

**FOOD STAMP REFERENCE AMENDMENTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Rebecca Chavez-Houck**

Senate Sponsor: Luz Robles

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**LONG TITLE**

**General Description:**

This bill modifies the Utah Workforce Services Code and related sections by changing references to federal food stamps to SNAP (Supplemental Nutrition Assistance Program).

**Highlighted Provisions:**

This bill:

- ▶ defines "SNAP" as the federal "Supplemental Nutrition Assistance Program," formerly known as the federal Food Stamp Program;
- ▶ defines "SNAP benefits" as a financial benefit, coupon, or privilege available under SNAP;
- ▶ changes references in the code to food stamps to SNAP or SNAP benefits; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**26-18-3.6**, as enacted by Laws of Utah 1997, Chapter 243

**35A-1-102**, as last amended by Laws of Utah 2011, Chapter 188



- 28           **35A-3-311**, as enacted by Laws of Utah 1997, Chapter 174
- 29           **35A-3-603**, as renumbered and amended by Laws of Utah 2003, Chapter 90
- 30           **35A-3-608**, as last amended by Laws of Utah 2005, Chapter 71
- 31           **35A-4-103**, as last amended by Laws of Utah 2008, Chapter 305
- 32           **58-63-102**, as last amended by Laws of Utah 2008, Chapter 246
- 33           **59-12-104.5**, as last amended by Laws of Utah 2011, Chapter 384
- 34           **62A-11-103**, as last amended by Laws of Utah 2009, Chapter 142
- 35           **63J-5-103**, as last amended by Laws of Utah 2010, Chapter 370
- 36           **76-8-1205**, as last amended by Laws of Utah 2003, Chapter 90
- 37           **76-8-1206**, as last amended by Laws of Utah 2010, Chapter 193
- 38           **78B-12-203**, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

41           Section 1. Section **26-18-3.6** is amended to read:

42           **26-18-3.6. Income and resources from institutionalized spouses.**

43           (1) As used in this section:

44           (a) "Community spouse" means the spouse of an institutionalized spouse.

45           (b) (i) "Community spouse monthly income allowance" means an amount by which the  
 46 minimum monthly maintenance needs allowance for the spouse exceeds the amount of monthly  
 47 income otherwise available to the community spouse, determined without regard to the  
 48 allowance, except as provided in Subsection (1)(b)(ii).

49           (ii) If a court has entered an order against an institutionalized spouse for monthly  
 50 income for the support of the community spouse, the community spouse monthly income  
 51 allowance for the spouse may not be less than the amount of the monthly income so ordered.

52           (c) "Community spouse resource allowance" is an amount by which the greatest of the  
 53 following exceeds the amount of the resources otherwise available to the community spouse:

54           (i) \$15,804;

55           (ii) the lesser of the spousal share computed under Subsection (4) or \$76,740;

56           (iii) the amount established in a hearing held under Subsection (11); or

57           (iv) the amount transferred by court order under Subsection (11)(c).

58           (d) "Excess shelter allowance" for a community spouse means the amount by which the

59 sum of the spouse's expense for rent or mortgage payment, taxes, and insurance, and in the case  
60 of condominium or cooperative, required maintenance charge, for the community spouse's  
61 principal residence and the spouse's actual expenses for electricity, natural gas, and water  
62 utilities or, at the discretion of the department, the federal [~~food stamp~~] standard utility  
63 allowance under SNAP as defined in Section 35A-1-102, exceeds 30% of the amount described  
64 in Subsection (9).

65 (e) "Family member" means a minor dependent child, dependent parents, or dependent  
66 sibling of the institutionalized spouse or community spouse who are residing with the  
67 community spouse.

68 (f) (i) "Institutionalized spouse" means a person who is residing in a nursing facility  
69 and is married to a spouse who is not in a nursing facility.

70 (ii) An "institutionalized spouse" does not include a person who is not likely to reside  
71 in a nursing facility for at least 30 consecutive days.

72 (g) "Nursing care facility" is defined in Section 26-21-2.

73 (2) The division shall comply with this section when determining eligibility for  
74 medical assistance for an institutionalized spouse.

75 (3) For services furnished during a calendar year beginning on or after January 1, 1999,  
76 the dollar amounts specified in Subsections (1)(c)(i), (1)(c)(ii), and (10)(b) shall be increased  
77 by the division by the amount as determined annually by the federal Health Care Financing  
78 Administration.

79 (4) The division shall compute, as of the beginning of the first continuous period of  
80 institutionalization of the institutionalized spouse:

81 (a) the total value of the resources to the extent either the institutionalized spouse or  
82 the community spouse has an ownership interest; and

83 (b) a spousal share, which is 1/2 of the resources described in Subsection (4)(a).

84 (5) At the request of an institutionalized spouse or a community spouse, at the  
85 beginning of the first continuous period of institutionalization of the institutionalized spouse  
86 and upon the receipt of relevant documentation of resources, the division shall promptly assess  
87 and document the total value described in Subsection (4)(a) and shall provide a copy of that  
88 assessment and documentation to each spouse and shall retain a copy of the assessment. When  
89 the division provides a copy of the assessment, it shall include a notice stating that the spouse

90 may request a hearing under Subsection (11).

91 (6) When determining eligibility for medical assistance under this chapter:

92 (a) Except as provided in Subsection (6)(b), all the resources held by either the  
93 institutionalized spouse, community spouse, or both, are considered to be available to the  
94 institutionalized spouse.

95 (b) Resources are considered to be available to the institutionalized spouse only to the  
96 extent that the amount of those resources exceeds the amounts specified in Subsections  
97 (1)(c)(i) through (iv) at the time of application for medical assistance under this chapter.

