

1 **GENERAL REPEALER**

2 2012 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: John L. Valentine**

5 House Sponsor: Val L. Peterson

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Utah Code by repealing provisions that have been found
10 unconstitutional or are no longer in use.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ repeals provisions of Utah Code that have been found unconstitutional relating to:
- 14 • a prohibition on legal voters of any county, city, or town initiating a budget,
15 budget change, or land use ordinance, or requiring a budget or land use
16 ordinance adopted by a local legislative body to the voters;
- 17 • a legal presumption of malice in criminal libel cases;
- 18 • a prohibition on the distribution of pornographic materials through cable
19 televisions;
- 20 ▶ repeals provisions of Utah Code that are not in use relating to:
- 21 • the use of certified local inspectors by the Office of Licensing;
- 22 • the applicability of the Defined Contribution Risk Adjuster Act to an insurance
23 carrier that offers a defined contribution arrangement health benefit plan;
- 24 • certain rulemaking authority of the Department of Workforce Services that went
25 into effect in July 1998; and
- 26 ▶ makes technical changes.

27 **Money Appropriated in this Bill:**



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **34A-2-702**, as last amended by Laws of Utah 2008, Chapters 27 and 90

34 **61-2g-301**, as renumbered and amended by Laws of Utah 2011, Chapter 289

35 **62A-2-101**, as last amended by Laws of Utah 2011, Chapter 366

36 **63G-3-305**, as renumbered and amended by Laws of Utah 2008, Chapter 382

37 **78B-3-404**, as renumbered and amended by Laws of Utah 2008, Chapter 3

38 REPEALS:

39 **20A-7-401**, as last amended by Laws of Utah 2008, Chapter 24

40 **61-2g-303**, as enacted by Laws of Utah 2011, Chapter 289

41 **62A-2-108.3**, as last amended by Laws of Utah 2008, Chapter 382

42 **76-9-503**, as enacted by Laws of Utah 1973, Chapter 196

43 **76-10-1229**, as enacted by Laws of Utah 1981, Chapter 97



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

46 Section 1. Section **34A-2-702** is amended to read:

47 **34A-2-702. Employers' Reinsurance Fund -- Injury causing death -- Burial**
48 **expenses -- Payments to dependents.**

49 (1) (a) There is created an Employers' Reinsurance Fund for the purpose of making a
50 payment for an industrial accident or occupational disease occurring on or before June 30,
51 1994. A payment made under this section shall be made in accordance with this chapter or
52 Chapter 3, Utah Occupational Disease Act. The Employers' Reinsurance Fund has no liability
53 for an industrial accident or occupational disease occurring on or after July 1, 1994.

54 (b) The Employers' Reinsurance Fund succeeds to all money previously held in the
55 "Special Fund," the "Combined Injury Fund," or the "Second Injury Fund."

56 (c) The commissioner shall appoint an administrator of the Employers' Reinsurance
57 Fund.

58 (d) The state treasurer shall be the custodian of the Employers' Reinsurance Fund.

59 (e) The administrator shall make provisions for and direct a distribution from the
60 Employers' Reinsurance Fund.

61 (f) Reasonable costs of administering the Employers' Reinsurance Fund or other fees
62 may be paid from the Employers' Reinsurance Fund.

63 (2) The state treasurer shall:

64 (a) receive workers' compensation premium assessments from the State Tax
65 Commission; and

66 (b) invest the Employers' Reinsurance Fund to ensure maximum investment return for
67 both long and short term investments in accordance with Section 51-7-12.5.

68 (3) (a) The administrator may employ, retain, or appoint counsel to represent the
69 Employers' Reinsurance Fund in a proceeding brought to enforce a claim against or on behalf
70 of the Employers' Reinsurance Fund.

71 (b) If requested by the commission, the attorney general shall aid in representation of
72 the Employers' Reinsurance Fund.

73 (4) The liability of the state, its departments, agencies, instrumentalities, elected or
74 appointed officials, or other duly authorized agents, with respect to payment of compensation
75 benefits, expenses, fees, medical expenses, or disbursement properly chargeable against the
76 Employers' Reinsurance Fund, is limited to the cash or assets in the Employers' Reinsurance
77 Fund, and they are not otherwise, in any way, liable for the operation, debts, or obligations of
78 the Employers' Reinsurance Fund.

