

# HB0200S01 compared with HB0200

~~text~~ shows text that was in HB0200 but was deleted in HB0200S01.

inserted text shows text that was not in HB0200 but was inserted into HB0200S01.

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Representative Brad L. Dee proposes the following substitute bill:

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This bill modifies parts of the Utah Code to make technical corrections, including eliminating references to repealed provisions, making minor wording changes, updating cross references, and correcting numbering.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- ▶ modifies parts of the Utah Code to make technical corrections, including eliminating references to repealed provisions, making minor wording changes, updating cross references, correcting numbering, and fixing errors that were created from the previous year's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

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### **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
- 17-16-21**, as last amended by Laws of Utah 2009, Chapter 123
- 17B-2a-608**, as enacted by Laws of Utah 2010, Chapter 159
- 19-6-902**, as last amended by Laws of Utah 2008, Chapter 38
- 25-6-14**, as last amended by Laws of Utah 2004, Chapter 89
- 26-3-7**, as last amended by Laws of Utah 2012, Chapter 391
- 26-18-2.6 (Superseded 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 161
- 26-18-2.6 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapters 161 and 347
- 26-18-402**, as last amended by Laws of Utah 2012, Chapter 402
- 26-36a-206**, as enacted by Laws of Utah 2010, Chapter 179
- 34A-5-106**, as last amended by Laws of Utah 2012, Chapter 101
- 35A-8-414**, as renumbered and amended by Laws of Utah 2012, Chapter 212
- 38-1a-201**, as renumbered and amended by Laws of Utah 2012, Chapter 278
- 51-7-15**, as last amended by Laws of Utah 1992, Chapter 285
- 51-7-18.2**, as last amended by Laws of Utah 1992, Chapter 285
- 53-3-207**, as last amended by Laws of Utah 2012, Chapter 144
- 53-5a-102**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 53A-1a-506**, as last amended by Laws of Utah 2012, Chapter 66
- 53A-3-425**, as last amended by Laws of Utah 2012, Chapter 425
- 53A-25b-201**, as last amended by Laws of Utah 2012, Chapter 291
- 54-17-801**, as enacted by Laws of Utah 2012, Chapter 182
- 57-1-24.3**, as enacted by Laws of Utah 2012, Chapter 164
- 57-14-2**, as last amended by Laws of Utah 2012, Chapter 45

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- 58-3a-502**, as last amended by Laws of Utah 2008, Chapter 382
- 58-9-102**, as last amended by Laws of Utah 2008, Chapter 353
- 58-13-5**, as last amended by Laws of Utah 2008, Chapters 3 and 382
- 58-17b-103**, as enacted by Laws of Utah 2004, Chapter 280
- 58-17b-309**, as last amended by Laws of Utah 2012, Chapters 234 and 344
- 58-22-102**, as last amended by Laws of Utah 2011, Chapter 14
- 58-22-201**, as last amended by Laws of Utah 1996, Chapter 259
- 58-22-503**, as last amended by Laws of Utah 2008, Chapter 382
- 58-26a-102**, as last amended by Laws of Utah 2008, Chapters 265 and 382
- 58-28-307**, as last amended by Laws of Utah 2009, Chapter 220
- 58-37-10**, as last amended by Laws of Utah 2007, Chapter 153
- 58-37c-3**, as last amended by Laws of Utah 2008, Chapter 382
- 58-37c-17**, as enacted by Laws of Utah 1992, Chapter 155
- 58-37d-2**, as enacted by Laws of Utah 1992, Chapter 156
- 58-47b-301**, as last amended by Laws of Utah 1998, Chapter 159
- 59-2-1109**, as last amended by Laws of Utah 2011, Chapter 366
- 63A-12-111**, as enacted by Laws of Utah 2012, Chapter 377
- 63G-6-202 (Superseded 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 91  
and last amended by Coordination Clause, Laws of Utah 2012, Chapter 347
- 63G-6a-203 (Effective 05/01/13)**, as last amended by Laws of Utah 2012, Chapter 91  
and renumbered and amended by Laws of Utah 2012, Chapter 347 and last amended  
by Coordination Clause, Laws of Utah 2012, Chapter 347
- 63G-7-701**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 63I-1-209**, as last amended by Laws of Utah 2012, Chapters 9 and 212
- 63I-1-213, as last amended by Laws of Utah 2011, Chapter 15**
- 63I-1-235**, as last amended by Laws of Utah 2012, Chapter 212
- 63I-1-258**, as last amended by Laws of Utah 2012, Chapters 82, 234, and 349
- 63I-2-261, as enacted by Laws of Utah 2009, Chapter 372**
- 63I-2-267, as last amended by Laws of Utah 2011, Chapter 427**
- 67-1a-2**, as last amended by Laws of Utah 2012, Chapter 35
- 67-19-13.5**, as enacted by Laws of Utah 2012, Chapter 266

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**76-1-403**, as last amended by Laws of Utah 1974, Chapter 32  
**76-1-501**, as enacted by Laws of Utah 1973, Chapter 196  
**76-3-202**, as last amended by Laws of Utah 2008, Chapter 355  
**76-3-203.5**, as last amended by Laws of Utah 2011, Chapters 320 and 366  
**76-4-203**, as last amended by Laws of Utah 1993, Chapter 230  
**76-4-401**, as last amended by Laws of Utah 2008, Chapter 342  
**76-5-307**, as enacted by Laws of Utah 2008, Chapter 343  
**76-6-107**, as last amended by Laws of Utah 2012, Chapter 300  
**76-6-412**, as last amended by Laws of Utah 2012, Chapter 257  
**76-6-1102**, as last amended by Laws of Utah 2009, Chapter 164  
**76-7-305.5**, as repealed and reenacted by Laws of Utah 2010, Chapter 314  
**76-8-109**, as last amended by Laws of Utah 2010, Chapter 12  
**76-9-702**, as last amended by Laws of Utah 2012, Chapter 303  
**76-9-702.1**, as enacted by Laws of Utah 2012, Chapter 303  
**76-9-702.5**, as last amended by Laws of Utah 2011, Chapter 320  
**76-9-1008**, as enacted by Laws of Utah 2011, Chapter 21  
**76-10-104.1**, as last amended by Laws of Utah 2012, Chapter 154  
**76-10-501**, as last amended by Laws of Utah 2012, Chapter 114  
**76-10-526**, as last amended by Laws of Utah 2012, Chapter 270  
**76-10-919**, as last amended by Laws of Utah 2010, Chapter 154  
**76-10-1201**, as last amended by Laws of Utah 2008, Chapter 297  
**77-36-2.5, as last amended by Laws of Utah 2011, Chapter 113**  
**77-38-302**, as last amended by Laws of Utah 2012, Chapter 260  
**77-38-303**, as last amended by Laws of Utah 2012, Chapter 260  
**77-41-103**, as enacted by Laws of Utah 2012, Chapter 145  
**78A-6-1302**, as enacted by Laws of Utah 2012, Chapter 316  
**78B-2-313**, as enacted by Laws of Utah 2012, Chapter 79  
**78B-6-121**, as last amended by Laws of Utah 2012, Chapter 340

