10296 DNA specimens receive appropriate training and that the specimens are obtained in accordance
10297 with accepted protocol.

10298 (c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA
10299 Specimen Restricted Account created in Section 53-10-407.

10300 (d) Payment of the reimbursement is second in priority to payments the minor is
10301 ordered to make for restitution under this section and treatment under Section 78A-6-321.

10302 Section 189. Section **78A-11-108** is amended to read:

10303 **78A-11-108. Involuntary disability retirement or removal of a judge.**

10304 (1) The commission shall recommend and issue an order for the removal or involuntary
10305 retirement of a judge of any court of this state, in accordance with the procedure outlined in this

10306 section, for a disability that seriously interferes with the performance of the judge's judicial
10307 duties and which is, or is likely to become, of a permanent character.

10308 (2) The commission shall order a medical examination and report.

10309 (3) The commission in recommending an order of involuntary retirement or removal of
10310 a judge for a disability, shall base it on the evaluation and recommendations submitted by one
10311 or more medical examiners or physicians, including an examination of essential statements
10312 submitted by either bar or judicial associations or committees certifying that:

10313 (a) the judge [~~is mentally or physically disabled~~] acquires a physical or mental
10314 disability and this disability seriously interferes with the performance of the judge's judicial
10315 duties; and

10316 (b) the judge's incapacity is likely to continue and be permanent and that the judge
10317 should be involuntarily retired or removed.

10318 (4) (a) The Supreme Court shall review the commission's proceedings as to both law
10319 and fact and may permit the introduction of additional evidence.

10320 (b) After its review, the Supreme Court shall issue its order implementing, rejecting, or
10321 modifying the commission's order.

10322 (5) Retirement or involuntary retirement as provided in this chapter shall be processed
10323 through the Utah State Retirement Office, and the judge retiring shall meet the requirements for
10324 retirement as specified in this chapter.

10325 (6) Upon an order for involuntary retirement, the judge shall retire with the same rights
10326 and privileges as if the judge retired pursuant to statute.

10327 Section 190. Section **78B-3-110** is amended to read:

10328 **78B-3-110. Defense to civil action for damages resulting from commission of**
10329 **crime.**

10330 (1) A person may not recover from the victim of a crime for personal injury or property
10331 damage if the person:

10332 (a) entered the property of the victim with criminal intent and the injury or damage
10333 occurred while the person was on the victim's property; or

10334 (b) committed a crime against the victim, during which the damage or injury occurred.

10335 (2) The provisions of Subsection (1) do not apply if the person can prove by clear and
10336 convincing evidence that:

10337 (a) ~~his~~ the person's actions did not constitute a felony; and

10338 (b) ~~his~~ the person's culpability was less than the person from whom recovery is
10339 sought.

10340 (3) Subsections (1) and (2) apply to any next-of-kin, heirs, or personal representatives
10341 of the person if the person ~~is disabled~~ acquires a disability or is killed.

10342 (4) Subsections (1), (2), and (3) do not apply if the person committing or attempting to
10343 commit the crime has clearly retreated from the criminal activity.

10344 (5) "Clearly retreated" means that the person committing the criminal act has fully,
10345 clearly, and immediately ceased all hostile, threatening, violent, or criminal behavior or
10346 activity.

10347 Section 191. **Effective date.**

10348 This bill takes effect on May 10, 2011, except that the amendments to Section
10349 78A-6-117 (Effective 07/01/11) take effect on July 1, 2011.

10350 Section 192. **Coordinating H.B. 230 with H.B. 13 -- Technical amendments.**

10351 If this H.B. 230 and H.B. 13, Immunizations for Teen Mothers, both pass, it is the
10352 intent of the Legislature that the Office of Legislative Research and General Counsel shall
10353 prepare the Utah Code database for publication by:

10354 (1) amending Section 26-10-1 to read:

10355 "26-10-1. Definitions.

10356 As used in this chapter:

10357 (1) "Maternal and child health services" means:

10358 (a) the provision of educational, preventative, diagnostic, and treatment services,
10359 including medical care, hospitalization, and other institutional care and aftercare, appliances,
10360 and facilitating services directed toward reducing infant mortality and improving the health of
10361 mothers and children provided, however, that nothing in this ~~section~~ Subsection (1) shall be

10362 construed to allow any agency of the state to interfere with the rights of the parent of an
 10363 unmarried minor in decisions about the providing of health information or services;
 10364 (b) the development, strengthening, and improvement of standards and techniques
 10365 relating to the services and care;
 10366 (c) the training of personnel engaged in the provision, development, strengthening, or
 10367 improvement of the services and care; and
 10368 (d) necessary administrative services connected with Subsections (1)(a), (b), and (c).
 10369 [~~(2) "Crippled children's services" means:~~]
 10370 (2) "Minor" means a person under the age of 18.
 10371 (3) "Services for children with disabilities" means
 10372 (a) the early location of [~~crippled~~] children with a disability, provided that any program
 10373 of prenatal diagnosis for the purpose of detecting the possible disease or disabilities of an
 10374 unborn child will not be used for screening, but rather will be utilized only when there are
 10375 medical or genetic indications that warrant diagnosis;
 10376 (b) the provision for [~~such~~] children described in Subsection (3)(a), of preventive,
 10377 diagnosis, and treatment services, including medical care, hospitalization, and other
 10378 institutional care and aftercare, appliances, and facilitating services directed toward the
 10379 diagnosis of the condition of [~~such~~] those children or toward the restoration of the children to
 10380 maximum physical and mental health;
 10381 (c) the development, strengthening, and improvement of standards and techniques
 10382 relating to [~~such~~] services and care described in this Subsection (3);
 10383 (d) the training of personnel engaged in the provision, development, strengthening, or
 10384 improvement of [~~such~~] services and care described in this Subsection (3); and
 10385 (e) necessary administrative services connected with Subsections [~~(2)~~] (3)(a), (b), and
 10386 (c)."; and
 10387 (2) amending Section 26-10-2 to read:
 10388 **"26-10-2. Maternal and child health and crippled children's services provided by**
 10389 **department.**

10390 The department shall, as funding permits, provide for maternal and child health services
10391 and ~~[crippled children's] services [to individuals who need such services and]~~ for children with
10392 a disability if the individual needs the services and the individual cannot reasonably obtain
10393 ~~[them]~~ the services from other sources."