

**REVISOR'S STATUTE**

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brad L. Dee**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies parts of the Utah Code to make technical corrections, including eliminating references to repealed provisions, making minor wording changes, updating cross references, and correcting numbering.

**Highlighted Provisions:**

This bill:

- ▶ modifies parts of the Utah Code to make technical corrections, including eliminating references to repealed provisions, making minor wording changes, updating cross references, correcting numbering, and fixing errors that were created from the previous year's session.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**11-36a-306**, as enacted by Laws of Utah 2011, Chapter 47

**11-49-202**, as enacted by Laws of Utah 2012, Chapter 202

**11-49-407**, as enacted by Laws of Utah 2012, Chapter 202

**13-49-204**, as enacted by Laws of Utah 2012, Chapter 375



- 28           **17-16-21**, as last amended by Laws of Utah 2009, Chapter 123
- 29           **17B-2a-608**, as enacted by Laws of Utah 2010, Chapter 159
- 30           **19-6-902**, as last amended by Laws of Utah 2008, Chapter 38
- 31           **25-6-14**, as last amended by Laws of Utah 2004, Chapter 89
- 32           **26-3-7**, as last amended by Laws of Utah 2012, Chapter 391
- 33           **26-18-2.6 (Superseded 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 161
- 34           **26-18-2.6 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapters 161
- 35   and 347
- 36           **26-18-402**, as last amended by Laws of Utah 2012, Chapter 402
- 37           **26-36a-206**, as enacted by Laws of Utah 2010, Chapter 179
- 38           **34A-5-106**, as last amended by Laws of Utah 2012, Chapter 101
- 39           **35A-8-414**, as renumbered and amended by Laws of Utah 2012, Chapter 212
- 40           **38-1a-201**, as renumbered and amended by Laws of Utah 2012, Chapter 278
- 41           **51-7-15**, as last amended by Laws of Utah 1992, Chapter 285
- 42           **51-7-18.2**, as last amended by Laws of Utah 1992, Chapter 285
- 43           **53-3-207**, as last amended by Laws of Utah 2012, Chapter 144
- 44           **53-5a-102**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 45           **53A-1a-506**, as last amended by Laws of Utah 2012, Chapter 66
- 46           **53A-3-425**, as last amended by Laws of Utah 2012, Chapter 425
- 47           **53A-25b-201**, as last amended by Laws of Utah 2012, Chapter 291
- 48           **54-17-801**, as enacted by Laws of Utah 2012, Chapter 182
- 49           **57-1-24.3**, as enacted by Laws of Utah 2012, Chapter 164
- 50           **57-14-2**, as last amended by Laws of Utah 2012, Chapter 45
- 51           **58-3a-502**, as last amended by Laws of Utah 2008, Chapter 382
- 52           **58-9-102**, as last amended by Laws of Utah 2008, Chapter 353
- 53           **58-13-5**, as last amended by Laws of Utah 2008, Chapters 3 and 382
- 54           **58-17b-103**, as enacted by Laws of Utah 2004, Chapter 280
- 55           **58-17b-309**, as last amended by Laws of Utah 2012, Chapters 234 and 344
- 56           **58-22-102**, as last amended by Laws of Utah 2011, Chapter 14
- 57           **58-22-201**, as last amended by Laws of Utah 1996, Chapter 259
- 58           **58-22-503**, as last amended by Laws of Utah 2008, Chapter 382

59           **58-26a-102**, as last amended by Laws of Utah 2008, Chapters 265 and 382  
60           **58-28-307**, as last amended by Laws of Utah 2009, Chapter 220  
61           **58-37-10**, as last amended by Laws of Utah 2007, Chapter 153  
62           **58-37c-3**, as last amended by Laws of Utah 2008, Chapter 382  
63           **58-37c-17**, as enacted by Laws of Utah 1992, Chapter 155  
64           **58-37d-2**, as enacted by Laws of Utah 1992, Chapter 156  
65           **58-47b-301**, as last amended by Laws of Utah 1998, Chapter 159  
66           **59-2-1109**, as last amended by Laws of Utah 2011, Chapter 366  
67           **63A-12-111**, as enacted by Laws of Utah 2012, Chapter 377  
68           **63G-6-202 (Superseded 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 91  
69 and last amended by Coordination Clause, Laws of Utah 2012, Chapter 347  
70           **63G-6a-203 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 91  
71 and renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended  
72 by Coordination Clause, Laws of Utah 2012, Chapter 347  
73           **63G-7-701**, as renumbered and amended by Laws of Utah 2008, Chapter 382  
74           **63I-1-209**, as last amended by Laws of Utah 2012, Chapters 9 and 212  
75           **63I-1-235**, as last amended by Laws of Utah 2012, Chapter 212  
76           **63I-1-258**, as last amended by Laws of Utah 2012, Chapters 82, 234, and 349  
77           **67-1a-2**, as last amended by Laws of Utah 2012, Chapter 35  
78           **67-19-13.5**, as enacted by Laws of Utah 2012, Chapter 266  
79           **76-1-403**, as last amended by Laws of Utah 1974, Chapter 32  
80           **76-1-501**, as enacted by Laws of Utah 1973, Chapter 196  
81           **76-3-202**, as last amended by Laws of Utah 2008, Chapter 355  
82           **76-3-203.5**, as last amended by Laws of Utah 2011, Chapters 320 and 366  
83           **76-4-203**, as last amended by Laws of Utah 1993, Chapter 230  
84           **76-4-401**, as last amended by Laws of Utah 2008, Chapter 342  
85           **76-5-307**, as enacted by Laws of Utah 2008, Chapter 343  
86           **76-6-107**, as last amended by Laws of Utah 2012, Chapter 300  
87           **76-6-412**, as last amended by Laws of Utah 2012, Chapter 257  
88           **76-6-1102**, as last amended by Laws of Utah 2009, Chapter 164  
89           **76-7-305.5**, as repealed and reenacted by Laws of Utah 2010, Chapter 314

- 90            **76-8-109**, as last amended by Laws of Utah 2010, Chapter 12
- 91            **76-9-702**, as last amended by Laws of Utah 2012, Chapter 303
- 92            **76-9-702.1**, as enacted by Laws of Utah 2012, Chapter 303
- 93            **76-9-702.5**, as last amended by Laws of Utah 2011, Chapter 320
- 94            **76-9-1008**, as enacted by Laws of Utah 2011, Chapter 21
- 95            **76-10-104.1**, as last amended by Laws of Utah 2012, Chapter 154
- 96            **76-10-501**, as last amended by Laws of Utah 2012, Chapter 114
- 97            **76-10-526**, as last amended by Laws of Utah 2012, Chapter 270
- 98            **76-10-919**, as last amended by Laws of Utah 2010, Chapter 154
- 99            **76-10-1201**, as last amended by Laws of Utah 2008, Chapter 297
- 100          **77-38-302**, as last amended by Laws of Utah 2012, Chapter 260
- 101          **77-38-303**, as last amended by Laws of Utah 2012, Chapter 260
- 102          **77-41-103**, as enacted by Laws of Utah 2012, Chapter 145
- 103          **78A-6-1302**, as enacted by Laws of Utah 2012, Chapter 316
- 104          **78B-2-313**, as enacted by Laws of Utah 2012, Chapter 79
- 105          **78B-6-121**, as last amended by Laws of Utah 2012, Chapter 340

REPEALS:

- 107          **53A-8-101**, as enacted by Laws of Utah 1988, Chapter 2
- 108          **58-40-5**, as last amended by Laws of Utah 2008, Chapter 382

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

Section 1. Section **11-36a-306** is amended to read:

**11-36a-306. Certification of impact fee analysis.**

(1) An impact fee facilities plan shall include a written certification from the person or entity that prepares the impact fee facilities plan that states the following:

"I certify that the attached impact fee facilities plan:

1. includes only the costs of public facilities that are:

- a. allowed under the Impact Fees Act; and
- b. actually incurred; or
- c. projected to be incurred or encumbered within six years after the day on which each

impact fee is paid;

- 121 2. does not include:
- 122       a. costs of operation and maintenance of public facilities;
- 123       b. costs for qualifying public facilities that will raise the level of service for the
- 124 facilities, through impact fees, above the level of service that is supported by existing residents;
- 125 or
- 126       c. an expense for overhead, unless the expense is calculated pursuant to a methodology
- 127 that is consistent with generally accepted cost accounting practices and the methodological
- 128 standards set forth by the federal Office of Management and Budget for federal grant
- 129 reimbursement; and
- 130 3. complies in each and every relevant respect with the Impact Fees Act."

131       (2) An impact fee analysis shall include a written certification from the person or entity

132 that prepares the impact fee analysis which states as follows:

133 "I certify that the attached impact fee analysis:

- 134 1. includes only the costs of public facilities that are:
- 135       a. allowed under the Impact Fees Act; and
- 136       b. actually incurred; or
- 137       c. projected to be incurred or encumbered within six years after the day on which each
- 138 impact fee is paid;

- 139 2. does not include:
- 140       a. costs of operation and maintenance of public facilities;
- 141       b. costs for qualifying public facilities that will raise the level of service for the
- 142 facilities, through impact fees, above the level of service that is supported by existing residents;
- 143 or
- 144       c. an expense for overhead, unless the expense is calculated pursuant to a methodology
- 145 that is consistent with generally accepted cost accounting practices and the methodological
- 146 standards set forth by the federal Office of Management and Budget for federal grant
- 147 reimbursement;
- 148 3. offsets costs with grants or other alternate sources of payment; and
- 149 4. complies in each and every relevant respect with the Impact Fees Act."

150       Section 2. Section **11-49-202** is amended to read:

151       **11-49-202. Meetings -- Staff.**

152 (1) The commission shall meet for the purpose of reviewing an ethics complaint when:

153 (a) except otherwise expressly provided in this chapter, called to meet at the discretion  
154 of the chair; or

155 (b) a majority of members agree to meet.

156 (2) A majority of the commission is a quorum.

157 (3) (a) The commission shall prepare, on an annual basis, a summary data report that  
158 contains:

159 (i) a general description of the activities of the commission during the past year;

160 (ii) the number of ethics complaints filed with the commission;

161 (iii) the number of ethics complaints dismissed in accordance with Section 11-49-602;

162 (iv) the number of ethics complaints reviewed by the commission in accordance with  
163 Section 11-49-701;

164 (v) an executive summary of each complaint review in accordance with Section  
165 11-49-701; and

166 (vi) an accounting of the commission's budget and expenditures.

167 (b) The summary data report shall be submitted to the [~~Government Operations and~~]  
168 Political Subdivisions Interim Committee on an annual basis.

169 (c) The summary data report shall be a public record.

170 (4) (a) The Senate and the House of Representatives shall employ staff for the  
171 commission at a level that is reasonable to assist the commission in performing its duties as  
172 established in this chapter.

173 (b) The Legislative Management Committee shall:

174 (i) authorize each staff position for the commission; and

175 (ii) approve the employment of each staff member for the commission.

176 (c) Staff for the commission shall work only for the commission and may not perform  
177 services for the Senate, House of Representatives, other legislative offices, or a political  
178 subdivision.

179 (5) A meeting held by the commission is subject to Title 52, Chapter 4, Open and  
180 Public Meetings Act, unless otherwise provided.

181 Section 3. Section **11-49-407** is amended to read:

182 **11-49-407. Communications of commission members.**

183 (1) As used in this section, "third party" means a person who is not a member of the  
184 commission or staff to the commission.

185 (2) While a complaint is under review by the commission, a member of the  
186 commission may not initiate or consider any communications concerning the complaint with a  
187 third party unless:

188 (a) the communication is expressly permitted under the procedures established by this  
189 chapter; or

190 (b) the communication is made by the third party, in writing, simultaneously to:

191 (i) all members of the commission; and

192 (ii) a staff member of the commission.

193 (3) While the commission is reviewing a complaint under this chapter, a commission  
194 member may communicate outside of [~~the meetings~~] a meeting, hearing, or [~~deliberations~~]  
195 deliberation with another member of, or staff to, the commission, only if the member's  
196 communication does not materially compromise the member's responsibility to independently  
197 review and make decisions in relation to the complaint.

198 Section 4. Section **13-49-204** is amended to read:

199 **13-49-204. Bonds -- Exemption -- Statements dependant on posting bond.**

200 (1) Except as provided in Subsection (5), an immigration consultant shall post a cash  
201 bond or surety bond:

202 (a) in the amount \$50,000; and

203 (b) payable to the division for the benefit of any person damaged by a fraud,  
204 misstatement, misrepresentation, unlawful act, omission, or failure to provide services of an  
205 immigration consultant, or an agent, representative, or employee of an immigration consultant.

206 (2) A bond required under this section shall be:

207 (a) in a form approved by the attorney general; and

208 (b) conditioned upon the faithful compliance of an immigration consultant with this  
209 chapter and division rules.

210 (3) (a) If a surety bond posted by an immigration consultant under this section is  
211 canceled due to the person's negligence, the division may assess a \$300 reinstatement fee.

212 (b) No part of a bond posted by an immigration consultant under this section may be  
213 withdrawn:

214 (i) during the period the registration under this chapter is in effect; or

215 (ii) while a revocation proceeding is pending against the person.

216 (4) (a) A bond posted under this section by an immigration consultant may be forfeited  
217 if the person's registration under this chapter is revoked.

218 (b) Notwithstanding Subsection (4)(a), the division may make a claim against a bond  
219 posted by an immigration consultant for money owed the division under this ~~[division]~~ chapter  
220 without the commission first revoking the immigration consultant's registration.

221 (5) The requirements of this section do not apply to an employee of a nonprofit,  
222 tax-exempt corporation who assists clients to complete an application document in an  
223 immigration matter, free of charge or for a fee, including reasonable costs, consistent with that  
224 authorized by the Board of Immigration Appeals under 8 C.F.R. Sec. 292.2.

225 (6) A person may not disseminate by any means a statement indicating that the person  
226 is an immigration consultant, engages in the business of an immigration consultant, or proposes  
227 to engage in the business of an immigration consultant, unless the person has posted a bond  
228 under this section that is maintained throughout the period covered by the statement, such as a  
229 listing in a telephone book.

230 (7) An immigration consultant may not make or authorize the making of an oral or  
231 written reference to the immigration consultant's compliance with the bonding requirements of  
232 this section except as provided in this chapter.

233 Section 5. Section **17-16-21** is amended to read:

234 **17-16-21. Fees of county officers.**

235 (1) As used in this section, "county officer" means all of the county officers  
236 enumerated in Section 17-53-101 except county recorders, county constables, and county  
237 sheriffs.

238 (2) (a) Each county officer shall collect, in advance, for exclusive county use and  
239 benefit:

240 (i) all fees established by the county legislative body under Section 17-53-211; and

241 (ii) any other fees authorized or required by law.

242 (b) As long as the Children's Legal Defense Account is authorized by Section  
243 51-9-408, the county clerk shall:

244 (i) assess \$10 in addition to whatever fee for a marriage license is established under



245 authority of this section [~~and in addition to the \$20 assessed for the displaced homemaker~~  
246 ~~program~~]; and

247 (ii) transmit \$10 from each marriage license fee to the Division of Finance for deposit  
248 in the Children's Legal Defense Account.

249 (c) (i) As long as the Division of Child and Family Services, created in Section  
250 62A-4a-103, has the responsibility under Section 62A-4a-105 to provide services, including  
251 temporary shelter, for victims of domestic violence, the county clerk shall:

252 (A) collect \$10 in addition to whatever fee for a marriage license is established under  
253 authority of this section, in addition to the amount described in Subsection (2)(b), if an  
254 applicant chooses, as provided in Subsection (2)(c)(ii), to pay the additional \$10; and

255 (B) to the extent actually paid, transmit \$10 from each marriage license fee to the  
256 Division of Finance for distribution to the Division of Child and Family Services for the  
257 operation of shelters for victims of domestic violence.

258 (ii) (A) The county clerk shall provide a method for an applicant for a marriage license  
259 to choose to pay the additional \$10 referred to in Subsection (2)(c)(i).

260 (B) An applicant for a marriage license may choose not to pay the additional \$10  
261 referred to in Subsection (2)(c)(i) without affecting the applicant's ability to be issued a  
262 marriage license.

263 (3) This section does not apply to any fees currently being assessed by the state but  
264 collected by county officers.

265 Section 6. Section **17B-2a-608** is amended to read:

266 **17B-2a-608. Limit on property tax authority -- Exceptions.**

267 (1) As used in this section, "elected official" means a metropolitan water district board  
268 of trustee member who is elected to the board of trustees by metropolitan water district voters  
269 at an election held for that purpose.

270 (2) The board of trustees of a metropolitan water district may not collect property tax  
271 revenue in a tax year beginning on or after January 1, 2015, that would exceed the certified tax  
272 rate under Section 59-2-924 unless:

273 (a) the members of the board of trustees are all elected officials; or

274 (b) the proposed tax levy has previously been approved by:

275 (i) a majority of the metropolitan water district voters at an election held for that

276 purpose; or

277 (ii) the legislative body of each municipality that appoints a member to the board of  
278 trustees under Section [~~17B-2a-204~~] 17B-2a-604.

279 Section 7. Section **19-6-902** is amended to read:

280 **19-6-902. Definitions.**

281 As used in this part:

282 (1) "Board" means the Solid and Hazardous Waste Control Board, as defined in  
283 Section 19-1-106, within the Department of Environmental Quality.

284 (2) "Certified decontamination specialist" means an individual who has met the  
285 standards for certification as a decontamination specialist and has been certified by the board  
286 under Subsection 19-6-906(2).

287 (3) "Contaminated" or "contamination" means:

288 (a) polluted by hazardous materials that cause property to be unfit for human habitation  
289 or use due to immediate or long-term health hazards; or

290 (b) that a property is polluted by hazardous materials as a result of the use, production,  
291 or presence of methamphetamine in excess of decontamination standards adopted by the  
292 Department of Health under Section 26-51-201.

293 (4) "Contamination list" means a list maintained by the local health department of  
294 properties:

295 (a) reported to the local health department under Section 19-6-903; and

296 (b) determined by the local health department to be contaminated.

297 (5) (a) "Decontaminated" means property that at one time was contaminated, but the  
298 contaminants have been removed.

299 (b) "Decontaminated" for a property that was contaminated by the use, production, or  
300 presence of methamphetamine means that the property satisfies decontamination standards  
301 adopted by the Department of Health under Section 26-51-201.

302 (6) "Hazardous materials":

303 (a) has the same meaning as "hazardous or dangerous [~~materials~~] material" as defined  
304 in Section 58-37d-3; and

305 (b) includes any illegally manufactured controlled substances.

306 (7) "Health department" means a local health department under Title 26A, Local

307 Health Authorities.

308 (8) "Owner of record":

309 (a) means the owner of real property as shown on the records of the county recorder in  
310 the county where the property is located; and

311 (b) may include an individual, financial institution, company, corporation, or other  
312 entity.

313 (9) "Property":

314 (a) means any real property, site, structure, part of a structure, or the grounds  
315 surrounding a structure; and

316 (b) includes single-family residences, outbuildings, garages, units of multiplexes,  
317 condominiums, apartment buildings, warehouses, hotels, motels, boats, motor vehicles, trailers,  
318 manufactured housing, shops, or booths.

319 (10) "Reported property" means property that is the subject of a law enforcement report  
320 under Section 19-6-903.

321 Section 8. Section **25-6-14** is amended to read:

322 **25-6-14. Restricting transfers of trust interests.**

323 (1) (a) For trusts created on or after December 31, 2003, a settlor who in writing  
324 irrevocably transfers property in trust to a trust having as trustee a company defined in  
325 Subsection 7-5-1(1)(d) who holds some or all of the trust assets in this state in a savings  
326 account [~~described in Subsection~~ as defined in Section 7-1-103[(29)]], a certificate of deposit, a  
327 brokerage account, a trust company fiduciary account, or account or deposit located in this state  
328 that is similar to such an account may provide that the income or principal interest of the settlor  
329 as beneficiary of the trust may not be either voluntarily or involuntarily transferred before  
330 payment or delivery to the settlor as beneficiary by the trustee. The provision shall be  
331 considered to be a restriction on the transfer of the settlor's beneficial interest in the trust that is  
332 enforceable under applicable nonbankruptcy law within the meaning of Section 541(c)(2) of  
333 the Bankruptcy Code or successor provision.

334 (b) This Subsection (1) applies to:

335 (i) any form of transfer into trust including:

336 (A) conveyance; or

337 (B) assignment; and

- 338 (ii) transfers of:
- 339 (A) personal property;
- 340 (B) interests in personal property;
- 341 (C) real property; or
- 342 (D) interests in real property.

343 (2) (a) Except as provided in Subsection (2)(c), if a trust has a restriction as provided in  
344 Subsection (1)(a), a creditor or other claimant of the settlor may not satisfy a claim, or liability  
345 on it, in either law or equity, out of the settlor's transfer or settlor's beneficial interest in the  
346 trust.

347 (b) For the purposes of Subsection (2)(a), a creditor includes one holding or seeking to  
348 enforce a judgment entered by a court or other body having adjudicative authority as well as  
349 one with a right to payment, whether or not reduced to judgment, liquidated, unliquidated,  
350 fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or  
351 unsecured.

352 (c) A restriction provided under Subsection (1) does not prevent a creditor or person  
353 described in Subsection (2)(a) from satisfying a claim or liability out of the settlor's beneficial  
354 interest in or transfer into trust if:

355 (i) the claim is a judgment, order, decree, or other legally enforceable decision or ruling  
356 resulting from a judicial, arbitration, mediation, or administrative proceeding commenced prior  
357 to or within three years after the trust is created;

358 (ii) the settlor's transfer into trust is made with actual intent to hinder, delay, or defraud  
359 that creditor;

360 (iii) the trust provides that the settlor may revoke or terminate all or part of the trust  
361 without the consent of a person who has a substantial beneficial interest in the trust and the  
362 interest would be adversely affected by the exercise of the settlor's power to revoke or  
363 terminate all or part of the trust;

364 (iv) the trust requires that all or a part of the trust's income or principal, or both must be  
365 distributed to the settlor as beneficiary;

366 (v) the claim is for a payment owed by a settlor under a child support judgment or  
367 order;

368 (vi) the transfer is made when the settlor is insolvent or the transfer renders the settlor

369 insolvent;

370 (vii) the claim is for recovery of public assistance received by the settlor allowed under  
371 Title 26, Chapter 19, Medical Benefits Recovery Act;

372 (viii) the claim is a tax or other amount owed by the settlor to any governmental entity;

373 (ix) the claim is by a spouse or former spouse of the settlor on account of an agreement  
374 or order for the payment of support or alimony or for a division or distribution of property;

375 (x) (A) the settlor transferred assets into the trust that:

376 (I) were listed in a written representation of the settlor's assets given to a claimant to  
377 induce the claimant to enter into a transaction or agreement with the settlor; or

378 (II) were transferred from the settlor's control in breach of any written agreement,  
379 covenant, or security interest between the settlor and the claimant; or

380 (B) without limiting the claimant's right to pursue assets not held by the trust, a  
381 claimant described in Subsection (2)(c)(x)(A) may only foreclose or execute upon an asset in  
382 the trust listed in the written representation described in Subsection (2)(c)(x)(A)(I) or  
383 transferred in breach of a written agreement, covenant, or security interest as provided in  
384 Subsection (2)(c)(x)(A)(II) to the extent of the settlor's interest in that asset when it was  
385 transferred to the trust or the equivalent value of that asset at the time of foreclosure or  
386 execution if the original asset was sold or traded by the trust; or

387 (xi) the claim is a judgment, award, order, sentence, fine, penalty, or other  
388 determination of liability of the settlor for conduct of the settlor constituting fraud, intentional  
389 infliction of harm, or a crime.

390 (d) The statute of limitations for actions to satisfy a claim or liability out of the settlor's  
391 beneficial interest in or transfer into trust under Subsections (2)(c)(ii), (v), (vii), (viii), (ix), (x),  
392 and (xi) is the statute of limitations applicable to the underlying action.

393 (e) For the purposes of Subsection (2)(c) "revoke or terminate" does not include:

394 (i) a power to veto a distribution from the trust;

395 (ii) a testamentary special power of appointment or similar power;

396 (iii) the right to receive a distribution of income, principal, or both in the discretion of  
397 another, including a trustee other than the settlor, an interest in a charitable remainder unitrust  
398 or charitable remainder annuity trust as defined in Internal Revenue Code Section 664 or  
399 successor provision, or a right to receive principal subject to an ascertainable standard set forth

400 in the trust; or

401 (iv) the power to appoint nonsubordinate advisers or trust protectors who can remove  
402 and appoint trustees, who can direct, consent to or disapprove distributions, or is the power to  
403 serve as an investment director or appoint an investment director under Section 75-7-906.

404 (3) The satisfaction of a claim under Subsection (2)(c) is limited to that part of the trust  
405 or transfer to which it applies.

406 (4) (a) If a trust has a restriction as provided under Subsection (1), the restriction  
407 prevents anyone, including a person listed in Subsection (2)(a), from asserting any cause of  
408 action or claim for relief against a trustee or anyone involved in the counseling, drafting,  
409 preparation, execution, or funding of the trust for:

- 410 (i) conspiracy to commit a fraudulent conveyance;
- 411 (ii) aiding and abetting a fraudulent conveyance; or
- 412 (iii) participating in the trust transaction.

413 (b) A person prevented from asserting a cause of action or claim for relief under this  
414 Subsection (4) may assert a cause of action only against:

- 415 (i) the trust assets; or
- 416 (ii) the settlor or beneficiary to the extent allowed under Subsection 25-6-5(1)(a).

417 (5) In any action brought under Subsection (2)(c), the burden to prove the matter by  
418 clear and convincing evidence shall be upon the creditor.

419 (6) For purposes of this section, the transfer shall be considered to have been made on  
420 the date the property was originally transferred in trust.

421 (7) The courts of this state shall have exclusive jurisdiction over any action brought  
422 under this section.

423 (8) If a trust or a property transfer to a trust is voided or set aside under Subsection  
424 (2)(c), the trust or property transfer shall be voided or set aside only to the extent necessary to  
425 satisfy:

426 (a) the settlor's debt to the creditor or other person at whose instance the trust or  
427 property transfer is voided or set aside; and

428 (b) the costs and attorney fees allowed by the court.

429 (9) If a trust or a property transfer to a trust is voided or set aside under Subsection  
430 (2)(c) and the court is satisfied that the trustee did not act in bad faith in accepting or

431 administering the property that is the subject of the trust:

432 (a) the trustee has a first and paramount lien against the property that is the subject of  
433 the trust in an amount equal to the entire cost properly incurred by the trustee in a defense of  
434 the action or proceedings to void or set aside the trust or the property transfer, including  
435 attorney fees;

436 (b) the trust or property transfer that is voided or set aside is subject to the proper fees,  
437 costs, preexisting rights, claims, and interest of the trustee and any predecessor trustee if the  
438 trustee and predecessor trustee did not act in bad faith; and

439 (c) any beneficiary, including the settlor, may retain a distribution made by exercising a  
440 trust power or discretion vested in the trustee of the trust, if the power or discretion was  
441 properly exercised before the commencement of the action or proceeding to void or set aside  
442 the trust or property transfer.

443 (10) If at least one trustee is a trust company as defined in Subsection 7-5-1(1)(d), then  
444 individuals may also serve as cotrustees.

445 Section 9. Section **26-3-7** is amended to read:

446 **26-3-7. Disclosure of health data -- Limitations.**

447 The department may not disclose any identifiable health data unless:

448 (1) one of the following persons has consented to the disclosure:

449 (a) the individual;

450 (b) the next-of-kin if the individual is deceased;

451 (c) the parent or legal guardian if the individual is a minor or mentally incompetent; or

452 (d) a person holding a power of attorney covering such matters on behalf of the  
453 individual;

454 (2) the disclosure is to a governmental entity in this or another state or the federal  
455 government, provided that:

456 (a) the data will be used for a purpose for which they were collected by the department;

457 and

458 (b) the recipient enters into a written agreement satisfactory to the department agreeing  
459 to protect such data in accordance with the requirements of this chapter and department rule  
460 and not permit further disclosure without prior approval of the department;

461 (3) the disclosure is to an individual or organization, for a specified period, solely for

462 bona fide research and statistical purposes, determined in accordance with department rules,  
463 and the department determines that the data are required for the research and statistical  
464 purposes proposed and the requesting individual or organization enters into a written  
465 agreement satisfactory to the department to protect the data in accordance with this chapter and  
466 department rule and not permit further disclosure without prior approval of the department;

467 (4) the disclosure is to a governmental entity for the purpose of conducting an audit,  
468 evaluation, or investigation of the department and such governmental entity agrees not to use  
469 those data for making any determination affecting the rights, benefits, or entitlements of any  
470 individual to whom the health data relates;

471 (5) the disclosure is of specific medical or epidemiological information to authorized  
472 personnel within the department, local health departments, public health authorities, official  
473 health agencies in other states, the United States Public Health Service, the Centers for Disease  
474 Control and Prevention (CDC), or agencies responsible to enforce quarantine, when necessary  
475 to continue patient services or to undertake public health efforts to control communicable,  
476 infectious, acute, chronic, or any other disease or health hazard that the department considers to  
477 be dangerous or important or that may affect the public health;

478 (6) (a) the disclosure is of specific medical or epidemiological information to a "health  
479 care provider" as defined in Section 78B-3-403, health care personnel, or public health  
480 personnel who has a legitimate need to have access to the information in order to assist the  
481 patient or to protect the health of others closely associated with the patient[~~- This~~]; and

482 (b) this Subsection (6) does not create a duty to warn third parties;

483 (7) the disclosure is necessary to obtain payment from an insurer or other third-party  
484 payor in order for the department to obtain payment or to coordinate benefits for a patient; or

485 (8) the disclosure is to the subject of the identifiable health data.

486 Section 10. Section **26-18-2.6 (Superseded 05/01/13)** is amended to read:

487 **26-18-2.6 (Superseded 05/01/13). Dental benefits.**

488 (1) (a) Except as provided in Subsection (8), the division shall establish a competitive  
489 bid process to bid out Medicaid dental benefits under this chapter.

490 (b) The division may bid out the Medicaid dental benefits separately from other  
491 program benefits.

492 (2) The division shall use the following criteria to evaluate dental bids:



- 493 (a) ability to manage dental expenses;
- 494 (b) proven ability to handle dental insurance;
- 495 (c) efficiency of claim paying procedures;
- 496 (d) provider contracting, discounts, and adequacy of network; and
- 497 (e) other criteria established by the department.
- 498 (3) The division shall request bids for the program's benefits:
- 499 (a) in 2011; and
- 500 (b) at least once every five years thereafter.
- 501 (4) The division's contract with dental plans for the program's benefits shall include
- 502 risk sharing provisions in which the dental plan must accept 100% of the risk for any difference
- 503 between the division's premium payments per client and actual dental expenditures.
- 504 (5) The division may not award contracts to:
- 505 (a) more than three responsive bidders under this section; or
- 506 (b) an insurer that does not have a current license in the state.
- 507 (6) (a) The division may cancel the request for proposals if:
- 508 (i) there are no responsive bidders; or
- 509 (ii) the division determines that accepting the bids would increase the program's costs.
- 510 (b) If the division cancels the request for proposals under Subsection (6)(a), the
- 511 division shall report to the Health and Human Services Interim Committee regarding the
- 512 reasons for the decision.
- 513 (7) Title 63G, Chapter 6, Utah Procurement Code, shall apply to this section.
- 514 (8) (a) The division may:
- 515 (i) establish a dental health care delivery system and payment reform pilot program for
- 516 Medicaid dental benefits to increase access to cost effective and quality dental health care by
- 517 increasing the number of dentists available for Medicaid dental services; and
- 518 (ii) target specific Medicaid populations or geographic areas in the state.
- 519 (b) The pilot program shall establish compensation models for dentists and dental
- 520 hygienists that:
- 521 (i) increase access to quality, cost effective dental care; and
- 522 (ii) use funds from the Division of Family Health and Preparedness that are available to
- 523 reimburse dentists for educational loans in exchange for the dentist agreeing to serve Medicaid

524 and under-served populations.