### REPEALS:

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

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*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;

2. does not include:

a. costs of operation and maintenance of public facilities;

b. costs for qualifying public facilities that will raise the level of service for the facilities, through impact fees, above the level of service that is supported by existing residents;

or

c. an expense for overhead, unless the expense is calculated pursuant to a methodology that is consistent with generally accepted cost accounting practices and the methodological standards set forth by the federal Office of Management and Budget for federal grant reimbursement; and

3. complies in each and every relevant respect with the Impact Fees Act."

(2) An impact fee analysis shall include a written certification from the person or entity that prepares the impact fee analysis which states as follows:

"I certify that the attached impact fee analysis:

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;

2. does not include:

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- a. costs of operation and maintenance of public facilities;
- b. costs for qualifying public facilities that will raise the level of service for the facilities, through impact fees, above the level of service that is supported by existing residents;

or

c. an expense for overhead, unless the expense is calculated pursuant to a methodology that is consistent with generally accepted cost accounting practices and the methodological standards set forth by the federal Office of Management and Budget for federal grant reimbursement;

- 3. offsets costs with grants or other alternate sources of payment; and
- 4. complies in each and every relevant respect with the Impact Fees Act."

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

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

(1) The commission shall meet for the purpose of reviewing an ethics complaint when:  
(a) except otherwise expressly provided in this chapter, called to meet at the discretion of the chair; or

(b) a majority of members agree to meet.

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

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

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

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

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

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

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

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

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

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

(4) (a) The Senate and the House of Representatives shall employ staff for the

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commission at a level that is reasonable to assist the commission in performing its duties as established in this chapter.

(b) The Legislative Management Committee shall:

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

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

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

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

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

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

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

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

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

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

(i) all members of the commission; and

(ii) a staff member of the commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 17-16-21. Fees of county officers.

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

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

- (i) all fees established by the county legislative body under Section 17-53-211; and
- (ii) any other fees authorized or required by law.

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

(i) assess \$10 in addition to whatever fee for a marriage license is established under authority of this section [~~and in addition to the \$20 assessed for the displaced homemaker program~~]; and

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

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

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

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

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

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

(3) This section does not apply to any fees currently being assessed by the state but

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collected by county officers.

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

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

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

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

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

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

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

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

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

### **19-6-902. Definitions.**

As used in this part:

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

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

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

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

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

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

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

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

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

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

(6) "Hazardous materials":

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

(b) includes any illegally manufactured controlled substances.

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

(8) "Owner of record":

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

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

(9) "Property":

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

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

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

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

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

(1) (a) For trusts created on or after December 31, 2003, a settlor who in writing irrevocably transfers property in trust to a trust having as trustee a company defined in Subsection 7-5-1(1)(d) who holds some or all of the trust assets in this state in a savings

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account [~~described in Subsection~~] as defined in Section 7-1-103[(29)], a certificate of deposit, a brokerage account, a trust company fiduciary account, or account or deposit located in this state that is similar to such an account may provide that the income or principal interest of the settlor as beneficiary of the trust may not be either voluntarily or involuntarily transferred before payment or delivery to the settlor as beneficiary by the trustee. The provision shall be considered to be a restriction on the transfer of the settlor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of Section 541(c)(2) of the Bankruptcy Code or successor provision.

(b) This Subsection (1) applies to:

(i) any form of transfer into trust including:

(A) conveyance; or

(B) assignment; and

(ii) transfers of:

(A) personal property;

(B) interests in personal property;

(C) real property; or

(D) interests in real property.

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

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

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

(i) the claim is a judgment, order, decree, or other legally enforceable decision or ruling resulting from a judicial, arbitration, mediation, or administrative proceeding commenced prior

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to or within three years after the trust is created;

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

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

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

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

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

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

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

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

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

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

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

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

(xi) the claim is a judgment, award, order, sentence, fine, penalty, or other

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determination of liability of the settlor for conduct of the settlor constituting fraud, intentional infliction of harm, or a crime.

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

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

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

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

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

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

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

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

(i) conspiracy to commit a fraudulent conveyance;

(ii) aiding and abetting a fraudulent conveyance; or

(iii) participating in the trust transaction.

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

(i) the trust assets; or

(ii) the settlor or beneficiary to the extent allowed under Subsection 25-6-5(1)(a).

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

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

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

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

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

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

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

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

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

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

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

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

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

The department may not disclose any identifiable health data unless:

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

(a) the individual;

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- (b) the next-of-kin if the individual is deceased;
  - (c) the parent or legal guardian if the individual is a minor or mentally incompetent; or
  - (d) a person holding a power of attorney covering such matters on behalf of the individual;
- (2) the disclosure is to a governmental entity in this or another state or the federal government, provided that:
- (a) the data will be used for a purpose for which they were collected by the department; and
  - (b) the recipient enters into a written agreement satisfactory to the department agreeing to protect such data in accordance with the requirements of this chapter and department rule and not permit further disclosure without prior approval of the department;
- (3) the disclosure is to an individual or organization, for a specified period, solely for bona fide research and statistical purposes, determined in accordance with department rules, and the department determines that the data are required for the research and statistical purposes proposed and the requesting individual or organization enters into a written agreement satisfactory to the department to protect the data in accordance with this chapter and department rule and not permit further disclosure without prior approval of the department;
- (4) the disclosure is to a governmental entity for the purpose of conducting an audit, evaluation, or investigation of the department and such governmental entity agrees not to use those data for making any determination affecting the rights, benefits, or entitlements of any individual to whom the health data relates;
- (5) the disclosure is of specific medical or epidemiological information to authorized personnel within the department, local health departments, public health authorities, official health agencies in other states, the United States Public Health Service, the Centers for Disease Control and Prevention (CDC), or agencies responsible to enforce quarantine, when necessary to continue patient services or to undertake public health efforts to control communicable, infectious, acute, chronic, or any other disease or health hazard that the department considers to be dangerous or important or that may affect the public health;
- (6) (a) the disclosure is of specific medical or epidemiological information to a "health care provider" as defined in Section 78B-3-403, health care personnel, or public health personnel who has a legitimate need to have access to the information in order to assist the