98 (7) The division may not find an institutionalized spouse to be ineligible for medical  
99 assistance by reason of resources determined under Subsection (5) to be available for the cost  
100 of care when:

101 (a) the institutionalized spouse has assigned to the state any rights to support from the  
102 community spouse;

103 (b) (i) except as provided in Subsection (7)(b)(ii), the institutionalized spouse lacks the  
104 ability to execute an assignment due to physical or mental impairment;

105 (ii) Subsection (7)(b)(i) does not prevent the division from seeking a court order  
106 seeking an assignment of support; or

107 (c) the division determines that denial of medical assistance would cause an undue  
108 burden.

109 (8) During the continuous period in which an institutionalized spouse is in an  
110 institution and after the month in which an institutionalized spouse is eligible for medical  
111 assistance, the resources of the community spouse may not be considered to be available to the  
112 institutionalized spouse.

113 (9) When an institutionalized spouse is determined to be eligible for medical  
114 assistance, in determining the amount of the spouse's income that is to be applied monthly for  
115 the cost of care in the nursing care facility, the division shall deduct from the spouse's monthly  
116 income the following amounts in the following order:

117 (a) a personal needs allowance, the amount of which is determined by the division;

118 (b) a community spouse monthly income allowance, but only to the extent that the  
119 income of the institutionalized spouse is made available to, or for the benefit of, the community  
120 spouse;

121 (c) a family allowance for each family member, equal to at least 1/3 of the amount that  
122 the amount described in Subsection (10)(a)(i) exceeds the amount of monthly income of that  
123 family member; and

124 (d) amounts for incurred expenses for the medical or remedial care for the  
125 institutionalized spouse.

126 (10) (a) Except as provided in Subsection (10)(b), the division shall establish a  
127 minimum monthly maintenance needs allowance for each community spouse which is not less  
128 than the sum of:

129 (i) 150% of the current poverty guideline for a two-person family unit that applies to  
130 this state as established by the United States Department of Health and Human Services; and

131 (ii) an excess shelter allowance.

132 (b) The amount provided in Subsection (10)(a) may not exceed \$1,976, unless a court  
133 order establishes a higher amount.

134 (11) (a) An institutionalized spouse or a community spouse may request a hearing with  
135 respect to the determinations described in Subsections (11)(e)(i) through (v) if an application  
136 for medical assistance has been made on behalf of the institutionalized spouse.

137 (b) A hearing under this subsection regarding the community spouse resource  
138 allowance shall be held by the division within 90 days from the date of the request for the  
139 hearing.

140 (c) If either spouse establishes that the community spouse needs income, above the  
141 level otherwise provided by the minimum monthly maintenance needs allowance, due to  
142 exceptional circumstances resulting in significant financial duress, there shall be substituted,  
143 for the minimum monthly maintenance needs allowance provided under Subsection (10), an  
144 amount adequate to provide additional income as is necessary.

145 (d) If either spouse establishes that the community spouse resource allowance, in  
146 relation to the amount of income generated by the allowance is inadequate to raise the  
147 community spouse's income to the minimum monthly maintenance needs allowance, there shall  
148 be substituted, for the community spouse resource allowance, an amount adequate to provide a  
149 minimum monthly maintenance needs allowance.

150 (e) A hearing may be held under this subsection if either the institutionalized spouse or  
151 community spouse is dissatisfied with a determination of:

- 152 (i) the community spouse monthly income allowance;
- 153 (ii) the amount of monthly income otherwise available to the community spouse;
- 154 (iii) the computation of the spousal share of resources under Subsection (4);
- 155 (iv) the attribution of resources under Subsection (6); or
- 156 (v) the determination of the community spouse resource allocation.

157 (12) (a) An institutionalized spouse may transfer an amount equal to the community  
 158 spouse resource allowance, but only to the extent the resources of the institutionalized spouse  
 159 are transferred to or for the sole benefit of the community spouse.

160 (b) The transfer under Subsection (12)(a) shall be made as soon as practicable after the  
 161 date of the initial determination of eligibility, taking into account the time necessary to obtain a  
 162 court order under Subsection (12)(c).

163 (c) [~~Title 26,~~] Chapter 19, Medical Benefits Recovery Act, does not apply if a court has  
 164 entered an order against an institutionalized spouse for the support of the community spouse.

165 Section 2. Section **35A-1-102** is amended to read:

166 **35A-1-102. Definitions.**

167 Unless otherwise specified, as used in this title:

168 (1) "Client" means an individual who the department has determined to be eligible for  
 169 services or benefits under:

- 170 (a) Chapter 3, Employment Support Act; and
- 171 (b) Chapter 5, Training and Workforce Improvement Act.

172 (2) "Department" means the Department of Workforce Services created in Section  
 173 35A-1-103.

174 (3) "Economic service area" means an economic service area established in accordance  
 175 with Chapter 2, Economic Service Areas.

176 (4) "Employment assistance" means services or benefits provided by the department  
 177 under:

- 178 (a) Chapter 3, Employment Support Act; and
- 179 (b) Chapter 5, Training and Workforce Improvement Act.

180 (5) "Employment center" is a location in an economic service area where the services  
 181 provided by an economic service area under Section 35A-2-201 may be accessed by a client.

182 (6) "Employment counselor" means an individual responsible for developing an

183 employment plan and coordinating the services and benefits under this title in accordance with  
184 Chapter 2, Economic Service Areas.