79 [~~(5) (a) If injury causes death within a period of 312 weeks from the date of the
80 accident, the employer or insurance carrier shall pay:]~~

81 [~~(i) the burial expenses of the deceased as provided in Section 34A-2-418; and]~~

82 [~~(ii) benefits in the amount and to a person provided for in this Subsection (5).]~~

83 [~~(b) (i) If there is a wholly dependent person at the time of the death, the payment by
84 the employer or its insurance carrier shall be:]~~

85 [~~(A) subject to Subsections (5)(b)(i)(B) and (C), 66-2/3% of the decedent's average
86 weekly wage at the time of the injury;]~~

87 [~~(B) not more than a maximum of 85% of the state average weekly wage at the time of
88 the injury per week; and]~~

89 [~~(C) (i) not less than a minimum of \$45 per week, plus:]~~

90 ~~[(Aa) \$5 for a dependent spouse; and]~~

91 ~~[(Bb) \$5 for each dependent minor child under the age of 18 years, up to a maximum~~
92 ~~of four such dependent minor children; and]~~

93 ~~[(H) not exceeding:]~~

94 ~~[(Aa) the average weekly wage of the employee at the time of the injury; and]~~

95 ~~[(Bb) 85% of the state average weekly wage at the time of the injury per week.]~~

96 ~~[(ii) Compensation shall continue during dependency for the remainder of the period~~
97 ~~between the date of the death and the expiration of 312 weeks after the date of the injury.]~~

98 ~~[(iii) (A) The payment by the employer or its insurance carrier to a wholly dependent~~
99 ~~person during dependency following the expiration of the first 312-week period described in~~
100 ~~Subsection (5) (b)(ii) shall be an amount equal to the weekly benefits paid to the wholly~~
101 ~~dependent person during the initial 312-week period, reduced by 50% of the federal Social~~
102 ~~Security death benefits the wholly dependent person:]~~

103 ~~[(F) is eligible to receive for a week as of the first day the employee is eligible to~~
104 ~~receive a Social Security death benefit; and]~~

105 ~~[(H) receives:]~~

106 ~~[(B) An employer or its insurance carrier may not reduce compensation payable under~~
107 ~~this Subsection (5)(b)(iii) on or after May 5, 2008, to a wholly dependent person by an amount~~
108 ~~related to a cost-of-living increase to the Social Security death benefits that the wholly~~
109 ~~dependent person is first eligible to receive for a week, notwithstanding whether the employee~~
110 ~~is injured on or before May 4, 2008.]~~

111 ~~[(C) For purposes of a wholly dependent person whose compensation payable is~~
112 ~~reduced under this Subsection (5)(b)(iii) on or before May 4, 2008, the reduction is limited to~~
113 ~~the amount of the reduction as of May 4, 2008.]~~

114 ~~[(iv) The issue of dependency is subject to review at the end of the initial 312-week~~
115 ~~period and annually after the initial 312-week period. If in a review it is determined that, under~~
116 ~~the facts and circumstances existing at that time, the applicant is no longer a wholly dependent~~
117 ~~person, the applicant:]~~

118 ~~[(A) may be considered a partly dependent or nondependent person; and]~~

119 ~~[(B) shall be paid the benefits as may be determined under Subsection (5)(d)(iii).]~~

120 ~~[(c) (i) For purposes of a dependency determination, a surviving spouse of a deceased~~

121 employee is conclusively presumed to be wholly dependent for a 312-week period from the
122 date of death of the employee. This presumption does not apply after the initial 312-week
123 period.]

124 [(ii) (A) In determining the annual income of the surviving spouse after the initial
125 312-week period, there shall be excluded 50% of a federal Social Security death benefit that the
126 surviving spouse:]

127 [(F) is eligible to receive for a week as of the first day the surviving spouse is eligible to
128 receive a Social Security death benefit; and]

129 [(H) receives:]

130 [(B) An employer or its insurance carrier may not reduce compensation payable under
131 this Subsection (5)(c)(ii) on or after May 5, 2008, to a surviving spouse by an amount related to
132 a cost-of-living increase to the Social Security death benefits that the surviving spouse is first
133 eligible to receive for a week, notwithstanding whether the employee is injured on or before
134 May 4, 2008.]

135 [(C) For purposes of a surviving spouse whose compensation payable is reduced under
136 this Subsection (5)(c)(ii) on or before May 4, 2008, the reduction is limited to the amount of
137 the reduction as of May 4, 2008.]