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patient or to protect the health of others closely associated with the patient[~~—This~~]; and

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

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

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

~~{ **63I-1-213. Repeal dates, Title 13.**~~

~~———— Title 13, Chapter 16, Motor Fuel Marketing Act, is repealed July 1, 2012.~~

~~———— **63I-2-261. Repeal dates -- Title 61.**~~

~~———— Section 61-2c-205.1 is repealed July 1, 2012.~~

~~———— **63I-2-267. Repeal dates -- Title 67.**~~

~~———— Section 67-19a-101.5 is repealed July 1, 2012.~~

~~———— **77-36-2.5. Conditions for release after arrest for domestic violence -- Jail release agreements -- Jail release court orders.**~~

~~———— (1) (a) Upon arrest for domestic violence, and before the person is released on bail, recognizance, or otherwise, the person may not personally contact the alleged victim of domestic violence.~~

~~———— (b) A person who violates Subsection (1)(a) is guilty of a class B misdemeanor.~~

~~———— (2) Upon arrest for domestic violence, a person may not be released on bail, recognizance, or otherwise prior to the close of the next court day following the arrest, unless as a condition of that release the person is ordered by the court or agrees in writing that until further order of the court, the person will:~~

~~———— (a) have no personal contact with the alleged victim;~~

~~———— (b) not threaten or harass the alleged victim; and~~

~~———— (c) not knowingly enter onto the premises of the alleged victim's residence or any premises temporarily occupied by the alleged victim.~~

~~———— (3) (a) The jail release agreement or jail release court order expires at midnight on the day on which the person arrested appears in person or by video for arraignment or an initial appearance.~~

~~———— (b) (i) If criminal charges have not been filed against the arrested person, the court may, for good cause and in writing, extend the jail release agreement or jail release court order beyond the time period under Subsection (3)(a) as provided in Subsection (3)(b)(ii).~~

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~~—— (ii) (A) The court may extend a jail release agreement or jail release court order under Subsection (3)(b)(i) to no longer than midnight of the third business day after the arrested person's first court appearance.~~

~~—— (B) If criminal charges are filed against the arrested person within the three business days under Subsection (3)(b)(ii)(A), the jail release agreement or the jail release court order continues in effect until the arrested person appears in person or by video at the arrested person's next scheduled court appearance.~~

~~—— (c) If criminal charges have been filed against the arrested person the court may, upon the request of the prosecutor or the victim or upon the court's own motion, issue a pretrial protective order.~~

~~—— (4) As a condition of release, the court may order the defendant to participate in an electronic or other monitoring program and to pay the costs associated with the program.~~

~~—— (5) (a) Subsequent to an arrest for domestic violence, an alleged victim may waive in writing any or all of the release conditions described in Subsection (2)(a) or (c). Upon waiver, those release conditions do not apply to the alleged perpetrator.~~

~~—— (b) A court or magistrate may modify the release conditions described in Subsections (1)(a) or (c), in writing or on the record, and only for good cause shown.~~

~~—— (6) (a) When a person is released pursuant to Subsection (2), the releasing agency shall notify the arresting law enforcement agency of the release, conditions of release, and any available information concerning the location of the victim. The arresting law enforcement agency shall then make a reasonable effort to notify the victim of that release.~~

~~—— (b) (i) When a person is released pursuant to Subsection (2) based on a written jail release agreement, the releasing agency shall transmit that information to the statewide domestic violence network described in Section 78B-7-113.~~

~~—— (ii) When a person is released pursuant to Subsection (2) or (3) based upon a jail release court order or if a jail release agreement is modified pursuant to Subsection (5)(b), the court shall transmit that order to the statewide domestic violence network described in Section 78B-7-113.~~

~~—— (iii) A copy of the jail release court order or written jail release agreement shall be given to the person by the releasing agency before the person is released.~~

~~—— (c) This Subsection (6) does not create or increase liability of a law enforcement officer~~

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~~or agency, and the good faith immunity provided by Section 77-36-8 is applicable.~~

~~—— (7) (a) If a law enforcement officer has probable cause to believe that a person has violated a jail release court order or jail release agreement executed pursuant to Subsection (2) the officer shall, without a warrant, arrest the alleged violator.~~

~~—— (b) Any person who knowingly violates a jail release court order or jail release agreement executed pursuant to Subsection (2) is guilty as follows:~~

~~—— (i) if the original arrest was for a felony, an offense under this section is a third degree felony; or~~

~~—— (ii) if the original arrest was for a misdemeanor, an offense under this section is a class A misdemeanor.~~

~~—— (c) City attorneys may prosecute class A misdemeanor violations under this section.~~

~~—— (8) An individual who was originally arrested for a felony under this chapter and released pursuant to this section may subsequently be held without bail if there is substantial evidence to support a new felony charge against him.~~

~~—— (9) At the time an arrest for domestic violence is made, the arresting officer shall provide the alleged victim with written notice containing:~~

~~—— (a) the release conditions described in Subsection (2), and notice that those release conditions shall be ordered by a court or must be agreed to by the alleged perpetrator prior to release;~~

~~—— (b) notification of the penalties for violation of any jail release court order or any jail release agreement executed under Subsection (2);~~

~~—— (c) notification that the alleged perpetrator is to personally appear in court on the next day the court is open for business after the day of the arrest;~~

~~—— (d) the address of the appropriate court in the district or county in which the alleged victim resides;~~

~~—— (e) the availability and effect of any waiver of the release conditions; and~~

~~—— (f) information regarding the availability of and procedures for obtaining civil and criminal protective orders with or without the assistance of an attorney.~~

~~—— (10) At the time an arrest for domestic violence is made, the arresting officer shall provide the alleged perpetrator with written notice containing:~~