525 (c) The division may amend the state plan and apply to the Secretary of Health and  
526 Human Services for waivers or pilot programs if necessary to establish the new dental care  
527 delivery and payment reform model. The division shall evaluate the pilot program's effect on  
528 the cost of dental care and access to dental care for the targeted Medicaid populations. The  
529 division shall report to the Legislature's Health and Human Services Interim Committee by  
530 November 30th of each year that the pilot project is in effect.

531 Section 11. Section **26-18-2.6 (Effective 05/01/13)** is amended to read:

532 **26-18-2.6 (Effective 05/01/13). Dental benefits.**

533 (1) (a) Except as provided in Subsection (8), the division shall establish a competitive  
534 bid process to bid out Medicaid dental benefits under this chapter.

535 (b) The division may bid out the Medicaid dental benefits separately from other  
536 program benefits.

537 (2) The division shall use the following criteria to evaluate dental bids:

538 (a) ability to manage dental expenses;

539 (b) proven ability to handle dental insurance;

540 (c) efficiency of claim paying procedures;

541 (d) provider contracting, discounts, and adequacy of network; and

542 (e) other criteria established by the department.

543 (3) The division shall request bids for the program's benefits:

544 (a) in 2011; and

545 (b) at least once every five years thereafter.

546 (4) The division's contract with dental plans for the program's benefits shall include  
547 risk sharing provisions in which the dental plan must accept 100% of the risk for any difference  
548 between the division's premium payments per client and actual dental expenditures.

549 (5) The division may not award contracts to:

550 (a) more than three responsive bidders under this section; or

551 (b) an insurer that does not have a current license in the state.

552 (6) (a) The division may cancel the request for proposals if:

553 (i) there are no responsive bidders; or

554 (ii) the division determines that accepting the bids would increase the program's costs.

555 (b) If the division cancels the request for proposals under Subsection (6)(a), the  
556 division shall report to the Health and Human Services Interim Committee regarding the  
557 reasons for the decision.

558 (7) Title 63G, Chapter 6a, Utah Procurement Code, shall apply to this section.

559 (8) (a) The division may:

560 (i) establish a dental health care delivery system and payment reform pilot program for  
561 Medicaid dental benefits to increase access to cost effective and quality dental health care by  
562 increasing the number of dentists available for Medicaid dental services; and

563 (ii) target specific Medicaid populations or geographic areas in the state.

564 (b) The pilot program shall establish compensation models for dentists and dental  
565 hygienists that:

566 (i) increase access to quality, cost effective dental care; and

567 (ii) use funds from the Division of Family Health and Preparedness that are available to  
568 reimburse dentists for educational loans in exchange for the dentist agreeing to serve Medicaid  
569 and under-served populations.

570 (c) The division may amend the state plan and apply to the Secretary of Health and  
571 Human Services for waivers or pilot programs if necessary to establish the new dental care  
572 delivery and payment reform model. The division shall evaluate the pilot program's effect on  
573 the cost of dental care and access to dental care for the targeted Medicaid populations. The  
574 division shall report to the Legislature's Health and Human Services Interim Committee by  
575 November 30th of each year that the pilot project is in effect.

576 Section 12. Section **26-18-402** is amended to read:

577 **26-18-402. Medicaid Restricted Account.**

578 (1) There is created a restricted account in the General Fund known as the Medicaid  
579 Restricted Account.

580 (2) (a) Except as provided in Subsection (3), the following shall be deposited into the  
581 Medicaid Restricted Account:

582 (i) any general funds appropriated to the department for the state plan for medical  
583 assistance or for the Division of Health Care Financing that are not expended by the  
584 department in the fiscal year for which the general funds were appropriated and which are not  
585 otherwise designated as nonlapsing shall lapse into the Medicaid Restricted Account;

586 (ii) any unused state funds that are associated with the Medicaid program, as defined in  
587 Section 26-18-2, from the Department of Workforce Services and the Department of Human  
588 Services; and

589 (iii) any penalties imposed and collected under:

590 (A) Section 17B-2a-818.5;

591 (B) Section 19-1-206;

592 [~~(D)~~] (C) Section 63A-5-205;

593 [~~(E)~~] (D) Section 63C-9-403; [~~or~~]

594 [~~(F)~~] (E) Section 72-6-107.5[;]; or

595 [~~(G)~~] (F) Section 79-2-404[;].

596 (b) The account shall earn interest and all interest earned shall be deposited into the  
597 account.

598 (c) The Legislature may appropriate money in the restricted account to fund programs  
599 that expand medical assistance coverage and private health insurance plans to low income  
600 persons who have not traditionally been served by Medicaid, including the Utah Children's  
601 Health Insurance Program created in Chapter 40.

602 (3) For fiscal years 2008-09, 2009-10, 2010-11, 2011-12, and 2012-13 the following  
603 funds are nonlapsing:

604 (a) any general funds appropriated to the department for the state plan for medical  
605 assistance, or for the Division of Health Care Financing that are not expended by the  
606 department in the fiscal year in which the general funds were appropriated; and

607 (b) funds described in Subsection (2)(a)(ii).

608 Section 13. Section **26-36a-206** is amended to read:

609 **26-36a-206. Penalties and interest.**

610 (1) A facility that fails to pay any assessment or file a return as required under this  
611 chapter, within the time required by this chapter, shall pay, in addition to the assessment,  
612 penalties and interest established by the department.

613 (2) (a) Consistent with Subsection (2)(b), the department shall adopt rules in  
614 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which establish  
615 reasonable penalties and interest for the violations described in Subsection (1).

616 (b) If a hospital fails to timely pay the full amount of a quarterly assessment, the

617 department shall add to the assessment:

618 (i) a penalty equal to 5% of the quarterly amount not paid on or before the due date;

619 and

620 (ii) on the last day of each quarter after the due date until the assessed amount and the

621 penalty imposed under Subsection (2)(b)(i) are paid in full, an additional 5% penalty on:

622 (A) any unpaid quarterly assessment; and

623 (B) any unpaid penalty assessment.

624 (c) The division may waive, reduce, or compromise the penalties and interest provided

625 for in this section in the same manner as provided in Subsection 59-1-401[~~(8)~~](13).

626 Section 14. Section **34A-5-106** is amended to read:

627 **34A-5-106. Discriminatory or prohibited employment practices -- Permitted**  
628 **practices.**

629 (1) It is a discriminatory or prohibited employment practice to take any action  
630 described in Subsections (1)(a) through (f).

631 (a) (i) An employer may not refuse to hire, promote, discharge, demote, or terminate  
632 any person, or to retaliate against, harass, or discriminate in matters of compensation or in  
633 terms, privileges, and conditions of employment against any person otherwise qualified,  
634 because of:

635 (A) race;

636 (B) color;

637 (C) sex;

638 (D) pregnancy, childbirth, or pregnancy-related conditions;

639 (E) age, if the individual is 40 years of age or older;

640 (F) religion;

641 (G) national origin; or

642 (H) disability.

643 (ii) A person may not be considered "otherwise qualified," unless that person possesses  
644 the following required by an employer for any particular job, job classification, or position:

645 (A) education;

646 (B) training;

647 (C) ability, with or without reasonable accommodation;

648 (D) moral character;

649 (E) integrity;

650 (F) disposition to work;

651 (G) adherence to reasonable rules and regulations; and

652 (H) other job related qualifications required by an employer.

653 (iii) (A) As used in this chapter, "to discriminate in matters of compensation" means  
654 the payment of differing wages or salaries to employees having substantially equal experience,  
655 responsibilities, and skill for the particular job.

656 (B) Notwithstanding Subsection (1)(a)(iii)(A):

657 (I) nothing in this chapter prevents increases in pay as a result of longevity with the  
658 employer, if the salary increases are uniformly applied and available to all employees on a  
659 substantially proportional basis; and

660 (II) nothing in this section prohibits an employer and employee from agreeing to a rate  
661 of pay or work schedule designed to protect the employee from loss of Social Security payment  
662 or benefits if the employee is eligible for those payments.

663 (b) An employment agency may not:

664 (i) refuse to list and properly classify for employment, or refuse to refer an individual  
665 for employment, in a known available job for which the individual is otherwise qualified,  
666 because of:

667 (A) race;

668 (B) color;

669 (C) sex;

670 (D) pregnancy, childbirth, or pregnancy-related conditions;

671 (E) religion;

672 (F) national origin;

673 (G) age, if the individual is 40 years of age or older; or

674 (H) disability; or

675 (ii) comply with a request from an employer for referral of applicants for employment  
676 if the request indicates either directly or indirectly that the employer discriminates in  
677 employment on account of:

678 (A) race;

- 679 (B) color;
- 680 (C) sex;
- 681 (D) pregnancy, childbirth, or pregnancy-related conditions;
- 682 (E) religion;
- 683 (F) national origin;
- 684 (G) age, if the individual is 40 years of age or older; or
- 685 (H) disability.

686 (c) A labor organization may not exclude any individual otherwise qualified from full  
687 membership rights in the labor organization, expel the individual from membership in the labor  
688 organization, or otherwise discriminate against or harass any of the labor organization's  
689 members in full employment of work opportunity, or representation, because of:

- 690 (i) race;
- 691 (ii) sex;
- 692 (iii) pregnancy, childbirth, or pregnancy-related conditions;
- 693 (iv) religion;
- 694 (v) national origin;
- 695 (vi) age, if the individual is 40 years of age or older; or
- 696 (vii) disability.

697 (d) Unless based upon a bona fide occupational qualification, or required by and given  
698 to an agency of government for security reasons, an employer, employment agency, or labor  
699 organization may not print, or circulate, or cause to be printed or circulated, any statement,  
700 advertisement, or publication, use any form of application for employment or membership, or  
701 make any inquiry in connection with prospective employment or membership that expresses,  
702 either directly or indirectly:

- 703 (i) any limitation, specification, or discrimination as to:
  - 704 (A) race;
  - 705 (B) color;
  - 706 (C) religion;
  - 707 (D) sex;
  - 708 (E) pregnancy, childbirth, or pregnancy-related conditions;
  - 709 (F) national origin;

710 (G) age, if the individual is 40 years of age or older; or

711 (H) disability; or

712 (ii) the intent to make any limitation, specification, or discrimination described in

713 Subsection (1)(d)(i).

714 (e) A person, whether or not an employer, an employment agency, a labor organization,

715 or the employees or members of an employer, employment agency, or labor organization, may

716 not:

717 (i) aid, incite, compel, or coerce the doing of an act defined in this section to be a

718 discriminatory or prohibited employment practice;

719 (ii) obstruct or prevent any person from complying with this chapter, or any order

720 issued under this chapter; or

721 (iii) attempt, either directly or indirectly, to commit any act prohibited in this section.

722 (f) (i) An employer, labor organization, joint apprenticeship committee, or vocational

723 school, providing, coordinating, or controlling apprenticeship programs, or providing,

724 coordinating, or controlling on-the-job-training programs, instruction, training, or retraining

725 programs may not:

726 (A) deny to, or withhold from, any qualified person, the right to be admitted to, or

727 participate in any apprenticeship training program, on-the-job-training program, or other

728 occupational instruction, training or retraining program because of:

729 (I) race;

730 (II) color;

731 (III) sex;

732 (IV) pregnancy, childbirth, or pregnancy-related conditions;

733 (V) religion;

734 (VI) national origin;

735 (VII) age, if the individual is 40 years of age or older; or

736 (VIII) disability;

737 (B) discriminate against or harass any qualified person in that person's pursuit of

738 programs described in Subsection (1)(f)(i)(A), or to discriminate against such a person in the

739 terms, conditions, or privileges of programs described in Subsection (1)(f)(i)(A), because of:

740 (I) race;



- 741 (II) color;
- 742 (III) sex;
- 743 (IV) pregnancy, childbirth, or pregnancy-related conditions;
- 744 (V) religion;
- 745 (VI) national origin;
- 746 (VII) age, if the individual is 40 years of age or older; or
- 747 (VIII) disability; or
- 748 (C) except as provided in Subsection (1)(f)(ii), print, publish, or cause to be printed or
- 749 published, any notice or advertisement relating to employment by the employer, or membership
- 750 in or any classification or referral for employment by a labor organization, or relating to any
- 751 classification or referral for employment by an employment agency, indicating any preference,
- 752 limitation, specification, or discrimination based on:
  - 753 (I) race;
  - 754 (II) color;
  - 755 (III) sex;
  - 756 (IV) pregnancy, childbirth, or pregnancy-related conditions;
  - 757 (V) religion;
  - 758 (VI) national origin;
  - 759 (VII) age, if the individual is 40 years of age or older; or
  - 760 (VIII) disability.
- 761 (ii) Notwithstanding Subsection (1)(f)(i)(C), if the following is a bona fide
- 762 occupational qualification for employment, a notice or advertisement described in Subsection
- 763 (1)(f)(i)(C) may indicate a preference, limitation, specification, or discrimination based on:
  - 764 (A) race;
  - 765 (B) color;
  - 766 (C) religion;
  - 767 (D) sex;
  - 768 (E) pregnancy, childbirth, or pregnancy-related conditions;
  - 769 (F) age;
  - 770 (G) national origin; or
  - 771 (H) disability.

772 (2) Nothing contained in Subsections (1)(a) through (1)(f) shall be construed to  
773 prevent:

774 (a) the termination of employment of an individual who, with or without reasonable  
775 accommodation, is physically, mentally, or emotionally unable to perform the duties required  
776 by that individual's employment;

777 (b) the variance of insurance premiums or coverage on account of age; or

778 (c) a restriction on the activities of individuals licensed by the liquor authority with  
779 respect to persons under 21 years of age.

780 (3) (a) It is not a discriminatory or prohibited employment practice:

781 (i) for an employer to hire and employ employees, for an employment agency to  
782 classify or refer for employment any individual, for a labor organization to classify its  
783 membership or to classify or refer for employment any individual or for an employer, labor  
784 organization, or joint labor-management committee controlling apprenticeship or other training  
785 or retraining programs to admit or employ any individual in any such program, on the basis of  
786 religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, national origin, or  
787 disability in those certain instances where religion, sex, pregnancy, childbirth, or  
788 pregnancy-related conditions, age, if the individual is 40 years of age or older, national origin,  
789 or disability is a bona fide occupational qualification reasonably necessary to the normal  
790 operation of that particular business or enterprise;

791 (ii) for a school, college, university, or other educational institution to hire and employ  
792 employees of a particular religion if:

793 (A) the school, college, university, or other educational institution is, in whole or in  
794 substantial part, owned, supported, controlled, or managed by a particular religious corporation,  
795 association, or society; or

796 (B) the curriculum of the school, college, university, or other educational institution is  
797 directed toward the propagation of a particular religion;

798 (iii) for an employer to give preference in employment to:

799 (A) the employer's:

800 (I) spouse;

801 (II) child; or

802 (III) son-in-law or daughter-in-law;

803 (B) any person for whom the employer is or would be liable to furnish financial  
804 support if those persons were unemployed;

805 (C) any person to whom the employer during the preceding six months has furnished  
806 more than one-half of total financial support regardless of whether or not the employer was or  
807 is legally obligated to furnish support; or

808 (D) any person whose education or training was substantially financed by the employer  
809 for a period of two years or more.

810 (b) Nothing in this chapter applies to any business or enterprise on or near an Indian  
811 reservation with respect to any publicly announced employment practice of the business or  
812 enterprise under which preferential treatment is given to any individual because that individual  
813 is a native American Indian living on or near an Indian reservation.

814 (c) Nothing in this chapter shall be interpreted to require any employer, employment  
815 agency, labor organization, vocational school, joint labor-management committee, or  
816 apprenticeship program subject to this chapter to grant preferential treatment to any individual  
817 or to any group because of the race, color, religion, sex, age, national origin, or disability of the  
818 individual or group on account of an imbalance which may exist with respect to the total  
819 number or percentage of persons of any race, color, religion, sex, age, national origin, or  
820 disability employed by any employer, referred or classified for employment by an employment  
821 agency or labor organization, admitted to membership or classified by any labor organization,  
822 or admitted to or employed in, any apprenticeship or other training program, in comparison  
823 with the total number or percentage of persons of that race, color, religion, sex, age, national  
824 origin, or disability in any community or county or in the available work force in any  
825 community or county.

826 (4) It is not a discriminatory or prohibited practice with respect to age to observe the  
827 terms of a bona fide seniority system or any bona fide employment benefit plan such as a  
828 retirement, pension, or insurance plan that is not a subterfuge to evade the purposes of this  
829 chapter, except that no such employee benefit plan shall excuse the failure to hire an individual.

830 (5) Notwithstanding Subsection (4), or any other statutory provision to the contrary, a  
831 person may not be subject to involuntary termination or retirement from employment on the  
832 basis of age alone, if the individual is 40 years of age or older, except:

833 (a) under Subsection (6); and

834 (b) when age is a bona fide occupational qualification.

835 (6) Nothing in this section prohibits compulsory retirement of an employee who has  
836 attained at least 65 years of age, and who, for the two-year period immediately before  
837 retirement, is employed in a bona fide executive or a high policymaking position, if:

838 (a) that employee is entitled to an immediate nonforfeitable annual retirement benefit  
839 from the employee's employer's pension, profit-sharing, savings, or deferred compensation  
840 plan, or any combination of those plans; and

841 (b) the benefit described in Subsection (6)(a) equals, in the aggregate, at least \$44,000.

842 Section 15. Section **35A-8-414** is amended to read:

843 **35A-8-414. Property and funds of authority declared public property --**

844 **Exemption from taxes -- Alternative agreement with public body.**

845 (1) The property and funds of an authority are declared to be public property used for  
846 essential public, governmental, and charitable purposes.

847 (2) (a) Subject to Subsections (2)(b) and (c), the property and authority are exempt  
848 from all taxes and special assessments of a public body.

849 (b) This tax exemption does not apply to any portion of a project used for a  
850 profit-making enterprise.

851 (c) In taxing these portions appropriate allowance shall be made for any expenditure by  
852 an authority for utilities or other public services it provides to serve the property.

853 (3) In lieu of taxes on its exempt property an authority may agree to make payments to  
854 a public body if the authority finds that making the payments is consistent with the  
855 maintenance of the low-rent character of housing projects and the achievement of the purposes  
856 of this part.

857 Section 16. Section **38-1a-201** is amended to read:

858 **38-1a-201. Establishment of State Construction Registry -- Filing index.**

859 (1) Subject to receiving adequate funding through a legislative appropriation and  
860 contracting with an approved third party vendor as provided in Section 38-1a-202, the division  
861 shall establish and maintain the State Construction Registry to:

862 (a) (i) assist in protecting public health, safety, and welfare; and

863 (ii) promote a fair working environment;

864 (b) be overseen by the division with the assistance of the designated agent;

- 865 (c) provide a central repository for all required notices;
- 866 (d) make accessible, by way of an Internet website:
- 867 (i) the filing and review of required notices; and
- 868 (ii) the transmitting of building permit information under Subsection 38-1a-205(1) and
- 869 the reviewing of that information;
- 870 (e) accommodate:
- 871 (i) electronic filing of required notices and electronic transmitting of building permit
- 872 information described in Subsection (1)(d)(ii); and
- 873 (ii) the filing of required notices by alternate means, including United States mail,
- 874 telefax, or any other method as the division provides by rule;
- 875 (f) (i) provide electronic notification for up to three email addresses for each interested
- 876 person who requests to receive notification under Section 38-1a-204 from the designated agent;
- 877 and
- 878 (ii) provide alternate means of providing notification to a person who makes a filing by
- 879 alternate means, including United States mail, telefax, or any other method as the division
- 880 prescribes by rule; and
- 881 (g) provide hard-copy printing of electronic receipts for an individual filing evidencing
- 882 the date and time of the individual filing and the content of the individual filing.
- 883 (2) The designated agent shall index filings in the registry by:
- 884 (a) the name of the owner;
- 885 (b) the name of the original contractor;
- 886 (c) subdivision, development, or other project name, if any;
- 887 (d) lot or parcel number;
- 888 (e) the address of the project property;
- 889 (f) entry number;
- 890 (g) the name of the county in which the project property is located;
- 891 (h) for [~~construction~~] private projects [~~that are not government projects~~]:
- 892 (i) the tax parcel identification number of each parcel included in the project property;
- 893 and
- 894 (ii) the building permit number;
- 895 (i) for government projects, the government project-identifying information; and

896 (j) any other identifier that the division considers reasonably appropriate in  
897 collaboration with the designated agent.

898 Section 17. Section **51-7-15** is amended to read:

899 **51-7-15. Bonds of state treasurer and other public treasurers -- Reports to**  
900 **council.**

901 (1) (a) The state treasurer, county, city, and town treasurers, the clerk or treasurer of  
902 each school district, and any other public treasurers that the council designates by rule shall be  
903 bonded in an amount of not less than that established by the council.

904 (b) The council shall base the minimum bond amount on the amount of public funds  
905 normally in the treasurer's possession or control.

906 (2) (a) When a public treasurer deposits or invests public funds as authorized by this  
907 chapter, he and his bondsmen are not liable for any loss of public funds invested or deposited  
908 unless the loss is caused by the malfeasance of the treasurer or of any member of his staff.

909 (b) A public treasurer and his bondsmen are liable for any loss for any reason from  
910 deposits or investments not made in conformity with this chapter and the rules of the council.

911 (3) (a) Each public treasurer shall file a written report with the council on or before  
912 January 31 and July 31 of each year.

913 (b) The report shall contain:

914 (i) the information about the deposits and investments of that treasurer during the  
915 preceding six months ending December 31 and June 30, respectively, that the council requires  
916 by rule; and

917 (ii) information detailing the nature and extent of interest rate contracts permitted by  
918 Subsection 51-7-17~~(2)~~(3).

919 (c) The public treasurer shall make copies of the report available to the public at his  
920 offices during normal business hours.

921 Section 18. Section **51-7-18.2** is amended to read:

922 **51-7-18.2. Public treasurer's reports -- Contents.**

923 (1) The council may:

924 (a) require any public treasurer to prepare and file with it a written report in a form  
925 prescribed by the council containing the information required by this section; and

926 (b) specify that the report will contain the information required by this section for any

927 date.

928 (2) The council shall require the report to include information:

929 (a) specifying the amount of public funds in the public treasurer's possession or  
930 control;

931 (b) detailing the nature and extent of the deposit and investment of those funds;

932 (c) detailing the rate of return on each deposit or investment; and

933 (d) detailing the nature and extent of interest rate contracts authorized by Subsection  
934 51-7-17[(2)](3).

935 (3) The public treasurer shall file the report with the council within 10 days after he  
936 receives the council's request.

937 (4) Each public treasurer shall make copies of any reports required by this section  
938 available for inspection by the public at his office during normal business hours.

939 Section 19. Section **53-3-207** is amended to read:

940 **53-3-207. License certificates or driving privilege cards issued to drivers by class**  
941 **of motor vehicle -- Contents -- Release of anatomical gift information -- Temporary**  
942 **licenses or driving privilege cards -- Minors' licenses, cards, and permits -- Violation.**

943 (1) As used in this section:

944 (a) "driving privilege" means the privilege granted under this chapter to drive a motor  
945 vehicle;

946 (b) "governmental entity" means the state and its political subdivisions as defined in  
947 this Subsection (1);

948 (c) "political subdivision" means any county, city, town, school district, public transit  
949 district, community development and renewal agency, special improvement or taxing district,  
950 local district, special service district, an entity created by an interlocal agreement adopted under  
951 Title 11, Chapter 13, Interlocal Cooperation Act, or other governmental subdivision or public  
952 corporation; and

953 (d) "state" means this state, and includes any office, department, agency, authority,  
954 commission, board, institution, hospital, college, university, children's justice center, or other  
955 instrumentality of the state.

956 (2) (a) The division shall issue to every person privileged to drive a motor vehicle, a  
957 regular license certificate, a limited-term license certificate, or a driving privilege card

958 indicating the type or class of motor vehicle the person may drive.

959 (b) A person may not drive a class of motor vehicle unless granted the privilege in that  
960 class.

961 (3) (a) Every regular license certificate, limited-term license certificate, or driving  
962 privilege card shall bear:

963 (i) the distinguishing number assigned to the person by the division;

964 (ii) the name, birth date, and Utah residence address of the person;

965 (iii) a brief description of the person for the purpose of identification;

966 (iv) any restrictions imposed on the license under Section 53-3-208;

967 (v) a photograph of the person;

968 (vi) a photograph or other facsimile of the person's signature;

969 (vii) an indication whether the person intends to make an anatomical gift under Title  
970 26, Chapter 28, Revised Uniform Anatomical Gift Act, unless the driving privilege is extended  
971 under Subsection 53-3-214(3); and

972 (viii) except as provided in Subsection (3)(b), if the person states that the person is a  
973 veteran of the United States military on the application for a driver license in accordance with  
974 Section 53-3-205 and provides verification that the person was honorably discharged from the  
975 United States military, an indication that the person is a United States military veteran for a  
976 regular license certificate or limited-term license certificate issued on or after July 1, 2011.

977 (b) A regular license certificate or limited-term license certificate issued to any person  
978 younger than 21 years on a portrait-style format as required in Subsection (5)(b)(i) is not  
979 required to include an indication that the person is a United States military veteran under  
980 Subsection (3)(a)(viii).

981 (c) A new license certificate issued by the division may not bear the person's Social  
982 Security number.

983 (d) (i) The regular license certificate, limited-term license certificate, or driving  
984 privilege card shall be of an impervious material, resistant to wear, damage, and alteration.

985 (ii) Except as provided under Subsection (4)(b), the size, form, and color of the regular  
986 license certificate, limited-term license certificate, or driving privilege card shall be as  
987 prescribed by the commissioner.

988 (iii) The commissioner may also prescribe the issuance of a special type of limited



989 regular license certificate, limited-term license certificate, or driving privilege card under  
990 Subsection 53-3-220(4).

991 (4) (a) (i) The division, upon determining after an examination that an applicant is  
992 mentally and physically qualified to be granted a driving privilege, may issue to an applicant a  
993 receipt for the fee if the applicant is eligible for a regular license certificate or limited-term  
994 license certificate.

995 (ii) (A) The division shall issue a temporary regular license certificate or temporary  
996 limited-term license certificate allowing the person to drive a motor vehicle while the division  
997 is completing its investigation to determine whether the person is entitled to be granted a  
998 driving privilege.

999 (B) A temporary regular license certificate or a temporary limited-term license  
1000 certificate issued under this Subsection (4) shall be recognized and have the same rights and  
1001 privileges as a regular license certificate or a limited-term license certificate.

1002 (b) The temporary regular license certificate or temporary limited-term license  
1003 certificate shall be in the person's immediate possession while driving a motor vehicle, and it is  
1004 invalid when the person's regular license certificate or limited-term license certificate has been  
1005 issued or when, for good cause, the privilege has been refused.

1006 (c) The division shall indicate on the temporary regular license certificate or temporary  
1007 limited-term license certificate a date after which it is not valid as a temporary license.

1008 (d) (i) Except as provided in Subsection (4)(d)(ii), the division may not issue a  
1009 temporary driving privilege card or other temporary permit to an applicant for a driving  
1010 privilege card.

1011 (ii) The division may issue a learner permit issued in accordance with Section  
1012 53-3-210.5 to an applicant for a driving privilege card.

1013 (5) (a) The division shall distinguish learner permits, temporary permits, regular  
1014 license certificates, limited-term license certificates, and driving privilege cards issued to any  
1015 person younger than 21 years of age by use of plainly printed information or the use of a color  
1016 or other means not used for other regular license certificates, limited-term license certificates,  
1017 or driving privilege cards.

1018 (b) The division shall distinguish a regular license certificate, limited-term license  
1019 certificate, or driving privilege card issued to any person:

1020 (i) younger than 21 years of age by use of a portrait-style format not used for other  
1021 regular license certificates, limited-term license certificates, or driving privilege cards and by  
1022 plainly printing the date the regular license certificate, limited-term license certificate, or  
1023 driving privilege card holder is 21 years of age, which is the legal age for purchasing an  
1024 alcoholic beverage or alcoholic product under Section [~~32B-14-403~~] 32B-4-403; and

1025 (ii) younger than 19 years of age, by plainly printing the date the regular license  
1026 certificate, limited-term license certificate, or driving privilege card holder is 19 years of age,  
1027 which is the legal age for purchasing tobacco products under Section 76-10-104.

1028 (6) The division shall distinguish a limited-term license certificate by clearly indicating  
1029 on the document:

- 1030 (a) that it is temporary; and
- 1031 (b) its expiration date.

1032 (7) (a) The division shall only issue a driving privilege card to a person whose privilege  
1033 was obtained without providing evidence of lawful presence in the United States as required  
1034 under Subsection 53-3-205(8).

1035 (b) The division shall distinguish a driving privilege card from a license certificate by:

- 1036 (i) use of a format, color, font, or other means; and
- 1037 (ii) clearly displaying on the front of the driving privilege card a phrase substantially  
1038 similar to "FOR DRIVING PRIVILEGES ONLY -- NOT VALID FOR IDENTIFICATION".

1039 (8) The provisions of Subsection (5)(b) do not apply to a learner permit, temporary  
1040 permit, temporary regular license certificate, temporary limited-term license certificate, or any  
1041 other temporary permit.

1042 (9) The division shall issue temporary license certificates of the same nature, except as  
1043 to duration, as the license certificates that they temporarily replace, as are necessary to  
1044 implement applicable provisions of this section and Section 53-3-223.

1045 (10) (a) A governmental entity may not accept a driving privilege card as proof of  
1046 personal identification.

1047 (b) A driving privilege card may not be used as a document providing proof of a  
1048 person's age for any government required purpose.

1049 (11) A person who violates Subsection (2)(b) is guilty of a class C misdemeanor.

1050 (12) Unless otherwise provided, the provisions, requirements, classes, endorsements,

1051 fees, restrictions, and sanctions under this code apply to a:

1052 (a) driving privilege in the same way as a license or limited-term license issued under  
1053 this chapter; and

1054 (b) limited-term license certificate or driving privilege card in the same way as a  
1055 regular license certificate issued under this chapter.

1056 Section 20. Section **53-5a-102** is amended to read:

1057 **53-5a-102. Uniform firearm laws.**

1058 (1) The individual right to keep and bear arms being a constitutionally protected right  
1059 under Article I, Section 6 of the Utah Constitution, the Legislature finds the need to provide  
1060 uniform civil and criminal firearm laws throughout the state.

1061 (2) Except as specifically provided by state law, a local authority or state entity may  
1062 not:

1063 (a) prohibit an individual from owning, possessing, purchasing, selling, transferring,  
1064 transporting, or keeping a firearm at the individual's place of residence, property, business, or  
1065 in any vehicle lawfully in the individual's possession or lawfully under the individual's control;  
1066 or

1067 (b) require an individual to have a permit or license to purchase, own, possess,  
1068 transport, or keep a firearm.

1069 (3) In conjunction with Title 76, Chapter 10, Part 5, Weapons, this section is uniformly  
1070 applicable throughout this state and in all its political subdivisions and municipalities.

1071 (4) All authority to regulate firearms is reserved to the state except where the  
1072 Legislature specifically delegates responsibility to local authorities or state entities.

1073 (5) Unless specifically authorized by the Legislature by statute, a local authority or  
1074 state entity may not enact, establish, or enforce any ordinance, regulation, rule, or policy  
1075 pertaining to firearms that in any way inhibits or restricts the possession or use of firearms on  
1076 either public or private property.

1077 (6) As used in this section:

1078 (a) "firearm" has the same meaning as defined in ~~Subsection~~ Section 76-10-501~~(9)~~;  
1079 and

1080 (b) "local authority or state entity" includes public school districts, public schools, and  
1081 state institutions of higher education.

1082 (7) Nothing in this section restricts or expands private property rights.

1083 Section 21. Section **53A-1a-506** is amended to read:

1084 **53A-1a-506. Eligible students.**

1085 (1) As used in this section:

1086 (a) "District school" means a public school under the control of a local school board  
1087 elected pursuant to Title 20A, Chapter 14, Nomination and Election of State and Local School  
1088 Boards.

1089 (b) "Refugee" means a person who is eligible to receive benefits and services from the  
1090 federal Office of Refugee Resettlement.

1091 (2) All resident students of the state qualify for admission to a charter school, subject  
1092 to the limitations set forth in this section and Section 53A-1a-506.5.

1093 (3) (a) A charter school shall enroll an eligible student who submits a timely  
1094 application, unless the number of applications exceeds the capacity of a program, class, grade  
1095 level, or the charter school.