138 [(d) (i) If there is a partly dependent person at the time of the death, the payment shall
139 be:]

140 [(A) subject to Subsections (5)(d)(i)(B) and (C), 66-2/3% of the decedent's average
141 weekly wage at the time of the injury;]

142 [(B) not more than a maximum of 85% of the state average weekly wage at the time of
143 the injury per week; and]

144 [(C) not less than a minimum of \$45 per week.]

145 [(ii) Compensation shall continue during dependency for the remainder of the period
146 between the date of death and the expiration of 312 weeks after the date of injury.]

147 Compensation may not amount to more than a maximum of \$30,000.]

148 [(iii) The benefits provided for in this Subsection (5)(d) shall be in keeping with the
149 circumstances and conditions of dependency existing at the date of injury, and any amount paid
150 under this Subsection (5)(d) shall be consistent with the general provisions of this chapter and
151 Chapter 3, Utah Occupational Disease Act.]

152 ~~[(iv) Benefits to a person determined to be partly dependent under Subsection (5)(c):]~~

153 ~~[(A) shall be determined in keeping with the circumstances and conditions of~~

154 ~~dependency existing at the time of the dependency review; and]~~

155 ~~[(B) may be paid in an amount not exceeding the maximum weekly rate that a partly~~

156 ~~dependent person would receive if wholly dependent.]~~

157 ~~[(v) A payment under this section shall be paid to a person during a person's~~

158 ~~dependency by the employer or its insurance carrier.]~~

159 ~~[(e) (i) Subject to Subsection (5)(c)(ii), if there is a wholly dependent person and also a~~

160 ~~partly dependent person at the time of death, the benefits may be apportioned in a manner~~

161 ~~consistent with Section 34A-2-414.]~~

162 ~~[(ii) The total benefits awarded to all parties concerned may not exceed the maximum~~

163 ~~provided for by law.]~~

164 ~~[(6)] (5) The Employers' Reinsurance Fund:~~

165 (a) shall be:

166 (i) used only in accordance with Subsection (1) for:

167 (A) the purpose of making a payment for an industrial accident or occupational disease

168 occurring on or before June 30, 1994, in accordance with this section and Section 34A-2-703;

169 and

170 (B) payment of:

171 (I) reasonable costs of administering the Employers' Reinsurance Fund; or

172 (II) fees required to be paid by the Employers' Reinsurance Fund;

173 (ii) expended according to processes that can be verified by audit; and

174 (b) may not be used for:

175 (i) administrative costs unrelated to the Employers' Reinsurance Fund; or

176 (ii) an activity of the commission other than an activity described in Subsection ~~[(6)]~~

177 (5)(a).

178 Section 2. Section **61-2g-301** is amended to read:

179 **61-2g-301. License or certification required.**

180 (1) Except as provided in Subsection (2) ~~[and in Section 61-2g-303]~~, it is unlawful for

181 a person to prepare, for valuable consideration, an appraisal, an appraisal report, a certified

182 appraisal report, or perform a consultation service relating to real estate or real property in this

183 state without first being licensed or certified in accordance with this chapter.

184 (2) This section does not apply to:

185 (a) a principal broker, associate broker, or sales agent as defined by Section 61-2f-102
186 licensed by this state who, in the ordinary course of the broker's or sales agent's business, gives
187 an opinion:

188 (i) regarding the value of real estate;

189 (ii) to a potential seller or third-party recommending a listing price of real estate; or

190 (iii) to a potential buyer or third-party recommending a purchase price of real estate;

191 (b) an employee of a company who states an opinion of value or prepares a report
192 containing value conclusions relating to real estate or real property solely for the company's
193 use;

194 (c) an official or employee of a government agency while acting solely within the scope
195 of the official's or employee's duties, unless otherwise required by Utah law;

196 (d) an auditor or accountant who states an opinion of value or prepares a report
197 containing value conclusions relating to real estate or real property while performing an audit;

198 (e) an individual, except an individual who is required to be licensed or certified under
199 this chapter, who states an opinion about the value of property in which the person has an
200 ownership interest;

201 (f) an individual who states an opinion of value if no consideration is paid or agreed to
202 be paid for the opinion and no other party is reasonably expected to rely on the individual's
203 appraisal expertise;

204 (g) an individual, such as a researcher or a secretary, who does not render significant
205 professional assistance, as defined by the board, in arriving at a real estate appraisal analysis,
206 opinion, or conclusion; or

207 (h) an attorney authorized to practice law in this state who, in the course of the
208 attorney's practice, uses an appraisal report governed by this chapter or who states an opinion
209 of the value of real estate.