~~—— (a) notification that the alleged perpetrator may not contact the alleged victim before~~

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being released;

~~—— (b) the release conditions described in Subsection (2) and notice that those release conditions shall be ordered by a court or shall be agreed to by the alleged perpetrator prior to release;~~

~~—— (c) notification of the penalties for violation of any jail release court order or any written jail release agreement executed under Subsection (2); and~~

~~—— (d) notification that the alleged perpetrator is to personally appear in court on the next day the court is open for business after the day of the arrest.~~

~~—— (11) (a) If the alleged perpetrator fails to personally appear in court as scheduled, the jail release court order or jail release agreement does not expire and continues in effect until the alleged perpetrator makes the personal appearance in court as required by Section 77-36-2.6.~~

~~—— (b) If, when the alleged perpetrator personally appears in court as required by Section 77-36-2.6, criminal charges have not been filed against the arrested person, the court may allow the jail release court order or jail release agreement to expire at midnight on the day of the court appearance or may extend it for good cause.~~

~~—— (12) In addition to the provisions of Subsections (2) through (8), because of the unique and highly emotional nature of domestic violence crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of continued acts of violence subsequent to the release of an offender who has been arrested for domestic violence, it is the finding of the Legislature that domestic violence crimes, as defined in Section 77-36-1, are crimes for which bail may be denied if there is substantial evidence to support the charge, and if the court finds by clear and convincing evidence that the alleged perpetrator would constitute a substantial danger to an alleged victim of domestic violence if released on bail.~~

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

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

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

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

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

(a) ability to manage dental expenses;

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- (b) proven ability to handle dental insurance;
- (c) efficiency of claim paying procedures;
- (d) provider contracting, discounts, and adequacy of network; and
- (e) other criteria established by the department.

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

- (a) in 2011; and
- (b) at least once every five years thereafter.

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

(5) The division may not award contracts to:

- (a) more than three responsive bidders under this section; or
- (b) an insurer that does not have a current license in the state.

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

- (i) there are no responsive bidders; or
- (ii) the division determines that accepting the bids would increase the program's costs.

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

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

(8) (a) The division may:

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

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

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

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

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

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

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

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

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

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

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

- (a) ability to manage dental expenses;
- (b) proven ability to handle dental insurance;
- (c) efficiency of claim paying procedures;
- (d) provider contracting, discounts, and adequacy of network; and
- (e) other criteria established by the department.

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

- (a) in 2011; and
- (b) at least once every five years thereafter.

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

(5) The division may not award contracts to:

- (a) more than three responsive bidders under this section; or
- (b) an insurer that does not have a current license in the state.

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

- (i) there are no responsive bidders; or
- (ii) the division determines that accepting the bids would increase the program's costs.

(b) If the division cancels the request for proposals under Subsection (6)(a), the

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division shall report to the Health and Human Services Interim Committee regarding the reasons for the decision.

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

(8) (a) The division may:

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

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

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

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

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

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

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

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

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

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

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

(ii) any unused state funds that are associated with the Medicaid program, as defined in

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Section 26-18-2, from the Department of Workforce Services and the Department of Human Services; and

(iii) any penalties imposed and collected under:

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

(B) Section 19-1-206;

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) If a hospital fails to timely pay the full amount of a quarterly assessment, the department shall add to the assessment:

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

(ii) on the last day of each quarter after the due date until the assessed amount and the penalty imposed under Subsection (2)(b)(i) are paid in full, an additional 5% penalty on:

(A) any unpaid quarterly assessment; and

(B) any unpaid penalty assessment.

(c) The division may waive, reduce, or compromise the penalties and interest provided for in this section in the same manner as provided in Subsection 59-1-401[(8)](13).

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

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

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

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

(A) race;

(B) color;

(C) sex;

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

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

(F) religion;

(G) national origin; or

(H) disability.

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

(A) education;

(B) training;

(C) ability, with or without reasonable accommodation;

(D) moral character;

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- (E) integrity;
- (F) disposition to work;
- (G) adherence to reasonable rules and regulations; and
- (H) other job related qualifications required by an employer.

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

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

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

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

(b) An employment agency may not:

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

- (A) race;
- (B) color;
- (C) sex;
- (D) pregnancy, childbirth, or pregnancy-related conditions;
- (E) religion;
- (F) national origin;
- (G) age, if the individual is 40 years of age or older; or
- (H) disability; or

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

- (A) race;
- (B) color;

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- (C) sex;
- (D) pregnancy, childbirth, or pregnancy-related conditions;
- (E) religion;
- (F) national origin;
- (G) age, if the individual is 40 years of age or older; or
- (H) disability.

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

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

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

- (i) any limitation, specification, or discrimination as to:
  - (A) race;
  - (B) color;
  - (C) religion;
  - (D) sex;
  - (E) pregnancy, childbirth, or pregnancy-related conditions;
  - (F) national origin;
  - (G) age, if the individual is 40 years of age or older; or

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(H) disability; or

(ii) the intent to make any limitation, specification, or discrimination described in Subsection (1)(d)(i).

(e) A person, whether or not an employer, an employment agency, a labor organization, or the employees or members of an employer, employment agency, or labor organization, may not:

(i) aid, incite, compel, or coerce the doing of an act defined in this section to be a discriminatory or prohibited employment practice;

(ii) obstruct or prevent any person from complying with this chapter, or any order issued under this chapter; or

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

(f) (i) An employer, labor organization, joint apprenticeship committee, or vocational school, providing, coordinating, or controlling apprenticeship programs, or providing, coordinating, or controlling on-the-job-training programs, instruction, training, or retraining programs may not:

(A) deny to, or withhold from, any qualified person, the right to be admitted to, or participate in any apprenticeship training program, on-the-job-training program, or other occupational instruction, training or retraining program because of:

(I) race;

(II) color;

(III) sex;

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

(V) religion;

(VI) national origin;

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

(VIII) disability;

(B) discriminate against or harass any qualified person in that person's pursuit of programs described in Subsection (1)(f)(i)(A), or to discriminate against such a person in the terms, conditions, or privileges of programs described in Subsection (1)(f)(i)(A), because of:

(I) race;

(II) color;

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- (III) sex;
- (IV) pregnancy, childbirth, or pregnancy-related conditions;
- (V) religion;
- (VI) national origin;
- (VII) age, if the individual is 40 years of age or older; or
- (VIII) disability; or

(C) except as provided in Subsection (1)(f)(ii), print, publish, or cause to be printed or published, any notice or advertisement relating to employment by the employer, or membership in or any classification or referral for employment by a labor organization, or relating to any classification or referral for employment by an employment agency, indicating any preference, limitation, specification, or discrimination based on:

- (I) race;
- (II) color;
- (III) sex;
- (IV) pregnancy, childbirth, or pregnancy-related conditions;
- (V) religion;
- (VI) national origin;
- (VII) age, if the individual is 40 years of age or older; or
- (VIII) disability.