1096 (b) If the number of applications exceeds the capacity of a program, class, grade level,  
1097 or the charter school, students shall be selected on a random basis, except as provided in  
1098 Subsections (4) through (6).

1099 (4) A charter school may give an enrollment preference to:

1100 (a) a student of a parent who has actively participated in the development of the charter  
1101 school;

1102 (b) siblings of students presently enrolled in the charter school;

1103 (c) a student of a parent who is employed by the charter school;

1104 (d) students [~~matriculating~~] articulating between charter schools offering similar  
1105 programs that are governed by the same governing body;

1106 (e) students [~~matriculating~~] articulating from one charter school to another pursuant to  
1107 [~~a matriculation~~] an articulation agreement between the charter schools that is approved by the  
1108 State Charter School Board; or

1109 (f) students who reside within:

1110 (i) the school district in which the charter school is located;

1111 (ii) the municipality in which the charter school is located; or

1112 (iii) a two-mile radius from the charter school.

1113 (5) If a district school converts to charter status, the charter school shall give an  
1114 enrollment preference to students who would have otherwise attended it as a district school.

1115 (6) (a) A charter school whose mission is to enhance learning opportunities for  
1116 refugees or children of refugee families may give an enrollment preference to refugees or  
1117 children of refugee families.

1118 (b) A charter school whose mission is to enhance learning opportunities for English  
1119 language learners may give an enrollment preference to English language learners.

1120 (7) A charter school may not discriminate in its admission policies or practices on the  
1121 same basis as other public schools may not discriminate in their admission policies and  
1122 practices.

1123 Section 22. Section **53A-3-425** is amended to read:

1124 **53A-3-425. Association leave -- District policy.**

1125 (1) As used in this section:

1126 (a) "Association leave" means leave from a school district employee's regular school  
1127 responsibilities granted for that employee to spend time for association, employee association,  
1128 or union duties.

1129 (b) "Employee association" means an association that:

1130 (i) negotiates employee salaries, benefits, contracts, or other conditions of employment;

1131 or

1132 (ii) performs union duties.

1133 (2) Except as provided in Subsection (3), a local school board may not allow paid  
1134 association leave for a school district employee to perform an employee association or union  
1135 duty.

1136 (3) (a) A local school board may allow paid association leave for a school district  
1137 employee to perform an employee association duty if:

1138 (i) the duty performed by the employee on paid association leave will directly benefit  
1139 the school district, including representing the school district's licensed educators:

1140 (A) on a board or committee, such as the school district's foundation, a curriculum  
1141 development board, insurance committee, or catastrophic leave committee;

1142 (B) at a school district leadership meeting; or

1143 (C) at a workshop or meeting conducted by the school district's local school board;

1144 (ii) the duty performed by the employee on paid association leave does not include  
1145 political activity, including:

1146 (A) advocating for or against a candidate for public office in a partisan or nonpartisan  
1147 election;

1148 (B) soliciting a contribution for a political action committee, a political issues  
1149 committee, a registered political party, or a candidate, as defined in Section 20A-11-101; or

1150 (C) initiating, drafting, soliciting signatures for, or advocating for or against a ballot  
1151 proposition, as defined in Section 20A-1-102; and

1152 (iii) the local school board ensures compliance with the requirements of Subsections  
1153 (4)(a) through (g).

1154 (b) Prior to a school district employee's participation in paid or unpaid association  
1155 leave, a local school board shall adopt a written policy that governs association leave.

1156 (c) Except as provided in Subsection (3)(d), a local school board policy that governs  
1157 association leave shall require reimbursement to the school district of the costs for an  
1158 employee, including benefits, for the time that the employee is:

1159 (i) on unpaid association leave; or

1160 (ii) participating in a paid association leave activity that does not provide a direct  
1161 benefit to the school district.

1162 (d) For a school district that allowed association leave described in Subsections  
1163 (3)(c)(i) and (ii) prior to January 1, 2011, the local school board policy that governs association  
1164 leave may allow up to 10 days of association leave before requiring a reimbursement described  
1165 in Subsection (3)(c).

1166 (e) A reimbursement required under Subsection (3)(c), (d), or (4)(g) may be provided  
1167 by an employee, association, or union.

1168 (4) If a local school board adopts a policy to allow paid association leave, the policy  
1169 shall include procedures and controls to:

1170 (a) ensure that the duties performed by employees on paid association leave directly  
1171 benefit the school district;

1172 (b) require the school district to document the use and approval of paid association  
1173 leave;

1174 (c) require school district supervision of employees on paid association leave;

1175 (d) require the school district to account for the costs and expenses of paid association  
1176 leave;

1177 (e) ensure that during the hours of paid association leave a school district employee  
1178 may not engage in political activity, including:

1179 (i) advocating for or against a candidate for public office in a partisan or nonpartisan  
1180 election;

1181 (ii) soliciting a contribution for a political action committee, a political issues  
1182 committee, a registered political party, or a candidate, as defined in Section 20A-11-101; and

1183 (iii) initiating, drafting, soliciting signatures for, or advocating for or against a ballot  
1184 proposition, as defined in Section 20A-1-102;

1185 (f) ensure that association leave is only paid out of school district funds when the paid  
1186 association leave directly benefits the district; and

1187 (g) require the reimbursement to the school district of the cost of paid association leave  
1188 activities that do not provide a direct benefit to education within the school district.

1189 (5) If a local school board adopts a policy to allow paid association leave, that policy  
1190 shall indicate that a willful violation of this section or of a policy adopted in accordance with  
1191 Subsection (3) or (4) may be used for disciplinary action under Section 53A-8a-502.

1192 Section 23. Section **53A-25b-201** is amended to read:

1193 **53A-25b-201. Authority of the State Board of Education -- Rulemaking --**  
1194 **Superintendent -- Advisory Council.**

1195 (1) The State Board of Education is the governing board of the Utah Schools for the  
1196 Deaf and the Blind.

1197 (2) (a) The board shall appoint a superintendent for the Utah Schools for the Deaf and  
1198 the Blind.

1199 (b) The board shall make rules in accordance with Title 63G, Chapter 3, Utah  
1200 Administrative Rulemaking Act, regarding the qualifications, terms of employment, and duties  
1201 of the superintendent for the Utah Schools for the Deaf and the Blind.

1202 (3) The superintendent shall:

1203 (a) subject to the approval of the board, appoint an associate superintendent to  
1204 administer the Utah School for the Deaf based on:

1205 (i) demonstrated competency as an expert educator of deaf persons; and

1206 (ii) knowledge of school management and the instruction of deaf persons;  
1207 (b) subject to the approval of the board, appoint an associate superintendent to  
1208 administer the Utah School for the Blind based on:  
1209 (i) demonstrated competency as an expert educator of blind persons; and  
1210 (ii) knowledge of school management and the instruction of blind persons, including an  
1211 understanding of the unique needs and education of deafblind persons.  
1212 (4) (a) The board shall:  
1213 (i) establish [~~the~~] an Advisory Council for the Utah Schools for the Deaf and the Blind  
1214 and appoint no more than 11 members to the advisory council;  
1215 (ii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative  
1216 Rulemaking Act, regarding the operation of the advisory council; and  
1217 (iii) receive and consider the advice and recommendations of the advisory council but  
1218 is not obligated to follow the recommendations of the advisory council.  
1219 (b) The advisory council described in Subsection (4)(a) shall include at least:  
1220 (i) two members who are blind;  
1221 (ii) two members who are deaf; and  
1222 (iii) two members who are deafblind or parents of a deafblind child.  
1223 (5) The board shall approve the annual budget and expenditures of the Utah Schools  
1224 for the Deaf and the Blind.  
1225 (6) (a) On or before the November interim meeting each year, the board shall report to  
1226 the Education Interim Committee on the Utah Schools for the Deaf and the Blind.  
1227 (b) The report shall be presented verbally and in written form to the Education Interim  
1228 Committee and shall include:  
1229 (i) a financial report;  
1230 (ii) a report on the activities of the superintendent and associate superintendents;  
1231 (iii) a report on activities to involve parents and constituency and advocacy groups in  
1232 the governance of the school; and  
1233 (iv) a report on student achievement including:  
1234 (A) student academic achievement data, including longitudinal data for both current  
1235 and previous students served by the Utah Schools for the Deaf and the Blind;  
1236 (B) graduation rates; and



1237 (C) students exiting the Utah Schools for the Deaf and the Blind and their educational  
1238 placement after exiting the Utah Schools for the Deaf and the Blind.

1239 Section 24. Section **54-17-801** is amended to read:

1240 **54-17-801. Definitions.**

1241 As used in this part:

1242 (1) "Contract customer" means a person who executes or will execute a renewable  
1243 energy contract with a qualified utility.

1244 (2) "Qualified utility" means an electric corporation that serves more than 200,000  
1245 retail customers in the state.

1246 (3) "Renewable energy contract" means a contract under this ~~[section]~~ part for the  
1247 delivery of electricity from one or more renewable energy facilities to a contract customer  
1248 requiring the use of a qualified utility's transmission or distribution system to deliver the  
1249 electricity from a renewable energy facility to the contract customer.

1250 (4) "Renewable energy facility":

1251 (a) except as provided in Subsection (4)(b), has the same meaning as renewable energy  
1252 source defined in Section 54-17-601; and

1253 (b) does not include an electric generating facility whose costs have been included in a  
1254 qualified utility's rates as a facility providing electric service to the qualified utility's system.

1255 Section 25. Section **57-1-24.3** is amended to read:

1256 **57-1-24.3. Notices to default trustor -- Opportunity to negotiate foreclosure relief.**

1257 (1) As used in this section:

1258 (a) "Default trustor" means a trustor under a trust deed that secures a loan that the  
1259 beneficiary or servicer claims is in default.

1260 (b) "Foreclosure relief" means a mortgage modification program or other foreclosure  
1261 relief option offered by a beneficiary or servicer.

1262 (c) "Loan" means an obligation incurred for personal, family, or household purposes,  
1263 evidenced by a promissory note or other credit agreement for which a trust deed encumbering  
1264 owner-occupied residential property is given as security.

1265 (d) "Owner-occupied residential property" means real property that is occupied by its  
1266 owner as the owner's primary residence.

1267 (e) "Servicer" means an entity, retained by the beneficiary:

1268 (i) for the purpose of receiving a scheduled periodic payment from a borrower pursuant  
1269 to the terms of a loan; or

1270 (ii) that meets the definition of servicer under 12 U.S.C. Sec. 2605(i)(2) with respect to  
1271 residential mortgage loans.

1272 (f) "Single point of contact" means a person who, as the designated representative of  
1273 the beneficiary or servicer, is authorized to:

1274 (i) coordinate and ensure effective communication with a default trustor concerning:

1275 (A) foreclosure proceedings initiated by the beneficiary or servicer relating to the trust  
1276 property; and

1277 (B) any foreclosure relief offered by or acceptable to the beneficiary or servicer; and

1278 (ii) direct all foreclosure proceedings initiated by the beneficiary or servicer relating to  
1279 the trust property, including:

1280 (A) the filing of a notice of default under Section 57-1-24 and any cancellation of a  
1281 notice of default;

1282 (B) the publication of a notice of trustee's sale under Section 57-1-25; and

1283 (C) the postponement of a trustee's sale under Section 57-1-27 or this section.

1284 (2) (a) Before a notice of default is filed for record under Section 57-1-24, a beneficiary  
1285 or servicer shall:

1286 (i) designate a single point of contact; and

1287 (ii) send notice by United States mail to the default trustor.

1288 (b) A notice under Subsection (2)(a)(ii) shall:

1289 (i) advise the default trustor of the intent of the beneficiary or servicer to file a notice of  
1290 default;

1291 (ii) state:

1292 (A) the nature of the default;

1293 (B) the total amount the default trustor is required to pay in order to cure the default  
1294 and avoid the filing of a notice of default, itemized by the type and amount of each component  
1295 part of the total cure amount; and

1296 (C) the date by which the default trustor is required to pay the amount to cure the  
1297 default and avoid the filing of a notice of default;

1298 (iii) disclose the name, telephone number, email address, and mailing address of the

1299 single point of contact designated by the beneficiary or servicer; and

1300 (iv) direct the default trustor to contact the single point of contact regarding foreclosure  
1301 relief available through the beneficiary or servicer for which a default trustor may apply, if the  
1302 beneficiary or servicer offers foreclosure relief.

1303 (3) Before the expiration of the three-month period described in Subsection 57-1-24(2),  
1304 a default trustor may apply directly with the single point of contact for any available  
1305 foreclosure relief.

1306 (4) A default trustor shall, within the time required by the beneficiary or servicer,  
1307 provide all financial and other information requested by the single point of contact to enable  
1308 the beneficiary or servicer to determine whether the default trustor qualifies for the foreclosure  
1309 relief for which the default trustor applies.

1310 (5) The single point of contact shall:

1311 (a) inform the default trustor about and make available to the default [~~trust~~] trustor any  
1312 available foreclosure relief;

1313 (b) undertake reasonable and good faith efforts, consistent with applicable law, to  
1314 consider the default trustor for foreclosure relief for which the default trustor is eligible;

1315 (c) ensure timely and appropriate communication with the default trustor concerning  
1316 foreclosure relief for which the default trustor applies; and

1317 (d) notify the default trustor by United States mail of the decision of the beneficiary or  
1318 servicer regarding the foreclosure relief for which the default trustor applies.

1319 (6) Notice of a trustee's sale may not be given under Section 57-1-25 with respect to  
1320 the trust property of a default trustor who has applied for foreclosure relief until after the single  
1321 point of contact provides the notice required by Subsection (5)(d).

1322 (7) A beneficiary or servicer may cause a notice of a trustee's sale to be given with  
1323 respect to the trust property of a default trustor who has applied for foreclosure relief if, in the  
1324 exercise of the sole discretion of the beneficiary or servicer, the beneficiary or servicer:

1325 (a) determines that the default trustor does not qualify for the foreclosure relief for  
1326 which the default trustor has applied; or

1327 (b) elects not to enter into a written agreement with the default trustor to implement the  
1328 foreclosure relief.

1329 (8) (a) A beneficiary or servicer may postpone a trustee's sale of the trust property in

1330 order to allow further time for negotiations relating to foreclosure relief.

1331 (b) A postponement of a trustee's sale under Subsection (8)(a) does not require the  
1332 trustee to file for record a new or additional notice of default under Section 57-1-24.

1333 (9) A beneficiary or servicer shall cause the cancellation of a notice of default filed  
1334 under Section 57-1-24 on the trust property of a default trustor if the beneficiary or servicer:

1335 (a) determines that the default trustor qualifies for the foreclosure relief for which the  
1336 default trustor has applied; and

1337 (b) enters into a written agreement with the default trustor to implement the foreclosure  
1338 relief.

1339 (10) This section may not be construed to require a beneficiary or servicer to:

1340 (a) establish foreclosure relief; or

1341 (b) approve an application for foreclosure relief submitted by a default trustor.

1342 (11) A beneficiary and servicer shall each take reasonable measures to ensure that their  
1343 respective practices in the foreclosure of owner-occupied residential property and any  
1344 foreclosure relief with respect to a loan:

1345 (a) comply with all applicable federal and state fair lending statutes; and

1346 (b) ensure appropriate treatment of default trustors in the foreclosure process.

1347 (12) This section does not apply if the beneficiary under a trust deed securing a loan is  
1348 an individual.

1349 (13) A beneficiary or servicer is considered to have complied with the requirements of  
1350 this section if the beneficiary or servicer designates and uses a single point of contact in  
1351 compliance with federal law, rules, regulations, guidance, or guidelines governing the  
1352 beneficiary or servicer and issued by, as applicable, the Board of Governors of the Federal  
1353 Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of  
1354 the Currency, the National Credit Union Administration, or the Consumer Financial Protection  
1355 Bureau.

1356 (14) The failure of a beneficiary or servicer to comply with a requirement of this  
1357 section does not affect the validity of a trustee's sale of the trust property to a bona fide  
1358 purchaser.

1359 Section 26. Section **57-14-2** is amended to read:

1360 **57-14-2. Definitions.**

1361 As used in this chapter:

1362 [~~(4)~~] (1) "Charge" means the admission price or fee asked in return for permission to  
1363 enter or go upon the land.

1364 [~~(1)~~] (2) (a) "Land" means any land within the territorial limits of Utah.

1365 (b) "Land" includes roads, railway corridors, water, water courses, private ways and  
1366 buildings, structures, and machinery or equipment when attached to the realty.

1367 [~~(2)~~] (3) "Owner" includes the possessor of any interest in the land, whether public or  
1368 private land, a tenant, a lessor, a lessee, and an occupant or person in control of the premises.

1369 [~~(5)~~] (4) "Person" includes any person, regardless of age, maturity, or experience, who  
1370 enters upon or uses land for recreational purposes.

1371 [~~(3)~~] (5) "Recreational purpose" includes, but is not limited to, any of the following or  
1372 any combination thereof:

1373 (a) hunting;

1374 (b) fishing;

1375 (c) swimming;

1376 (d) skiing;

1377 (e) snowshoeing;

1378 (f) camping;

1379 (g) picnicking;

1380 (h) hiking;

1381 (i) studying nature;

1382 (j) waterskiing;

1383 (k) engaging in water sports;

1384 (l) engaging in equestrian activities;

1385 (m) using boats;

1386 (n) mountain biking;

1387 (o) riding narrow gauge rail cars on a narrow gauge track that does not exceed 24 inch  
1388 gauge;

1389 (p) using off-highway vehicles or recreational vehicles;

1390 (q) viewing or enjoying historical, archaeological, scenic, or scientific sites; and

1391 (r) aircraft operations.

1392 Section 27. Section **58-3a-502** is amended to read:

1393 **58-3a-502. Penalty for unlawful conduct.**

1394 (1) (a) If upon inspection or investigation, the division concludes that a person has  
1395 violated Subsections 58-1-501(1)(a) through (d) or Section 58-3a-501 or any rule or order  
1396 issued with respect to Section 58-3a-501, and that disciplinary action is appropriate, the  
1397 director or the director's designee from within the division for each alternative respectively,  
1398 shall promptly issue a citation to the person according to this chapter and any pertinent rules,  
1399 attempt to negotiate a stipulated settlement, or notify the person to appear before an  
1400 adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

1401 (i) A person who violates Subsections 58-1-501(1)(a) through (d) or Section 58-3a-501  
1402 or any rule or order issued with respect to Section 58-3a-501, as evidenced by an uncontested  
1403 citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may  
1404 be assessed a fine pursuant to this Subsection (1) and may, in addition to or in lieu of, be  
1405 ordered to cease and desist from violating Subsections 58-1-501(1)(a) through (d) or Section  
1406 58-3a-501 or any rule or order issued with respect to this section.

1407 (ii) Except for a cease and desist order, the licensure sanctions cited in Section  
1408 58-3a-401 may not be assessed through a citation.

1409 (b) A citation shall:

1410 (i) be in writing;

1411 (ii) describe with particularity the nature of the violation, including a reference to the  
1412 provision of the chapter, rule, or order alleged to have been violated;

1413 (iii) clearly state that the recipient must notify the division in writing within 20  
1414 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing  
1415 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

1416 (iv) clearly explain the consequences of failure to timely contest the citation or to make  
1417 payment of any fines assessed by the citation within the time specified in the citation.

1418 (c) The division may issue a notice in lieu of a citation.

1419 (d) Each citation issued under this section, or a copy of each citation, may be served  
1420 upon ~~[any]~~ a person upon whom a summons may be served in accordance with the Utah Rules  
1421 of Civil Procedure and may be made personally or upon the person's agent by a division  
1422 investigator or by any person specially designated by the director or by mail.

1423 (e) If within 20 calendar days from the service of the citation, the person to whom the  
1424 citation was issued fails to request a hearing to contest the citation, the citation becomes the  
1425 final order of the division and is not subject to further agency review. The period to contest a  
1426 citation may be extended by the division for cause.

1427 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation  
1428 the license of a licensee who fails to comply with a citation after it becomes final.

1429 (g) The failure of an applicant for licensure to comply with a citation after it becomes  
1430 final is a ground for denial of license.

1431 (h) No citation may be issued under this section after the expiration of six months  
1432 following the occurrence of any violation.

1433 (i) The director or the director's designee shall assess fines according to the following:

1434 (i) for a first offense handled pursuant to Subsection (1)(a), a fine of up to \$1,000;

1435 (ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to \$2,000;

1436 and

1437 (iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to  
1438 \$2,000 for each day of continued offense.

1439 (2) An action initiated for a first or second offense which has not yet resulted in a final  
1440 order of the division shall not preclude initiation of any subsequent action for a second or  
1441 subsequent offense during the pendency of any preceding action. The final order on a  
1442 subsequent action shall be considered a second or subsequent offense, respectively, provided  
1443 the preceding action resulted in a first or second offense, respectively.

1444 (3) Any penalty which is not paid may be collected by the director by either referring  
1445 the matter to a collection agency or bringing an action in the district court of the county in  
1446 which the person against whom the penalty is imposed resides or in the county where the office  
1447 of the director is located. Any county attorney or the attorney general of the state shall provide  
1448 legal assistance and advice to the director in any action to collect the penalty. In any action  
1449 brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be  
1450 awarded to the division.

1451 Section 28. Section **58-9-102** is amended to read:

1452 **58-9-102. Definitions.**

1453 In addition to the definitions in Section 58-1-102, as used in this chapter:

1454 (1) "Authorizing agent" means a person legally entitled to authorize the cremation of  
1455 human remains.

1456 (2) "Beneficiary" means the individual who, at the time of the [beneficiary's]  
1457 individual's death, is to receive the benefit of the property and services purchased under a  
1458 preneed funeral arrangement.

1459 (3) "Board" means the Board of Funeral Service created in Section 58-9-201.

1460 (4) "Body part" means:

1461 (a) a limb or other portion of the anatomy that is removed from a person or human  
1462 remains for medical purposes during treatment, surgery, biopsy, autopsy, or medical research;  
1463 or

1464 (b) a human body or any portion of a body that has been donated to science for medical  
1465 research purposes.

1466 (5) "Buyer" means a person who purchases a preneed funeral arrangement.

1467 (6) "Calcination" means a process in which a dead human body is reduced by intense  
1468 heat to a residue that is not as substantive as the residue that follows cremation.

1469 (7) "Cremated remains" means all the remains of a cremated body recovered after the  
1470 completion of the cremation process, including pulverization which leaves only bone fragments  
1471 reduced to unidentifiable dimensions and may possibly include the residue of foreign matter  
1472 including casket material, bridgework, or eyeglasses that were cremated with the human  
1473 remains.

1474 (8) "Cremation" means the technical process, using direct flame and heat, that reduces  
1475 human remains to bone fragments through heat and evaporation and includes the processing  
1476 and usually the pulverization of the bone fragments.

1477 (9) "Cremation chamber" means the enclosed space within which the cremation  
1478 process takes place and which is used exclusively for the cremation of human remains.

1479 (10) "Cremation container" means the container:

1480 (a) in which the human remains are transported to the crematory and placed in the  
1481 cremation chamber for cremation; and

1482 (b) that meets substantially all of the following standards:

1483 (i) composed of readily combustible materials suitable for cremation;

1484 (ii) able to be closed in order to provide a complete covering for the human remains;



- 1485 (iii) resistant to leakage or spillage;
- 1486 (iv) rigid enough for handling with ease; and
- 1487 (v) able to provide protection for the health, safety, and personal integrity of crematory
- 1488 personnel.
- 1489 (11) "Crematory" means the building or portion of a building that houses the cremation
- 1490 chamber and the holding facility.
- 1491 (12) "Direct disposition" means the disposition of a dead human body:
- 1492 (a) as quickly as law allows;
- 1493 (b) without preparation of the body by embalming; and
- 1494 (c) without an attendant funeral service or graveside service.
- 1495 (13) "Disposition" means the final disposal of a dead human body by:
- 1496 (a) earth interment;
- 1497 (b) above ground burial;
- 1498 (c) cremation;
- 1499 (d) calcination;
- 1500 (e) burial at sea;
- 1501 (f) delivery to a medical institution; or
- 1502 (g) other lawful means.
- 1503 (14) "Embalming" means replacing body fluids in a dead human body with preserving
- 1504 and disinfecting chemicals.
- 1505 (15) (a) "Funeral merchandise" means any of the following into which a dead human
- 1506 body is placed in connection with the transportation or disposition of the body:
- 1507 (i) a vault;
- 1508 (ii) a casket; or
- 1509 (iii) other personal property.
- 1510 (b) "Funeral merchandise" does not include:
- 1511 (i) a mausoleum crypt;
- 1512 (ii) an interment receptacle preset in a cemetery; or
- 1513 (iii) a columbarium niche.
- 1514 (16) "Funeral service" means a service, rite, or ceremony performed:
- 1515 (a) with respect to the death of a human; and

1516 (b) with the body of the deceased present.

1517 (17) "Funeral service director" means an individual licensed under this chapter who  
1518 may engage in all lawful professional activities regulated and defined under the practice of  
1519 funeral service.

1520 (18) (a) "Funeral service establishment" means a place of business at a specific street  
1521 address or location licensed under this chapter that is devoted to:

1522 (i) the embalming, care, custody, shelter, preparation for burial, and final disposition of  
1523 dead human bodies; and

1524 (ii) the furnishing of services, merchandise, and products purchased from the  
1525 establishment as a preneed provider under a preneed funeral arrangement.

1526 (b) "Funeral service establishment" includes:

1527 (i) all portions of the business premises and all tools, instruments, and supplies used in  
1528 the preparation and embalming of dead human bodies for burial, cremation, and final  
1529 disposition as defined by division rule; and

1530 (ii) a facility used by the business in which funeral services may be conducted.

1531 (19) "Funeral service intern" means an individual licensed under this chapter who is  
1532 permitted to:

1533 (a) assist a funeral service director in the embalming or other preparation of a dead  
1534 human body for disposition;

1535 (b) assist a funeral service director in the cremation, calcination, or pulverization of a  
1536 dead human body or its remains; and

1537 (c) perform other funeral service activities under the supervision of a funeral service  
1538 director.

1539 (20) "Graveside service" means a funeral service held at the location of disposition.

1540 (21) "Memorial service" means a service, rite, or ceremony performed:

1541 (a) with respect to the death of a human; and

1542 (b) without the body of the deceased present.

1543 (22) "Practice of funeral service" means:

1544 (a) supervising the receipt of custody and transportation of a dead human body to  
1545 prepare the body for:

1546 (i) disposition; or

- 1547 (ii) shipment to another location;
- 1548 (b) entering into a contract with a person to provide professional services regulated
- 1549 under this chapter;
- 1550 (c) embalming or otherwise preparing a dead human body for disposition;
- 1551 (d) supervising the arrangement or conduct of:
  - 1552 (i) a funeral service;
  - 1553 (ii) a graveside service; or
  - 1554 (iii) a memorial service;
- 1555 (e) cremation, calcination, or pulverization of a dead human body or the body's
- 1556 remains;
- 1557 (f) supervising the arrangement of:
  - 1558 (i) a disposition; or
  - 1559 (ii) a direct disposition;
- 1560 (g) facilitating:
  - 1561 (i) a disposition; or
  - 1562 (ii) a direct disposition;
- 1563 (h) supervising the sale of funeral merchandise by a funeral establishment;
- 1564 (i) managing or otherwise being responsible for the practice of funeral service in a
- 1565 licensed funeral service establishment;
- 1566 (j) supervising the sale of a preneed funeral arrangement; and
- 1567 (k) contracting with or employing individuals to sell a preneed funeral arrangement.
- 1568 (23) (a) "Preneed funeral arrangement" means a written or oral agreement sold in
- 1569 advance of the death of the beneficiary under which a person agrees with a buyer to provide at
- 1570 the death of the beneficiary any of the following as are typically provided in connection with a
- 1571 disposition:
  - 1572 (i) goods;
  - 1573 (ii) services, including:
    - 1574 (A) embalming services; and
    - 1575 (B) funeral directing services;
  - 1576 (iii) real property; or
  - 1577 (iv) personal property, including:

- 1578 (A) a casket;
- 1579 (B) another primary container;
- 1580 (C) a cremation or transportation container;
- 1581 (D) an outer burial container;
- 1582 (E) a vault;
- 1583 (F) a grave liner;
- 1584 (G) funeral clothing and accessories;
- 1585 (H) a monument;
- 1586 (I) a grave marker; and
- 1587 (J) a cremation urn.

1588 (b) "Preneed funeral arrangement" does not include a policy or product of life  
1589 insurance providing a death benefit cash payment upon the death of the beneficiary which is  
1590 not limited to providing the products or services described in Subsection (23)(a).

1591 (24) "Processing" means the reduction of identifiable bone fragments after the  
1592 completion of the cremation process to unidentifiable bone fragments by manual means.

1593 (25) "Pulverization" means the reduction of identifiable bone fragments after the  
1594 completion of the cremation and processing to granulated particles by manual or mechanical  
1595 means.

1596 (26) "Sales agent" means an individual licensed under this chapter as a preneed funeral  
1597 arrangement sales agent.

1598 (27) "Temporary container" means a receptacle for cremated remains usually made of  
1599 cardboard, plastic, or similar material designed to hold the cremated remains until an urn or  
1600 other permanent container is acquired.

1601 (28) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-9-501.

1602 (29) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-9-502.

1603 (30) "Urn" means a receptacle designed to permanently encase the cremated remains.

1604 Section 29. Section **58-13-5** is amended to read:

1605 **58-13-5. Information relating to adequacy and quality of medical care --**

1606 **Immunity from liability.**

1607 (1) As used in this section, "health care provider" has the same meaning as defined in  
1608 Section 78B-3-403.

1609 (2) (a) The division, and the boards within the division that act regarding the health  
1610 care providers defined in this section, shall adopt rules to establish procedures to obtain  
1611 information concerning the quality and adequacy of health care rendered to patients by those  
1612 health care providers.

1613 (b) It is the duty of an individual licensed under Title 58, Occupations and Professions,  
1614 as a health care provider to furnish information known to him with respect to health care  
1615 rendered to patients by any health care provider licensed under Title 58, Occupations and  
1616 Professions, as the division or a board may request during the course of the performance of its  
1617 duties.

1618 (3) A health care facility as defined in Section 26-21-2 which employs, grants  
1619 privileges to, or otherwise permits a licensed health care provider to engage in licensed practice  
1620 within the health care facility, and any professional society of licensed health care providers,  
1621 shall report any of the following events in writing to the division within 60 days after the event  
1622 occurs regarding the licensed health care provider:

1623 (a) terminating employment of an employee for cause related to the employee's practice  
1624 as a licensed health care provider;

1625 (b) terminating or restricting privileges for cause to engage in any act or practice  
1626 related to practice as a licensed health care provider;

1627 (c) terminating, suspending, or restricting membership or privileges associated with  
1628 membership in a professional association for acts of unprofessional, unlawful, incompetent, or  
1629 negligent conduct related to practice as a licensed health care provider;

1630 (d) subjecting a licensed health care provider to disciplinary action for a period of more  
1631 than 30 days;

1632 (e) a finding that a licensed health care provider has violated professional standards or  
1633 ethics;

1634 (f) a finding of incompetence in practice as a licensed health care provider;

1635 (g) a finding of acts of moral turpitude by a licensed health care provider; or

1636 (h) a finding that a licensed health care provider is engaged in abuse of alcohol or  
1637 drugs.

1638 (4) This section does not prohibit any action by a health care facility, or professional  
1639 society comprised primarily of licensed health care providers to suspend, restrict, or revoke the

1640 employment, privileges, or membership of a health care provider.

1641 (5) The data and information obtained in accordance with this section is classified as a  
1642 "protected" record under Title 63G, Chapter 2, Government Records Access and Management  
1643 Act.

1644 (6) (a) Any person or organization furnishing information in accordance with this  
1645 section in response to the request of the division or a board, or voluntarily, is immune from  
1646 liability with respect to information provided in good faith and without malice, which good  
1647 faith and lack of malice is presumed to exist absent clear and convincing evidence to the  
1648 contrary.

1649 (b) The members of the board are immune from liability for any decisions made or  
1650 actions taken in response to information acquired by the board if those decisions or actions are  
1651 made in good faith and without malice, which good faith and lack of malice is presumed to  
1652 exist absent clear and convincing evidence to the contrary.