185 (7) "Employment plan" means a written agreement between the department and a client  
186 that describes:

187 (a) the relationship between the department and the client;

188 (b) the obligations of the department and the client; and

189 (c) the result if an obligation is not fulfilled by the department or the client.

190 (8) "Executive director" means the executive director of the department appointed  
191 under Section 35A-1-201.

192 (9) "Public assistance" means:

193 (a) services or benefits provided under Chapter 3, Employment Support Act;

194 (b) medical assistance provided under Title 26, Chapter 18, Medical Assistance Act;

195 (c) foster care maintenance payments provided from the General Fund or under Title  
196 IV-E of the Social Security Act;

197 (d) ~~[food stamps]~~ SNAP benefits; and

198 (e) any other public funds expended for the benefit of a person in need of financial,  
199 medical, food, housing, or related assistance.

200 (10) "SNAP" means the federal "Supplemental Nutrition Assistance Program" under  
201 Title 7, U.S.C. Chapter 51, Supplemental Nutrition Assistance Program, formerly known as  
202 the federal Food Stamp Program.

203 (11) "SNAP benefit" or "SNAP benefits" means a financial benefit, coupon, or  
204 privilege available under SNAP.

205 ~~[(10)]~~ (12) "Stabilization" means addressing the basic living, family care, and social or  
206 psychological needs of the client so that the client may take advantage of training or  
207 employment opportunities provided under this title or through other agencies or institutions.

208 Section 3. Section **35A-3-311** is amended to read:

209 **35A-3-311. Cash assistance to noncitizen legal residents and drug dependent**  
210 **persons.**

211 (1) The division may provide cash assistance to a legal resident who is not a citizen of  
212 the United States using funds appropriated from the general fund if barred under federal law  
213 from using federal funds.

214 (2) (a) The State exercises the opt out provision in Section 115 of the Personal  
215 Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193.

216 (b) Consistent with Subsection (2)(a), the division may provide cash assistance and  
217 ~~[food stamps]~~ SNAP benefits to a person who has been convicted of a felony involving a  
218 controlled substance, as defined in Section 58-37-2.

219 (c) As a condition for receiving cash assistance under this part, a drug dependant  
220 person, as defined in Section 58-37-2, shall:

221 (i) receive available treatment for the dependency; and

222 (ii) make progress toward overcoming the dependency.

223 (d) The department may only refer a client who is a drug dependent person to a  
224 treatment provider that has achieved an objective level of success, as defined by department  
225 rule, in treating drug dependency.

226 Section 4. Section **35A-3-603** is amended to read:

227 **35A-3-603. Civil liability for overpayment.**

228 (1) As used in this section, "intentionally, knowingly, and recklessly" mean the same as  
229 those terms are defined in Section 76-2-103.

230 (2) Each provider, client, or other person who receives an overpayment shall,  
231 regardless of fault, return the overpayment or repay its value to the department immediately:

232 (a) upon receiving written notice of the overpayment from the department; or

233 (b) upon discovering the overpayment, if that occurs prior to receiving notice.

234 (3) (a) Except as provided under Subsection (3)(b), interest on the unreturned balance  
235 of the overpayment shall accrue at the rate of 1% a month.

236 (b) If the overpayment was not the fault of the person receiving it, that person is not  
237 liable for interest on the unreturned balance.

238 (c) In accordance with federal law and rules made by the department, an overpayment  
239 may be recovered through deductions from cash assistance, general assistance, ~~[food stamps]~~  
240 SNAP benefits, other cash-related assistance provided to a client under this chapter, or any  
241 other means provided by federal law.

242 (4) Each person who knowingly assists a client, provider, or other person in obtaining  
243 an overpayment is jointly and severally liable for the overpayment.

244 (5) (a) In proving civil liability for overpayment under this section or Section



245 35A-3-605 when fault is alleged, the department shall prove by clear and convincing evidence  
246 that the overpayment was obtained intentionally, knowingly, recklessly, by false statement,  
247 misrepresentation, impersonation, or other fraudulent means, such as by committing any of the  
248 acts or omissions described in Sections 76-8-1203 through 76-8-1205.

249 (b) If fault is established under Subsection (5)(a), Section 35A-3-605, or Title 76,  
250 Chapter 8, Part 12, Public Assistance Fraud, any person who obtained or helped another obtain  
251 an overpayment shall be subject to:

252 (i) a civil penalty of 10% of the amount of the overpayment; and

253 (ii) disqualification from receiving cash assistance from the Family Employment  
254 Program and the general assistance program, if the overpayment was obtained from either of  
255 those programs, for 12 months for the first offense, 24 months for the second offense, and  
256 permanently for the third offense, or as otherwise provided by federal law; or

257 (iii) disqualification from the ~~[food stamp program]~~ SNAP, if that is the program from  
258 which the overpayment was received, for 12 months for the first offense, 24 months for the  
259 second offense, and permanently for the third offense, or as otherwise provided by federal law.

260 (6) If an action is filed, the department may recover, in addition to the principal sum  
261 plus interest, reasonable attorneys' fees and costs unless the repayment obligation arose from an  
262 administrative error by the department.

263 (7) If a court finds that funds or benefits were secured, in whole or part, by fraud by the  
264 person from whom repayment is sought, the court shall assess an additional sum as considered  
265 appropriate as punitive damages up to the amount of repayment being sought.

266 (8) Criminal actions for public assistance fraud are governed by Title 76, Chapter 8,  
267 Part 12, Public Assistance Fraud.

268 (9) Jurisdiction over benefits is continuous.