(ii) Notwithstanding Subsection (1)(f)(i)(C), if the following is a bona fide occupational qualification for employment, a notice or advertisement described in Subsection (1)(f)(i)(C) may indicate a preference, limitation, specification, or discrimination based on:

- (A) race;
- (B) color;
- (C) religion;
- (D) sex;
- (E) pregnancy, childbirth, or pregnancy-related conditions;
- (F) age;
- (G) national origin; or
- (H) disability.

(2) Nothing contained in Subsections (1)(a) through (1)(f) shall be construed to

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prevent:

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

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

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

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

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

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

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

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

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

(A) the employer's:

(I) spouse;

(II) child; or

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

(B) any person for whom the employer is or would be liable to furnish financial

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support if those persons were unemployed;

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

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

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

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

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

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

(a) under Subsection (6); and

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

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

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

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

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

**35A-8-414. Property and funds of authority declared public property --  
Exemption from taxes -- Alternative agreement with public body.**

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

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

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

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

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

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

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

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

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

(ii) promote a fair working environment;

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

(c) provide a central repository for all required notices;

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(d) make accessible, by way of an Internet website:

(i) the filing and review of required notices; and

(ii) the transmitting of building permit information under Subsection 38-1a-205(1) and the reviewing of that information;

(e) accommodate:

(i) electronic filing of required notices and electronic transmitting of building permit information described in Subsection (1)(d)(ii); and

(ii) the filing of required notices by alternate means, including United States mail, telefax, or any other method as the division provides by rule;

(f) (i) provide electronic notification for up to three email addresses for each interested person who requests to receive notification under Section 38-1a-204 from the designated agent; and

(ii) provide alternate means of providing notification to a person who makes a filing by alternate means, including United States mail, telefax, or any other method as the division prescribes by rule; and

(g) provide hard-copy printing of electronic receipts for an individual filing evidencing the date and time of the individual filing and the content of the individual filing.

(2) The designated agent shall index filings in the registry by:

(a) the name of the owner;

(b) the name of the original contractor;

(c) subdivision, development, or other project name, if any;

(d) lot or parcel number;

(e) the address of the project property;

(f) entry number;

(g) the name of the county in which the project property is located;

(h) for ~~[construction]~~ private projects ~~[that are not government projects]~~:

(i) the tax parcel identification number of each parcel included in the project property;

and

(ii) the building permit number;

(i) for government projects, the government project-identifying information; and

(j) any other identifier that the division considers reasonably appropriate in

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collaboration with the designated agent.

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

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

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

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

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

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

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

(b) The report shall contain:

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

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

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

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

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

(1) The council may:

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

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

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

- (a) specifying the amount of public funds in the public treasurer's possession or control;
- (b) detailing the nature and extent of the deposit and investment of those funds;
- (c) detailing the rate of return on each deposit or investment; and
- (d) detailing the nature and extent of interest rate contracts authorized by Subsection 51-7-17[(2)](3).

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

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

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

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

(1) As used in this section:

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

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

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

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

(2) (a) The division shall issue to every person privileged to drive a motor vehicle, a regular license certificate, a limited-term license certificate, or a driving privilege card indicating the type or class of motor vehicle the person may drive.

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

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

- (i) the distinguishing number assigned to the person by the division;
- (ii) the name, birth date, and Utah residence address of the person;
- (iii) a brief description of the person for the purpose of identification;
- (iv) any restrictions imposed on the license under Section 53-3-208;
- (v) a photograph of the person;

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

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

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

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

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

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

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

(iii) The commissioner may also prescribe the issuance of a special type of limited regular license certificate, limited-term license certificate, or driving privilege card under

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Subsection 53-3-220(4).

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

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

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

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

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

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

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

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

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

(i) younger than 21 years of age by use of a portrait-style format not used for other

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regular license certificates, limited-term license certificates, or driving privilege cards and by plainly printing the date the regular license certificate, limited-term license certificate, or driving privilege card holder is 21 years of age, which is the legal age for purchasing an alcoholic beverage or alcoholic product under Section [~~32B-14-403~~] 32B-4-403; and

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

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

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

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

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

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

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

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

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

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

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

(12) Unless otherwise provided, the provisions, requirements, classes, endorsements, fees, restrictions, and sanctions under this code apply to a:

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

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

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

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

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

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

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

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

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

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

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

(6) As used in this section:

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

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

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

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

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

(1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

(f) students who reside within:

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

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

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

(5) If a district school converts to charter status, the charter school shall give an

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enrollment preference to students who would have otherwise attended it as a district school.

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

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

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

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

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

(1) As used in this section:

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

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

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

or

(ii) performs union duties.

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

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

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

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

(B) at a school district leadership meeting; or

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

(ii) the duty performed by the employee on paid association leave does not include

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political activity, including:

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

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

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

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

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

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

(i) on unpaid association leave; or

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

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

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

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

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

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

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

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

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leave;

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

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

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

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

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

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

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

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

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

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

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

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

(3) The superintendent shall:

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

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

(ii) knowledge of school management and the instruction of deaf persons;

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(b) subject to the approval of the board, appoint an associate superintendent to administer the Utah School for the Blind based on:

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

(ii) knowledge of school management and the instruction of blind persons, including an understanding of the unique needs and education of deafblind persons.

(4) (a) The board shall:

(i) establish ~~the~~ an Advisory Council for the Utah Schools for the Deaf and the Blind and appoint no more than 11 members to the advisory council;

(ii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the operation of the advisory council; and

(iii) receive and consider the advice and recommendations of the advisory council but is not obligated to follow the recommendations of the advisory council.