1653 (7) An individual who is a member of a hospital administration, board, committee,  
1654 department, medical staff, or professional organization of health care providers [is], and any  
1655 hospital, other health care entity, or professional organization conducting or sponsoring the  
1656 review, is immune from liability arising from participation in a review of a health care  
1657 provider's professional ethics, medical competence, moral turpitude, or substance abuse.

1658 (8) This section does not exempt a person licensed under Title 58, Occupations and  
1659 Professions, from complying with any reporting requirements established under state or federal  
1660 law.

1661 Section 30. Section **58-17b-103** is amended to read:

1662 **58-17b-103. Administrative inspections.**

1663 (1) The division may for the purpose of ascertaining compliance with the provisions of  
1664 this chapter, require a self-audit or enter and inspect the business premises of a person:

1665 (a) licensed under Part 3, Licensing; or

1666 (b) who is engaged in activities that require a license under Part 3, Licensing.

1667 (2) Before conducting an inspection under Subsection (1), the division shall, after  
1668 identifying the person in charge:

1669 (a) give proper identification;

1670 (b) request to see the applicable license or licenses;

1671 (c) describe the nature and purpose of the inspection; and  
1672 (d) provide, upon request, the authority of the division to conduct the inspection and  
1673 the penalty for refusing to permit the inspection as provided in Section 58-17b-504.

1674 (3) In conducting an inspection under Subsection (1), the division may, after meeting  
1675 the requirements of Subsection (2):

1676 (a) examine any record, prescription, order, drug, device, equipment, machine,  
1677 electronic device or media, or area related to activities for which a license has been issued or is  
1678 required by Part 3, Licensing, for the purpose of ascertaining compliance with the applicable  
1679 provisions of this chapter;

1680 (b) take a drug or device for further analysis if considered necessary;

1681 (c) temporarily seize a drug or device which is suspected to be adulterated, misbranded,  
1682 outdated, or otherwise in violation of this chapter, pending an adjudicative proceeding on the  
1683 matter;

1684 (d) box and seal drugs suspected to be adulterated, outdated, misbranded, or otherwise  
1685 in violation of this chapter; and

1686 (e) dispose of or return any drug or device obtained under this Subsection (3) in  
1687 accordance with procedures established by division rule.

1688 (4) An inspection conducted under Subsection (1) shall be during regular business  
1689 hours.

1690 (5) If, upon inspection, the division concludes that a person has violated the provisions  
1691 of this chapter or Chapter 37, Utah Control Substances Act, or any rule or order issued with  
1692 respect to those chapters, and that disciplinary action is appropriate, the director or the  
1693 director's designee shall promptly issue a fine or citation to the licensee in accordance with  
1694 Section 58-17b-504.

1695 Section 31. Section **58-17b-309** is amended to read:

1696 **58-17b-309. Exemptions from licensure.**

1697 (1) For purposes of this section:

1698 (a) "Cosmetic drug":

1699 (i) means a prescription drug that is:

1700 (A) for the purpose of promoting attractiveness or altering the appearance of an  
1701 individual; and

1702 (B) listed as a cosmetic drug subject to the exemption under this section by the division  
1703 by administrative rule or has been expressly approved for online dispensing, whether or not it is  
1704 dispensed online or through a physician's office; and

1705 (ii) does not include a prescription drug that is:

1706 (A) a controlled substance;

1707 (B) compounded by the physician; or

1708 (C) prescribed or used for the patient for the purpose of diagnosing, curing, or  
1709 preventing a disease.

1710 (b) "Injectable weight loss drug":

1711 (i) means an injectable prescription drug:

1712 (A) prescribed to promote weight loss; and

1713 (B) listed as an injectable prescription drug subject to exemption under this section by  
1714 the division by administrative rule; and

1715 (ii) does not include a prescription drug that is a controlled substance.

1716 (c) "Prescribing practitioner" means an individual licensed under:

1717 (i) Chapter 31b, Nurse Practice Act, as an advanced practice registered nurse with  
1718 prescriptive practice;

1719 (ii) Chapter 67, Utah Medical Practice Act;

1720 (iii) Chapter 68, Utah Osteopathic Medical Practice Act; or

1721 (iv) Chapter 70a, Physician Assistant Act.

1722 (2) In addition to the exemptions from licensure in Sections 58-1-307 and  
1723 58-17b-309.5, the following individuals may engage in the acts or practices described in this  
1724 section without being licensed under this chapter:

1725 (a) if the individual is described in Subsections (2)(b), (d), [~~and~~] or (e), the individual  
1726 notifies the division in writing of the individual's intent to dispense a drug under this  
1727 subsection;

1728 (b) a person selling or providing contact lenses in accordance with Section 58-16a-801;

1729 (c) an individual engaging in the practice of pharmacy technician under the direct  
1730 personal supervision of a pharmacist while making satisfactory progress in an approved  
1731 program as defined in division rule;

1732 (d) a prescribing practitioner who prescribes and dispenses a cosmetic drug or an



1733 injectable weight loss drug to the prescribing practitioner's patient in accordance with  
1734 Subsection (4); or

1735 (e) an optometrist, as defined in Section 58-16a-102, acting within the optometrist's  
1736 scope of practice as defined in Section 58-16a-601, who prescribes and dispenses a cosmetic  
1737 drug to the optometrist's patient in accordance with Subsection (4).

1738 (3) In accordance with Subsection 58-1-303(1)(a), an individual exempt under  
1739 Subsection (2)(c) must take all examinations as required by division rule following completion  
1740 of an approved curriculum of education, within the required time frame. This exemption  
1741 expires immediately upon notification of a failing score of an examination, and the individual  
1742 may not continue working as a pharmacy technician even under direct supervision.

1743 (4) A prescribing practitioner or optometrist is exempt from licensing under the  
1744 provisions of this part if the prescribing practitioner or optometrist:

1745 (a) (i) writes a prescription for a drug the prescribing practitioner or optometrist has the  
1746 authority to dispense under Subsection (4)(b); and

1747 (ii) informs the patient:

1748 (A) that the prescription may be filled at a pharmacy or dispensed in the prescribing  
1749 practitioner's or optometrist's office;

1750 (B) of the directions for appropriate use of the drug;

1751 (C) of potential side-effects to the use of the drug; and

1752 (D) how to contact the prescribing practitioner or optometrist if the patient has  
1753 questions or concerns regarding the drug;

1754 (b) dispenses a cosmetic drug or injectable weight loss drug only to the prescribing  
1755 practitioner's patients or for an optometrist, dispenses a cosmetic drug only to the optometrist's  
1756 patients;

1757 (c) follows labeling, record keeping, patient counseling, storage, purchasing and  
1758 distribution, operating, treatment, and quality of care requirements established by  
1759 administrative rule adopted by the division in consultation with the boards listed in Subsection  
1760 (5)(a); and

1761 (d) follows USP-NF 797 standards for sterile compounding if the drug dispensed to  
1762 patients is reconstituted or compounded.

1763 (5) (a) The division, in consultation with the board under this chapter and the relevant

1764 professional board, including the Physician Licensing Board, the Osteopathic Physician  
1765 Licensing Board, the Physician Assistant Licensing Board, the Board of Nursing, the  
1766 Optometrist Licensing Board, or the Online Prescribing, Dispensing, and Facilitation Board,  
1767 shall adopt administrative rules pursuant to Title 63G, Chapter 3, Utah Administrative  
1768 Rulemaking Act to designate:

1769 (i) the prescription drugs that may be dispensed as a cosmetic drug or weight loss drug  
1770 under this section; and

1771 (ii) the requirements under Subsection (4)(c).

1772 (b) When making a determination under Subsection (1)(a), the division and boards  
1773 listed in Subsection (5)(a)[;] may consider any federal Food and Drug Administration  
1774 indications or approval associated with a drug when adopting a rule to designate a prescription  
1775 drug that may be dispensed under this section.

1776 (c) The division may inspect the office of a prescribing practitioner or optometrist who  
1777 is dispensing under the provisions of this section, in order to determine whether the prescribing  
1778 practitioner or optometrist is in compliance with the provisions of this section. If a prescribing  
1779 practitioner or optometrist chooses to dispense under the provisions of this section, the  
1780 prescribing practitioner or optometrist consents to the jurisdiction of the division to inspect the  
1781 prescribing practitioner's or optometrist's office and determine if the provisions of this section  
1782 are being met by the prescribing practitioner [~~and~~] or optometrist.

1783 (d) If a prescribing practitioner or optometrist violates a provision of this section, the  
1784 prescribing practitioner or optometrist may be subject to discipline under:

1785 (i) this chapter; and

1786 (ii) (A) Chapter 16a, Utah Optometry Practice Act;

1787 (B) Chapter 31b, Nurse Practice Act;

1788 (C) Chapter 67, Utah Medical Practice Act;

1789 (D) Chapter 68, Utah Osteopathic Medical Practice Act;

1790 (E) Chapter 70a, Physician Assistant Act; or

1791 (F) Chapter 83, Online Prescribing, Dispensing, and Facilitation Act.

1792 (6) Except as provided in Subsection (2)(e), this section does not restrict or limit the  
1793 scope of practice of an optometrist or optometric physician licensed under Chapter 16a, Utah  
1794 Optometry Practice Act.

1795 Section 32. Section **58-22-102** is amended to read:

1796 **58-22-102. Definitions.**

1797 In addition to the definitions in Section 58-1-102, as used in this chapter:

1798 (1) "Board" means the Professional Engineers and Professional Land Surveyors  
1799 Licensing Board created in Section 58-22-201.

1800 (2) "Building" means a structure which has human occupancy or habitation as its  
1801 principal purpose, and includes the structural, mechanical, and electrical systems, utility  
1802 services, and other facilities required for the building, and is otherwise governed by the State  
1803 Construction Code or an approved code under Title 15A, State Construction and Fire Codes  
1804 Act.

1805 (3) "Complete construction plans" means a final set of plans, specifications, and reports  
1806 for a building or structure that normally includes:

- 1807 (a) floor plans;
- 1808 (b) elevations;
- 1809 (c) site plans;
- 1810 (d) foundation, structural, and framing detail;
- 1811 (e) electrical, mechanical, and plumbing design;
- 1812 (f) information required by the energy code;
- 1813 (g) specifications and related calculations as appropriate; and
- 1814 (h) all other documents required to obtain a building permit.

1815 (4) "EAC/ABET" means the Engineering Accreditation Commission/Accreditation  
1816 Board for Engineering and Technology.

1817 (5) "Fund" means the Professional Engineer, Professional Structural Engineer, and  
1818 Professional Land Surveyor Education and Enforcement Fund created in Section 58-22-103.

1819 (6) "NCEES" means the National Council of Examiners for Engineering and  
1820 Surveying.

1821 (7) "Principal" means a licensed professional engineer, professional structural engineer,  
1822 or professional land surveyor having responsible charge of an organization's professional  
1823 engineering, professional structural engineering, or professional land surveying practice.

1824 (8) "Professional engineer" means a person licensed under this chapter as a  
1825 professional engineer.

1826 (9) (a) "Professional engineering or the practice of engineering" means a service or  
1827 creative work, the adequate performance of which requires engineering education, training, and  
1828 experience in the application of special knowledge of the mathematical, physical, and  
1829 engineering sciences to the service or creative work as consultation, investigation, evaluation,  
1830 planning, design, and design coordination of engineering works and systems, planning the use  
1831 of land and water, facility programming, performing engineering surveys and studies, and the  
1832 review of construction for the purpose of monitoring compliance with drawings and  
1833 specifications; any of which embraces these services or work, either public or private, in  
1834 connection with any utilities, structures, buildings, machines, equipment, processes, work  
1835 systems, projects, and industrial or consumer products or equipment of a mechanical, electrical,  
1836 hydraulic, pneumatic, or thermal nature, and including other professional services as may be  
1837 necessary to the planning, progress, and completion of any engineering services.

1838 (b) The practice of professional engineering does not include the practice of  
1839 architecture as defined in Section 58-3a-102, but a licensed professional engineer may perform  
1840 architecture work as is incidental to the practice of engineering.

1841 (10) "Professional engineering intern" means a person who:

1842 (a) has completed the education requirements to become a professional engineer;

1843 (b) has passed the fundamentals of engineering examination; and

1844 (c) is engaged in obtaining the four years of qualifying experience for licensure under  
1845 the direct supervision of a licensed professional engineer.

1846 (11) "Professional land surveying or the practice of land surveying" means a service or  
1847 work, the adequate performance of which requires the application of special knowledge of the  
1848 principles of mathematics, the related physical and applied sciences, and the relevant  
1849 requirements of law for adequate evidence to the act of measuring and locating lines, angles,  
1850 elevations, natural and man-made features in the air, on the surface of the earth, within  
1851 underground workings, and on the beds of bodies of water for the purpose of determining areas  
1852 and volumes, for the monumenting or locating of property boundaries or points controlling  
1853 boundaries, and for the platting and layout of lands and subdivisions of lands, including the  
1854 topography, alignment and grades of streets, and for the preparation and perpetuation of maps,  
1855 record plats, field notes records, and property descriptions that represent these surveys and  
1856 other duties as sound surveying practices could direct.

1857 (12) "Professional land surveyor" means an individual licensed under this chapter as a  
1858 professional land surveyor.

1859 (13) "Professional structural engineer" means a person licensed under this chapter as a  
1860 professional structural engineer.

1861 (14) "Professional structural engineering or the practice of structural engineering"  
1862 means a service or creative work in the following areas, and may be further defined by rule by  
1863 the division in collaboration with the board:

1864 (a) providing structural engineering services for significant structures including:

1865 (i) buildings and other structures representing a substantial hazard to human life, which  
1866 include:

1867 (A) buildings and other structures whose primary occupancy is public assembly with an  
1868 occupant load greater than 300;

1869 (B) buildings and other structures with elementary school, secondary school, or day  
1870 care facilities with an occupant load greater than 250;

1871 (C) buildings and other structures with an occupant load greater than 500 for colleges  
1872 or adult education facilities;

1873 (D) health care facilities with an occupant load of 50 or more resident patients, but not  
1874 having surgery or emergency treatment facilities;

1875 (E) jails and detention facilities with a gross area greater than 3,000 square feet; or

1876 (F) an occupancy with an occupant load greater than 5,000;

1877 (ii) buildings and other structures designated as essential facilities, including:

1878 (A) hospitals and other health care facilities having surgery or emergency treatment  
1879 facilities with a gross area greater than 3,000 square feet;

1880 (B) fire, rescue, and police stations and emergency vehicle garages with a mean height  
1881 greater than 24 feet or a gross area greater than 5,000 square feet;

1882 (C) designated earthquake, hurricane, or other emergency shelters with a gross area  
1883 greater than 3,000 square feet;

1884 (D) designated emergency preparedness, communication, and operation centers and  
1885 other buildings required for emergency response with a mean height more than 24 feet or a  
1886 gross area greater than 5,000 square feet;

1887 (E) power-generating stations and other public utility facilities required as emergency

1888 backup facilities with a gross area greater than 3,000 square feet;

1889 (F) structures with a mean height more than 24 feet or a gross area greater than 5,000  
1890 square feet containing highly toxic materials as defined by the division by rule, where the  
1891 quantity of the material exceeds the maximum allowable quantities set by the division by rule;  
1892 and

1893 (G) aviation control towers, air traffic control centers, and emergency aircraft hangars  
1894 at commercial service and cargo air services airports as defined by the Federal Aviation  
1895 Administration with a mean height greater than 35 feet or a gross area greater than 20,000  
1896 square feet; and

1897 (iii) buildings and other structures requiring special consideration, including:

1898 (A) structures or buildings that are:

1899 (I) normally occupied by human beings; and

1900 (II) five stories or more in height; or

1901 (III) that have an average roof height more than 60 feet above the average ground level  
1902 measured at the perimeter of the structure; or

1903 (B) all buildings over 200,000 aggregate gross square feet in area; and

1904 (b) includes the definition of professional engineering or the practice of professional  
1905 engineering as provided in Subsection (9).

1906 (15) "Structure" means that which is built or constructed, an edifice or building of any  
1907 kind, or a piece of work artificially built up or composed of parts joined together in a definite  
1908 manner, and as otherwise governed by the State Construction Code or an approved code under  
1909 Title 15A, State Construction and Fire Codes Act.

1910 (16) "Supervision of an employee, subordinate, associate, or drafter of a licensee"  
1911 means that a licensed professional engineer, professional structural engineer, or professional  
1912 land surveyor is responsible for and personally reviews, corrects when necessary, and approves  
1913 work performed by an employee, subordinate, associate, or drafter under the direction of the  
1914 licensee, and may be further defined by rule by the division in collaboration with the board.

1915 (17) "TAC/ABET" means the Technology Accreditation Commission/Accreditation  
1916 Board for Engineering and Technology.

1917 (18) "Unlawful conduct" is defined in Sections 58-1-501 and 58-22-501.

1918 (19) "Unprofessional conduct" as defined in Section 58-1-501 may be further defined

1919 by rule by the division in collaboration with the board.

1920 Section 33. Section **58-22-201** is amended to read:

1921 **58-22-201. Board.**

1922 (1) There is created a Professional Engineers and Professional Land Surveyors  
1923 Licensing Board. The board shall consist of four licensed professional engineers, one licensed  
1924 professional structural engineer, one licensed professional land surveyor, and one member from  
1925 the general public. The composition of the four professional engineers on the board shall be  
1926 representative of the various professional engineering disciplines.

1927 (2) The board shall be appointed and shall serve in accordance with Section 58-1-201.  
1928 The members of the board who are professional engineers shall be appointed from among  
1929 nominees recommended by representative engineering societies in this state. The member of  
1930 the board who is a land surveyor shall be appointed from among nominees recommended by  
1931 representative professional land surveyor societies.

1932 (3) The duties and responsibilities of the board shall be in accordance with Sections  
1933 58-1-202 and 58-1-203. In addition, the board shall designate one of its members on a  
1934 permanent or rotating basis to:

1935 (a) assist the division in reviewing complaints concerning the unlawful or  
1936 unprofessional conduct of a [~~license~~] licensee; and

1937 (b) advise the division in its investigation of these complaints.

1938 (4) A board member who has, under Subsection (3), reviewed a complaint or advised  
1939 in its investigation may be disqualified from participating with the board when the board serves  
1940 as a presiding officer in an adjudicative proceeding concerning the complaint.

1941 Section 34. Section **58-22-503** is amended to read:

1942 **58-22-503. Penalty for unlawful conduct.**

1943 (1) (a) If upon inspection or investigation, the division concludes that a person has  
1944 violated Subsections 58-1-501(1)(a) through (d) or Section 58-22-501 or any rule or order  
1945 issued with respect to Section 58-22-501, and that disciplinary action is appropriate, the  
1946 director or the director's designee from within the division for each alternative respectively,  
1947 shall promptly issue a citation to the person according to this chapter and any pertinent rules,  
1948 attempt to negotiate a stipulated settlement, or notify the person to appear before an  
1949 adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

1950 (i) A person who violates Subsections 58-1-501(1)(a) through (d) or Section 58-22-501  
1951 or any rule or order issued with respect to Section 58-22-501, as evidenced by an uncontested  
1952 citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may  
1953 be assessed a fine pursuant to this Subsection (1) and may, in addition to or in lieu of, be  
1954 ordered to cease and desist from violating Subsections 58-1-501(1)(a) through (d) or Section  
1955 58-22-501 or any rule or order issued with respect to this section.

1956 (ii) Except for a cease and desist order, the licensure sanctions cited in Section  
1957 58-22-401 may not be assessed through a citation.

1958 (b) A citation shall:

1959 (i) be in writing;

1960 (ii) describe with particularity the nature of the violation, including a reference to the  
1961 provision of the chapter, rule, or order alleged to have been violated;

1962 (iii) clearly state that the recipient must notify the division in writing within 20  
1963 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing  
1964 conducted under Title 63G, Chapter 4, Administrative Procedures Act; and

1965 (iv) clearly explain the consequences of failure to timely contest the citation or to make  
1966 payment of any fines assessed by the citation within the time specified in the citation.

1967 (c) The division may issue a notice in lieu of a citation.

1968 (d) Each citation issued under this section, or a copy of each citation, may be served  
1969 upon ~~any~~ a person upon whom a summons may be served in accordance with the Utah Rules  
1970 of Civil Procedure and may be made personally or upon the person's agent by a division  
1971 investigator or by any person specially designated by the director or by mail.

1972 (e) If within 20 calendar days from the service of the citation, the person to whom the  
1973 citation was issued fails to request a hearing to contest the citation, the citation becomes the  
1974 final order of the division and is not subject to further agency review. The period to contest a  
1975 citation may be extended by the division for cause.

1976 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation  
1977 the license of a licensee who fails to comply with a citation after it becomes final.

1978 (g) The failure of an applicant for licensure to comply with a citation after it becomes  
1979 final is a ground for denial of license.

1980 (h) No citation may be issued under this section after the expiration of six months



1981 following the occurrence of any violation.

1982 (i) The director or the director's designee shall assess fines according to the following:

1983 (i) for a first offense handled pursuant to Subsection (1)(a), a fine of up to \$1,000;

1984 (ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to \$2,000;

1985 and

1986 (iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to

1987 \$2,000 for each day of continued offense.

1988 (2) An action initiated for a first or second offense which has not yet resulted in a final

1989 order of the division shall not preclude initiation of any subsequent action for a second or

1990 subsequent offense during the pendency of any preceding action. The final order on a

1991 subsequent action shall be considered a second or subsequent offense, respectively, provided

1992 the preceding action resulted in a first or second offense, respectively.

1993 (3) Any penalty which is not paid may be collected by the director by either referring

1994 the matter to a collection agency or bringing an action in the district court of the county in

1995 which the person against whom the penalty is imposed resides or in the county where the office

1996 of the director is located. Any county attorney or the attorney general of the state shall provide

1997 legal assistance and advice to the director in any action to collect the penalty. In any action

1998 brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be

1999 awarded to the division.

2000 Section 35. Section **58-26a-102** is amended to read:

2001 **58-26a-102. Definitions.**

2002 In addition to the definitions in Section 58-1-102, as used in this chapter:

2003 (1) "Accounting experience" means applying accounting and auditing skills and

2004 principles that are taught as a part of the professional education qualifying a person for

2005 licensure under this chapter and generally accepted by the profession, under the supervision of

2006 a licensed certified public accountant.

2007 (2) "AICPA" means the American Institute of Certified Public Accountants.

2008 (3) (a) "Attest and attestation engagement" means providing any or all of the following

2009 financial statement services:

2010 (i) an audit or other engagement to be performed in accordance with the Statements on

2011 Auditing Standards (SAS);

2012 (ii) a review of a financial statement to be performed in accordance with the Statements  
2013 on Standards for Accounting and Review Services (SSARS);

2014 (iii) an examination of prospective financial information to be performed in accordance  
2015 with the Statements on Standards for Attestation Engagements (SSAE); or

2016 (iv) an engagement to be performed in accordance with the standards of the PCAOB.

2017 (b) The standards specified in this definition shall be adopted by reference by the  
2018 division under its rulemaking authority in accordance with Title 63G, Chapter 3, Utah  
2019 Administrative Rulemaking Act, and shall be those developed for general application by  
2020 recognized national accountancy organizations such as the AICPA and the PCAOB.

2021 (4) "Board" means the Utah Board of Accountancy created in Section 58-26a-201.

2022 (5) "Certified Public Accountant" or "CPA" means an individual currently licensed by  
2023 this state or any other state, district, or territory of the United States of America to practice  
2024 public accountancy or who has been granted a license as a certified public accountant under  
2025 prior law or this chapter.

2026 (6) "Certified Public Accountant firm" or "CPA firm" means a qualified business entity  
2027 holding a valid registration as a Certified Public Accountant firm under this chapter.

2028 (7) "Client" means the person who retains a licensee for the performance of one or  
2029 more of the services included in the definition of the practice of public accountancy. "Client"  
2030 does not include a CPA's employer when the licensee works in a salaried or hourly rate  
2031 position.

2032 (8) "Compilation" means providing a service to be performed in accordance with  
2033 Statements on Standards for Accounting and Review Services (SSARS) that is presenting, in  
2034 the form of financial statements, information that is the representation of management or  
2035 owners, without undertaking to express any assurance on the statements.

2036 (9) "Experience" means:

2037 (a) accounting experience; or

2038 (b) professional experience.

2039 (10) "Licensee" means the holder of a current valid license issued under this chapter.

2040 (11) "NASBA" means the National Association of State Boards of Accountancy.

2041 (12) "PCAOB" means the Public Company Accounting Oversight Board.

2042 (13) "Practice of public accounting" means the offer to perform or the performance by

2043 a person holding himself out as a certified public accountant of one or more kinds of services  
2044 involving the use of auditing or accounting skills including the issuance of reports or opinions  
2045 on financial statements, performing attestation engagements, the performance of one or more  
2046 kinds of advisory or consulting services, or the preparation of tax returns or the furnishing of  
2047 advice on tax matters for a client.

2048 (14) "Peer review" means a study, appraisal, or review of one or more aspects of the  
2049 professional work of a person or qualified business entity in the practice of public accountancy,  
2050 by a licensee or any other qualified person in accordance with rules adopted pursuant to this  
2051 chapter and who is not affiliated with the person or qualified business entity being reviewed.

2052 (15) "Principal place of business" means the office location designated by the licensee  
2053 for purposes of substantial equivalency and licensure by endorsement.

2054 (16) "Professional experience" means experience lawfully obtained while licensed as a  
2055 certified public accountant in another jurisdiction, recognized by rule, in the practice of public  
2056 accountancy performed for a client, which includes expression of assurance or opinion.

2057 (17) "Qualified business entity" means a sole proprietorship, corporation, limited  
2058 liability company, or partnership engaged in the practice of public accountancy.

2059 (18) "Qualified continuing professional education" means a formal program of  
2060 education that contributes directly to the professional competence of a certified public  
2061 accountant.

2062 (19) "Qualifying examinations" means:

2063 (a) the AICPA Uniform CPA Examination;

2064 (b) the AICPA Examination of Professional Ethics for CPAs;

2065 (c) the Utah Laws and Rules Examination; and

2066 (d) any other examination approved by the board and adopted by the division by rule in  
2067 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

2068 (20) (a) "Report" means:

2069 (i) when used with reference to financial statements, an opinion, report or other form of  
2070 language that:

2071 (A) states or implies assurance as to the reliability of any financial statements; or

2072 (B) implies that the person or firm issuing it has special knowledge or competence in  
2073 accounting or auditing and specifically includes compilations and reviews; such an implication

2074 of special knowledge or competence may arise from use by the issuer of the report of names or  
2075 titles indicating that the person or firm is a public accountant or auditor, or from the language  
2076 of the report itself; or

2077 (ii) any disclaimer of opinion when it is conventionally understood to imply any  
2078 positive assurance as to the reliability of the financial statements referred to or language  
2079 suggesting special competence on the part of the person or firm issuing such language; and it  
2080 includes any other form of language that is conventionally understood to imply such assurance  
2081 or such special knowledge or competence.

2082 (b) "Report" does not include a financial statement prepared by an unlicensed person if:

2083 (i) that financial statement has a cover page which includes essentially the following  
2084 language: "I (we) have prepared the accompanying financial statements of (name of entity) as  
2085 of (time period) for the (period) then ended. This presentation is limited to preparing, in the  
2086 form of financial statements, information that is the representation of management (owners). I  
2087 (we) have not audited or reviewed the accompanying financial statements and accordingly do  
2088 not express an opinion or any other form of assurance on them."; and

2089 (ii) the cover page and any related footnotes do not use the terms "compilation,"  
2090 "review," "audit," "generally accepted auditing standards," "generally accepted accounting  
2091 principles," or other similar terms.

2092 (21) "Review of financial statements" means performing inquiry and analytical  
2093 procedures which provide a reasonable basis for expressing limited assurance that there are no  
2094 material modifications that should be made to the statements in order for them to be in  
2095 conformity with generally accepted accounting principles or, if applicable, with another  
2096 comprehensive basis of accounting; and, the issuance of a report on the financial statements  
2097 stating that a review was performed in accordance with the standards established by the  
2098 American Institute of Certified Public Accountants.

2099 (22) (a) "Substantial equivalency" means a determination by the division in  
2100 collaboration with the board or its designee that:

2101 (i) the education, examination, and experience requirements set forth in the statutes and  
2102 administrative rules of another jurisdiction are comparable to or exceed the education,  
2103 examination, and experience requirements set forth in the Uniform Accountancy Act; or

2104 (ii) an individual CPA's education, examination, and experience qualifications are

2105 comparable to or exceed the education, examination, and experience requirements set forth in  
2106 the Uniform Accountancy Act.

2107 (b) In ascertaining whether an individual's qualifications are substantially equivalent as  
2108 used in this chapter, the division in collaboration with the board shall take into account the  
2109 qualifications without regard to the sequence in which the education, examination, and  
2110 experience requirements were attained.

2111 (23) "Uniform Accountancy Act" means the model public accountancy legislation  
2112 developed and promulgated by national accounting and regulatory associations that contains  
2113 standardized definitions and regulations for the practice of public accounting as recognized by  
2114 the division in collaboration with the board.

2115 (24) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-26a-501.

2116 (25) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-26a-502 and  
2117 as may be further defined by rule.

2118 (26) "Year of experience" means 2,000 hours of cumulative experience.

2119 Section 36. Section **58-28-307** is amended to read:

2120 **58-28-307. Exemptions from chapter.**

2121 In addition to the exemptions from licensure in Section 58-1-307 this chapter does not  
2122 apply to:

2123 (1) any person who practices veterinary medicine, surgery, or dentistry upon any  
2124 animal owned by him, and the employee of that person when the practice is upon an animal  
2125 owned by his employer, and incidental to his employment, except:

2126 (a) this exemption does not apply to any person, or his employee, when the ownership  
2127 of an animal was acquired for the purpose of circumventing this chapter; and

2128 (b) this exemption does not apply to the administration, dispensing, or prescribing of a  
2129 prescription drug, or nonprescription drug intended for off label use, unless the administration,  
2130 dispensing, or prescribing of the drug is obtained through an existing veterinarian-patient  
2131 relationship;

2132 (2) any person who as a student at a veterinary college approved by the board engages  
2133 in the practice of veterinary medicine, surgery, and dentistry as part of his academic training  
2134 and under the direct supervision and control of a licensed veterinarian, if that practice is during  
2135 the last two years of the college course of instruction and does not exceed an 18-month

2136 duration;

2137 (3) a veterinarian who is an officer or employee of the government of the United  
2138 States, or the state, or its political subdivisions, and technicians under his supervision, while  
2139 engaged in the practice of veterinary medicine, surgery, or dentistry for that government;

2140 (4) any person while engaged in the vaccination of poultry, pullorum testing, typhoid  
2141 testing of poultry, and related poultry disease control activity;

2142 (5) any person who is engaged in bona fide and legitimate medical, dental,  
2143 pharmaceutical, or other scientific research, if that practice of veterinary medicine, surgery, or  
2144 dentistry is directly related to, and a necessary part of, that research;

2145 (6) veterinarians licensed under the laws of another state rendering professional  
2146 services in association with licensed veterinarians of this state for a period not to exceed 90  
2147 days;

2148 (7) registered pharmacists of this state engaged in the sale of veterinary supplies,  
2149 instruments, and medicines, if the sale is at his regular place of business;

2150 (8) any person in this state engaged in the sale of veterinary supplies, instruments, and  
2151 medicines, except prescription drugs which must be sold in compliance with state and federal  
2152 regulations, if the supplies, instruments, and medicines are sold in original packages bearing  
2153 adequate identification and directions for application and administration and the sale is made in  
2154 the regular course of, and at the regular place of business;

2155 (9) any person rendering emergency first aid to animals in those areas where a licensed  
2156 veterinarian is not available, and if suspicious reportable diseases are reported immediately to  
2157 the state veterinarian;

2158 (10) any person performing or teaching nonsurgical bovine artificial insemination;

2159 (11) any person affiliated with an institution of higher education who teaches  
2160 nonsurgical bovine embryo transfer or any technician trained by or approved by an institution  
2161 of higher education who performs nonsurgical bovine embryo transfer, but only if any  
2162 prescription drug used in the procedure is prescribed and administered under the direction of a  
2163 veterinarian licensed to practice in Utah;

2164 (12) (a) upon written referral by a licensed veterinarian, the practice of animal  
2165 chiropractic by a chiropractic physician licensed under Chapter 73, Chiropractic Physician  
2166 Practice Act, who has completed an animal chiropractic course approved by the American

2167 Veterinary Chiropractic Association or the division;

2168 (b) upon written referral by a licensed veterinarian, the practice of animal physical  
2169 therapy by a physical therapist licensed under Chapter 24b, Physical Therapy Practice Act, who  
2170 has completed at least 100 hours of animal physical therapy training, including quadruped  
2171 anatomy and hands-on training, approved by the division;

2172 (c) upon written referral by a licensed veterinarian, the practice of animal massage  
2173 therapy by a massage therapist licensed under Chapter 47b, Massage Therapy Practice Act,  
2174 who has completed at least 60 hours of animal massage therapy training, including quadruped  
2175 anatomy and hands-on training, approved by the division; and

2176 (d) upon written referral by a licensed veterinarian, the practice of acupuncture by an  
2177 acupuncturist licensed under Chapter 72, Acupuncture Licensing Act, who has completed a  
2178 course of study on animal acupuncture approved by the division;

2179 (13) unlicensed assistive personnel performing duties appropriately delegated to the  
2180 unlicensed assistive personnel in accordance with Section 58-28-502;

2181 (14) an animal shelter employee who is:

2182 (a) acting under the indirect supervision of a licensed veterinarian; and

2183 (b) performing animal euthanasia in the course and scope of employment; and

2184 (15) an individual providing appropriate training for animals[?]; however, this  
2185 exception does not include diagnosing any medical condition, or prescribing or dispensing any  
2186 prescription drugs or therapeutics.