269 (10) This chapter does not preclude the Department of Health from carrying out its  
270 responsibilities under Title 26, Chapter 19, Medical Benefits Recovery Act, and Chapter 20,  
271 Utah False Claims Act.

272 Section 5. Section **35A-3-608** is amended to read:

273 **35A-3-608. Schedule of payments to be paid upon liability -- Establishment --**  
274 **Cancellation.**

275 (1) At any time, the department may:

276 (a) consistent with the income, earning capacity, and resources of the obligor, set or  
277 reset the level and schedule of payments to be paid upon the liability; and

278 (b) at any time, cancel the schedule of payments and demand immediate payment in  
279 full.

280 (2) The department may recover an overpayment through deductions from cash  
281 assistance or [~~food stamps pursuant to~~] SNAP benefits under Section 35A-3-603.

282 Section 6. Section **35A-4-103** is amended to read:

283 **35A-4-103. Void agreements -- Child support obligations -- Penalties.**

284 (1) (a) Any agreement by an individual to waive, release, or commute his rights to  
285 benefits or any other rights under this chapter is void.

286 (b) Any agreement by any individual in the employ of any person or concern to pay all  
287 or any portion of an employer's contributions, required under this chapter from the employer, is  
288 void.

289 (c) An employer may not directly or indirectly:

290 (i) make, require, or accept any deduction from wages to finance the employer's  
291 contributions required from the employer;

292 (ii) require or accept any waiver of any right under this chapter by any individual in the  
293 employer's employ;

294 (iii) discriminate in regard to the hiring or tenure of work on any term or condition of  
295 work of any individual on account of the individual claiming benefits under this chapter; or

296 (iv) in any manner obstruct or impede the filing of claims for benefits.

297 (d) (i) Any employer or officer or agent of an employer who violates Subsection (1)(c)  
298 is, for each offense, guilty of a class B misdemeanor.

299 (ii) Notwithstanding Sections 76-3-204 and 76-3-301, a fine imposed under this  
300 Subsection (1) shall be not less than \$100, and a penalty of imprisonment shall be not more  
301 than six months.

302 (2) An individual claiming benefits may not be charged fees or costs of any kind in any  
303 proceeding under this chapter by the department or its representatives, or by any court or any  
304 officer of the court.

305 (3) (a) Any individual claiming benefits in any proceeding before the department or its  
306 representatives or a court may be represented by counsel or any other authorized agent.

307 (b) A counsel or agent may not either charge or receive for the counsel's or agent's  
308 services more than an amount approved by the division or administrative law judge in  
309 accordance with rules made by the department.

310 (4) Except as provided for in Subsection (5):

311 (a) any assignment, pledge, or encumbrance of any right to benefits that are or may  
312 become due or payable under this chapter is void;

313 (b) rights to benefits are exempt from levy, execution, attachment, or any other remedy  
314 provided for the collection of debt;

315 (c) benefits received by any individual, so long as they are not mingled with other  
316 funds of the recipient, are exempt from any remedy for the collection of all debts except debts  
317 incurred for necessities furnished to the individual or the individual's spouse or dependents  
318 during the time when the individual was unemployed; and

319 (d) any waiver of any exemption provided for in Subsection (4) is void.

320 (5) (a) An individual filing a new claim for unemployment compensation shall, at the  
321 time of filing the claim, disclose whether or not the individual owes:

322 (i) child support obligations; or

323 (ii) an uncollected overissuance of [~~food stamp~~] SNAP benefits.

324 (b) If the individual owes child support obligations, and is determined to be eligible for  
325 unemployment compensation, the division shall notify the state or local child support agency  
326 charged with enforcing that obligation that the individual is eligible for unemployment  
327 compensation.

328 (c) The division shall deduct and withhold from any unemployment compensation  
329 payable to an individual that owes child support obligations:

330 (i) any amount required to be deducted and withheld from unemployment  
331 compensation under legal process, as defined in the Social Security Act, 42 U.S.C. Sec. 659(i),  
332 properly served upon the department;

333 (ii) the amount determined under an agreement submitted to the division under  
334 Subsection 454 (19)(B)(i) of the Social Security Act, 42 U.S.C. Sec. 654, by the state or local  
335 child support enforcement agency, except if Subsection (5)(c)(i) is applicable; or

336 (iii) the amount specified by the claimant to the division if neither Subsection (5)(c)(i)  
337 nor (ii) is applicable.

338 (d) The division shall notify the state [~~food stamp~~] SNAP agency that an individual is  
339 eligible for unemployment compensation if the individual:

- 340 (i) owes an uncollected overissuance of [~~food stamp~~] SNAP benefits; and
- 341 (ii) is determined to be eligible for unemployment compensation.

342 (e) The division shall deduct and withhold from any unemployment compensation  
343 payable to an individual who owes an uncollected overissuance of [~~food stamp~~] SNAP  
344 benefits:

345 (i) the amount specified by the individual to the division to be deducted and withheld  
346 under this Subsection (5)(e);

347 (ii) the amount, if any, determined pursuant to an agreement submitted to the state  
348 [~~food stamp~~] SNAP agency under Section 13(c)(3)(B) of the Food [~~Stamp~~] and Nutrition Act  
349 of [~~1977~~] 2008; or

350 (iii) any amount otherwise required to be deducted and withheld from unemployment  
351 compensation pursuant to Section 13(c)(3)(B) of the Food [~~Stamp~~] and Nutrition Act of [~~1977~~]  
352 2008.