(b) The advisory council described in Subsection (4)(a) shall include at least:

(i) two members who are blind;

(ii) two members who are deaf; and

(iii) two members who are deafblind or parents of a deafblind child.

(5) The board shall approve the annual budget and expenditures of the Utah Schools for the Deaf and the Blind.

(6) (a) On or before the November interim meeting each year, the board shall report to the Education Interim Committee on the Utah Schools for the Deaf and the Blind.

(b) The report shall be presented verbally and in written form to the Education Interim Committee and shall include:

(i) a financial report;

(ii) a report on the activities of the superintendent and associate superintendents;

(iii) a report on activities to involve parents and constituency and advocacy groups in the governance of the school; and

(iv) a report on student achievement including:

(A) student academic achievement data, including longitudinal data for both current and previous students served by the Utah Schools for the Deaf and the Blind;

(B) graduation rates; and

(C) students exiting the Utah Schools for the Deaf and the Blind and their educational

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placement after exiting the Utah Schools for the Deaf and the Blind.

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

### **54-17-801. Definitions.**

As used in this part:

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

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

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

(4) "Renewable energy facility":

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

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

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

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

(1) As used in this section:

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

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

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

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

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

(i) for the purpose of receiving a scheduled periodic payment from a borrower pursuant

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to the terms of a loan; or

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

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

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

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

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

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

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

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

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

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

(i) designate a single point of contact; and

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

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

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

(ii) state:

(A) the nature of the default;

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

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

(iii) disclose the name, telephone number, email address, and mailing address of the single point of contact designated by the beneficiary or servicer; and

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

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

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

(5) The single point of contact shall:

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

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

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

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

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

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

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

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

(8) (a) A beneficiary or servicer may postpone a trustee's sale of the trust property in order to allow further time for negotiations relating to foreclosure relief.

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

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

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

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

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

(a) establish foreclosure relief; or

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

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

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

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

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

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

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

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

### **57-14-2. Definitions.**

As used in this chapter:

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

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

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

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

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

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

- (a) hunting;
- (b) fishing;
- (c) swimming;
- (d) skiing;
- (e) snowshoeing;
- (f) camping;
- (g) picnicking;
- (h) hiking;
- (i) studying nature;
- (j) waterskiing;
- (k) engaging in water sports;
- (l) engaging in equestrian activities;
- (m) using boats;
- (n) mountain biking;
- (o) riding narrow gauge rail cars on a narrow gauge track that does not exceed 24 inch gauge;
- (p) using off-highway vehicles or recreational vehicles;
- (q) viewing or enjoying historical, archaeological, scenic, or scientific sites; and
- (r) aircraft operations.

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

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### 58-3a-502. Penalty for unlawful conduct.

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

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

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

(b) A citation shall:

(i) be in writing;

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

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

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

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

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

(e) If within 20 calendar days from the service of the citation, the person to whom the

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citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review. The period to contest a citation may be extended by the division for cause.

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

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

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

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

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

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

and

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

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

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

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

### **58-9-102. Definitions.**

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

(1) "Authorizing agent" means a person legally entitled to authorize the cremation of

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human remains.

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

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

(4) "Body part" means:

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

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

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

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

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

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

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

(10) "Cremation container" means the container:

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

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

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

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

(iii) resistant to leakage or spillage;

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(iv) rigid enough for handling with ease; and

(v) able to provide protection for the health, safety, and personal integrity of crematory personnel.

(11) "Crematory" means the building or portion of a building that houses the cremation chamber and the holding facility.

(12) "Direct disposition" means the disposition of a dead human body:

(a) as quickly as law allows;

(b) without preparation of the body by embalming; and

(c) without an attendant funeral service or graveside service.

(13) "Disposition" means the final disposal of a dead human body by:

(a) earth interment;

(b) above ground burial;

(c) cremation;

(d) calcination;

(e) burial at sea;

(f) delivery to a medical institution; or

(g) other lawful means.

(14) "Embalming" means replacing body fluids in a dead human body with preserving and disinfecting chemicals.

(15) (a) "Funeral merchandise" means any of the following into which a dead human body is placed in connection with the transportation or disposition of the body:

(i) a vault;

(ii) a casket; or

(iii) other personal property.

(b) "Funeral merchandise" does not include:

(i) a mausoleum crypt;

(ii) an interment receptacle preset in a cemetery; or

(iii) a columbarium niche.

(16) "Funeral service" means a service, rite, or ceremony performed:

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

(b) with the body of the deceased present.

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

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

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

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

(b) "Funeral service establishment" includes:

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

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

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

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

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

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

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

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

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

(b) without the body of the deceased present.

(22) "Practice of funeral service" means:

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

(i) disposition; or

(ii) shipment to another location;

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(b) entering into a contract with a person to provide professional services regulated under this chapter;

(c) embalming or otherwise preparing a dead human body for disposition;

(d) supervising the arrangement or conduct of:

(i) a funeral service;

(ii) a graveside service; or

(iii) a memorial service;

(e) cremation, calcination, or pulverization of a dead human body or the body's remains;

(f) supervising the arrangement of:

(i) a disposition; or

(ii) a direct disposition;

(g) facilitating:

(i) a disposition; or

(ii) a direct disposition;

(h) supervising the sale of funeral merchandise by a funeral establishment;

(i) managing or otherwise being responsible for the practice of funeral service in a licensed funeral service establishment;

(j) supervising the sale of a preneed funeral arrangement; and

(k) contracting with or employing individuals to sell a preneed funeral arrangement.

(23) (a) "Preneed funeral arrangement" means a written or oral agreement sold in advance of the death of the beneficiary under which a person agrees with a buyer to provide at the death of the beneficiary any of the following as are typically provided in connection with a disposition:

(i) goods;

(ii) services, including:

(A) embalming services; and

(B) funeral directing services;

(iii) real property; or

(iv) personal property, including:

(A) a casket;

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- (B) another primary container;
- (C) a cremation or transportation container;
- (D) an outer burial container;
- (E) a vault;
- (F) a grave liner;
- (G) funeral clothing and accessories;
- (H) a monument;
- (I) a grave marker; and
- (J) a cremation urn.

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

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

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

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

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

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

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

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

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

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

#### **Immunity from liability.**

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

(2) (a) The division, and the boards within the division that act regarding the health

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care providers defined in this section, shall adopt rules to establish procedures to obtain information concerning the quality and adequacy of health care rendered to patients by those health care providers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) licensed under Part 3, Licensing; or
- (b) who is engaged in activities that require a license under Part 3, Licensing.