2187 Section 37. Section **58-37-10** is amended to read:

2188 **58-37-10. Search warrants -- Administrative inspection warrants -- Inspections**  
2189 **and seizures of property without warrant.**

2190 (1) Search warrants relating to offenses involving controlled substances may be  
2191 authorized pursuant to the Utah Rules of Criminal Procedure.

2192 (2) Issuance and execution of administrative inspection warrants shall be as follows:

2193 (a) Any judge or magistrate of this state within his jurisdiction upon proper oath or  
2194 affirmation showing probable cause, may issue warrants for the purpose of conducting  
2195 administrative inspections authorized by this act or regulations thereunder and seizures of  
2196 property appropriate to such inspections. Probable cause for purposes of this act exists upon  
2197 showing a valid public interest in the effective enforcement of the act or rules promulgated

2198 thereunder sufficient to justify administrative inspection of the area, premises, building, or  
2199 conveyance in the circumstances specified in the application for the warrant.

2200 (b) A warrant shall issue only upon an affidavit of an officer or employee duly  
2201 designated and having knowledge of the facts alleged sworn to before a judge or magistrate  
2202 which establish the grounds for issuing the warrant. If the judge or magistrate is satisfied that  
2203 grounds for the application exist or that there is probable cause to believe they exist, he shall  
2204 issue a warrant identifying the area, premises, building, or conveyance to be inspected, the  
2205 purpose of the inspection, and if appropriate, the type of property to be inspected, if any. The  
2206 warrant shall:

2207 (i) state the grounds for its issuance and the name of each person whose affidavit has  
2208 been taken to support it;

2209 (ii) be directed to a person authorized by Section 58-37-9 of this act to execute it;

2210 (iii) command the person to whom it is directed to inspect the area, premises, building,  
2211 or conveyance identified for the purpose specified and if appropriate, direct the seizure of the  
2212 property specified;

2213 (iv) identify the item or types of property to be seized, if any; and

2214 (v) direct that it be served during normal business hours and designate the judge or  
2215 magistrate to whom it shall be returned.

2216 (c) A warrant issued pursuant to this section must be executed and returned within 10  
2217 days after its date unless, upon a showing of a need for additional time, the court instructs  
2218 otherwise in the warrant. If property is seized pursuant to a warrant, the person executing the  
2219 warrant shall give to the person from whom or from whose premises the property was taken a  
2220 copy of the warrant and a receipt for the property taken or leave the copy and receipt at the  
2221 place where the property was taken. Return of the warrant shall be made promptly and be  
2222 accompanied by a written inventory of any property taken. The inventory shall be made in the  
2223 presence of the person executing the warrant and of the person from whose possession or  
2224 premises the property was taken, if they are present, or in the presence of at least one credible  
2225 person other than the person executing the warrant. A copy of the inventory shall be delivered  
2226 to the person from whom or from whose premises the property was taken and to the applicant  
2227 for the warrant.

2228 (d) The judge or magistrate who issued the warrant under this section shall attach a



2229 copy of the return and all other papers to the warrant and file them with the court.

2230 (3) The department is authorized to make administrative inspections of controlled  
2231 premises in accordance with the following provisions:

2232 (a) For purposes of this section only, "controlled premises" means:

2233 (i) Places where persons licensed or exempted from licensing requirements under this  
2234 act are required to keep records.

2235 (ii) Places including factories, warehouses, establishments, and conveyances where  
2236 persons licensed or exempted from licensing requirements are permitted to possess,  
2237 manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled  
2238 substance.

2239 (b) When authorized by an administrative inspection warrant a law enforcement officer  
2240 or employee designated in Section 58-37-9, upon presenting the warrant and appropriate  
2241 credentials to the owner, operator, or agent in charge, has the right to enter controlled premises  
2242 for the purpose of conducting an administrative inspection.

2243 (c) When authorized by an administrative inspection warrant, a law enforcement  
2244 officer or employee designated in Section 58-37-9 has the right:

2245 (i) To inspect and copy records required by this chapter.

2246 (ii) To inspect within reasonable limits and a reasonable manner, the controlled  
2247 premises and all pertinent equipment, finished and unfinished material, containers, and labeling  
2248 found, and except as provided in Subsection (3)(e), all other things including records, files,  
2249 papers, processes, controls, and facilities subject to regulation and control by this chapter or by  
2250 rules promulgated by the department.

2251 (iii) To inventory and take stock of any controlled substance and obtain samples of any  
2252 substance.

2253 (d) This section shall not be construed to prevent the inspection of books and records  
2254 without a warrant pursuant to an administrative subpoena issued by a court or the department  
2255 nor shall it be construed to prevent entries and administrative inspections including seizures of  
2256 property without a warrant:

2257 (i) with the consent of the owner, operator, or agent in charge of the controlled  
2258 premises;

2259 (ii) in situations presenting imminent danger to health or safety;

2260 (iii) in situations involving inspection of conveyances where there is reasonable cause  
2261 to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

2262 (iv) in any other exceptional or emergency circumstance where time or opportunity to  
2263 apply for a warrant is lacking; and

2264 (v) in all other situations where a warrant is not constitutionally required.

2265 (e) No inspection authorized by this section shall extend to financial data, sales data,  
2266 other than shipment data, or pricing data unless the owner, operator, or agent in charge of the  
2267 controlled premises consents in writing.

2268 Section 38. Section **58-37c-3** is amended to read:

2269 **58-37c-3. Definitions.**

2270 In addition to the definitions in Section 58-1-102, as used in this chapter:

2271 (1) "Board" means the Controlled Substance Precursor Advisory Board created in  
2272 Section 58-37c-4.

2273 (2) "Controlled substance precursor" includes a chemical reagent and means any of the  
2274 following:

2275 (a) Phenyl-2-propanone;

2276 (b) Methylamine;

2277 (c) Ethylamine;

2278 (d) D-lysergic acid;

2279 (e) Ergotamine and its salts;

2280 (f) Diethyl malonate;

2281 (g) Malonic acid;

2282 (h) Ethyl malonate;

2283 (i) Barbituric acid;

2284 (j) Piperidine and its salts;

2285 (k) N-acetylanthranilic acid and its salts;

2286 (l) Pyrrolidine;

2287 (m) Phenylacetic acid and its salts;

2288 (n) Anthranilic acid and its salts;

2289 (o) Morpholine;

2290 (p) Ephedrine;

- 2291 (q) Pseudoephedrine;
- 2292 (r) Norpseudoephedrine;
- 2293 (s) Phenylpropanolamine;
- 2294 (t) Benzyl cyanide;
- 2295 (u) Ergonovine and its salts;
- 2296 (v) 3,4-Methylenedioxyphenyl-2-propanone;
- 2297 (w) propionic anhydride;
- 2298 (x) Insosafrole;
- 2299 (y) Safrole;
- 2300 (z) Piperonal;
- 2301 (aa) N-Methylephedrine;
- 2302 (bb) N-ethylephedrine;
- 2303 (cc) N-methylpseudoephedrine;
- 2304 (dd) N-ethylpseudoephedrine;
- 2305 (ee) Hydriotic acid;
- 2306 (ff) gamma butyrolactone (GBL), including butyrolactone, 1,2 butanolide,
- 2307 2-oxanolone, tetrahydro-2-furanone, dihydro-2(3H)-furanone, and tetramethylene glycol, but
- 2308 not including gamma aminobutric acid (GABA);
- 2309 (gg) 1,4 butanediol;
- 2310 (hh) any salt, isomer, or salt of an isomer of the chemicals listed in Subsections (2)(a)
- 2311 through (gg);
- 2312 (ii) Crystal iodine;
- 2313 (jj) Iodine at concentrations greater than 1.5% by weight in a solution or matrix;
- 2314 (kk) Red phosphorous, except as provided in Section 58-37c-19.7;
- 2315 (ll) anhydrous ammonia, except as provided in Section 58-37c-19.9;
- 2316 (mm) any controlled substance precursor listed under the provisions of the Federal
- 2317 Controlled Substances Act which is designated by the director under the emergency listing
- 2318 provisions set forth in Section 58-37c-14; and
- 2319 (nn) any chemical which is designated by the director under the emergency listing
- 2320 provisions set forth in Section 58-37c-14.
- 2321 (3) "Deliver," "delivery," "transfer," or "furnish" means the actual, constructive, or

2322 attempted transfer of a controlled substance precursor.

2323 (4) "Matrix" means something, as a substance, in which something else originates,  
2324 develops, or is contained.

2325 (5) "Person" means any individual, group of individuals, proprietorship, partnership,  
2326 joint venture, corporation, or organization of any type or kind.

2327 (6) "Practitioner" means a physician, dentist, podiatric physician, veterinarian,  
2328 pharmacist, scientific investigator, pharmacy, hospital, pharmaceutical manufacturer, or other  
2329 person licensed, registered, or otherwise permitted to distribute, dispense, conduct research  
2330 with respect to, administer, or use in teaching[;] or chemical analysis a controlled substance in  
2331 the course of professional practice or research in this state.

2332 (7) (a) "Regulated distributor" means a person within the state who provides, sells,  
2333 furnishes, transfers, or otherwise supplies a listed controlled substance precursor chemical in a  
2334 regulated transaction.

2335 (b) "Regulated distributor" does not include any person excluded from regulation under  
2336 this chapter.

2337 (8) (a) "Regulated purchaser" means any person within the state who receives a listed  
2338 controlled substance precursor chemical in a regulated transaction.

2339 (b) "Regulated purchaser" does not include any person excluded from regulation under  
2340 this chapter.

2341 (9) "Regulated transaction" means any actual, constructive or attempted:

2342 (a) transfer, distribution, delivery, or furnishing by a person within the state to another  
2343 person within or outside of the state of a threshold amount of a listed precursor chemical; or

2344 (b) purchase or acquisition by any means by a person within the state from another  
2345 person within or outside the state of a threshold amount of a listed precursor chemical.

2346 (10) "Retail distributor" means a grocery store, general merchandise store, drug store,  
2347 or other entity or person whose activities as a distributor are limited almost exclusively to sales  
2348 for personal use:

2349 (a) in both number of sales and volume of sales; and

2350 (b) either directly to walk-in customers or in face-to-face transactions by direct sales.

2351 (11) "Threshold amount of a listed precursor chemical" means any amount of a  
2352 controlled substance precursor or a specified amount of a controlled substance precursor in a

2353 matrix; however, the division may exempt from the provisions of this chapter a specific  
2354 controlled substance precursor in a specific amount and in certain types of transactions which  
2355 provisions for exemption shall be defined by the division by rule adopted pursuant to Title  
2356 63G, Chapter 3, Utah Administrative Rulemaking Act.

2357 (12) "Unlawful conduct" as defined in Section 58-1-501 includes knowingly and  
2358 intentionally:

2359 (a) engaging in a regulated transaction without first being appropriately licensed or  
2360 exempted from licensure under this chapter;

2361 (b) acting as a regulated distributor and selling, transferring, or in any other way  
2362 conveying a controlled substance precursor to a person within the state who is not appropriately  
2363 licensed or exempted from licensure as a regulated purchaser, or selling, transferring, or  
2364 otherwise conveying a controlled substance precursor to a person outside of the state and  
2365 failing to report the transaction as required;

2366 (c) acting as a regulated purchaser and purchasing or in any other way obtaining a  
2367 controlled substance precursor from a person within the state who is not a licensed regulated  
2368 distributor, or purchasing or otherwise obtaining a controlled substance precursor from a  
2369 person outside of the state and failing to report the transaction as required;

2370 (d) engaging in a regulated transaction and failing to submit reports and keep required  
2371 records of inventories required under the provisions of this chapter or rules adopted pursuant to  
2372 this chapter;

2373 (e) making any false statement in any application for license, in any record to be kept,  
2374 or on any report submitted as required under this chapter;

2375 (f) with the intent of causing the evasion of the recordkeeping or reporting  
2376 requirements of this chapter and rules related to this chapter, receiving or distributing any listed  
2377 controlled substance precursor chemical in any manner designed so that the making of records  
2378 or filing of reports required under this chapter is not required;

2379 (g) failing to take immediate steps to comply with licensure, reporting, or  
2380 recordkeeping requirements of this chapter because of lack of knowledge of those  
2381 requirements, upon becoming informed of the requirements;

2382 (h) presenting false or fraudulent identification where or when receiving or purchasing  
2383 a listed controlled substance precursor chemical;

2384 (i) creating a chemical mixture for the purpose of evading any licensure, reporting or  
2385 recordkeeping requirement of this chapter or rules related to this chapter, or receiving a  
2386 chemical mixture created for that purpose;

2387 (j) if the person is at least 18 years of age, employing, hiring, using, persuading,  
2388 inducing, enticing, or coercing another person under 18 years of age to violate any provision of  
2389 this chapter, or assisting in avoiding detection or apprehension for any violation of this chapter  
2390 by any federal, state, or local law enforcement official; and

2391 (k) obtaining or attempting to obtain or to possess any controlled substance precursor  
2392 or any combination of controlled substance precursors knowing or having a reasonable cause to  
2393 believe that the controlled substance precursor is intended to be used in the unlawful  
2394 manufacture of any controlled substance.

2395 (13) "Unprofessional conduct" as defined in Section 58-1-102 and as may be further  
2396 defined by rule includes the following:

2397 (a) violation of any provision of this chapter, the Controlled Substance Act of this state  
2398 or any other state, or the Federal Controlled Substance Act; and

2399 (b) refusing to allow agents or representatives of the division or authorized law  
2400 enforcement personnel to inspect inventories or controlled substance precursors or records or  
2401 reports relating to purchases and sales or distribution of controlled substance precursors as such  
2402 records and reports are required under this chapter.

2403 Section 39. Section **58-37c-17** is amended to read:

2404 **58-37c-17. Inspection authority.**

2405 For the purpose of inspecting, copying, and auditing records and reports required under  
2406 this chapter and rules adopted pursuant thereto, and for the purpose of inspecting ~~[an]~~ and  
2407 auditing inventories of listed controlled substance precursors, the director, or his authorized  
2408 agent, and law enforcement personnel of any federal, state, or local law enforcement agency is  
2409 authorized to enter the premises of regulated distributors and regulated purchasers during  
2410 normal business hours to conduct administrative inspections.

2411 Section 40. Section **58-37d-2** is amended to read:

2412 **58-37d-2. Purpose.**

2413 The clandestine production of methamphetamine, other amphetamines, phencyclidine,  
2414 narcotic analgesic analogs, so-called "designer drugs,"<sup>[7]</sup> various hallucinogens, cocaine and

2415 methamphetamine base "crack" cocaine and methamphetamine "ice" respectively, has  
2416 increased dramatically throughout the western states and Utah. These highly technical illegal  
2417 operations create substantial dangers to the general public and environment from fire,  
2418 explosions, and the release of toxic chemicals. By their very nature these activities often  
2419 involve a number of persons in a conspiratorial enterprise to bring together all necessary  
2420 components for clandestine production, to thwart regulation and detection, and to distribute the  
2421 final product. Therefore, the Legislature enacts the following Utah Clandestine Laboratory Act  
2422 for prosecution of specific illegal laboratory operations. With regard to the controlled  
2423 substances specified herein, this act shall control, notwithstanding the prohibitions and  
2424 penalties in Title 58, Chapter 37, Utah Controlled Substances Act.

2425 Section 41. Section **58-47b-301** is amended to read:

2426 **58-47b-301. Licensure required.**

2427 (1) An individual shall hold a license issued under this chapter in order to engage in the  
2428 practice of massage therapy, except as specifically provided in Section 58-1-307 or  
2429 58-47b-304.

2430 (2) An individual shall have a license in order to:

2431 (a) represent himself as a massage therapist or massage apprentice;

2432 (b) [~~represents~~] represent himself as providing a service that is within the practice of  
2433 massage therapy or [~~uses~~] use the word massage or any other word to describe such services; or

2434 (c) [~~charges~~] charge or [~~receives~~] receive a fee or any consideration for providing a  
2435 service that is within the practice of massage therapy.

2436 Section 42. Section **59-2-1109** is amended to read:

2437 **59-2-1109. Indigent persons -- Deferral or abatement -- Application -- County**  
2438 **authority to make refunds.**

2439 (1) A person under the age of 65 years is not eligible for a deferral or abatement  
2440 provided for poor people under Sections 59-2-1107 and 59-2-1108 unless:

2441 (a) the county finds that extreme hardship would prevail if the grants were not made; or

2442 (b) the person has a disability.

2443 (2) (a) An application for the deferral or abatement shall be filed on or before  
2444 September 1 with the county in which the property is located.

2445 (b) The application shall include a signed statement setting forth the eligibility of the

2446 applicant for the deferral or abatement.

2447 (c) Both husband and wife shall sign the application if the husband and wife seek a  
2448 deferral or abatement on a residence:

2449 (i) in which they both reside; and

2450 (ii) which they own as joint tenants.

2451 (d) A county may extend the deadline for filing under Subsection (2)(a) until December  
2452 31 if the county finds that good cause exists to extend the deadline.

2453 (3) (a) For purposes of this Subsection (3):

2454 (i) "Property taxes due" means the taxes due on a person's property:

2455 (A) for which an abatement is granted by a county under Section 59-2-1107; and

2456 (B) for the calendar year for which the abatement is granted.

2457 (ii) "Property taxes paid" is an amount equal to the sum of:

2458 (A) the amount of the property taxes the person paid for the taxable year for which the  
2459 person is applying for the abatement; and

2460 (B) the amount of the abatement the county grants under Section 59-2-1107.

2461 (b) A county granting an abatement to a person under Section 59-2-1107 shall refund  
2462 to that person an amount equal to the amount by which the person's property taxes paid exceed  
2463 the person's property taxes due, if that amount is \$1 or more.

2464 (4) For purposes of this section:

2465 (a) a poor person is any person:

2466 (i) whose total household income as defined in Section 59-2-1202 is less than the  
2467 maximum household income certified to a homeowner's credit under Subsection 59-2-1208(1);

2468 (ii) who resides for not less than 10 months of each year in the residence for which the  
2469 tax relief, deferral, or abatement is requested; and

2470 (iii) who is unable to meet the tax assessed on the person's residential property as the  
2471 tax becomes due; and

2472 (b) "residence" includes a mobile home as defined under Section [~~70D-2-401~~]  
2473 70D-2-102.

2474 (5) If the claimant is the grantor of a trust holding title to real or tangible personal  
2475 property on which an abatement or deferral is claimed, the claimant may claim the portion of  
2476 the abatement or deferral under Section 59-2-1107 or 59-2-1108 and be treated as the owner of



2477 that portion of the property held in trust for which the claimant proves to the satisfaction of the  
2478 county that:

2479 (a) title to the portion of the trust will revert in the claimant upon the exercise of a  
2480 power:

2481 (i) by:

2482 (A) the claimant as grantor of the trust;

2483 (B) a nonadverse party; or

2484 (C) both the claimant and a nonadverse party; and

2485 (ii) regardless of whether the power is a power:

2486 (A) to revoke;

2487 (B) to terminate;

2488 (C) to alter;

2489 (D) to amend; or

2490 (E) to appoint;

2491 (b) the claimant is obligated to pay the taxes on that portion of the trust property

2492 beginning January 1 of the year the claimant claims the abatement or deferral; and

2493 (c) the claimant meets the requirements under this part for the abatement or deferral.

2494 (6) The commission shall adopt rules to implement this section.

2495 (7) Any poor person may qualify for:

2496 (a) the deferral of taxes under Section 59-2-1108;

2497 (b) if the person meets the requisites of this section, for the abatement of taxes under

2498 Section 59-2-1107; or

2499 (c) both:

2500 (i) the deferral described in Subsection (7)(a); and

2501 (ii) the abatement described in Subsection (7)(b).

2502 Section 43. Section **63A-12-111** is amended to read:

2503 **63A-12-111. Government records ombudsman.**

2504 (1) (a) The director of the division shall appoint a government records ombudsman.

2505 (b) The government records ombudsman may not be a member of the records

2506 committee.

2507 (2) The government records ombudsman shall:

2508 (a) be familiar with the provisions of Title 63G, Chapter 2, Government Records  
2509 Access and Management Act;

2510 (b) serve as a resource for a person who is making or responding to a records request or  
2511 filing an appeal relating to a records request;

2512 (c) upon request, attempt to mediate disputes between requestors and responders; and

2513 (d) on an annual basis, report to the Government Operations [~~and Political~~  
2514 ~~Subdivisions~~] Interim Committee on the work performed by the government records  
2515 ombudsman during the previous year.

2516 (3) The government records ombudsman may not testify, or be compelled to testify,  
2517 before the records committee, another administrative body, or a court regarding a matter that  
2518 the government records ombudsman provided services in relation to under this section.

2519 Section 44. Section **63G-6-202 (Superseded 05/01/13)** is amended to read:

2520 **63G-6-202 (Superseded 05/01/13). Powers and duties of board.**

2521 (1) Except as otherwise provided in Section 63G-6-104 and Subsection  
2522 63G-6-208(1)(b), the policy board shall:

2523 (a) make rules, consistent with this chapter, governing the procurement, management,  
2524 and control of any and all supplies, services, technology, and construction to be procured by the  
2525 state; and

2526 (b) consider and decide matters of policy within the provisions of this chapter,  
2527 including those referred to it by the chief procurement officer.

2528 (2) (a) The policy board may:

2529 (i) audit and monitor the implementation of its rules and the requirements of this  
2530 chapter;

2531 (ii) upon the request of a local public procurement unit, review that procurement unit's  
2532 proposed rules to ensure that they are not inconsistent with the provisions of this chapter; and

2533 (iii) approve the use of innovative procurement methods proposed by local public  
2534 procurement units.

2535 (b) Except as provided in Section 63G-6-807, the policy board may not exercise  
2536 authority [~~over the award or administration of~~]:

2537 (i) over the award or administration of any particular [contact] contract; or

2538 (ii) over any dispute, claim, or litigation pertaining to any particular contract.

2539 Section 45. Section **63G-6a-203 (Effective 05/01/13)** is amended to read:

2540 **63G-6a-203 (Effective 05/01/13). Powers and duties of board.**

2541 (1) In addition to making rules in accordance with Section 63G-6a-402 and the other  
2542 provisions of this chapter, the board shall consider and decide matters of policy within the  
2543 provisions of this chapter, including those referred to it by the chief procurement officer.

2544 (2) (a) The board may:

2545 (i) audit and monitor the implementation of its rules and the requirements of this  
2546 chapter;

2547 (ii) upon the request of a local public procurement unit, review that local public  
2548 procurement unit's proposed rules to ensure that they are not inconsistent with the provisions of  
2549 this chapter or rules made by the board; and

2550 (iii) approve the use of innovative procurement processes.

2551 (b) Except as provided in Section 63G-6a-1702, the board may not exercise authority  
2552 over ~~the award or administration of~~:

2553 (i) the award or administration of any particular contract; or

2554 (ii) any dispute, claim, or litigation pertaining to any particular contract.

2555 (3) The board does not have authority over a matter involving:

2556 (a) a non-executive state procurement unit;

2557 (b) a local government unit; or

2558 (c) except as otherwise expressly provided in this chapter, a local public procurement  
2559 unit.

2560 Section 46. Section **63G-7-701** is amended to read:

2561 **63G-7-701. Payment of claim or judgment against state -- Presentment for**  
2562 **payment.**

2563 (1) ~~(a)~~ Each claim, as defined by Subsection 63G-7-102(1), that is approved by the  
2564 state or any final judgment obtained against the state shall be presented for payment to:

2565 ~~(i)~~ (a) the state risk manager; or

2566 ~~(ii)~~ (b) the office, agency, institution, or other instrumentality involved, if payment by  
2567 that instrumentality is otherwise permitted by law.

2568 ~~(b)~~ (2) If payment of the claim is not authorized by law, the judgment or claim shall  
2569 be presented to the board of examiners for action as provided in Section 63G-9-301.

2570           ~~[(e)]~~ (3) If a judgment against the state is reduced by the operation of Section  
2571 63G-7-604, the claimant may submit the excess claim to the board of examiners.  
2572           Section 47. Section **63I-1-209** is amended to read:  
2573           **63I-1-209. Repeal dates, Title 9.**  
2574           ~~[(+)]~~ Title 9, Chapter 1, Part 8, Commission on National and Community Service Act,  
2575 is repealed July 1, 2014.  
2576           ~~[(2) Subsection 35A-8-302(6), defining "qualifying city," is repealed January 1, 2013.]~~  
2577           ~~[(3) Subsection 35A-8-305(2), related to a grant for fiscal year 2011-12 only, is~~  
2578 ~~repealed January 1, 2013.]~~  
2579           ~~[(4) The language in Subsection 35A-8-307(2) that reads "except for Subsection~~  
2580 ~~35A-8-305(2)" is repealed January 1, 2013.]~~  
2581           ~~[(5) Subsection 35A-8-307(3), requiring the Permanent Community Impact Fund~~  
2582 ~~Board to make a finding before making a grant to a city under Subsection 35A-8-305(2), is~~  
2583 ~~repealed January 1, 2013.]~~  
2584           Section 48. Section **63I-1-235** is amended to read:  
2585           **63I-1-235. Repeal dates, Title 35A.**  
2586           (1) Title 35A, Utah Workforce Services Code, is repealed July 1, 2015.  
2587           ~~[(2) Section 35A-3-114, the Displaced Homemaker Program, together with the~~  
2588 ~~provision for funding that program contained in Subsection 17-16-21(2)(b), is repealed July 1,~~  
2589 ~~2012.]~~  
2590           ~~[(3)]~~ (2) Title 35A, Chapter 8, Part 7, Utah Housing Corporation Act, is repealed July  
2591 1, 2016.  
2592           ~~[(4)]~~ (3) Title 35A, Chapter 8, Part 18, Transitional Housing and Community  
2593 Development Advisory Council, is repealed July 1, 2014.  
2594           Section 49. Section **63I-1-258** is amended to read:  
2595           **63I-1-258. Repeal dates, Title 58.**  
2596           (1) Title 58, Chapter 9, Funeral Services Licensing Act, is repealed July 1, 2018.  
2597           (2) Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, is  
2598 repealed July 1, 2016.  
2599           ~~[(+)]~~ (3) Section 58-13-2.5 is repealed July 1, 2013.  
2600           ~~[(3)]~~ (4) Title 58, Chapter 15, Health Facility Administrator Act, is repealed July 1,

2601 2015.

2602 [~~(4)~~] (5) Section 58-17b-309.5 is repealed July 1, 2015.

2603 [~~(5)~~] (6) Title 58, Chapter 20a, Environmental Health Scientist Act, is repealed July 1,

2604 2013.

2605 [~~(6)~~] (7) Title 58, Chapter 40, Recreational Therapy Practice Act, is repealed July 1,

2606 2023.

2607 [~~(7)~~] (8) Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing  
2608 Act, is repealed July 1, 2019.

2609 [~~(8)~~] (9) Title 58, Chapter 42a, Occupational Therapy Practice Act, is repealed July 1,

2610 2015.

2611 [~~(9)~~] (10) Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act, is  
2612 repealed July 1, 2013.

2613 [~~(10)~~] (11) Title 58, Chapter 47b, Massage Therapy Practice Act, is repealed July 1,

2614 2014.

2615 [~~(11)~~] (12) Section 58-69-302.5 is repealed on July 1, 2015.

2616 [~~(12)~~] (13) Title 58, Chapter 72, Acupuncture Licensing Act, is repealed July 1, 2017.

2617 Section 50. Section **67-1a-2** is amended to read:

2618 **67-1a-2. Duties enumerated.**

2619 (1) The lieutenant governor shall:

2620 (a) perform duties delegated by the governor, including assignments to serve in any of  
2621 the following capacities:

2622 (i) as the head of any one department, if so qualified, with the consent of the Senate,  
2623 and, upon appointment at the pleasure of the governor and without additional compensation;

2624 (ii) as the chairperson of any cabinet group organized by the governor or authorized by  
2625 law for the purpose of advising the governor or coordinating intergovernmental or  
2626 interdepartmental policies or programs;

2627 (iii) as liaison between the governor and the state Legislature to coordinate and  
2628 facilitate the governor's programs and budget requests;

2629 (iv) as liaison between the governor and other officials of local, state, federal, and  
2630 international governments or any other political entities to coordinate, facilitate, and protect the  
2631 interests of the state;

- 2632 (v) as personal advisor to the governor, including advice on policies, programs,  
2633 administrative and personnel matters, and fiscal or budgetary matters; and
- 2634 (vi) as chairperson or member of any temporary or permanent boards, councils,  
2635 commissions, committees, task forces, or other group appointed by the governor;
- 2636 (b) serve on all boards and commissions in lieu of the governor, whenever so  
2637 designated by the governor;
- 2638 (c) serve as the chief election officer of the state as required by Subsection (2);
- 2639 (d) keep custody of the Great Seal of Utah;
- 2640 (e) keep a register of, and attest, the official acts of the governor;
- 2641 (f) affix the Great Seal, with an attestation, to all official documents and instruments to  
2642 which the official signature of the governor is required; and
- 2643 (g) furnish a certified copy of all or any part of any law, record, or other instrument  
2644 filed, deposited, or recorded in the office of the lieutenant governor to any person who requests  
2645 it and pays the fee.
- 2646 (2) (a) As the chief election officer, the lieutenant governor shall:
- 2647 (i) exercise general supervisory authority over all elections;
- 2648 (ii) exercise direct authority over the conduct of elections for federal, state, and  
2649 multicounty officers and statewide or multicounty ballot propositions and any recounts  
2650 involving those races;
- 2651 (iii) assist county clerks in unifying the election ballot;
- 2652 (iv) (A) prepare election information for the public as required by statute and as  
2653 determined appropriate by the lieutenant governor; and
- 2654 (B) make the information under Subsection (2)(a)(iv)(A) available to the public and to  
2655 news media on the Internet and in other forms as required by statute or as determined  
2656 appropriate by the lieutenant governor;
- 2657 (v) receive and answer election questions and maintain an election file on opinions  
2658 received from the attorney general;
- 2659 (vi) maintain a current list of registered political parties as defined in Section  
2660 20A-8-101;
- 2661 (vii) maintain election returns and statistics;
- 2662 (viii) certify to the governor the names of those persons who have received the highest

2663 number of votes for any office;

2664 (ix) ensure that all voting equipment purchased by the state complies with the  
2665 requirements of Subsection 20A-5-302(2) and Sections 20A-5-402.5 and 20A-5-402.7;

2666 (x) conduct the study described in Section 67-1a-14; and

2667 (xi) perform other election duties as provided in Title 20A, Election Code.

2668 (b) As chief election officer, the lieutenant governor may not assume the  
2669 responsibilities assigned to the county clerks, city recorders, town clerks, or other local election  
2670 officials by Title 20A, Election Code.