353 (f) Any amount deducted and withheld under Subsection (5)(c) or (e) shall:

354 (i) be paid by the department to the appropriate:

355 (A) state or local child support enforcement agency; or

356 (B) state [~~food stamp~~] SNAP agency; and

357 (ii) for all purposes, be treated as if it was paid to the individual as unemployment  
358 compensation and then paid by the individual to the appropriate:

359 (A) state or local child support enforcement agency in satisfaction of the individual's  
360 child support obligation; or

361 (B) state [~~food stamp~~] SNAP agency in satisfaction of the individual's uncollected  
362 overissuance.

363 (g) For purposes of this Subsection (5):

364 (i) "Child support obligation" means obligations that are enforced under a plan  
365 described in Section 454 of the Social Security Act, 42 U.S.C. Sec. 654, that has been approved  
366 by the Secretary of Health and Human Services under Part D of Title IV of the Social Security  
367 Act, 42 U.S.C. Sec. 651 et seq.

368 (ii) "State [~~food stamp~~] SNAP agency" means the Department of Workforce Services

369 or its designee responsible for the collection of uncollected overissuances.

370 (iii) "State or local child support enforcement agency" means any agency or political  
371 subdivision of the state operating under a plan described in this Subsection (5).

372 (iv) "Uncollected overissuance" is as defined in Section 13(c)(1) of the Food [~~Stamp~~]  
373 and Nutrition Act of [~~1977~~] 2008.

374 (v) "Unemployment compensation" means any compensation payable under this  
375 chapter, including amounts payable under an agreement directed by federal law that provides  
376 compensation assistance or allowances for unemployment.

377 (h) This Subsection (5) is applicable only if appropriate arrangements have been made  
378 for reimbursement by the state or local child support enforcement agency or state [~~food stamp~~]  
379 SNAP agency for the administrative costs of the department under this Subsection (5) that are  
380 directly related to the enforcement of child support obligations or the repayment of uncollected  
381 overissuance of [~~food stamp~~] SNAP benefits.

382 Section 7. Section **58-63-102** is amended to read:

383 **58-63-102. Definitions.**

384 In addition to the definitions in Section 58-1-102, as used in this chapter:

385 (1) "Armed courier service" means a person engaged in business as a contract security  
386 company who transports or offers to transport tangible personal property from one place or  
387 point to another under the control of an armed security officer employed by that service.

388 (2) "Armed private security officer" means an individual:

389 (a) employed by a contract security company;

390 (b) whose primary duty is:

391 (i) guarding personal or real property; or

392 (ii) providing protection or security to the life and well being of humans or animals;

393 and

394 (c) who wears, carries, possesses, or has immediate access to a firearm in the  
395 performance of the individual's duties.

396 (3) "Armored car company" means a person engaged in business under contract to  
397 others who transports or offers to transport tangible personal property, currency, valuables,  
398 jewelry, [~~food stamps~~] SNAP benefits as defined in Section 35A-1-102, or any other high value  
399 items, that require secured delivery from one place to another under the control of an armored

400 car security officer employed by the company using a specially equipped motor vehicle offering  
401 a high degree of security.

402 (4) "Armored car security officer" means an individual:

403 (a) employed by an armored car company;

404 (b) whose primary duty is to guard the tangible property, currency, valuables, jewelry,  
405 ~~[food stamps]~~ SNAP benefits as defined in Section 35A-1-102, or other high value items that  
406 require secured delivery from one place to another; and

407 (c) who wears, carries, possesses, or has immediate access to a firearm in the  
408 performance of the individual's duties.

409 (5) "Board" means the Security Services Licensing Board created in Section  
410 58-63-201.

411 (6) "Contract security company" means a person engaged in business to provide  
412 security or guard services to another person on a contractual basis by assignment of an armed  
413 or unarmed private security officer.

414 (7) "Identification card" means a personal pocket or wallet size card issued by the  
415 division to each armored car and armed or unarmed private security officer licensed under this  
416 chapter.

417 (8) "Officer" means a president, vice president, secretary, treasurer, or other officer of a  
418 corporation or limited liability company listed as an officer in the files with the Division of  
419 Corporations and Commercial Code.

420 (9) "Owner" means a proprietor or general partner of a proprietorship or partnership, a  
421 lessee or assignee of the owner, the manager of the facility, or the event operator.

422 (10) "Peace officer" means a person who:

423 (a) is a certified peace officer as defined in Title 53, Chapter 13, Peace Officer  
424 Classifications; and

425 (b) derives total or special law enforcement powers from, and is an employee of, the  
426 federal government, the state, or a political subdivision, agency, department, branch, or service  
427 of either, of a municipality, or a unit of local government.

428 (11) "Regular basis" means at least 20 hours per month.

429 (12) (a) "Security officer" means an individual who is licensed as an armed or unarmed  
430 private security officer under this chapter and who:

431 (i) is employed by a contract security company securing, guarding, or otherwise  
432 protecting tangible personal property, real property, or the life and well being of human or  
433 animal life against:

434 (A) trespass or other unlawful intrusion or entry;

435 (B) larceny;

436 (C) vandalism or other abuse;

437 (D) arson or other criminal activity; or

438 (E) personal injury caused by another person or as a result of an act or omission by  
439 another person;

440 (ii) is controlling, regulating, or directing the flow of movements of an individual or  
441 vehicle; or

442 (iii) providing street patrol service.

443 (b) "Security officer" does not include an individual whose duties are limited to  
444 custodial or other services even though the presence of that individual may act to provide a  
445 service set forth under Subsection (12)(a).