210 (3) An opinion of value or report containing value conclusions exempt under
211 Subsection (2) may not be referred to as an appraisal.

212 (4) Except as provided in Subsection (2) [~~and Section 61-2g-303~~], to prepare or cause
213 to be prepared in this state an appraisal, an appraisal report, or a certified appraisal report an

214 individual shall:

215 (a) apply in writing for licensure or certification as provided in this chapter in the form
216 as the division may prescribe; and

217 (b) become licensed or certified under this chapter.

218 Section 3. Section **62A-2-101** is amended to read:

219 **62A-2-101. Definitions.**

220 As used in this chapter:

221 (1) "Adult day care" means nonresidential care and supervision:

222 (a) for three or more adults for at least four but less than 24 hours a day; and

223 (b) that meets the needs of functionally impaired adults through a comprehensive
224 program that provides a variety of health, social, recreational, and related support services in a
225 protective setting.

226 (2) (a) "Boarding school" means a private school that:

227 (i) uses a regionally accredited education program;

228 (ii) provides a residence to the school's students:

229 (A) for the purpose of enabling the school's students to attend classes at the school; and

230 (B) as an ancillary service to educating the students at the school;

231 (iii) has the primary purpose of providing the school's students with an education, as
232 defined in Subsection (2)(b)(i); and

233 (iv) (A) does not provide the treatment or services described in Subsection (26)(a); or

234 (B) provides the treatment or services described in Subsection (26)(a) on a limited
235 basis, as described in Subsection (2)(b)(ii).

236 (b) (i) For purposes of Subsection (2)(a)(iii), "education" means a course of study for
237 one or more of grades kindergarten through 12th grade.

238 (ii) For purposes of Subsection (2)(a)(iv)(B), a private school provides the treatment or
239 services described in Subsection (26)(a) on a limited basis if:

240 (A) the treatment or services described in Subsection (26)(a) are provided only as an
241 incidental service to a student; and

242 (B) the school does not:

243 (I) specifically solicit a student for the purpose of providing the treatment or services
244 described in Subsection (26)(a); or

245 (II) have a primary purpose of providing the services described in Subsection (26)(a).

246 (c) "Boarding school" does not include a therapeutic school.

247 ~~[(3) "Certified local inspector" means a person certified by the office, pursuant to~~
248 ~~Subsection 62A-2-108.3(1), to conduct an inspection described in Subsection 62A-2-108.3(4).]~~

249 ~~[(4) "Certified local inspector applicant" means a person for which designation as a~~
250 ~~certified local inspector is sought under Section 62A-2-108.3.]~~

251 ~~[(5)] (3) "Child" means a person under 18 years of age.~~

252 ~~[(6)] (4) "Child placing" means receiving, accepting, or providing custody or care for~~
253 ~~any child, temporarily or permanently, for the purpose of:~~

- 254 (a) finding a person to adopt the child;
- 255 (b) placing the child in a home for adoption; or
- 256 (c) foster home placement.

257 ~~[(7)] (5) "Client" means an individual who receives or has received services from a~~
258 ~~licensee.~~

259 ~~[(8)] (6) "Day treatment" means specialized treatment that is provided to:~~

- 260 (a) a client less than 24 hours a day; and
- 261 (b) four or more persons who:
 - 262 (i) are unrelated to the owner or provider; and
 - 263 (ii) have emotional, psychological, developmental, physical, or behavioral
 - 264 dysfunctions, impairments, or chemical dependencies.

265 ~~[(9)] (7) "Department" means the Department of Human Services.~~

266 ~~[(10)] (8) "Direct access" means that an individual has, or likely will have, contact with~~
267 ~~or access to a child or vulnerable adult that provides the individual with an opportunity for~~
268 ~~personal communication or touch.~~

269 ~~[(11)] (9) "Director" means the director of the Office of Licensing.~~

270 ~~[(12)] (10) "Domestic violence" is as defined in Section 77-36-1.~~

271 ~~[(13)] (11) "Domestic violence treatment program" means a nonresidential program~~
272 ~~designed to provide psychological treatment and educational services to perpetrators and~~
273 ~~victims of domestic violence.~~

274 ~~[(14)] (12) "Elder adult" means a person 65 years of age or older.~~

275 ~~[(15)] (13) "Executive director" means the executive director of the department.~~

276 [~~(16)~~] (14) "Foster home" means a temporary residential living environment for the
277 care of:

278 (a) fewer than four foster children in the home of a licensed or certified foster parent;

279 or

280 (b) four or more children in the home of a licensed or certified foster parent if the
281 children are siblings.