2671 (3) (a) The lieutenant governor shall:

2672 (i) (A) determine a new city's classification under Section 10-2-301 upon the city's  
2673 incorporation under Title 10, Chapter 2, Part 1, Incorporation, based on the city's population  
2674 using the population estimate from the Utah Population Estimates Committee; and

2675 (B) (I) prepare a certificate indicating the class in which the new city belongs based on  
2676 the city's population; and

2677 (II) within 10 days after preparing the certificate, deliver a copy of the certificate to the  
2678 city's legislative body;

2679 (ii) (A) determine the classification under Section 10-2-301 of a consolidated  
2680 municipality upon the consolidation of multiple municipalities under Title 10, Chapter 2, Part  
2681 6, Consolidation of Municipalities, using population information from:

2682 (I) each official census or census estimate of the United States Bureau of the Census;  
2683 or

2684 (II) the population estimate from the Utah Population Estimates Committee, if the  
2685 population of a municipality is not available from the United States Bureau of the Census; and

2686 (B) (I) prepare a certificate indicating the class in which the consolidated municipality  
2687 belongs based on the municipality's population; and

2688 (II) within 10 days after preparing the certificate, deliver a copy of the certificate to the  
2689 consolidated municipality's legislative body; and

2690 (iii) monitor the population of each municipality using population information from:

2691 (A) each official census or census estimate of the United States Bureau of the Census;  
2692 or

2693 (B) the population estimate from the Utah Population Estimates Committee, if the

2694 population of a municipality is not available from the United States Bureau of the Census.

2695 (b) If the applicable population figure under Subsection (3)(a)(ii) or (iii) indicates that  
2696 a municipality's population has increased beyond the population for its current class, the  
2697 lieutenant governor shall:

2698 (i) prepare a certificate indicating the class in which the municipality belongs based on  
2699 the increased population figure; and

2700 (ii) within 10 days after preparing the certificate, deliver a copy of the certificate to the  
2701 legislative body of the municipality whose class has changed.

2702 (c) (i) If the applicable population figure under Subsection (3)(a)(ii) or (iii) indicates  
2703 that a municipality's population has decreased below the population for its current class, the  
2704 lieutenant governor shall send written notification of that fact to the municipality's legislative  
2705 body.

2706 (ii) Upon receipt of a petition under Subsection 10-2-302(2) from a municipality whose  
2707 population has decreased below the population for its current class, the lieutenant governor  
2708 shall:

2709 (A) prepare a certificate indicating the class in which the municipality belongs based  
2710 on the decreased population figure; and

2711 (B) within 10 days after preparing the certificate, deliver a copy of the certificate to the  
2712 legislative body of the municipality whose class has changed.

2713 Section 51. Section **67-19-13.5** is amended to read:

2714 **67-19-13.5. Department provides payroll services to executive branch agencies --**  
2715 **Report.**

2716 (1) As used in this section:

2717 (a) (i) "Executive branch entity" means a department, division, agency, board, or office  
2718 within the executive branch of state government that employs a person who is paid through the  
2719 central payroll system developed by the Division of Finance as of December 31, 2011.

2720 (ii) "Executive branch entity" does not include the Offices of the Attorney General,  
2721 State Treasurer, State Auditor, [~~Department~~] or Departments of Transportation, [~~Department~~  
2722 ~~of~~] Technology Services, or [~~the Department of~~] Natural Resources.

2723 (b) (i) "Payroll services" means using the central payroll system as directed by the  
2724 Division of Finance to:



2725 (A) enter and validate payroll reimbursements, which include reimbursements for  
2726 mileage, a service award, and other wage types;

2727 (B) calculate, process, and validate a retirement;

2728 (C) enter a leave adjustment; and

2729 (D) certify payroll by ensuring an entry complies with a rule or policy adopted by the  
2730 department or the Division of Finance.

2731 (ii) "Payroll services" does not mean:

2732 (A) a function related to payroll that is performed by an employee of the Division of  
2733 Finance;

2734 (B) a function related to payroll that is performed by an executive branch agency on  
2735 behalf of a person who is not an employee of the executive branch agency;

2736 (C) the entry of time worked by an executive branch agency employee into the central  
2737 payroll system; or

2738 (D) approval or verification by a supervisor or designee of the entry of time worked.

2739 (2) (a) Except as provided by Subsection (2)(b), on or before September 19, 2012, the  
2740 department shall provide payroll services to all executive branch entities.

2741 (b) On or before June 30, 2013, the department shall provide payroll services to the  
2742 Department of Public Safety for an employee who is certified by the Peace Officer Standards  
2743 and Training Division.

2744 (3) (a) After September 19, 2012, an executive branch entity, other than the  
2745 department, the Division of Finance, or the Department of Public Safety, may not create a  
2746 full-time equivalent position or part-time position, or request an appropriation to fund a  
2747 full-time equivalent position or part-time position for the purpose of providing payroll services  
2748 to the entity.

2749 (b) After June 30, 2013, the Department of Public Safety may not create a full-time  
2750 equivalent position or part-time position, or request an appropriation to fund a full-time  
2751 equivalent position or part-time position for the purpose of providing payroll services.

2752 (4) The Department of Transportation, the Department of Technology Services, and the  
2753 Department of Natural Resources shall report on the inability to transfer payroll services to the  
2754 department or the progress of transferring payroll services to the department:

2755 (a) to the Government Operations Interim Committee before October 30, 2012; and

2756 (b) to the Infrastructure and General Government Appropriations Subcommittee on or  
2757 before February 11, 2013.

2758 Section 52. Section **76-1-403** is amended to read:

2759 **76-1-403. Former prosecution barring subsequent prosecution for offense out of**  
2760 **same episode.**

2761 (1) If a defendant has been prosecuted for one or more offenses arising out of a single  
2762 criminal episode, a subsequent prosecution for the same or a different offense arising out of the  
2763 same criminal episode is barred if:

2764 (a) the subsequent prosecution is for an offense that was or should have been tried  
2765 under Subsection 76-1-402(2) in the former prosecution; and

2766 (b) the former prosecution:

2767 (i) resulted in acquittal; [~~or~~]

2768 (ii) resulted in conviction; [~~or~~]

2769 (iii) was improperly terminated; or

2770 (iv) was terminated by a final order or judgment for the defendant that has not been  
2771 reversed, set aside, or vacated and that necessarily required a determination inconsistent with a  
2772 fact that must be established to secure conviction in the subsequent prosecution.

2773 (2) There is an acquittal if the prosecution resulted in a finding of not guilty by the trier  
2774 of facts or in a determination that there was insufficient evidence to warrant conviction. A  
2775 finding of guilty of a lesser included offense is an acquittal of the greater offense even though  
2776 the conviction for the lesser included offense is subsequently reversed, set aside, or vacated.

2777 (3) There is a conviction if the prosecution resulted in a judgment of guilt that has not  
2778 been reversed, set aside, or vacated; a verdict of guilty that has not been reversed, set aside, or  
2779 vacated and that is capable of supporting a judgment; or a plea of guilty accepted by the court.

2780 (4) There is an improper termination of prosecution if the termination takes place  
2781 before the verdict, is for reasons not amounting to an acquittal, and takes place after a jury has  
2782 been impaneled and sworn to try the defendant, or, if the jury trial is waived, after the first  
2783 witness is sworn. However, termination of prosecution is not improper if:

2784 (a) the defendant consents to the termination; [~~or~~]

2785 (b) the defendant waives his right to object to the termination; or

2786 (c) the court finds and states for the record that the termination is necessary because:

- 2787 (i) it is physically impossible to proceed with the trial in conformity with the law; [or]
- 2788 (ii) there is a legal defect in the proceeding not attributable to the state that would make
- 2789 any judgment entered upon a verdict reversible as a matter of law; [or]
- 2790 (iii) prejudicial conduct in or out of the courtroom not attributable to the state makes it
- 2791 impossible to proceed with the trial without injustice to the defendant or the state; [or]
- 2792 (iv) the jury is unable to agree upon a verdict; or
- 2793 (v) false statements of a juror on voir dire prevent a fair trial.

2794 Section 53. Section **76-1-501** is amended to read:

2795 **76-1-501. Presumption of innocence -- "Element of the offense" defined.**

2796 (1) A defendant in a criminal proceeding is presumed to be innocent until each element  
2797 of the offense charged against him is proved beyond a reasonable doubt. In the absence of  
2798 [~~such~~] this proof, the defendant shall be acquitted.

2799 (2) As used in this part the words "element of the offense" mean:

- 2800 (a) The conduct, attendant circumstances, or results of conduct proscribed, prohibited,
- 2801 or forbidden in the definition of the offense;
- 2802 (b) The culpable mental state required.
- 2803 (3) The existence of jurisdiction and venue are not elements of the offense but shall be
- 2804 established by a preponderance of the evidence.

2805 Section 54. Section **76-3-202** is amended to read:

2806 **76-3-202. Paroled persons -- Termination or discharge from sentence -- Time**  
2807 **served on parole -- Discretion of Board of Pardons and Parole.**

2808 (1) (a) Except as provided in Subsection (1)(b), every person committed to the state  
2809 prison to serve an indeterminate term and later released on parole shall, upon completion of  
2810 three years on parole outside of confinement and without violation, be terminated from the  
2811 person's sentence unless the parole is earlier terminated by the Board of Pardons and Parole.

2812 (b) Every person committed to the state prison to serve an indeterminate term and later  
2813 released on parole on or after July 1, 2008, and who was convicted of any felony offense under  
2814 Title 76, Chapter 5, Offenses Against the Person, or any attempt, conspiracy, or solicitation to  
2815 commit any of these felony offenses, shall complete a term of parole that extends through the  
2816 expiration of the person's maximum sentence, unless the parole is earlier terminated by the  
2817 Board of Pardons and Parole.

2818 (2) Every person convicted of a second degree felony for violating Section 76-5-404,  
2819 forcible sexual abuse, or 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a  
2820 child, or attempting, conspiring, or soliciting the commission of a violation of any of those  
2821 sections, and who is paroled before July 1, 2008, shall, upon completion of 10 years parole  
2822 outside of confinement and without violation, [shall] be terminated from the sentence unless  
2823 the person is earlier terminated by the Board of Pardons and Parole.

2824 (3) (a) Every person convicted of a first degree felony for committing any offense listed  
2825 in Subsection (3)(b), or attempting, conspiring, or soliciting the commission of a violation of  
2826 any of those sections, shall complete a term of lifetime parole outside of confinement and  
2827 without violation unless the person is earlier terminated by the Board of Pardons and Parole.

2828 (b) The offenses referred to in Subsection (3)(a) are:

2829 (i) Section 76-5-301.1, child kidnapping;

2830 (ii) Subsection 76-5-302(1)(b)(vi), aggravated kidnapping involving a sexual offense;

2831 (iii) Section 76-5-402, rape;

2832 (iv) Section 76-5-402.1, rape of a child;

2833 (v) Section 76-5-402.2, object rape;

2834 (vi) Section 76-5-402.3, object rape of a child;

2835 (vii) Subsection 76-5-403(2), forcible sodomy;

2836 (viii) Section 76-5-403.1, sodomy on a child;

2837 (ix) Section 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child;

2838 or

2839 (x) Section 76-5-405, aggravated sexual assault.

2840 (4) Any person who violates the terms of parole, while serving parole, for any offense  
2841 under Subsection (1), (2), or (3), shall at the discretion of the Board of Pardons and Parole be  
2842 recommitted to prison to serve the portion of the balance of the term as determined by the  
2843 Board of Pardons and Parole, but not to exceed the maximum term.

2844 (5) In order for a parolee convicted on or after May 5, 1997, to be eligible for early  
2845 termination from parole, the parolee must provide to the Board of Pardons and Parole:

2846 (a) evidence that the parolee has completed high school classwork and has obtained a  
2847 high school graduation diploma, a GED certificate, or a vocational certificate; or

2848 (b) documentation of the inability to obtain one of the items listed in Subsection (5)(a)

2849 because of:

2850 (i) a diagnosed learning disability; or

2851 (ii) other justified cause.

2852 (6) Any person paroled following a former parole revocation may not be discharged

2853 from the person's sentence until:

2854 (a) the person has served the applicable period of parole under this section outside of  
2855 confinement and without violation;

2856 (b) the person's maximum sentence has expired; or

2857 (c) the Board of Pardons and Parole orders the person to be discharged from the  
2858 sentence.

2859 (7) (a) All time served on parole, outside of confinement and without violation,  
2860 constitutes service of the total sentence but does not preclude the requirement of serving the  
2861 applicable period of parole under this section, outside of confinement and without violation.

2862 (b) Any time a person spends outside of confinement after commission of a parole  
2863 violation does not constitute service of the total sentence unless the person is exonerated at a  
2864 parole revocation hearing.

2865 (c) (i) Any time a person spends in confinement awaiting a hearing before the Board of  
2866 Pardons and Parole or a decision by the board concerning revocation of parole constitutes  
2867 service of the sentence.

2868 (ii) In the case of exoneration by the board, the time spent is included in computing the  
2869 total parole term.

2870 (8) When any parolee without authority from the Board of Pardons and Parole absents  
2871 himself from the state or avoids or evades parole supervision, the period of absence, avoidance,  
2872 or evasion tolls the parole period.

2873 (9) (a) While on parole, time spent in confinement outside the state may not be credited  
2874 toward the service of any Utah sentence.

2875 (b) Time in confinement outside the state or in the custody of any tribal authority or the  
2876 United States government for a conviction obtained in another jurisdiction tolls the expiration  
2877 of the Utah sentence.

2878 (10) This section does not preclude the Board of Pardons and Parole from paroling or  
2879 discharging an inmate at any time within the discretion of the Board of Pardons and Parole

2880 unless otherwise specifically provided by law.

2881 (11) A parolee sentenced to lifetime parole may petition the Board of Pardons and  
2882 Parole for termination of lifetime parole.

2883 Section 55. Section **76-3-203.5** is amended to read:

2884 **76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.**

2885 (1) As used in this section:

2886 (a) "Felony" means any violation of a criminal statute of the state, any other state, the  
2887 United States, or any district, possession, or territory of the United States for which the  
2888 maximum punishment the offender may be subjected to exceeds one year in prison.

2889 (b) "Habitual violent offender" means a person convicted within the state of any violent  
2890 felony and who on at least two previous occasions has been convicted of a violent felony and  
2891 committed to either prison in Utah or an equivalent correctional institution of another state or  
2892 of the United States either at initial sentencing or after revocation of probation.

2893 (c) "Violent felony" means:

2894 (i) any of the following offenses, or any attempt, solicitation, or conspiracy to commit  
2895 any of the following offenses punishable as a felony:

2896 (A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief,  
2897 Title 76, Chapter 6, Part 1, Property Destruction;

2898 (B) assault by prisoner, Section 76-5-102.5;

2899 (C) disarming a police officer, Section 76-5-102.8;

2900 (D) aggravated assault, Section 76-5-103;

2901 (E) aggravated assault by prisoner, Section 76-5-103.5;

2902 (F) mayhem, Section 76-5-105;

2903 (G) stalking, Subsection 76-5-106.5(2) or (3);

2904 (H) threat of terrorism, Section 76-5-107.3;

2905 (I) child abuse, Subsection 76-5-109(2)(a) or (b);

2906 (J) commission of domestic violence in the presence of a child, Section 76-5-109.1;

2907 (K) abuse or neglect of a child with a disability, Section 76-5-110;

2908 (L) abuse, neglect, or exploitation of a vulnerable adult, Section 76-5-111;

2909 (M) endangerment of a child or vulnerable adult, Section 76-5-112.5;

2910 (N) criminal homicide offenses under Title 76, Chapter 5, Part 2, Criminal Homicide;

- 2911 (O) kidnapping, child kidnapping, and aggravated kidnapping under Title 76, Chapter  
2912 5, Part 3, Kidnapping, Trafficking, and Smuggling;
- 2913 (P) rape, Section 76-5-402;
- 2914 (Q) rape of a child, Section 76-5-402.1;
- 2915 (R) object rape, Section 76-5-402.2;
- 2916 (S) object rape of a child, Section 76-5-402.3;
- 2917 (T) forcible sodomy, Section 76-5-403;
- 2918 (U) sodomy on a child, Section 76-5-403.1;
- 2919 (V) forcible sexual abuse, Section 76-5-404;
- 2920 (W) aggravated sexual abuse of a child or sexual abuse of a child, Section 76-5-404.1;
- 2921 (X) aggravated sexual assault, Section 76-5-405;
- 2922 (Y) sexual exploitation of a minor, Section 76-5b-201;
- 2923 (Z) sexual exploitation of a vulnerable adult, Section 76-5b-202;
- 2924 (AA) aggravated burglary and burglary of a dwelling under Title 76, Chapter 6, Part 2,  
2925 Burglary and Criminal Trespass;
- 2926 (BB) aggravated robbery and robbery under Title 76, Chapter 6, Part 3, Robbery;
- 2927 (CC) theft by extortion under Subsection 76-6-406(2)(a) or (b);
- 2928 (DD) tampering with a witness under Subsection 76-8-508(1);
- 2929 (EE) retaliation against a witness, victim, or informant under Section 76-8-508.3;
- 2930 (FF) tampering with a juror under Subsection 76-8-508.5(2)(c);
- 2931 (GG) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any  
2932 threat or by use of force theft by extortion has been committed pursuant to Subsections  
2933 76-6-406(2)(a), (b), and (i);
- 2934 (HH) possession, use, or removal of explosive, chemical, or incendiary devices under  
2935 Subsections 76-10-306(3) through (6);
- 2936 (II) unlawful delivery of explosive, chemical, or incendiary devices under Section  
2937 76-10-307;
- 2938 (JJ) purchase or possession of a dangerous weapon or handgun by a restricted person  
2939 under Section 76-10-503;
- 2940 (KK) unlawful discharge of a firearm under Section 76-10-508;
- 2941 (LL) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);

2942 (MM) bus hijacking under Section 76-10-1504; and  
2943 (NN) discharging firearms and hurling missiles under Section 76-10-1505; or  
2944 (ii) any felony violation of a criminal statute of any other state, the United States, or  
2945 any district, possession, or territory of the United States which would constitute a violent  
2946 felony as defined in this Subsection (1) if committed in this state.

2947 (2) If a person is convicted in this state of a violent felony by plea or by verdict and the  
2948 trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender  
2949 under this section, the penalty for a:

2950 (a) third degree felony is as if the conviction were for a first degree felony;  
2951 (b) second degree felony is as if the conviction were for a first degree felony; or  
2952 (c) first degree felony remains the penalty for a first degree penalty except:  
2953 (i) the convicted person is not eligible for probation; and  
2954 (ii) the Board of Pardons and Parole shall consider that the convicted person is a  
2955 habitual violent offender as an aggravating factor in determining the length of incarceration.

2956 (3) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall  
2957 provide notice in the information or indictment that the defendant is subject to punishment as a  
2958 habitual violent offender under this section. Notice shall include the case number, court, and  
2959 date of conviction or commitment of any case relied upon by the prosecution.

2960 (b) (i) The defendant shall serve notice in writing upon the prosecutor if the defendant  
2961 intends to deny that:

2962 (A) the defendant is the person who was convicted or committed;  
2963 (B) the defendant was represented by counsel or had waived counsel; or  
2964 (C) the defendant's plea was understandingly or voluntarily entered.

2965 (ii) The notice of denial shall be served not later than five days prior to trial and shall  
2966 state in detail the defendant's contention regarding the previous conviction and commitment.

2967 (4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to  
2968 a jury, the jury may not be told, until after it returns its verdict on the underlying felony charge,  
2969 of the:

2970 (i) defendant's previous convictions for violent felonies, except as otherwise provided  
2971 in the Utah Rules of Evidence; or  
2972 (ii) allegation against the defendant of being a habitual violent offender.



2973 (b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of  
2974 being an habitual violent offender by the same jury, if practicable, unless the defendant waives  
2975 the jury, in which case the allegation shall be tried immediately to the court.

2976 (c) (i) Before or at the time of sentencing the trier of fact shall determine if this section  
2977 applies.

2978 (ii) The trier of fact shall consider any evidence presented at trial and the prosecution  
2979 and the defendant shall be afforded an opportunity to present any necessary additional  
2980 evidence.

2981 (iii) Before sentencing under this section, the trier of fact shall determine whether this  
2982 section is applicable beyond a reasonable doubt.

2983 (d) If any previous conviction and commitment is based upon a plea of guilty or no  
2984 contest, there is a rebuttable presumption that the conviction and commitment were regular and  
2985 lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the  
2986 conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution  
2987 to establish by a preponderance of the evidence that the defendant was then represented by  
2988 counsel or had lawfully waived the right to have counsel present, and that the defendant's plea  
2989 was understandingly and voluntarily entered.

2990 (e) If the trier of fact finds this section applicable, the court shall enter that specific  
2991 finding on the record and shall indicate in the order of judgment and commitment that the  
2992 defendant has been found by the trier of fact to be a habitual violent offender and is sentenced  
2993 under this section.

2994 (5) (a) The sentencing enhancement provisions of Section 76-3-407 supersede the  
2995 provisions of this section.

2996 (b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in  
2997 Subsection (1)(c) shall include any felony sexual offense violation of Title 76, Chapter 5, Part  
2998 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.

2999 (6) The sentencing enhancement described in this section does not apply if:

3000 (a) the offense for which the person is being sentenced is:

3001 (i) a grievous sexual offense;

3002 (ii) child kidnapping, Section 76-5-301.1;

3003 (iii) aggravated kidnapping, Section 76-5-302; or

3004 (iv) forcible sexual abuse, Section 76-5-404; and  
3005 (b) applying the sentencing enhancement provided for in this section would result in a  
3006 lower maximum penalty than the penalty provided for under the section that describes the  
3007 offense for which the person is being sentenced.

3008 Section 56. Section **76-4-203** is amended to read:

3009 **76-4-203. Criminal solicitation -- Elements.**

3010 (1) An actor commits criminal solicitation if, with intent that a felony be committed, he  
3011 solicits, requests, commands, offers to hire, or importunes another person to engage in specific  
3012 conduct that under the circumstances as the actor believes them to be would be a felony or  
3013 would cause the other person to be a party to the commission of a felony.

3014 (2) An actor may be convicted under this section only if the solicitation is made under  
3015 circumstances strongly corroborative of the actor's intent that the offense be committed.

3016 (3) It is not a defense under this section that the person solicited by the actor:

3017 (a) does not agree to act upon the solicitation;

3018 (b) does not commit an overt act;

3019 (c) does not engage in conduct constituting a substantial step toward the commission of  
3020 any offense;

3021 (d) is not criminally responsible for the felony solicited;

3022 (e) was acquitted, was not prosecuted or convicted, or was convicted of a different  
3023 offense or of a different type or degree of offense; or

3024 (f) is immune from prosecution.

3025 (4) It is not a defense under this section that the actor:

3026 (a) belongs to a class of persons that by definition is legally incapable of committing  
3027 the offense in an individual capacity; or

3028 (b) fails to communicate with the person he solicits to commit an offense, if the intent  
3029 of the actor's conduct was to effect the communication.

3030 (5) Nothing in this section prevents an actor who otherwise solicits, requests,  
3031 commands, encourages, or intentionally aids another person to engage in conduct which  
3032 constitutes an offense from being prosecuted and convicted as a party to the offense under  
3033 Section 76-2-202 if the person solicited actually commits the offense.

3034 Section 57. Section **76-4-401** is amended to read:

3035 **76-4-401. Enticing a minor -- Elements -- Penalties.**

3036 (1) As used in this section:

3037 (a) "Minor" means a person who is under the age of 18.

3038 (b) "Text messaging" means a communication in the form of electronic text or one or  
3039 more electronic images sent by the actor from a telephone or computer to another person's  
3040 telephone or computer by addressing the communication to the person's telephone number.

3041 (2) (a) A person commits enticement of a minor when the person knowingly uses or  
3042 attempts to use the Internet or text messaging to solicit, seduce, lure, or entice a minor or  
3043 another person that the actor believes to be a minor to engage in any sexual activity which is a  
3044 violation of state criminal law.

3045 (b) A person commits enticement of a minor when the person knowingly uses the  
3046 Internet or text messaging to:

3047 (i) initiate contact with a minor or a person the actor believes to be a minor; and

3048 (ii) subsequently to the action under Subsection (2)(b)(i), by any electronic or written  
3049 means, solicits, seduces, lures, or entices, or attempts to solicit, seduce, lure, or entice the  
3050 minor or a person the actor believes to be the minor to engage in any sexual activity which is a  
3051 violation of state criminal law.

3052 (3) It is not a defense to the crime of enticing a minor under Subsection (2), or an  
3053 attempt to commit this offense, that a law enforcement officer or an undercover operative who  
3054 is working with a law enforcement agency was involved in the detection or investigation of the  
3055 offense.

3056 (4) An enticement of a minor under Subsection (2)(a) or (b) with the intent to commit:

3057 (a) a first degree felony is a:

3058 (i) second degree felony upon the first conviction for violation of this Subsection

3059 (4)(a); and

3060 (ii) first degree felony punishable by imprisonment for an indeterminate term of not  
3061 fewer than three years and which may be for life, upon a second or any subsequent conviction  
3062 for a violation of this Subsection (4)(a);

3063 (b) a second degree felony is a third degree felony;

3064 (c) a third degree felony is a class A misdemeanor;

3065 (d) a class A misdemeanor is a class B misdemeanor; and

3066 (e) a class B misdemeanor is a class C misdemeanor.

3067 (5) (a) When a person who commits a felony violation of this section has been

3068 previously convicted of an offense under Subsection (5)(b), the court may not in any way

3069 shorten the prison sentence, and the court may not:

3070 (i) grant probation;

3071 (ii) suspend the execution or imposition of the sentence;

3072 (iii) enter a judgment for a lower category of offense; or

3073 (iv) order hospitalization.

3074 (b) The sections referred to in Subsection (5)(a) are:

3075 (i) Section 76-4-401, enticing a minor;

3076 (ii) Section 76-5-301.1, child kidnapping;

3077 (iii) Section 76-5-402, rape;

3078 (iv) Section 76-5-402.1, rape of a child;

3079 (v) Section 76-5-402.2, object rape;

3080 (vi) Section 76-5-402.3, object rape of a child;

3081 (vii) Subsection 76-5-403(2), forcible sodomy;

3082 (viii) Section 76-5-403.1, sodomy on a child;

3083 (ix) Section 76-5-404, forcible sexual abuse;

3084 (x) Section 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child;

3085 (xi) Section 76-5-405, aggravated sexual assault;

3086 (xii) any offense in any other state or federal jurisdiction which constitutes or would

3087 constitute a crime in Subsections [~~(4)~~] (5)(b)(i) through (xi); or

3088 (xiii) the attempt, solicitation, or conspiracy to commit any of the offenses in

3089 Subsections [~~(4)~~] (5)(b)(i) through (xii).

3090 Section 58. Section **76-5-307** is amended to read:

3091 **76-5-307. Definitions.**

3092 As used in Sections 76-5-308 through [~~76-5-312~~] 76-5-310 of this part:

3093 (1) "Family member" means a person's parent, grandparent, sibling, or any other person

3094 related to the person by consanguinity or affinity to the second degree.

3095 (2) "Smuggling of human beings" means the transportation or procurement of

3096 transportation for one or more persons by an actor who knows or has reason to know that the

3097 person or persons transported or to be transported are not:

3098 (a) citizens of the United States;

3099 (b) permanent resident aliens; or

3100 (c) otherwise lawfully in this state or entitled to be in this state.

3101 Section 59. Section **76-6-107** is amended to read:

3102 **76-6-107. Graffiti defined -- Penalties -- Removal costs -- Reimbursement**

3103 **liability.**

3104 (1) As used in this section:

3105 (a) "Etching" means defacing, damaging, or destroying hard surfaces by means of a  
3106 chemical action which uses any caustic cream, gel, liquid, or solution.

3107 (b) "Graffiti" means any form of unauthorized printing, writing, spraying, scratching,  
3108 affixing, etching, or inscribing on the property of another regardless of the content or the nature  
3109 of the material used in the commission of the act.

3110 (c) "Victim" means the person or entity whose property was defaced by the graffiti and  
3111 bears the expense for its removal.

3112 (2) Graffiti is a:

3113 (a) second degree felony if the damage caused is in excess of \$5,000;

3114 (b) third degree felony if the damage caused is in excess of \$1,000;

3115 (c) class A misdemeanor if the damage caused is equal to or in excess of \$300; and

3116 (d) class B misdemeanor if the damage caused is less than \$300.

3117 (3) Damages under Subsection (2) include removal costs, repair costs, or replacement  
3118 costs, whichever is less.

3119 (4) The court, upon conviction or adjudication, shall order restitution to the victim in  
3120 the amount of removal, repair, or replacement costs.

3121 (5) An additional amount of \$1,000 in restitution shall be added to removal costs if the  
3122 graffiti is positioned on an overpass or an underpass, requires that traffic be interfered with in  
3123 order to remove it, or the entity responsible for the area in which the clean-up is to take place  
3124 must provide assistance in order for the removal to take place safely.

3125 (6) A person who voluntarily, and at his own expense, removes graffiti for which he is  
3126 responsible may be credited for the removal costs against restitution ordered by a court.

3127 Section 60. Section **76-6-412** is amended to read:

3128           **76-6-412. Theft -- Classification of offenses -- Action for treble damages.**  
3129           (1) Theft of property and services as provided in this chapter is punishable:  
3130           (a) as a second degree felony if the:  
3131           (i) value of the property or services is or exceeds \$5,000;  
3132           (ii) property stolen is a firearm or an operable motor vehicle;  
3133           (iii) actor is armed with a dangerous weapon, as defined in Section 76-1-601, at the  
3134 time of the theft; or  
3135           (iv) property is stolen from the person of another;  
3136           (b) as a third degree felony if:  
3137           (i) the value of the property or services is or exceeds \$1,500 but is less than \$5,000;  
3138           (ii) the actor has been twice before convicted of any of the offenses listed in this  
3139 Subsection (1)(b)(ii), if each prior offense was committed within 10 years of the date of the  
3140 current conviction or the date of the offense upon which the current conviction is based:  
3141           (A) any theft, any robbery, or any burglary with intent to commit theft;  
3142           (B) any offense under Title 76, Chapter 6, Part 5, Fraud; or  
3143           (C) any attempt to commit any offense under Subsection (1)(b)(ii)(A) or (B);  
3144           (iii) in a case not amounting to a second-degree felony, the property taken is a stallion,  
3145 mare, colt, gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine,  
3146 poultry, or a fur-bearing animal raised for commercial purposes; or  
3147           (iv) (A) the value of property or services is or exceeds \$500 but is less than \$1,500;  
3148           (B) the theft occurs on a property where the offender has committed any theft within  
3149 the past five years; and  
3150           (C) the offender has received written notice from the merchant prohibiting the offender  
3151 from entering the property pursuant to Section 78B-3-108; or  
3152           (c) as a class A misdemeanor if:  
3153           (i) the value of the property stolen is or exceeds \$500 but is less than \$1,500;  
3154           (ii) (A) the value of property or services is less than \$500;  
3155           (B) the theft occurs on a property where the offender has committed any theft within  
3156 the past five years; and  
3157           (C) the offender has received written notice from the merchant prohibiting the offender  
3158 from entering the property pursuant to Section 78B-3-108; or

3159 (d) as a class B misdemeanor if the value of the property stolen is less than \$500 and  
3160 the theft is not an offense under Subsection (1)(c).

3161 (2) Any individual who violates Subsection 76-6-408(1) or Section 76-6-413, or  
3162 commits theft of property described in Subsection 76-6-412(1)(b)(iii), is civilly liable for three  
3163 times the amount of actual damages, if any sustained by the plaintiff, and for costs of suit and  
3164 reasonable attorney fees.

3165 Section 61. Section **76-6-1102** is amended to read:

3166 **76-6-1102. Identity fraud crime.**

3167 (1) As used in this part, "personal identifying information" may include:

3168 (a) name;

3169 (b) birth date;

3170 (c) address;

3171 (d) telephone number;

3172 (e) drivers license number;

3173 (f) Social Security number;

3174 (g) place of employment;

3175 (h) employee identification numbers or other personal identification numbers;

3176 (i) mother's maiden name;

3177 (j) electronic identification numbers;

3178 (k) electronic signatures under Title 46, Chapter 4, Uniform Electronic Transactions

3179 Act; or

3180 (l) any other numbers or information that can be used to access a person's financial  
3181 resources or medical information, except for numbers or information that can be prosecuted as  
3182 financial transaction card offenses under Sections 76-6-506 through ~~[76-6-506.4]~~ 76-6-506.6.