446 (c) (i) "Security officer" does not include an individual whose duties include taking  
447 admission tickets, checking credentials, ushering, or checking bags, purses, backpacks, or other  
448 materials going into a facility as described in Subsection (12)(c)(ii) if:

449 (A) the individual carries out these duties without the use of specialized equipment;

450 (B) the authority of the individual is limited to denying entry or passage of a person  
451 into or within the facility; and

452 (C) the individual is not authorized to use physical force in the performance of the  
453 individual's duties under this Subsection (12)(c).

454 (ii) As used in this Subsection (12)(c), "facility" means a sports, concert, or theatrical  
455 venue, or a convention center, fairgrounds, public assembly facility, or mass gathering location.

456 (13) "Security system" means equipment, a device, or an instrument installed for:

457 (a) detecting and signaling entry or intrusion by an individual into or onto, or exit from  
458 the premises protected by the system; or

459 (b) signaling the commission of criminal activity at the election of an individual having  
460 control of the features of the security system.

461 (14) "Specialized resource, motor vehicle, or equipment" means an item of tangible

462 personal property specifically designed for use in law enforcement or in providing security or  
463 guard services, or that is specially equipped with a device or feature designed for use in  
464 providing law enforcement, security, or guard services, but does not include:

465 (a) standardized clothing, whether or not bearing a company name or logo, if the  
466 clothing does not bear the words "security" or "guard"; or

467 (b) an item of tangible personal property, other than a firearm or nonlethal weapon, that  
468 may be used without modification in providing security or guard services.

469 (15) "Street patrol service" means a contract security company that provides patrols by  
470 means of foot, vehicle, or other method of transportation using public streets, thoroughfares, or  
471 property in the performance of the company's duties and responsibilities.

472 (16) "Unarmed private security officer" means an individual:

473 (a) employed by a contract security company;

474 (b) whose primary duty is guarding personal or real property or providing protection or  
475 security to the life and well being of humans or animals;

476 (c) who does not wear, carry, possess, or have immediate access to a firearm in the  
477 performance of the individual's duties; and

478 (d) who wears clothing of distinctive design or fashion bearing a symbol, badge,  
479 emblem, insignia, or other device that identifies the individual as a security officer.

480 (17) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-63-501.

481 (18) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-63-502 and as  
482 may be further defined by rule.

483 Section 8. Section **59-12-104.5** is amended to read:

484 **59-12-104.5. Revenue and Taxation Interim Committee review of sales and use**  
485 **taxes.**

486 The Revenue and Taxation Interim Committee shall:

487 (1) review Subsection 59-12-104(28) before October 1 of the year after the year in  
488 which Congress permits a state to participate in the special supplemental nutrition program  
489 under 42 U.S.C. Sec. 1786 even if state or local sales taxes are collected within the state on  
490 purchases of food under that program;

491 (2) review Subsection 59-12-104(21) before October 1 of the year after the year in  
492 which Congress permits a state to participate in the [~~food stamp program under the Food Stamp~~



493 ~~Act, 7 U.S.C. Sec. 2011 et seq.] SNAP as defined in Section 35A-1-102, even if state or local~~  
494 sales taxes are collected within the state on purchases of food under that program; and

495 (3) review Subsection 59-12-104(62) before the October 2011 interim meeting.

496 Section 9. Section **62A-11-103** is amended to read:

497 **62A-11-103. Definitions.**

498 As used in this part:

499 (1) "Account" means a demand deposit account, checking or negotiable withdrawal  
500 order account, savings account, time deposit account, or money-market mutual fund account.

501 (2) "Cash medical support" means an obligation to equally share all reasonable and  
502 necessary medical and dental expenses of children.

503 (3) "Child support services" or "IV-D child support services" means services provided  
504 pursuant to Part D of Title IV of the Social Security Act, 42 U.S.C. Sec. 651, et seq.

505 (4) "Director" means the director of the Office of Recovery Services.

506 (5) "Disposable earnings" means that part of the earnings of an individual remaining  
507 after the deduction of all amounts required by law to be withheld.

508 (6) "Financial institution" means:

509 (a) a depository institution as defined in Section 7-1-103 or the Federal Deposit  
510 Insurance Act, 12 U.S.C. Sec. 1813(c);

511 (b) an institution-affiliated party as defined in the Federal Deposit Insurance Act, 12  
512 U.S.C. Sec. 1813(u);

513 (c) any federal credit union or state credit union as defined in the Federal Credit Union  
514 Act, 12 U.S.C. Sec. 1752, including an institution-affiliated party of such a credit union as  
515 defined in 12 U.S.C. Sec. 1786(r);

516 (d) a broker-dealer as defined in Section 61-1-13; or

517 (e) any benefit association, insurance company, safe deposit company, money-market  
518 mutual fund, or similar entity authorized to do business in the state.

519 (7) "Financial record" is defined in the Right to Financial Privacy Act of 1978, 12  
520 U.S.C. Sec. 3401.

521 (8) "Income" means earnings, compensation, or other payment due to an individual,  
522 regardless of source, whether denominated as wages, salary, commission, bonus, pay, or  
523 contract payment, or denominated as advances on future wages, salary, commission, bonus,

524 pay, allowances, contract payment, or otherwise, including severance pay, sick pay, and  
525 incentive pay. "Income" includes:

526 (a) all gain derived from capital assets, labor, or both, including profit gained through  
527 sale or conversion of capital assets;

528 (b) interest and dividends;

529 (c) periodic payments made under pension or retirement programs or insurance policies  
530 of any type;

531 (d) unemployment compensation benefits;

532 (e) workers' compensation benefits; and

533 (f) disability benefits.

534 (9) "IV-D" means Part D of Title IV of the Social Security Act, 42 U.S.C. Sec. 651 et  
535 seq.