282 [~~(17)~~] (15) (a) "Human services program" means a:

283 (i) foster home;

284 (ii) therapeutic school;

285 (iii) youth program;

286 (iv) resource family home; or

287 (v) facility or program that provides:

288 (A) secure treatment;

289 (B) inpatient treatment;

290 (C) residential treatment;

291 (D) residential support;

292 (E) adult day care;

293 (F) day treatment;

294 (G) outpatient treatment;

295 (H) domestic violence treatment;

296 (I) child placing services;

297 (J) social detoxification; or

298 (K) any other human services that are required by contract with the department to be
299 licensed with the department.

300 (b) "Human services program" does not include a boarding school.

301 [~~(18)~~] (16) "Licensee" means a person or human services program licensed by the
302 office.

303 [~~(19)~~] (17) "Local government" means a:

304 (a) city; or

305 (b) county.

306 [~~(20)~~] (18) "Minor" has the same meaning as "child."

307 [~~(21)~~] (19) "Office" means the Office of Licensing within the Department of Human
308 Services.

309 [~~(22)~~] (20) "Outpatient treatment" means individual, family, or group therapy or
310 counseling designed to improve and enhance social or psychological functioning for those
311 whose physical and emotional status allows them to continue functioning in their usual living
312 environment.

313 [~~(23)~~] (21) (a) "Person associated with the licensee" means a person:

314 (i) affiliated with a licensee as an owner, director, member of the governing body,
315 employee, agent, provider of care, or volunteer; or

316 (ii) applying to become affiliated with a licensee in any capacity listed under
317 Subsection [~~(23)~~] (21)(a)(i).

318 (b) Notwithstanding Subsection [~~(23)~~] (21)(a), "person associated with the licensee"
319 does not include an individual serving on the following bodies unless that individual has direct
320 access to children or vulnerable adults:

321 (i) a local mental health authority under Section 17-43-301;

322 (ii) a local substance abuse authority under Section 17-43-201; or

323 (iii) a board of an organization operating under a contract to provide:

324 (A) mental health or substance abuse programs; or

325 (B) services for the local mental health authority or substance abuse authority.

326 (c) "Person associated with the licensee" does not include a guest or visitor whose
327 access to children or vulnerable adults is directly supervised by the licensee at all times.

328 [~~(24)~~] (22) "Regular business hours" means:

329 (a) the hours during which services of any kind are provided to a client; or

330 (b) the hours during which a client is present at the facility of a licensee.

331 [~~(25)~~] (23) (a) "Residential support" means arranging for or providing the necessities of
332 life as a protective service to individuals or families who have a disability or who are
333 experiencing a dislocation or emergency that prevents them from providing these services for
334 themselves or their families.

335 (b) "Residential support" includes providing a supervised living environment for
336 persons with:

337 (i) dysfunctions or impairments that are:

- 338 (A) emotional;
- 339 (B) psychological;
- 340 (C) developmental; or
- 341 (D) behavioral; or
- 342 (ii) chemical dependencies.
- 343 (c) Treatment is not a necessary component of residential support.
- 344 (d) "Residential support" does not include residential services that are performed:
- 345 (i) exclusively under contract with the Division of Services for People with
- 346 Disabilities; and
- 347 (ii) in a facility that serves less than four individuals.
- 348 [~~26~~] (24) (a) "Residential treatment" means a 24-hour group living environment for
- 349 four or more individuals unrelated to the owner or provider that offers room or board and
- 350 specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or
- 351 habilitation services for persons with emotional, psychological, developmental, or behavioral
- 352 dysfunctions, impairments, or chemical dependencies.
- 353 (b) "Residential treatment" does not include a:
- 354 (i) boarding school; or
- 355 (ii) foster home.
- 356 [~~27~~] (25) "Residential treatment program" means a human services program that
- 357 provides:
- 358 (a) residential treatment; or
- 359 (b) secure treatment.
- 360 [~~28~~] (26) (a) "Secure treatment" means 24-hour specialized residential treatment or
- 361 care for persons whose current functioning is such that they cannot live independently or in a
- 362 less restrictive environment.
- 363 (b) "Secure treatment" differs from residential treatment to the extent that it requires
- 364 intensive supervision, locked doors, and other security measures that are imposed on residents
- 365 with neither their consent nor control.
- 366 [~~29~~] (27) "Social detoxification" means short-term residential services for persons
- 367 who are experiencing or have recently experienced drug or alcohol intoxication, that are
- 368 provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care

369 Facility Licensing and Inspection Act, and that include:

370 (a) room and board for persons who are unrelated to the owner or manager of the
371 facility;

372 (b) specialized rehabilitation to acquire sobriety; and

373 (c) aftercare services.