3183 (2) (a) A person is guilty of identity fraud when that person:

3184 (i) obtains personal identifying information of another person whether that person is  
3185 alive or deceased; and

3186 (ii) knowingly or intentionally uses, or attempts to use, that information with fraudulent  
3187 intent, including to obtain, or attempt to obtain, credit, goods, services, employment, any other  
3188 thing of value, or medical information.

3189 (b) It is not a defense to a violation of Subsection (2)(a) that the person did not know

3190 that the personal information belonged to another person.

3191 (3) Identity fraud is:

3192 (a) except as provided in Subsection (3)(b)(ii), a third degree felony if the value of the  
3193 credit, goods, services, employment, or any other thing of value is less than \$5,000; or

3194 (b) a second degree felony if:

3195 (i) the value of the credit, goods, services, employment, or any other thing of value is  
3196 or exceeds \$5,000; or

3197 (ii) the use described in Subsection (2)(a)(ii) of personal identifying information  
3198 results, directly or indirectly, in bodily injury to another person.

3199 (4) Multiple violations may be aggregated into a single offense, and the degree of the  
3200 offense is determined by the total value of all credit, goods, services, or any other thing of  
3201 value used, or attempted to be used, through the multiple violations.

3202 (5) When a defendant is convicted of a violation of this section, the court shall order  
3203 the defendant to make restitution to any victim of the offense or state on the record the reason  
3204 the court does not find ordering restitution to be appropriate.

3205 (6) Restitution under Subsection (5) may include:

3206 (a) payment for any costs incurred, including attorney fees, lost wages, and  
3207 replacement of checks; and

3208 (b) the value of the victim's time incurred due to the offense:

3209 (i) in clearing the victim's credit history or credit rating;

3210 (ii) in any civil or administrative proceedings necessary to satisfy or resolve any debt,  
3211 lien, or other obligation of the victim or imputed to the victim and arising from the offense; and

3212 (iii) in attempting to remedy any other intended or actual harm to the victim incurred as  
3213 a result of the offense.

3214 Section 62. Section **76-7-305.5** is amended to read:

3215 **76-7-305.5. Requirements for printed materials and informational video.**

3216 (1) In order to ensure that a woman's consent to an abortion is truly an informed  
3217 consent, the Department of Health shall, in accordance with the requirements of this section:

3218 (a) publish printed materials; and

3219 (b) produce an informational video.

3220 (2) The printed materials and the informational video described in Subsection (1) shall:



- 3221 (a) be scientifically accurate, comprehensible, and presented in a truthful,  
3222 nonmisleading manner;
- 3223 (b) present adoption as a preferred and positive choice and alternative to abortion;
- 3224 (c) be printed and produced in a manner that conveys the state's preference for  
3225 childbirth over abortion;
- 3226 (d) state that the state prefers childbirth over abortion;
- 3227 (e) state that it is unlawful for any person to coerce a woman to undergo an abortion;
- 3228 (f) state that any physician who performs an abortion without obtaining the woman's  
3229 informed consent or without providing her a private medical consultation in accordance with  
3230 the requirements of this section, may be liable to her for damages in a civil action at law;
- 3231 (g) provide information on resources and public and private services available to assist  
3232 a pregnant woman, financially or otherwise, during pregnancy, at childbirth, and while the  
3233 child is dependent, including:
- 3234 (i) medical assistance benefits for prenatal care, childbirth, and neonatal care;
- 3235 (ii) services and supports available under Section 35A-3-308;
- 3236 (iii) other financial aid that may be available during an adoption; and
- 3237 (iv) services available from public adoption agencies, private adoption agencies, and  
3238 private attorneys whose practice includes adoption;
- 3239 (h) describe the adoption-related expenses that may be paid under Section 76-7-203;
- 3240 (i) describe the persons who may pay the adoption related expenses described in  
3241 Subsection (2)(h);
- 3242 (j) describe the legal responsibility of the father of a child to assist in child support,  
3243 even if the father has agreed to pay for an abortion;
- 3244 (k) describe the services available through the Office of Recovery Services, within the  
3245 Department of Human Services, to establish and collect the support described in Subsection  
3246 (2)(j);
- 3247 (l) state that private adoption is legal;
- 3248 (m) in accordance with Subsection (3), describe the probable anatomical and  
3249 physiological characteristics of an unborn child at two-week gestational increments from  
3250 fertilization to full term, including:
- 3251 (i) brain and heart function; and

3252 (ii) the presence and development of external members and internal organs;  
3253 (n) describe abortion procedures used in current medical practice at the various stages  
3254 of growth of the unborn child, including:  
3255 (i) the medical risks associated with each procedure;  
3256 (ii) the risk related to subsequent childbearing that are associated with each procedure;  
3257 and  
3258 (iii) the consequences of each procedure to the unborn child at various stages of fetal  
3259 development;  
3260 (o) describe the possible detrimental psychological effects of abortion;  
3261 (p) describe the medical risks associated with carrying a child to term; and  
3262 (q) include relevant information on the possibility of an unborn child's survival at the  
3263 two-week gestational increments described in Subsection (2)(m).  
3264 (3) The information described in Subsection (2)(m) shall be accompanied by the  
3265 following for each gestational increment described in Subsection (2)(m):  
3266 (a) pictures or video segments that accurately represent the normal development of an  
3267 unborn child at that stage of development; and  
3268 (b) the dimensions of the fetus at that stage of development.  
3269 (4) The printed material and video described in Subsection (1) may include a toll-free  
3270 24-hour telephone number that may be called in order to obtain, orally, a list and description of  
3271 services, agencies, and adoption attorneys in the locality of the caller.  
3272 (5) In addition to the requirements described in Subsection (2), the printed material  
3273 described in Subsection (1)(a) shall:  
3274 (a) be printed in a typeface large enough to be clearly legible;  
3275 (b) in accordance with Subsection (6), include a geographically indexed list of public  
3276 and private services and agencies available to assist a woman, financially or otherwise, through  
3277 pregnancy, at childbirth, and while the child is dependent;  
3278 (c) except as provided in Subsection (7), include a separate brochure that contains  
3279 truthful, nonmisleading information regarding:  
3280 (i) the ability of an unborn child to experience pain during an abortion procedure;  
3281 (ii) the measures that may be taken, including the administration of an anesthetic or  
3282 analgesic to an unborn child, to alleviate or eliminate pain to an unborn child during an

3283 abortion procedure;

3284 (iii) the effectiveness and advisability of taking the measures described in Subsection

3285 (5)(c)(ii); and

3286 (iv) potential medical risks to a pregnant woman that are associated with the

3287 administration of an anesthetic or analgesic to an unborn child during an abortion procedure.

3288 (6) The list described in Subsection (5)(b) shall include:

3289 (a) private attorneys whose practice includes adoption; and

3290 (b) the names, addresses, and telephone numbers of each person listed under

3291 Subsection (5)(b) or (6)(a).

3292 (7) A person or facility is not required to provide the information described in

3293 Subsection (5)(c) to a patient or potential patient, if the abortion is to be performed:

3294 (a) on an unborn child who is less than 20 weeks gestational age at the time of the

3295 abortion; or

3296 (b) on an unborn child who is at least 20 weeks gestational age at the time of the

3297 abortion, if:

3298 (i) the abortion is being performed for a reason described in Subsection

3299 76-7-302(3)(b)(i); and

3300 (ii) due to a serious medical emergency, time does not permit compliance with the

3301 requirement to provide the information described in Subsection (5)(c).

3302 (8) In addition to the requirements described in Subsection (2), the video described in

3303 Subsection (1)(b) shall:

3304 (a) make reference to the list described in Subsection (5)(b); and

3305 (b) show an ultrasound of the heartbeat of an unborn child at:

3306 (i) four weeks from conception;

3307 (ii) six to eight weeks from conception; and

3308 (iii) each month after ~~ten~~ 10 weeks gestational age, up to 14 weeks gestational age.

3309 Section 63. Section **76-8-109** is amended to read:

3310 **76-8-109. Failure to disclose conflict of interest.**

3311 (1) As used in this section:

3312 (a) "Conflict of interest" means an action that is taken by a regulated officeholder that

3313 the officeholder reasonably believes may cause direct financial benefit or detriment to the

3314 officeholder, a member of the officeholder's immediate family, or an entity that the officeholder  
3315 is required to disclose under the provisions of this section, and that benefit or detriment is  
3316 distinguishable from the effects of that action on the public or on the officeholder's profession,  
3317 occupation, or association generally.

3318 (b) "Entity" means a corporation, a partnership, a limited liability company, a limited  
3319 partnership, a sole proprietorship, an association, a cooperative, a trust, an organization, a joint  
3320 venture, a governmental entity, an unincorporated organization, or any other legal entity,  
3321 whether established primarily for the purpose of gain or economic profit or not.

3322 (c) "Filer" means the individual filing a financial declaration under this section.

3323 (d) "Immediate family" means the regulated officeholder's spouse and children living  
3324 in the officeholder's immediate household.

3325 (e) "Income" means earnings, compensation, or any other payment made to an  
3326 individual for gain, regardless of source, whether denominated as wages, salary, commission,  
3327 pay, bonus, severance pay, incentive pay, contract payment, interest, per diem, expenses,  
3328 reimbursement, dividends, or otherwise.

3329 (f) "Regulated officeholder" means an individual that is required to file a financial  
3330 disclosure under the provisions and requirements of this section.

3331 (g) "State constitutional officer" means the governor, the lieutenant governor, the state  
3332 auditor, the state treasurer, or the attorney general.

3333 (2) (a) Before or during the execution of any order, settlement, declaration, contract, or  
3334 any other official act of office in which a state constitutional officer has actual knowledge that  
3335 the officer has a conflict of interest which is not stated on the financial disclosure form required  
3336 under Subsection (4), the officer shall publicly declare that the officer may have a conflict of  
3337 interest and what that conflict of interest is.

3338 (b) Before or during any vote on legislation or any legislative matter in which a  
3339 legislator has actual knowledge that the legislator has a conflict of interest which is not stated  
3340 on the ~~[the]~~ financial disclosure form required under Subsection (4), the legislator shall orally  
3341 declare to the committee or body before which the matter is pending that the legislator may  
3342 have a conflict of interest and what that conflict is.

3343 (c) Before or during any vote on any rule, resolution, order, or any other board matter  
3344 in which a member of the State Board of Education has actual knowledge that the member has

3345 a conflict of interest which is not stated on the financial disclosure form required under  
3346 Subsection (4), the member shall orally declare to the board that the member may have a  
3347 conflict of interest and what that conflict of interest is.

3348 (3) Any public declaration of a conflict of interest that is made under Subsection (2)  
3349 shall be noted:

3350 (a) on the official record of the action taken, for a state constitutional officer;

3351 (b) in the minutes of the committee meeting or in the Senate or House Journal, as  
3352 applicable, for a legislator; or

3353 (c) in the minutes of the meeting or on the official record of the action taken, for a  
3354 member of the State Board of Education.

3355 (4) (a) The following individuals shall file a financial disclosure form:

3356 (i) a state constitutional officer, to be due on the tenth day of January of each year, or  
3357 the following business day if the due date falls on a weekend or holiday;

3358 (ii) a legislator, at the following times:

3359 (A) on the first day of each general session of the Legislature; and

3360 (B) each time the legislator changes employment;

3361 (iii) a member of the State Board of Education, at the following times:

3362 (A) on the tenth day of January of each year, or the following business day if the due  
3363 date falls on a weekend or holiday; and

3364 (B) each time the member changes employment.

3365 (b) The financial disclosure form shall include:

3366 (i) the filer's name;

3367 (ii) the name and address of the filer's primary employer;

3368 (iii) a brief description of the filer's employment, including the filer's occupation and,  
3369 as applicable, job title;

3370 (iv) for each entity in which the filer is an owner or an officer:

3371 (A) the name of the entity;

3372 (B) a brief description of the type of business or activity conducted by the entity; and

3373 (C) the filer's position in the entity;

3374 (v) for each entity that has paid \$5,000 or more in income to the filer within the  
3375 one-year period ending immediately before the date of the disclosure form:

- 3376 (A) the name of the entity; and
- 3377 (B) a brief description of the type of business [~~of~~] or activity conducted by the entity;
- 3378 (vi) for each entity in which the filer holds any stocks or bonds having a fair market
- 3379 value of \$5,000 or more as of the date of the disclosure form, but excluding funds that are
- 3380 managed by a third party, including blind trusts, managed investment accounts, and mutual
- 3381 funds:
- 3382 (A) the name of the entity; and
- 3383 (B) a brief description of the type of business or activity conducted by the entity;
- 3384 (vii) for each entity not listed in Subsections (4)(b)(iv) through (4)(b)(vi), in which the
- 3385 filer serves on the board of directors or in any other type of formal advisory capacity:
- 3386 (A) the name of the entity or organization;
- 3387 (B) a brief description of the type of business or activity conducted by the entity; and
- 3388 (C) the type of advisory position held by the filer;
- 3389 (viii) at the option of the filer, any real property in which the filer holds an ownership
- 3390 or other financial interest that the filer believes may constitute a conflict of interest, including:
- 3391 (A) a description of the real property; and
- 3392 (B) a description of the type of interest held by the filer in the property;
- 3393 (ix) the name of the filer's spouse and any other adult residing in the filer's household
- 3394 that is not related by blood or marriage, as applicable;
- 3395 (x) a brief description of the employment and occupation of the filer's spouse and any
- 3396 other adult residing in the filer's household that is not related by blood or marriage, as
- 3397 applicable;
- 3398 (xi) at the option of the filer, a description of any other matter or interest that the filer
- 3399 believes may constitute a conflict of interest;
- 3400 (xii) the date the form was completed;
- 3401 (xiii) a statement that the filer believes that the form is true and accurate to the best of
- 3402 the filer's knowledge; and
- 3403 (xiv) the signature of the filer.
- 3404 (c) (i) The financial disclosure shall be filed with:
- 3405 (A) the secretary of the Senate, for a legislator that is a senator;
- 3406 (B) the chief clerk of the House of Representatives, for a legislator that is a

3407 representative; or

3408 (C) the lieutenant governor, for all other regulated officeholders.

3409 (ii) The lieutenant governor, the secretary of the Senate, and the chief clerk of the

3410 House of Representatives shall ensure that blank financial disclosure forms are available on the

3411 Internet and at their offices.

3412 (d) Financial disclosure forms that are filed under the procedures and requirements of

3413 this section shall be made available to the public:

3414 (i) on the Internet; and

3415 (ii) at the office where the form was filed.

3416 (e) This section's requirement to disclose a conflict of interest does not prohibit a

3417 regulated officeholder from voting or acting on any matter.

3418 (5) A regulated officeholder who violates the requirements of Subsection (2) is guilty

3419 of a class B misdemeanor.

3420 Section 64. Section **76-9-702** is amended to read:

3421 **76-9-702. Lewdness.**

3422 (1) A person is guilty of lewdness if the person under circumstances not amounting to

3423 rape, object rape, forcible sodomy, forcible sexual abuse, aggravated sexual assault, or an

3424 attempt to commit any of these offenses, performs any of the following acts in a public place or

3425 under circumstances which the person should know will likely cause affront or alarm to, on, or

3426 in the presence of another who is 14 years of age or older:

3427 (a) an act of sexual intercourse or sodomy;

3428 (b) exposes his or her genitals, the female breast below the top of the areola, the

3429 buttocks, the anus, or the pubic area;

3430 (c) masturbates; or

3431 (d) any other act of lewdness.

3432 (2) (a) A person convicted the first or second time of a violation of Subsection (1) is

3433 guilty of a class B misdemeanor, except under Subsection (2)(b).

3434 (b) A person convicted of a violation of Subsection (1) is guilty of a third degree felony

3435 if at the time of the violation:

3436 (i) the person is a sex offender as defined in Section 77-27-21.7;

3437 (ii) the person has been previously convicted two or more times of violating Subsection

3438 (1); or

3439 (iii) the person has previously been convicted of a violation of Subsection (1) and has  
3440 also previously been convicted of a violation of Section 76-9-702.5.

3441 (c) (i) For purposes of this Subsection (2) and Subsection [~~77-27-21.5(1)(n)~~]  
3442 77-41-102(16), a plea of guilty or nolo contendere to a charge under this section that is held in  
3443 abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction.

3444 (ii) This Subsection (2)(c) also applies if the charge under this Subsection (2) has been  
3445 subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

3446 (3) A woman's breast feeding, including breast feeding in any location where the  
3447 woman otherwise may rightfully be, does not under any circumstance constitute a lewd act,  
3448 irrespective of whether or not the breast is covered during or incidental to feeding.

3449 Section 65. Section **76-9-702.1** is amended to read:

3450 **76-9-702.1. Sexual battery.**

3451 (1) A person is guilty of sexual battery if the person, under circumstances not  
3452 amounting to an offense under Subsection (2), intentionally touches, whether or not through  
3453 clothing, the anus, buttocks, or any part of the genitals of another person, or the breast of a  
3454 female person, and the actor's conduct is under circumstances the actor knows or should know  
3455 will likely cause affront or alarm to the person touched.

3456 (2) Offenses referred to in Subsection (1) are:

3457 (a) rape, Section 76-5-402;

3458 (b) rape of a child, Section 76-5-402.1;

3459 (c) object rape, Section 76-5-402.2;

3460 (d) object rape of a child, Section 76-5-402.3;

3461 (e) forcible sodomy, Subsection 76-5-403(2);

3462 (f) sodomy on a child, Section 76-5-403.1;

3463 (g) forcible sexual abuse, Section 76-5-404;

3464 (h) sexual abuse of a child, Subsection 76-5-404.1(2);

3465 (i) aggravated sexual abuse of a child, Subsection 76-5-404.1(4);

3466 (j) aggravated sexual assault, Section 76-5-405; and

3467 (k) an attempt to commit any offense under this Subsection (2).

3468 (3) Sexual battery is a class A misdemeanor.



3469 (4) For purposes of Subsection [~~77-27-21.5(1)(n)~~] 77-41-102(16) only, a plea of guilty  
3470 or nolo contendere to a charge under this section that is held in abeyance under Title 77,  
3471 Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction. This Subsection (4) also  
3472 applies if the charge under this section has been subsequently reduced or dismissed in  
3473 accordance with the plea in abeyance agreement.

3474 Section 66. Section **76-9-702.5** is amended to read:

3475 **76-9-702.5. Lewdness involving a child.**

3476 (1) A person is guilty of lewdness involving a child if the person under circumstances  
3477 not amounting to rape of a child, object rape of a child, sodomy upon a child, sexual abuse of a  
3478 child, aggravated sexual abuse of a child, or an attempt to commit any of those offenses,  
3479 intentionally or knowingly does any of the following to, or in the presence of, a child who is  
3480 under 14 years of age:

3481 (a) performs an act of sexual intercourse or sodomy;

3482 (b) exposes his or her genitals, the female breast below the top of the areola, the  
3483 buttocks, the anus, or the pubic area:

3484 (i) in a public place; or

3485 (ii) in a private place:

3486 (A) under circumstances the person should know will likely cause affront or alarm; or

3487 (B) with the intent to arouse or gratify the sexual desire of the actor or the child;

3488 (c) masturbates;

3489 (d) under circumstances not amounting to sexual exploitation of a child under Section  
3490 76-5b-201, causes a child under the age of 14 years to expose his or her genitals, anus, or  
3491 breast, if female, to the actor, with the intent to arouse or gratify the sexual desire of the actor  
3492 or the child; or

3493 (e) performs any other act of lewdness.

3494 (2) (a) Lewdness involving a child is a class A misdemeanor, except under Subsection  
3495 (2)(b).

3496 (b) Lewdness involving a child is a third degree felony if at the time of the violation:

3497 (i) the person is a sex offender as defined in Section 77-27-21.7; or

3498 (ii) the person has previously been convicted of a violation of this section.

3499 Section 67. Section **76-9-1008** is amended to read:

3500           **76-9-1008. Proof of immigration status required to receive public benefits.**

3501           (1) (a) An agency that provides state or local public benefits as defined in 8 U.S.C. Sec.  
3502 1621 shall comply with Section [~~63G-11-104~~] 63G-12-402 and shall also comply with this  
3503 section, except:

3504           (i) as provided in Subsection [~~63G-11-104(4)~~] 63G-12-402(3)(g) or (k); or  
3505           (ii) when compliance is exempted by federal law or when compliance could reasonably  
3506 be expected to be grounds for the federal government to withhold federal Medicaid funding.

3507           (b) The agency shall verify a person's lawful presence in the United States by requiring  
3508 that the applicant under this section sign a certificate under penalty of perjury, stating that the  
3509 applicant:

3510           (i) is a United States citizen; or  
3511           (ii) is a qualified alien as defined by 8 U.S.C. Sec. 1641.  
3512           (c) The certificate under Subsection (1)(b) shall include a statement advising the signer  
3513 that providing false information subjects the signer to penalties for perjury.

3514           (d) The signature under this Subsection (1) may be executed in person or  
3515 electronically.

3516           (e) When an applicant who is a qualified alien has executed the certificate under this  
3517 section, the applicant's eligibility for benefits shall be verified by the agency through the federal  
3518 SAVE program or an equivalent program designated by the United States Department of  
3519 Homeland Security.

3520           (2) Any person who knowingly and willfully makes a false, fictitious, or fraudulent  
3521 statement of representation in a certificate executed under this section is guilty of public  
3522 assistance fraud under Section 76-8-1205.

3523           (3) If the certificate constitutes a false claim of United States citizenship under 18  
3524 U.S.C. Sec. 911, the agency requiring the certificate shall file a complaint with the United  
3525 States Attorney for the applicable federal judicial district based upon the venue in which the  
3526 certificate was executed.

3527           (4) Agencies may, with the concurrence of the Utah Attorney General, adopt variations  
3528 to the requirements of the provisions of this section that provide for adjudication of unique  
3529 individual circumstances where the verification procedures in this section would impose  
3530 unusual hardship on a legal resident of this state.

3531 (5) If an agency under Subsection (1) receives verification that a person making an  
3532 application for any benefit, service, or license is not a qualified alien, the agency shall provide  
3533 the information to the local law enforcement agency for enforcement of Section 76-8-1205  
3534 unless prohibited by federal mandate.

3535 Section 68. Section **76-10-104.1** is amended to read:

3536 **76-10-104.1. Providing tobacco paraphernalia to minors -- Penalties.**

3537 (1) For purposes of this section:

3538 (a) "Provides":

3539 (i) includes selling, giving, furnishing, sending, or causing to be sent; and

3540 (ii) does not include the acts of the United States Postal Service or other common  
3541 carrier when engaged in the business of transporting and delivering packages for others or the  
3542 acts of a person, whether compensated or not, who transports or delivers a package for another  
3543 person without any reason to know of the package's content.

3544 (b) "Tobacco paraphernalia":

3545 (i) means any equipment, product, or material of any kind which is used, intended for  
3546 use, or designed for use to package, repack, store, contain, conceal, ingest, inhale, or  
3547 otherwise introduce a cigar, cigarette, or tobacco in any form into the human body, including:

3548 (A) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without  
3549 screens, permanent screens, hashish heads, or punctured metal bowls;

3550 (B) water pipes;

3551 (C) carburetion tubes and devices;

3552 (D) smoking and carburetion masks;

3553 (E) roach clips: meaning objects used to hold burning material, such as a cigarette, that  
3554 has become too small or too short to be held in the hand;

3555 (F) chamber pipes;

3556 (G) carburetor pipes;

3557 (H) electric pipes;

3558 (I) air-driven pipes;

3559 (J) chillums;

3560 (K) bongs; and

3561 (L) ice pipes or chillers; and

3562 (ii) does not include matches or lighters.

3563 (2) (a) It is unlawful for a person to[;] knowingly, intentionally, recklessly, or with  
3564 criminal negligence provide any tobacco paraphernalia to any person under 19 years of age.

3565 (b) A person who violates this section is guilty of a class C misdemeanor on the first  
3566 offense and a class B misdemeanor on subsequent offenses.

3567 Section 69. Section **76-10-501** is amended to read:

3568 **76-10-501. Definitions.**

3569 As used in this part:

3570 (1) (a) "Antique firearm" means:

3571 (i) any firearm, including any firearm with a matchlock, flintlock, percussion cap, or  
3572 similar type of ignition system, manufactured in or before 1898; or

3573 (ii) a firearm that is a replica of any firearm described in this Subsection (1)(a), if the  
3574 replica:

3575 (A) is not designed or redesigned for using rimfire or conventional centerfire fixed  
3576 ammunition; or

3577 (B) uses rimfire or centerfire fixed ammunition which is:

3578 (I) no longer manufactured in the United States; and

3579 (II) is not readily available in ordinary channels of commercial trade; or

3580 (iii) (A) that is a muzzle loading rifle, shotgun, or pistol; and

3581 (B) is designed to use black powder, or a black powder substitute, and cannot use fixed  
3582 ammunition.

3583 (b) "Antique firearm" does not include:

3584 (i) a weapon that incorporates a firearm frame or receiver;

3585 (ii) a firearm that is converted into a muzzle loading weapon; or

3586 (iii) a muzzle loading weapon that can be readily converted to fire fixed ammunition by  
3587 replacing the:

3588 (A) barrel;

3589 (B) bolt;

3590 (C) breechblock; or

3591 (D) any combination of Subsection (1)(b)(iii)(A), (B), or (C).

3592 (2) "Bureau" means the Bureau of Criminal Identification created in Section 53-10-201

3593 within the Department of Public Safety.

3594 (3) (a) "Concealed dangerous weapon" means a dangerous weapon that is:

3595 (i) covered, hidden, or secreted in a manner that the public would not be aware of its  
3596 presence; and

3597 (ii) readily accessible for immediate use.

3598 (b) A dangerous weapon is not a concealed dangerous weapon if it is a firearm which is  
3599 unloaded and is securely encased.

3600 (4) "Criminal history background check" means a criminal background check  
3601 conducted by a licensed firearms dealer on every purchaser of a handgun, except a Federal  
3602 Firearms Licensee, through the bureau or the local law enforcement agency where the firearms  
3603 dealer conducts business.

3604 (5) "Curio or relic firearm" means a firearm that:

3605 (a) is of special interest to a collector because of a quality that is not associated with  
3606 firearms intended for:

3607 (i) sporting use;

3608 (ii) use as an offensive weapon; or

3609 (iii) use as a defensive weapon;

3610 (b) (i) was manufactured at least 50 years before the current date; and

3611 (ii) is not a replica of a firearm described in Subsection (5)(b)(i);

3612 (c) is certified by the curator of a municipal, state, or federal museum that exhibits  
3613 firearms to be a curio or relic of museum interest;

3614 (d) derives a substantial part of its monetary value:

3615 (i) from the fact that the firearm is:

3616 (A) novel;

3617 (B) rare; or

3618 (C) bizarre; or

3619 (ii) because of the firearm's association with an historical:

3620 (A) figure;

3621 (B) period; or

3622 (C) event; and

3623 (e) has been designated as a curio or relic firearm by the director of the United States

3624 Treasury Department Bureau of Alcohol, Tobacco, and Firearms under 27 C.F.R. Sec. [~~178.11~~  
3625 478.11.

3626 (6) (a) "Dangerous weapon" means an item that in the manner of its use or intended use  
3627 is capable of causing death or serious bodily injury.

3628 (b) The following factors shall be used in determining whether a knife, or another item,  
3629 object, or thing not commonly known as a dangerous weapon is a dangerous weapon:

3630 (i) the character of the instrument, object, or thing;

3631 (ii) the character of the wound produced, if any;

3632 (iii) the manner in which the instrument, object, or thing was used; and

3633 (iv) the other lawful purposes for which the instrument, object, or thing may be used.

3634 (c) "Dangerous weapon" does not include an explosive, chemical, or incendiary device  
3635 as defined by Section 76-10-306.

3636 (7) "Dealer" means a person who is:

3637 (a) licensed under 18 U.S.C. Sec. 923; and

3638 (b) engaged in the business of selling, leasing, or otherwise transferring a handgun,  
3639 whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

3640 (8) "Enter" means intrusion of the entire body.

3641 (9) "Federal Firearms Licensee" means a person who:

3642 (a) holds a valid Federal Firearms License issued under 18 U.S.C. Sec. 923; and

3643 (b) is engaged in the activities authorized by the specific category of license held.

3644 (10) (a) "Firearm" means a pistol, revolver, shotgun, short barrel shotgun, rifle or short  
3645 barrel rifle, or a device that could be used as a dangerous weapon from which is expelled a  
3646 projectile by action of an explosive.

3647 (b) As used in Sections 76-10-526 and 76-10-527, "firearm" does not include an  
3648 antique firearm.

3649 (11) "Firearms transaction record form" means a form created by the bureau to be  
3650 completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.

3651 (12) "Fully automatic weapon" means a firearm which fires, is designed to fire, or can  
3652 be readily restored to fire, automatically more than one shot without manual reloading by a  
3653 single function of the trigger.

3654 (13) (a) "Handgun" means a pistol, revolver, or other firearm of any description, loaded

3655 or unloaded, from which a shot, bullet, or other missile can be discharged, the length of which,  
3656 not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

3657 (b) As used in Sections 76-10-520, 76-10-521, and 76-10-522, "handgun" and "pistol  
3658 or revolver" do not include an antique firearm.

3659 (14) "House of worship" means a church, temple, synagogue, mosque, or other  
3660 building set apart primarily for the purpose of worship in which religious services are held and  
3661 the main body of which is kept for that use and not put to any other use inconsistent with its  
3662 primary purpose.

3663 (15) "Prohibited area" means a place where it is unlawful to discharge a firearm.

3664 (16) "Readily accessible for immediate use" means that a firearm or other dangerous  
3665 weapon is carried on the person or within such close proximity and in such a manner that it can  
3666 be retrieved and used as readily as if carried on the person.

3667 (17) "Residence" means an improvement to real property used or occupied as a primary  
3668 or secondary residence.

3669 (18) "Securely encased" means not readily accessible for immediate use, such as held  
3670 in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other  
3671 storage area of a motor vehicle, not including a glove box or console box.

3672 (19) "Short barrel shotgun" or "short barrel rifle" means a shotgun having a barrel or  
3673 barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels of  
3674 fewer than 16 inches in length, or a dangerous weapon made from a rifle or shotgun by  
3675 alteration, modification, or otherwise, if the weapon as modified has an overall length of fewer  
3676 than 26 inches.

3677 (20) "State entity" means a department, commission, board, council, agency,  
3678 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,  
3679 unit, bureau, panel, or other administrative unit of the state.

3680 (21) "Violent felony" has the same meaning as defined in Section 76-3-203.5.

3681 Section 70. Section **76-10-526** is amended to read:

3682 **76-10-526. Criminal background check prior to purchase of a firearm -- Fee --**  
3683 **Exemption for concealed firearm permit holders and law enforcement officers.**

3684 (1) For purposes of this section, "valid permit to carry a concealed firearm" does not  
3685 include a temporary permit issued under Section 53-5-705.

3686 (2) (a) To establish personal identification and residence in this state for purposes of  
3687 this part, a dealer shall require an individual receiving a firearm to present one photo  
3688 identification on a form issued by a governmental agency of the state.

3689 (b) A dealer may not accept a driving privilege card issued under Section 53-3-207 as  
3690 proof of identification for the purpose of establishing personal identification and residence in  
3691 this state as required under this Subsection (2).

3692 (3) (a) A criminal history background check is required for the sale of a firearm by a  
3693 licensed firearm dealer in the state.

3694 (b) Subsection (3)(a) does not apply to the sale of a firearm to a Federal Firearms  
3695 Licensee.

3696 (4) (a) An individual purchasing a firearm from a dealer shall consent in writing to a  
3697 criminal background check, on a form provided by the bureau.

3698 (b) The form shall contain the following information:

3699 (i) the dealer identification number;

3700 (ii) the name and address of the individual receiving the firearm;

3701 (iii) the date of birth, height, weight, eye color, and hair color of the individual  
3702 receiving the firearm; and

3703 (iv) the Social Security number or any other identification number of the individual  
3704 receiving the firearm.