536 (10) "New hire registry" means the centralized new hire registry created in Section  
537 35A-7-103.

538 (11) "Obligee" means an individual, this state, another state, or other comparable  
539 jurisdiction to whom a debt is owed or who is entitled to reimbursement of child support or  
540 public assistance.

541 (12) "Obligor" means a person, firm, corporation, or the estate of a decedent owing  
542 money to this state, to an individual, to another state, or other comparable jurisdiction in whose  
543 behalf this state is acting.

544 (13) "Office" means the Office of Recovery Services.

545 (14) "Provider" means a person or entity that receives compensation from any public  
546 assistance program for goods or services provided to a public assistance recipient.

547 (15) "Public assistance" or "assistance" means:

548 (a) services or benefits provided under Title 35A, Chapter 3, Employment Support Act;

549 (b) medical assistance provided under Title 26, Chapter 18, Medical Assistance Act;

550 (c) foster care maintenance payments under Part E of Title IV of the Social Security  
551 Act, 42 U.S.C. Sec. 670, et seq.;

552 (d) ~~[food stamps]~~ SNAP benefits as defined in Section 35A-1-102; or

553 (e) any other public funds expended for the benefit of a person in need of financial,  
554 medical, food, housing, or related assistance.

555 (16) "State case registry" means the central, automated record system maintained by  
556 the office and the central, automated district court record system maintained by the  
557 Administrative Office of the Courts, that contains records which use standardized data  
558 elements, such as names, Social Security numbers and other uniform identification numbers,  
559 dates of birth, and case identification numbers, with respect to:

560 (a) each case in which services are being provided by the office under the state IV-D  
561 child support services plan; and

562 (b) each support order established or modified in the state on or after October 1, 1998.

563 Section 10. Section **63J-5-103** is amended to read:

564 **63J-5-103. Scope and applicability of chapter.**

565 (1) Except as provided in Subsection (2), and except as otherwise provided by a statute  
566 superseding provisions of this chapter by explicit reference to this chapter, the provisions of  
567 this chapter apply to each agency and govern each federal funds request.

568 (2) This chapter does not govern federal funds requests for:

569 (a) the Medical Assistance Program, commonly known as Medicaid;

570 (b) the Children's Health Insurance Program;

571 (c) the Women, Infant, and Children program;

572 (d) the Temporary Assistance to Needy Families program;

573 (e) Social Security Act money;

574 (f) the Substance Abuse Prevention and Treatment program;

575 (g) Child Care Block grants;

576 (h) [~~Food Stamp~~] SNAP Administration and Training money;

577 (i) Unemployment Insurance Operations money;

578 (j) Federal Highway Administration money;

579 (k) the Utah National Guard; or

580 (l) pass-through federal funds.

581 (3) The governor need not seek legislative review or approval of federal funds received  
582 by the state if:

583 (a) the governor has declared a state of emergency; and

584 (b) the federal funds are received to assist victims of the state of emergency under

585 Subsection 63K-4-201(1).

586 Section 11. Section **76-8-1205** is amended to read:

587 **76-8-1205. Public assistance fraud defined.**

588 Each of the following persons, who intentionally, knowingly, or recklessly commits any  
589 of the following acts, is guilty of public assistance fraud:

590 (1) any person who uses, transfers, acquires, traffics in, falsifies, or possesses any [~~food~~  
591 ~~stamp~~] SNAP benefits as defined in Section 35A-1-102, [~~food stamp~~] SNAP identification  
592 card, certificate of eligibility for medical services, Medicaid identification card, fund transfer  
593 instrument, payment instrument, or public assistance warrant in a manner not allowed by law;

594 (2) any person who fraudulently misappropriates any funds exchanged for [~~food~~  
595 ~~stamps, any food stamp, food stamp~~] SNAP benefits as defined in Section 35A-1-102, or any  
596 identification card, certificate of eligibility for medical services, Medicaid identification card,  
597 or other public assistance with which he has been entrusted or that has come into his  
598 possession in connection with his duties in administering any state or federally funded public  
599 assistance program;

600 (3) any person who receives an unauthorized payment as a result of acts described in  
601 this section;

602 (4) any provider who receives payment or any client who receives benefits after failing  
603 to comply with any applicable requirement in Sections 76-8-1203 and 76-8-1204;

604 (5) any provider who files a claim for payment under any state or federally funded  
605 public assistance program for goods or services not provided to or for a client of that program;

606 (6) any provider who files or falsifies a claim, report, or document required by state or  
607 federal law, rule, or provider agreement for goods or services not authorized under the state or  
608 federally funded public assistance program for which the goods or services were provided;

609 (7) any provider who fails to credit the state for payments received from other sources;

610 (8) any provider who bills a client or a client's family for goods or services not  
611 provided, or bills in an amount greater than allowed by law or rule;

612 (9) any client who, while receiving public assistance, acquires income or resources in  
613 excess of the amount he previously reported to the state agency administering the public  
614 assistance, and fails to notify the state agency to which the client previously reported within 10  
615 days after acquiring the excess income or resources;

616 (10) any person who fails to act as required under Section 76-8-1203 or 76-8-1204 with

617 intent to obtain or help another obtain an "overpayment" as defined in Section 35A-3-602; and  
618 (11) any person who obtains an overpayment by violation of Section 76-8-1203 or  
619 76-8-1204.