374 [~~(30)~~] (28) "Substance abuse treatment program" means a program:

375 (a) designed to provide:

376 (i) specialized drug or alcohol treatment;

377 (ii) rehabilitation; or

378 (iii) habilitation services; and

379 (b) that provides the treatment or services described in Subsection [~~(30)~~] (28)(a) to
380 persons with:

381 (i) a diagnosed substance abuse disorder; or

382 (ii) chemical dependency disorder.

383 [~~(31)~~] (29) "Therapeutic school" means a residential group living facility:

384 (a) for four or more individuals that are not related to:

385 (i) the owner of the facility; or

386 (ii) the primary service provider of the facility;

387 (b) that serves students who have a history of failing to function:

388 (i) at home;

389 (ii) in a public school; or

390 (iii) in a nonresidential private school; and

391 (c) that offers:

392 (i) room and board; and

393 (ii) an academic education integrated with:

394 (A) specialized structure and supervision; or

395 (B) services or treatment related to:

396 (I) a disability;

397 (II) emotional development;

398 (III) behavioral development;

399 (IV) familial development; or

400 (V) social development.

401 [~~32~~] (30) "Unrelated persons" means persons other than parents, legal guardians,
402 grandparents, brothers, sisters, uncles, or aunts.

403 [~~33~~] (31) "Vulnerable adult" means an elder adult or an adult who has a temporary or
404 permanent mental or physical impairment that substantially affects the person's ability to:

- 405 (a) provide personal protection;
- 406 (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- 407 (c) obtain services necessary for health, safety, or welfare;
- 408 (d) carry out the activities of daily living;
- 409 (e) manage the adult's own resources; or
- 410 (f) comprehend the nature and consequences of remaining in a situation of abuse,
411 neglect, or exploitation.

412 [~~34~~] (32) (a) "Youth program" means a nonresidential program designed to provide
413 behavioral, substance abuse, or mental health services to minors that:

- 414 (i) serves adjudicated or nonadjudicated youth;
- 415 (ii) charges a fee for its services;
- 416 (iii) may or may not provide host homes or other arrangements for overnight
417 accommodation of the youth;
- 418 (iv) may or may not provide all or part of its services in the outdoors;
- 419 (v) may or may not limit or censor access to parents or guardians; and
- 420 (vi) prohibits or restricts a minor's ability to leave the program at any time of the
421 minor's own free will.

422 (b) "Youth program" does not include recreational programs such as Boy Scouts, Girl
423 Scouts, 4-H, and other such organizations.

424 Section 4. Section **63G-3-305** is amended to read:

425 **63G-3-305. Agency review of rules -- Schedule of filings -- Limited exemption for**
426 **certain rules.**

427 (1) Each agency shall review each of its rules within five years of the rule's original
428 effective date or within five years of the filing of the last five-year review, whichever is later.
429 Rules effective prior to 1992 need not be reviewed until 1997.

430 (2) An agency may consider any substantial review of a rule to be a five-year review.

431 If the agency chooses to consider a review a five-year review, it shall follow the procedures
432 outlined in Subsection (3).

433 (3) At the conclusion of its review, the agency shall file a notice of review on or before
434 the anniversary date indicating its intent to continue, amend, or repeal the rule.

435 (a) If the agency continues the rule, it shall file a statement which includes:

436 (i) a concise explanation of the particular statutory provisions under which the rule is
437 enacted and how these provisions authorize or require the rule;

438 (ii) a summary of written comments received during and since the last five-year review
439 of the rule from interested persons supporting or opposing the rule; and

440 (iii) a reasoned justification for continuation of the rule, including reasons why the
441 agency disagrees with comments in opposition to the rule, if any.

442 (b) If the agency repeals the rule, it shall comply with Section 63G-3-301.