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

- (a) give proper identification;
- (b) request to see the applicable license or licenses;
- (c) describe the nature and purpose of the inspection; and

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(d) provide, upon request, the authority of the division to conduct the inspection and the penalty for refusing to permit the inspection as provided in Section 58-17b-504.

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

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

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

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

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

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

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

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

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

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

(1) For purposes of this section:

(a) "Cosmetic drug":

(i) means a prescription drug that is:

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

(B) listed as a cosmetic drug subject to the exemption under this section by the division

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by administrative rule or has been expressly approved for online dispensing, whether or not it is dispensed online or through a physician's office; and

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

(A) a controlled substance;

(B) compounded by the physician; or

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

(b) "Injectable weight loss drug":

(i) means an injectable prescription drug:

(A) prescribed to promote weight loss; and

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

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

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

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

(ii) Chapter 67, Utah Medical Practice Act;

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

(iv) Chapter 70a, Physician Assistant Act.

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

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

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

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

(d) a prescribing practitioner who prescribes and dispenses a cosmetic drug or an injectable weight loss drug to the prescribing practitioner's patient in accordance with

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Subsection (4); or

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

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

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

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

(ii) informs the patient:

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

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

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

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

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

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

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

(5) (a) The division, in consultation with the board under this chapter and the relevant professional board, including the Physician Licensing Board, the Osteopathic Physician

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Licensing Board, the Physician Assistant Licensing Board, the Board of Nursing, the Optometrist Licensing Board, or the Online Prescribing, Dispensing, and Facilitation Board, shall adopt administrative rules pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act to designate:

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

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

(b) When making a determination under Subsection (1)(a), the division and boards listed in Subsection (5)(a)[7] may consider any federal Food and Drug Administration indications or approval associated with a drug when adopting a rule to designate a prescription drug that may be dispensed under this section.

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

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

(i) this chapter; and

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

(B) Chapter 31b, Nurse Practice Act;

(C) Chapter 67, Utah Medical Practice Act;

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

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

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

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

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

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### **58-22-102. Definitions.**

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

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

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

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

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

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

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

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

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

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

(9) (a) "Professional engineering or the practice of engineering" means a service or

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

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

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

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

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

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

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

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

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professional land surveyor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) power-generating stations and other public utility facilities required as emergency backup facilities with a gross area greater than 3,000 square feet;

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

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

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

(A) structures or buildings that are:

(I) normally occupied by human beings; and

(II) five stories or more in height; or

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

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

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

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

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

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

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

(19) "Unprofessional conduct" as defined in Section 58-1-501 may be further defined by rule by the division in collaboration with the board.

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

### **58-22-201. Board.**

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

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

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

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

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

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

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

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

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

(i) A person who violates Subsections 58-1-501(1)(a) through (d) or Section 58-22-501

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

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

(b) A citation shall:

(i) be in writing;

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

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

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

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

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

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

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

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

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

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

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

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

and

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

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

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

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

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

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

(1) "Accounting experience" means applying accounting and auditing skills and principles that are taught as a part of the professional education qualifying a person for licensure under this chapter and generally accepted by the profession, under the supervision of a licensed certified public accountant.

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

(3) (a) "Attest and attestation engagement" means providing any or all of the following financial statement services:

(i) an audit or other engagement to be performed in accordance with the Statements on Auditing Standards (SAS);

(ii) a review of a financial statement to be performed in accordance with the Statements

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on Standards for Accounting and Review Services (SSARS);

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

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

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

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

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

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

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

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

(9) "Experience" means:

(a) accounting experience; or

(b) professional experience.

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

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

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

(13) "Practice of public accounting" means the offer to perform or the performance by a person holding himself out as a certified public accountant of one or more kinds of services

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involving the use of auditing or accounting skills including the issuance of reports or opinions on financial statements, performing attestation engagements, the performance of one or more kinds of advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters for a client.

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

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

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

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

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

(19) "Qualifying examinations" means:

(a) the AICPA Uniform CPA Examination;

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

(c) the Utah Laws and Rules Examination; and

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

(20) (a) "Report" means:

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

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

(B) implies that the person or firm issuing it has special knowledge or competence in accounting or auditing and specifically includes compilations and reviews; such an implication of special knowledge or competence may arise from use by the issuer of the report of names or

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titles indicating that the person or firm is a public accountant or auditor, or from the language of the report itself; or

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

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

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

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

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

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

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

(ii) an individual CPA's education, examination, and experience qualifications are comparable to or exceed the education, examination, and experience requirements set forth in

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the Uniform Accountancy Act.

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

(23) "Uniform Accountancy Act" means the model public accountancy legislation developed and promulgated by national accounting and regulatory associations that contains standardized definitions and regulations for the practice of public accounting as recognized by the division in collaboration with the board.

(24) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-26a-501.

(25) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-26a-502 and as may be further defined by rule.

(26) "Year of experience" means 2,000 hours of cumulative experience.

Section 36. Section **58-28-307** is amended to read:

### **58-28-307. Exemptions from chapter.**

In addition to the exemptions from licensure in Section 58-1-307 this chapter does not apply to:

(1) any person who practices veterinary medicine, surgery, or dentistry upon any animal owned by him, and the employee of that person when the practice is upon an animal owned by his employer, and incidental to his employment, except:

(a) this exemption does not apply to any person, or his employee, when the ownership of an animal was acquired for the purpose of circumventing this chapter; and

(b) this exemption does not apply to the administration, dispensing, or prescribing of a prescription drug, or nonprescription drug intended for off label use, unless the administration, dispensing, or prescribing of the drug is obtained through an existing veterinarian-patient relationship;

(2) any person who as a student at a veterinary college approved by the board engages in the practice of veterinary medicine, surgery, and dentistry as part of his academic training and under the direct supervision and control of a licensed veterinarian, if that practice is during the last two years of the college course of instruction and does not exceed an 18-month duration;

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(3) a veterinarian who is an officer or employee of the government of the United States, or the state, or its political subdivisions, and technicians under his supervision, while engaged in the practice of veterinary medicine, surgery, or dentistry for that government;