620 Section 12. Section **76-8-1206** is amended to read:

621 **76-8-1206. Penalties for public assistance fraud.**

622 (1) The severity of the offense of public assistance fraud is classified in accordance  
623 with the value of payments, assistance, or other benefits received, misappropriated, claimed, or  
624 applied for as follows:

- 625 (a) second degree felony if the value is or exceeds \$5,000;
- 626 (b) third degree felony if the value is or exceeds \$1,500 but is less than \$5,000;
- 627 (c) class A misdemeanor if the value is or exceeds \$500 but is less than \$1,500; and
- 628 (d) class B misdemeanor if the value is less than \$500.

629 (2) For purposes of Subsection (1), the value of an offense is calculated by aggregating  
630 the values of each instance of public assistance fraud committed by the defendant as part of the  
631 same facts and circumstances or a related series of facts and circumstances.

632 (3) Incidents of trafficking in ~~[food stamps]~~ SNAP benefits as defined in Section  
633 35A-1-102 that occur within a six-month period, committed by an individual or coconspirators,  
634 are deemed to be a related series of facts and circumstances regardless of whether the  
635 transactions are conducted with a variety of unrelated parties.

636 Section 13. Section **78B-12-203** is amended to read:

637 **78B-12-203. Determination of gross income -- Imputed income.**

638 (1) As used in the guidelines, "gross income" includes prospective income from any  
639 source, including earned and nonearned income sources which may include salaries, wages,  
640 commissions, royalties, bonuses, rents, gifts from anyone, prizes, dividends, severance pay,  
641 pensions, interest, trust income, alimony from previous marriages, annuities, capital gains,  
642 Social Security benefits, workers' compensation benefits, unemployment compensation,  
643 income replacement disability insurance benefits, and payments from "nonmeans-tested"  
644 government programs.

645 (2) Income from earned income sources is limited to the equivalent of one full-time  
646 40-hour job. If and only if during the time prior to the original support order, the parent  
647 normally and consistently worked more than 40 hours at the parent's job, the court may

648 consider this extra time as a pattern in calculating the parent's ability to provide child support.

649 (3) Notwithstanding Subsection (1), specifically excluded from gross income are:

650 (a) cash assistance provided under Title 35A, Chapter 3, Part 3, Family Employment  
651 Program;

652 (b) benefits received under a housing subsidy program, the Job Training Partnership  
653 Act, Supplemental Security Income, Social Security Disability Insurance, Medicaid, [~~Food~~  
654 ~~Stamps~~] SNAP benefits, or General Assistance; and

655 (c) other similar means-tested welfare benefits received by a parent.

656 (4) (a) Gross income from self-employment or operation of a business shall be  
657 calculated by subtracting necessary expenses required for self-employment or business  
658 operation from gross receipts. The income and expenses from self-employment or operation of  
659 a business shall be reviewed to determine an appropriate level of gross income available to the  
660 parent to satisfy a child support award. Only those expenses necessary to allow the business to  
661 operate at a reasonable level may be deducted from gross receipts.

662 (b) Gross income determined under this subsection may differ from the amount of  
663 business income determined for tax purposes.

664 (5) (a) When possible, gross income should first be computed on an annual basis and  
665 then recalculated to determine the average gross monthly income.

666 (b) Each parent shall provide verification of current income. Each parent shall provide  
667 year-to-date pay stubs or employer statements and complete copies of tax returns from at least  
668 the most recent year unless the court finds the verification is not reasonably available.

669 Verification of income from records maintained by the Department of Workforce Services may  
670 be substituted for pay stubs, employer statements, and income tax returns.

671 (c) Historical and current earnings shall be used to determine whether an  
672 underemployment or overemployment situation exists.

673 (6) Gross income includes income imputed to the parent under Subsection (7).

674 (7) (a) Income may not be imputed to a parent unless the parent stipulates to the  
675 amount imputed, the parent defaults, or, in contested cases, a hearing is held and the judge in a  
676 judicial proceeding or the presiding officer in an administrative proceeding enters findings of  
677 fact as to the evidentiary basis for the imputation.

678 (b) If income is imputed to a parent, the income shall be based upon employment

679 potential and probable earnings as derived from employment opportunities, work history,  
680 occupation qualifications, and prevailing earnings for persons of similar backgrounds in the  
681 community, or the median earning for persons in the same occupation in the same geographical  
682 area as found in the statistics maintained by the Bureau of Labor Statistics.

683 (c) If a parent has no recent work history or a parent's occupation is unknown, income  
684 shall be imputed at least at the federal minimum wage for a 40-hour work week. To impute a  
685 greater income, the judge in a judicial proceeding or the presiding officer in an administrative  
686 proceeding shall enter specific findings of fact as to the evidentiary basis for the imputation.

687 (d) Income may not be imputed if any of the following conditions exist and the  
688 condition is not of a temporary nature:

689 (i) the reasonable costs of child care for the parents' minor children approach or equal  
690 the amount of income the custodial parent can earn;

691 (ii) a parent is physically or mentally unable to earn minimum wage;

692 (iii) a parent is engaged in career or occupational training to establish basic job skills;

693 or

694 (iv) unusual emotional or physical needs of a child require the custodial parent's  
695 presence in the home.

696 (8) (a) Gross income may not include the earnings of a minor child who is the subject  
697 of a child support award nor benefits to a minor child in the child's own right such as  
698 Supplemental Security Income.

699 (b) Social Security benefits received by a child due to the earnings of a parent shall be  
700 credited as child support to the parent upon whose earning record it is based, by crediting the  
701 amount against the potential obligation of that parent. Other unearned income of a child may  
702 be considered as income to a parent depending upon the circumstances of each case.

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**Legislative Review Note**  
as of 2-6-12 9:03 AM

**Office of Legislative Research and General Counsel**