443 (c) If the agency amends and continues the rule, it shall comply with the requirements
444 of Section 63G-3-301 and file the statement required in Subsection (3)(a).

445 (4) (a) The division shall publish the notice and statement in the bulletin.

446 (b) The division may schedule the publication of agency notices and statements,
447 provided that no notice and statement shall be published more than one year after the review
448 deadline established under Subsection (1).

449 (5) The division shall notify an agency of rules due for review at least 180 days prior to
450 the anniversary date.

451 (6) If an agency finds that it will not meet the deadline established in Subsection (1):

452 (a) the agency may file an extension prior to the anniversary date with the division
453 indicating the reason for the extension; and

454 (b) the division shall publish notice of the extension in the next issue of the bulletin.

455 (7) An extension permits the agency to file a notice no more than 120 days after the
456 anniversary date.

457 (8) If an agency fails to file a notice of review or extension on or before the date
458 specified in the notice mandated in Subsection (5), the division shall:

459 (a) publish a notice in the next issue of the bulletin that the rule has expired and is no
460 longer enforceable;

461 (b) remove the rule from the code; and

462 (c) notify the agency that the rule has expired.

463 (9) After a rule expires, an agency must comply with the requirements of Section
464 63G-3-301 to reenact the rule.

465 ~~[(10) (a) Rules issued under the following provisions related to the Department of~~
466 ~~Workforce Services or Labor Commission that are in effect on July 1, 1997, are not subject to~~
467 ~~the requirements of this section until July 1, 1998:]~~

468 ~~[(i) Title 34, Labor in General;]~~

469 ~~[(ii) Title 34A, Utah Labor Code;]~~

470 ~~[(iii) Title 35A, Utah Workforce Services Code;]~~

471 ~~[(iv) Title 40, Chapter 2, Coal Mines; and]~~

472 ~~[(v) Title 57, Chapter 21, Utah Fair Housing Act.]~~

473 ~~[(b) Any rule described in Subsection (10)(a) that would have expired on or after July~~
474 ~~1, 1997 but before July 1, 1998, expires July 1, 1998, unless for that rule the Department of~~
475 ~~Workforce Services or Labor Commission files:]~~

476 ~~[(i) the notice of review, described in Subsection (3); or]~~

477 ~~[(ii) an extension described in Subsection (6).]~~

478 Section 5. Section **78B-3-404** is amended to read:

479 **78B-3-404. Statute of limitations -- Exceptions -- Application.**

480 (1) A malpractice action against a health care provider shall be commenced within two
481 years after the plaintiff or patient discovers, or through the use of reasonable diligence should
482 have discovered the injury, whichever first occurs, but not to exceed four years after the date of
483 the alleged act, omission, neglect, or occurrence.

484 (2) Notwithstanding Subsection (1):

485 (a) in an action where the allegation against the health care provider is that a foreign
486 object has been wrongfully left within a patient's body, the claim shall be barred unless
487 commenced within one year after the plaintiff or patient discovers, or through the use of
488 reasonable diligence should have discovered, the existence of the foreign object wrongfully left
489 in the patient's body, whichever first occurs; or

490 (b) in an action where it is alleged that a patient has been prevented from discovering
491 misconduct on the part of a health care provider because that health care provider has
492 affirmatively acted to fraudulently conceal the alleged misconduct, the claim shall be barred

493 unless commenced within one year after the plaintiff or patient discovers, or through the use of
494 reasonable diligence, should have discovered the fraudulent concealment, whichever first
495 occurs.

496 ~~[(3) The limitations in this section shall apply to all persons, regardless of minority or~~
497 ~~other legal disability under Section 78B-2-108 or any other provision of the law.]~~

498 Section 6. **Repealer.**

499 This bill repeals:

500 Section **20A-7-401, Limitation -- Land use ordinances and budgets.**

501 Section **61-2g-303, Approval of an expert.**

502 Section **62A-2-108.3, Local government -- Certified local inspector -- Local**
503 **inspection of a residential treatment facility -- Reporting violations.**

504 Section **76-9-503, Presumption of malice -- Reading or seeing by another not**
505 **necessary -- Liability of newspaper or serial publication personnel.**

506 Section **76-10-1229, Distribution of pornographic material through cable television**
507 **prohibited -- Definitions -- Prosecution of violation.**

Legislative Review Note
as of 2-22-12 2:49 PM

Office of Legislative Research and General Counsel