3705 (5) (a) The dealer shall send the information required by Subsection (4) to the bureau  
3706 immediately upon its receipt by the dealer.

3707 (b) A dealer may not sell or transfer a firearm to an individual until the dealer has  
3708 provided the bureau with the information in Subsection (4) and has received approval from the  
3709 bureau under Subsection (7).

3710 (6) The dealer shall make a request for criminal history background information by  
3711 telephone or other electronic means to the bureau and shall receive approval or denial of the  
3712 inquiry by telephone or other electronic means.

3713 (7) When the dealer calls for or requests a criminal history background check, the  
3714 bureau shall:

3715 (a) review the criminal history files, including juvenile court records, to determine if  
3716 the individual is prohibited from purchasing, possessing, or transferring a firearm by state or



3717 federal law;

3718 (b) inform the dealer that:

3719 (i) the records indicate the individual is prohibited; or

3720 (ii) the individual is approved for purchasing, possessing, or transferring a firearm;

3721 (c) provide the dealer with a unique transaction number for that inquiry; and

3722 (d) provide a response to the requesting dealer during the call for a criminal

3723 background check, or by return call, or other electronic means, without delay, except in case of

3724 electronic failure or other circumstances beyond the control of the bureau, the bureau shall

3725 advise the dealer of the reason for the delay and give the dealer an estimate of the length of the

3726 delay.

3727 (8) (a) The bureau may not maintain any records of the criminal history background

3728 check longer than 20 days from the date of the dealer's request, if the bureau determines that

3729 the individual receiving the firearm is not prohibited from purchasing, possessing, or

3730 transferring the firearm under state or federal law.

3731 (b) However, the bureau shall maintain a log of requests containing the dealer's federal

3732 firearms number, the transaction number, and the transaction date for a period of 12 months.

3733 (9) If the criminal history background check discloses information indicating that the

3734 individual attempting to purchase the firearm is prohibited from purchasing, possessing, or

3735 transferring a firearm, the bureau shall inform the law enforcement agency in the jurisdiction

3736 where the individual resides.

3737 (10) If an individual is denied the right to purchase a firearm under this section, the

3738 individual may review the individual's criminal history information and may challenge or

3739 amend the information as provided in Section 53-10-108.

3740 (11) The bureau shall make rules in accordance with Title 63G, Chapter 3, Utah

3741 Administrative Rulemaking Act, to ensure the identity, confidentiality, and security of all

3742 records provided by the bureau under this part are in conformance with the requirements of the

3743 Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

3744 (12) (a) (i) A dealer shall collect a criminal history background check fee of \$7.50 for

3745 the sale of a firearm under this section.

3746 (ii) This fee remains in effect until changed by the bureau through the process under

3747 Section 63J-1-504.

3748 (b) (i) The dealer shall forward at one time all fees collected for criminal history  
3749 background checks performed during the month to the bureau by the last day of the month  
3750 following the sale of a firearm.

3751 (ii) The bureau shall deposit the fees in the General Fund as dedicated credits to cover  
3752 the cost of administering and conducting the criminal history background check program.

3753 (13) An individual with a concealed firearm permit issued under Title 53, Chapter 5,  
3754 Part 7, Concealed Firearm Act, is exempt from the background check and corresponding fee  
3755 required in this section for the purchase of a firearm if:

3756 (a) the individual presents the individual's concealed firearm permit to the dealer prior  
3757 to purchase of the firearm; and

3758 (b) the dealer verifies with the bureau that the individual's concealed firearm permit is  
3759 valid.

3760 (14) A law enforcement officer, as defined in Section 53-13-103, is exempt from the  
3761 background check fee required in this section for the purchase of a personal firearm to be  
3762 carried while off-duty if the law enforcement officer verifies current employment by providing  
3763 a letter of good standing from the officer's commanding officer and current law enforcement  
3764 photo identification. This section may only be used by a law enforcement officer to purchase a  
3765 personal firearm once in a 24-month period.

3766 Section 71. Section **76-10-919** is amended to read:

3767 **76-10-919. Person may bring action for injunctive relief and damages -- Treble**  
3768 **damages -- Recovery of actual damages or civil penalty by state or political subdivisions**  
3769 **-- Immunity of political subdivisions from damages, costs, or attorney fees.**

3770 (1) (a) A person who is a citizen of this state or a resident of this state and who is  
3771 injured or is threatened with injury in his business or property by a violation of the Utah  
3772 Antitrust Act may bring an action for injunctive relief and damages, regardless of whether the  
3773 person dealt directly or indirectly with the defendant. This remedy is in addition to any other  
3774 remedies provided by law. It may not diminish or offset any other remedy.

3775 (b) Subject to the provisions of Subsections (3), (4), and (5), the court shall award three  
3776 times the amount of damages sustained, plus the cost of suit and [a] reasonable attorney fees, in  
3777 addition to granting any appropriate temporary, preliminary, or permanent injunctive relief.

3778 (2) (a) If the court determines that a judgment in the amount of three times the damages

3779 awarded plus attorney fees and costs will directly cause the insolvency of the defendant, the  
3780 court shall reduce the amount of judgment to the highest sum that would not cause the  
3781 defendant's insolvency.

3782 (b) The court may not reduce a judgment to an amount less than the amount of  
3783 damages sustained plus the costs of suit and [a] reasonable attorney fees.

3784 (3) The state or any of its political subdivisions may recover the actual damages it  
3785 sustains, or the civil penalty provided by the Utah Antitrust Act, in addition to injunctive relief,  
3786 costs of suit, and reasonable attorney fees.

3787 (4) No damages, costs, or attorney fees may be recovered under this section:

3788 (a) from any political subdivision;

3789 (b) from the official or employee of any political subdivision acting in an official  
3790 capacity; or

3791 (c) against any person based on any official action directed by a political subdivision or  
3792 its official or employee acting in an official capacity.

3793 (5) Subsection (4) does not apply to cases filed before April 27, 1987, unless the  
3794 defendant establishes and the court determines that in light of all the circumstances, including  
3795 the posture of litigation and the availability of alternative relief, it would be inequitable not to  
3796 apply Subsection (4) to a pending case.

3797 (6) When a defendant has been sued in one or more actions by both direct and indirect  
3798 purchasers, whether in state court or federal court, a defendant shall be entitled to prove as a  
3799 partial or complete defense to a claim for damages that the damages incurred by the plaintiff or  
3800 plaintiffs have been passed on to others who are entitled to recover so as to avoid duplication  
3801 of recovery of damages. In an action by indirect purchasers, any damages or settlement  
3802 amounts paid to direct purchasers for the same alleged antitrust violations shall constitute a  
3803 defense in the amount paid on a claim by indirect purchasers under this chapter so as to avoid  
3804 duplication of recovery of damages.

3805 (7) It shall be presumed, in the absence of proof to the contrary, that the injured  
3806 persons who dealt directly with the defendant incurred at least 1/3 of the damages, and shall,  
3807 therefore, recover at least 1/3 of the awarded damages. It shall also be presumed, in the  
3808 absence of proof to the contrary, that the injured persons who dealt indirectly with the  
3809 defendant incurred at least 1/3 of the damages, and shall, therefore, recover at least 1/3 of the

3810 awarded damages. The final 1/3 of the damages shall be awarded by the court to those injured  
3811 persons determined by the court as most likely to have absorbed the damages.

3812 (8) There is a presumption, in the absence of proof to the contrary and subject to  
3813 Subsection (7), that each level in a product's or service's distribution chain passed on any and  
3814 all increments in its cost due to an increase in the cost of an ingredient or a component product  
3815 or service that was caused by a violation of this chapter. This amount will be presumed, in the  
3816 absence of evidence to the contrary, to be equal to the change in the cost, in dollars and cents,  
3817 of the ingredient, component product, or service to its first purchaser.

3818 (9) The attorney general shall be notified by the plaintiff about the filing of any class  
3819 action involving antitrust violations that includes plaintiffs from this state. The attorney  
3820 general shall receive a copy of each filing from each plaintiff. The attorney general may, in his  
3821 or her discretion, intervene or file amicus briefs in the case, and may be heard on the question  
3822 of the fairness or appropriateness of any proposed settlement agreement.

3823 (10) If, in a class action or parens patriae action filed under this chapter, including the  
3824 settlement of any action, it is not feasible to return any part of the recovery to the injured  
3825 plaintiffs, the court shall order the residual funds be applied to benefit the specific class of  
3826 injured plaintiffs, to improve antitrust enforcement generally by depositing the residual funds  
3827 into the Attorney General Litigation Fund created by Section 76-10-922, or both.

3828 (11) In any action brought under this chapter, the court shall approve all attorney fees  
3829 and arrangements for the payment of attorney fees, including contingency fee agreements.

3830 Section 72. Section **76-10-1201** is amended to read:

3831 **76-10-1201. Definitions.**

3832 For the purpose of this part:

3833 (1) "Blinder rack" means an opaque cover that covers the lower 2/3 of a material so  
3834 that the lower 2/3 of the material is concealed from view.

3835 (2) "Contemporary community standards" means those current standards in the  
3836 vicinage where an offense alleged under this part has occurred, is occurring, or will occur.

3837 (3) "Distribute" means to transfer possession of materials whether with or without  
3838 consideration.

3839 (4) "Exhibit" means to show.

3840 (5) (a) "Harmful to minors" means that quality of any description or representation, in

3841 whatsoever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when  
3842 it:

3843 (i) taken as a whole, appeals to the prurient interest in sex of minors;

3844 (ii) is patently offensive to prevailing standards in the adult community as a whole with  
3845 respect to what is suitable material for minors; and

3846 (iii) taken as a whole, does not have serious value for minors.

3847 (b) Serious value includes only serious literary, artistic, political or scientific value for  
3848 minors.

3849 (6) (a) "Knowingly," regarding material or a performance, means an awareness,  
3850 whether actual or constructive, of the character of the material or performance.

3851 (b) As used in this Subsection (6), a person has constructive knowledge if a reasonable  
3852 inspection or observation under the circumstances would have disclosed the nature of the  
3853 subject matter and if a failure to inspect or observe is either for the purpose of avoiding the  
3854 disclosure or is criminally negligent as described in Section 76-2-103.

3855 (7) "Material" means anything printed or written or any picture, drawing, photograph,  
3856 motion picture, or pictorial representation, or any statue or other figure, or any recording or  
3857 transcription, or any mechanical, chemical, or electrical reproduction, or anything which is or  
3858 may be used as a means of communication. Material includes undeveloped photographs,  
3859 molds, printing plates, and other latent representational objects.

3860 (8) "Minor" means any person less than 18 years of age.

3861 (9) "Negligently" means simple negligence, the failure to exercise that degree of care  
3862 that a reasonable and prudent person would exercise under like or similar circumstances.

3863 (10) "Nudity" means:

3864 (a) the showing of the human male or female genitals, pubic area, or buttocks, with less  
3865 than an opaque covering;

3866 (b) the showing of a female breast with less than an opaque covering, or any portion of  
3867 the female breast below the top of the areola; or

3868 (c) the depiction of covered male genitals in a discernibly turgid state.

3869 (11) "Performance" means any physical human bodily activity, whether engaged in  
3870 alone or with other persons, including singing, speaking, dancing, acting, simulating, or  
3871 pantomiming.

3872 (12) "Public place" includes a place to which admission is gained by payment of a  
3873 membership or admission fee, however designated, notwithstanding its being designated a  
3874 private club or by words of like import.

3875 (13) "Sado[=]masochistic abuse" means:

3876 (a) flagellation or torture by or upon a person who is nude or clad in undergarments, a  
3877 mask, or in a revealing or bizarre costume; or

3878 (b) the condition of being fettered, bound, or otherwise physically restrained on the part  
3879 of a person clothed as described in Subsection (13)(a).

3880 (14) "Sexual conduct" means acts of masturbation, sexual intercourse, or any touching  
3881 of a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is a female,  
3882 breast, whether alone or between members of the same or opposite sex or between humans and  
3883 animals in an act of apparent or actual sexual stimulation or gratification.

3884 (15) "Sexual excitement" means a condition of human male or female genitals when in  
3885 a state of sexual stimulation or arousal, or the sensual experiences of humans engaging in or  
3886 witnessing sexual conduct or nudity.

3887 Section 73. Section **77-38-302** is amended to read:

3888 **77-38-302. Definitions.**

3889 As used in this part:

3890 (1) "Convicted person" means a person who has been convicted of a crime.

3891 (2) "Conviction" means an adjudication by a federal or state court resulting from a trial  
3892 or plea, including a plea of no contest, nolo contendere, a finding of not guilty due to insanity,  
3893 or not guilty but having a mental illness regardless of whether the sentence was imposed or  
3894 suspended.

3895 (3) "Fund" means the Crime Victim Reparations Fund created in Section 51-9-404.

3896 (4) "Memorabilia" means any tangible property of a [~~defendant~~] convicted person or a  
3897 representative or assignee of a [~~defendant~~] convicted person, the value of which is enhanced by  
3898 the notoriety gained from the criminal activity for which the person was convicted.

3899 (5) "Notoriety of crimes contract" means a contract or other agreement with a  
3900 convicted person, or a representative or assignee of a convicted person, with respect to:

3901 (a) the reenactment of a crime in any manner including a movie, book, magazine  
3902 article, Internet website, recording, phonograph record, radio or television presentation, or live

3903 entertainment of any kind;

3904 (b) the expression of the convicted person's thoughts, feelings, opinions, or emotions  
3905 regarding a crime involving or causing personal injury, death, or property loss as a direct result  
3906 of the crime; or

3907 (c) the payment or exchange of any money or other consideration or the proceeds or  
3908 profits that directly or indirectly result from the notoriety of the crime.

3909 (6) "Office" means the Utah Office for Victims of Crime.

3910 (7) "Profit" means any income or benefit:

3911 (a) over and above the fair market value of tangible property that is received upon the  
3912 sale or transfer of memorabilia; or

3913 (b) any money, negotiable instruments, securities, or other consideration received or  
3914 contracted for gain which is traceable to a notoriety of crimes contract.

3915 Section 74. Section **77-38-303** is amended to read:

3916 **77-38-303. Profit from sale of memorabilia or notoriety of crimes contract --**

3917 **Deposit in Crime Victim Reparations Fund -- Penalty.**

3918 (1) Any convicted person or a representative or assignee of a convicted person who  
3919 receives a profit from the sale or transfer of memorabilia shall remit to the fund:

3920 (a) a complete, itemized accounting of the transaction, including:

3921 (i) a description of each item sold;

3922 (ii) the amount received for each item;

3923 (iii) the estimated fair market value of each item; and

3924 (iv) the name and address of the purchaser of each item; and

3925 (b) a check or money order for the amount of the profit, which shall be the difference  
3926 between the amount received for the item and the estimated fair market value of the item.

3927 (2) Any person who willfully violates Subsection (1) may be assessed a civil penalty of  
3928 up to \$1,000 per item sold or transferred or three times the amount of the unremitted profit,  
3929 whichever is greater.

3930 (3) (a) Any person or entity who enters into a notoriety of crime contract with a  
3931 convicted person or with a representative or assignee of a convicted person shall pay to the  
3932 fund any profit which by the terms of the contract would otherwise be owing to the convicted  
3933 person or representative or assignee of the convicted person.

3934 (b) A convicted person or a representative or assignee of a convicted person who has  
3935 received any profit from a notoriety of crime contract shall remit the profit to the fund. Any  
3936 future profit which, by the terms of the contract, would otherwise be owing to the convicted  
3937 person or a representative or assignee of a convicted person shall be paid to the fund as  
3938 required under Subsection (3)(a).

3939 (4) Upon receipt of [monies] money under Subsection (3), the office shall distribute the  
3940 amounts to the victim of the crime from which the profits are derived if any restitution remains  
3941 outstanding. If no restitution is outstanding, the [monies] money shall be deposited into the  
3942 fund.

3943 (5) (a) Any person or entity who willfully violates Subsection (3) may be assessed a  
3944 civil penalty of up to \$1,000,000.00, or up to three times the total value of the original notoriety  
3945 of crime contract, whichever is greater.

3946 (b) Any civil penalty ordered under this Subsection shall be paid to the fund.

3947 (6) The prosecuting agency or the attorney general may bring an action to enforce the  
3948 provisions of this chapter in the court of conviction.

3949 (7) A court shall enter an order to remit funds as provided in this chapter if it finds by a  
3950 preponderance of the evidence any violation of Subsection (1) or (3).

3951 Section 75. Section **77-41-103** is amended to read:

3952 **77-41-103. Department duties.**

3953 (1) The department, to assist in investigating kidnapping and sex-related crimes, and in  
3954 apprehending offenders, shall:

3955 (a) develop and operate a system to collect, analyze, maintain, and disseminate  
3956 information on offenders and sex and kidnap offenses;

3957 (b) make information listed in Subsection 77-41-110(4) available to the public; and

3958 (c) share information provided by an offender under this chapter that may not be made  
3959 available to the public under Subsection 77-41-110(4), but only:

3960 (i) for the purposes under this chapter; or

3961 (ii) in accordance with Section 63G-2-206.

3962 (2) Any law enforcement agency shall, in the manner prescribed by the department,  
3963 inform the department of:

3964 (a) the receipt of a report or complaint of an offense listed in Subsection



3965 77-41-102[(7)](9) or [(14)] (16), within three business days; and

3966 (b) the arrest of a person suspected of any of the offenses listed in Subsection

3967 77-41-102[(7)](9) or [(14)] (16), within five business days.

3968 (3) Upon convicting a person of any of the offenses listed in Subsection

3969 77-41-102[(7)](9) or [(14)] (16), the convicting court shall within three business days forward a  
3970 copy of the judgment and sentence to the department.

3971 (4) The department shall:

3972 (a) provide the following additional information when available:

3973 (i) the crimes the offender has been convicted of or adjudicated delinquent for;

3974 (ii) a description of the offender's primary and secondary targets; and

3975 (iii) any other relevant identifying information as determined by the department;

3976 (b) maintain the Sex Offender and Kidnap Offender Notification and Registration

3977 website; and

3978 (c) ensure that the registration information collected regarding an offender's enrollment  
3979 or employment at an educational institution is:

3980 (i) (A) promptly made available to any law enforcement agency that has jurisdiction  
3981 where the institution is located if the educational institution is an institution of higher  
3982 education; or

3983 (B) promptly made available to the district superintendent of the school district where  
3984 the offender is enrolled if the educational institution is an institution of primary education; and

3985 (ii) entered into the appropriate state records or data system.

3986 Section 76. Section **78A-6-1302** is amended to read:

3987 **78A-6-1302. Procedure -- Standard.**

3988 (1) When a motion is filed pursuant to Section 78A-6-1301 raising the issue of a  
3989 minor's competency to proceed, or when the court raises the issue of a minor's competency to  
3990 proceed, the juvenile court in which proceedings are pending shall stay all delinquency  
3991 proceedings.

3992 (2) If a motion for inquiry is opposed by either party, the court shall, prior to granting  
3993 or denying the motion, hold a limited hearing solely for the purpose of determining the  
3994 sufficiency of the motion. If the court finds that the allegations of incompetency raise a bona  
3995 fide doubt as to the minor's competency to proceed, it shall enter an order for an evaluation of

3996 the minor's competency to proceed, and shall set a date for a hearing on the issue of the minor's  
3997 competency.

3998 (3) After the granting of a motion, and prior to a full competency hearing, the court  
3999 may order the Department of Human Services to evaluate the minor and to report to the court  
4000 concerning the minor's mental condition.

4001 (4) The minor shall be evaluated by a mental health examiner with experience in  
4002 juvenile forensic evaluations and juvenile brain development, who is not involved in the  
4003 current treatment of the minor. If it becomes apparent that the minor may be not competent  
4004 due to an intellectual disability or related condition, the examiner shall be experienced in  
4005 intellectual disability or related condition evaluations of minors.

4006 (5) The petitioner or other party, as directed by the court, shall provide all information  
4007 and materials to the examiners relevant to a determination of the minor's competency  
4008 including:

- 4009 (a) the motion;
- 4010 (b) the arrest or incident reports pertaining to the charged offense;
- 4011 (c) the minor's known delinquency history information;
- 4012 (d) known prior mental health evaluations and treatments; and
- 4013 (e) consistent with 20 U.S.C. Sec. 1232G (b)(1)(E)(ii)(I), records pertaining to the  
4014 minor's education.

4015 (6) The minor's parents or guardian, the prosecutor, defense attorney, and guardian ad  
4016 litem, shall cooperate in providing the relevant information and materials to the examiners.

4017 (7) In conducting the evaluation and in the report determining if a minor is competent  
4018 to proceed as defined in Subsection 78A-6-105(30), the examiner shall consider the impact of a  
4019 mental disorder, intellectual disability, or related condition on a minor's present capacity to:

- 4020 (a) comprehend and appreciate the charges or allegations;
- 4021 (b) disclose to counsel pertinent facts, events, or states of mind;
- 4022 (c) comprehend and appreciate the range and nature of possible penalties, if applicable,  
4023 that may be imposed in the proceedings against the minor;
- 4024 (d) engage in reasoned choice of legal strategies and options;
- 4025 (e) understand the adversarial nature of the proceedings;
- 4026 (f) manifest appropriate courtroom behavior; and

4027 (g) testify relevantly, if applicable.

4028 (8) In addition to the requirements of Subsection (7), the examiner's written report  
4029 shall:

4030 (a) identify the specific matters referred for evaluation;

4031 (b) describe the procedures, techniques, and tests used in the evaluation and the  
4032 purpose or purposes for each;

4033 (c) state the examiner's clinical observations, findings, and opinions on each issue  
4034 referred for evaluation by the court, and indicate specifically those issues, if any, on which the  
4035 examiner could not give an opinion;

4036 (d) state the likelihood that the minor will attain competency and the amount of time  
4037 estimated to achieve it; and

4038 (e) identify the sources of information used by the examiner and present the basis for  
4039 the examiner's clinical findings and opinions.

4040 (9) The examiner shall provide an initial report to the court, the prosecuting and  
4041 defense attorneys, and the guardian ad litem, if applicable, within 30 days of the receipt of the  
4042 court's order. If the examiner informs the court that additional time is needed, the court may  
4043 grant, taking into consideration the custody status of the minor, up to an additional 30 days to  
4044 provide the report to the court and counsel. The examiner must provide the report within 60  
4045 days from the receipt of the court's order unless, for good cause shown, the court authorizes an  
4046 additional period of time to complete the evaluation and provide the report. The report shall  
4047 inform the court of the examiner's opinion concerning the competency and the likelihood of the  
4048 minor to attain competency within a year. In the alternative, the examiner may inform the court  
4049 in writing that additional time is needed to complete the report.

4050 (10) Any statement made by the minor in the course of any competency evaluation,  
4051 whether the evaluation is with or without the consent of the minor, any testimony by the  
4052 examiner based upon any statement, and any other fruits of the statement may not be admitted  
4053 in evidence against the minor in any delinquency or criminal proceeding except on an issue  
4054 respecting the mental condition on which the minor has introduced evidence. The evidence  
4055 may be admitted, however, where relevant to a determination of the minor's competency.

4056 (11) Prior to evaluating the minor, examiners shall specifically advise the minor and  
4057 the parents or guardian of the limits of confidentiality as provided under Subsection (10).

4058           (12) When the report is received the court shall set a date for a competency hearing  
4059 which shall be held in not less than five and not more than 15 days, unless the court enlarges  
4060 the time for good cause.

4061           (13) A minor shall be presumed competent unless the court, by a preponderance of the  
4062 evidence, finds the minor not competent to proceed. The burden of proof is upon the  
4063 proponent of incompetency to proceed.

4064           (14) (a) Following the hearing, the court shall determine by a preponderance of  
4065 evidence whether the minor is:

4066               (i) competent to proceed;

4067               (ii) not competent to proceed with a substantial probability that the minor may attain  
4068 competency in the foreseeable future; or

4069               (iii) not competent to proceed without a substantial probability that the minor may  
4070 attain competency in the foreseeable future.

4071           (b) If the court enters a finding pursuant to Subsection (14)(a)(i), the court shall  
4072 proceed with the delinquency proceedings.

4073           (c) If the court enters a finding pursuant to Subsection (14)(a)(ii), the court shall  
4074 proceed consistent with Section 78A-6-1303.

4075           (d) If the court enters a finding pursuant to Subsection (14)(a)(iii), the court shall  
4076 terminate the competency proceeding, dismiss the delinquency charges without prejudice, and  
4077 release the minor from any custody order related to the pending delinquency proceeding, unless  
4078 the prosecutor informs the court that commitment proceedings pursuant to Title 62A, Chapter  
4079 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental  
4080 Health Act, will be initiated. These commitment proceedings shall be initiated within seven  
4081 days after the court's order, unless the court enlarges the time for good cause shown. The  
4082 minor may be ordered to remain in custody until the commitment proceedings have been  
4083 concluded.

4084           (15) If the court finds the minor not competent to proceed, its order shall contain  
4085 findings addressing each of the factors in Subsection (7).

4086           Section 77. Section **78B-2-313** is amended to read:

4087           **78B-2-313. Action to recover deficiency after short sale.**

4088           (1) As used in this section:

4089 (a) "Deficiency" means the balance owed to a secured lender under a secured loan after  
4090 completion of a short sale of the secured property.

4091 (b) "Obligor" means the person or persons obligated to pay a secured loan.

4092 (c) "Secured lender" means the person or persons to whom the obligation under a  
4093 secured loan is owed.

4094 (d) "Secured loan" means a loan or other credit for personal, family, or household  
4095 purposes secured by a mortgage or trust deed on secured property.

4096 (e) "Secured property" means single-family, residential real property located in the  
4097 state that is the subject of a mortgage or trust deed to secure a secured loan.

4098 (f) "Short sale" means a sale:

4099 (i) of secured property;

4100 (ii) by the owner of the secured property;

4101 (iii) that results in the secured lender being paid less than the balance owing under the  
4102 secured loan; and

4103 (iv) made with the secured lender's consent and resulting in the secured lender  
4104 releasing the mortgage or reconveying the trust deed on the secured property.

4105 (2) An action to recover a deficiency is barred unless it is commenced no more than  
4106 three months after the date of recording of a release of mortgage or reconveyance of trust deed  
4107 with respect to secured property and resulting from a short sale of that property.

4108 (3) Subsection (2) does not apply if the obligor or owner engaged in fraud in  
4109 connection with the short sale.

4110 (4) Subsection (2) does not apply to an agreement that:

4111 (a) is executed:

4112 (i) between one or more obligors under a [~~secure~~] secured loan and the secured lender;

4113 and

4114 (ii) in connection with a short sale; and

4115 (b) obligates an obligor to pay some or all of a deficiency.

4116 Section 78. Section **78B-6-121** is amended to read:

4117 **78B-6-121. Consent of unmarried biological father.**

4118 (1) Except as provided in Subsections (2)(a) and 78B-6-122(1), and subject to  
4119 [~~Subsection~~] Subsections (5) and (6), with regard to a child who is placed with prospective

4120 adoptive parents more than six months after birth, consent of an unmarried biological father is  
4121 not required unless the unmarried biological father:

4122 (a) (i) developed a substantial relationship with the child by:

4123 (A) visiting the child monthly, unless the unmarried biological father was physically or  
4124 financially unable to visit the child on a monthly basis; or

4125 (B) engaging in regular communication with the child or with the person or authorized  
4126 agency that has lawful custody of the child;

4127 (ii) took some measure of responsibility for the child and the child's future; and

4128 (iii) demonstrated a full commitment to the responsibilities of parenthood by financial  
4129 support of the child of a fair and reasonable sum in accordance with the father's ability; or

4130 (b) (i) openly lived with the child:

4131 (A) (I) for a period of at least six months during the one-year period immediately  
4132 preceding the day on which the child is placed with prospective adoptive parents; or

4133 (II) if the child is less than one year old, for a period of at least six months during the  
4134 period of time beginning on the day on which the child is born and ending on the day on which  
4135 the child is placed with prospective adoptive parents; and

4136 (B) immediately preceding placement of the child with prospective adoptive parents;  
4137 and

4138 (ii) openly held himself out to be the father of the child during the six-month period  
4139 described in Subsection (1)(b)(i)(A).

4140 (2) (a) If an unmarried biological father was prevented from complying with a  
4141 requirement of Subsection (1) by the person or authorized agency having lawful custody of the  
4142 child, the unmarried biological father is not required to comply with that requirement.

4143 (b) The subjective intent of an unmarried biological father, whether expressed or  
4144 otherwise, that is unsupported by evidence that the requirements in Subsection (1) have been  
4145 met, shall not preclude a determination that the father failed to meet the requirements of  
4146 Subsection (1).

4147 (3) Except as provided in Subsections (6) and 78B-6-122(1), and subject to Subsection  
4148 (5), with regard to a child who is six months of age or less at the time the child is placed with  
4149 prospective adoptive parents, consent of an unmarried biological father is not required unless,  
4150 prior to the time the mother executes her consent for adoption or relinquishes the child for

4151 adoption, the unmarried biological father:

4152 (a) initiates proceedings in a district court of Utah to establish paternity under Title  
4153 78B, Chapter 15, Utah Uniform Parentage Act;

4154 (b) files with the court that is presiding over the paternity proceeding a sworn affidavit:

4155 (i) stating that he is fully able and willing to have full custody of the child;

4156 (ii) setting forth his plans for care of the child; and

4157 (iii) agreeing to a court order of child support and the payment of expenses incurred in  
4158 connection with the mother's pregnancy and the child's birth;

4159 (c) consistent with Subsection (4), files notice of the commencement of paternity  
4160 proceedings, described in Subsection (3)(a), with the state registrar of vital statistics within the  
4161 Department of Health, in a confidential registry established by the department for that purpose;  
4162 and

4163 (d) offered to pay and paid, during the pregnancy and after the child's birth, a fair and  
4164 reasonable amount of the expenses incurred in connection with the mother's pregnancy and the  
4165 child's birth, in accordance with his financial ability, unless:

4166 (i) he did not have actual knowledge of the pregnancy;

4167 (ii) he was prevented from paying the expenses by the person or authorized agency  
4168 having lawful custody of the child; or

4169 (iii) the mother refuses to accept the unmarried biological father's offer to pay the  
4170 expenses described in this Subsection (3)(d).

4171 (4) The notice described in Subsection (3)(c) is considered filed when it is entered into  
4172 the registry described in Subsection (3)(c).

4173 (5) Unless his ability to assert the right to consent has been lost for failure to comply  
4174 with Section 78B-6-110.1, or lost under another provision of Utah law, an unmarried biological  
4175 father shall have at least one business day after the child's birth to fully and strictly comply with  
4176 the requirements of Subsection (3).

4177 (6) Consent of an unmarried biological father is not required under this section if:

4178 (a) the court determines, in accordance with the requirements and procedures of Title  
4179 78A, Chapter 6, Part 5, Termination of Parental Rights Act, that the unmarried biological  
4180 father's rights should be terminated, based on the petition of any interested party;

4181 (b) (i) a declaration of paternity declaring the unmarried biological father to be the

4182 father of the child is rescinded under Section 78B-15-306; and  
4183           (ii) the unmarried biological father fails to comply with Subsection (3) within 10  
4184 business days after the day that notice of the rescission described in Subsection (6)(b)(i) is  
4185 mailed by the Office of Vital Records within the Department of Health as provided in Section  
4186 78B-15-306; or  
4187           (c) the unmarried biological father is notified under Section 78B-6-110.1 and fails to  
4188 preserve his rights in accordance with the requirements of that section.  
4189           (7) Unless the adoptee is conceived or born within a marriage, the petitioner in an  
4190 adoption proceeding shall, prior to entrance of a final decree of adoption, file with the court a  
4191 certificate from the state registrar of vital statistics within the Department of Health, stating:  
4192           (a) that a diligent search has been made of the registry of notices from unmarried  
4193 biological fathers described in Subsection (3)(c); and  
4194           (b) (i) that no filing has been found pertaining to the father of the child in question; or  
4195           (ii) if a filing is found, the name of the putative father and the time and date of filing.  
4196           **Section 79. Repealer.**  
4197           This bill repeals:  
4198           **Section 53A-8-101, Short title.**  
4199           **Section 58-40-5, License requirements.**

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**Legislative Review Note**  
**as of 1-7-13 5:24 PM**

**Office of Legislative Research and General Counsel**