(4) any person while engaged in the vaccination of poultry, pullorum testing, typhoid testing of poultry, and related poultry disease control activity;

(5) any person who is engaged in bona fide and legitimate medical, dental, pharmaceutical, or other scientific research, if that practice of veterinary medicine, surgery, or dentistry is directly related to, and a necessary part of, that research;

(6) veterinarians licensed under the laws of another state rendering professional services in association with licensed veterinarians of this state for a period not to exceed 90 days;

(7) registered pharmacists of this state engaged in the sale of veterinary supplies, instruments, and medicines, if the sale is at his regular place of business;

(8) any person in this state engaged in the sale of veterinary supplies, instruments, and medicines, except prescription drugs which must be sold in compliance with state and federal regulations, if the supplies, instruments, and medicines are sold in original packages bearing adequate identification and directions for application and administration and the sale is made in the regular course of, and at the regular place of business;

(9) any person rendering emergency first aid to animals in those areas where a licensed veterinarian is not available, and if suspicious reportable diseases are reported immediately to the state veterinarian;

(10) any person performing or teaching nonsurgical bovine artificial insemination;

(11) any person affiliated with an institution of higher education who teaches nonsurgical bovine embryo transfer or any technician trained by or approved by an institution of higher education who performs nonsurgical bovine embryo transfer, but only if any prescription drug used in the procedure is prescribed and administered under the direction of a veterinarian licensed to practice in Utah;

(12) (a) upon written referral by a licensed veterinarian, the practice of animal chiropractic by a chiropractic physician licensed under Chapter 73, Chiropractic Physician Practice Act, who has completed an animal chiropractic course approved by the American Veterinary Chiropractic Association or the division;

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(b) upon written referral by a licensed veterinarian, the practice of animal physical therapy by a physical therapist licensed under Chapter 24b, Physical Therapy Practice Act, who has completed at least 100 hours of animal physical therapy training, including quadruped anatomy and hands-on training, approved by the division;

(c) upon written referral by a licensed veterinarian, the practice of animal massage therapy by a massage therapist licensed under Chapter 47b, Massage Therapy Practice Act, who has completed at least 60 hours of animal massage therapy training, including quadruped anatomy and hands-on training, approved by the division; and

(d) upon written referral by a licensed veterinarian, the practice of acupuncture by an acupuncturist licensed under Chapter 72, Acupuncture Licensing Act, who has completed a course of study on animal acupuncture approved by the division;

(13) unlicensed assistive personnel performing duties appropriately delegated to the unlicensed assistive personnel in accordance with Section 58-28-502;

(14) an animal shelter employee who is:

(a) acting under the indirect supervision of a licensed veterinarian; and

(b) performing animal euthanasia in the course and scope of employment; and

(15) an individual providing appropriate training for animals[;]; however, this exception does not include diagnosing any medical condition, or prescribing or dispensing any prescription drugs or therapeutics.

Section 37. Section **58-37-10** is amended to read:

**58-37-10. Search warrants -- Administrative inspection warrants -- Inspections and seizures of property without warrant.**

(1) Search warrants relating to offenses involving controlled substances may be authorized pursuant to the Utah Rules of Criminal Procedure.

(2) Issuance and execution of administrative inspection warrants shall be as follows:

(a) Any judge or magistrate of this state within his jurisdiction upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this act or regulations thereunder and seizures of property appropriate to such inspections. Probable cause for purposes of this act exists upon showing a valid public interest in the effective enforcement of the act or rules promulgated thereunder sufficient to justify administrative inspection of the area, premises, building, or

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conveyance in the circumstances specified in the application for the warrant.

(b) A warrant shall issue only upon an affidavit of an officer or employee duly designated and having knowledge of the facts alleged sworn to before a judge or magistrate which establish the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and if appropriate, the type of property to be inspected, if any. The warrant shall:

(i) state the grounds for its issuance and the name of each person whose affidavit has been taken to support it;

(ii) be directed to a person authorized by Section 58-37-9 of this act to execute it;

(iii) command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and if appropriate, direct the seizure of the property specified;

(iv) identify the item or types of property to be seized, if any; and

(v) direct that it be served during normal business hours and designate the judge or magistrate to whom it shall be returned.

(c) A warrant issued pursuant to this section must be executed and returned within 10 days after its date unless, upon a showing of a need for additional time, the court instructs otherwise in the warrant. If property is seized pursuant to a warrant, the person executing the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or leave the copy and receipt at the place where the property was taken. Return of the warrant shall be made promptly and be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(d) The judge or magistrate who issued the warrant under this section shall attach a copy of the return and all other papers to the warrant and file them with the court.

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(3) The department is authorized to make administrative inspections of controlled premises in accordance with the following provisions:

(a) For purposes of this section only, "controlled premises" means:

(i) Places where persons licensed or exempted from licensing requirements under this act are required to keep records.

(ii) Places including factories, warehouses, establishments, and conveyances where persons licensed or exempted from licensing requirements are permitted to possess, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

(b) When authorized by an administrative inspection warrant a law enforcement officer or employee designated in Section 58-37-9, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, has the right to enter controlled premises for the purpose of conducting an administrative inspection.

(c) When authorized by an administrative inspection warrant, a law enforcement officer or employee designated in Section 58-37-9 has the right:

(i) To inspect and copy records required by this chapter.

(ii) To inspect within reasonable limits and a reasonable manner, the controlled premises and all pertinent equipment, finished and unfinished material, containers, and labeling found, and except as provided in Subsection (3)(e), all other things including records, files, papers, processes, controls, and facilities subject to regulation and control by this chapter or by rules promulgated by the department.

(iii) To inventory and take stock of any controlled substance and obtain samples of any substance.

(d) This section shall not be construed to prevent the inspection of books and records without a warrant pursuant to an administrative subpoena issued by a court or the department nor shall it be construed to prevent entries and administrative inspections including seizures of property without a warrant:

(i) with the consent of the owner, operator, or agent in charge of the controlled premises;

(ii) in situations presenting imminent danger to health or safety;

(iii) in situations involving inspection of conveyances where there is reasonable cause

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to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(iv) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; and

(v) in all other situations where a warrant is not constitutionally required.

(e) No inspection authorized by this section shall extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.

Section 38. Section **58-37c-3** is amended to read:

### **58-37c-3. Definitions.**

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

(1) "Board" means the Controlled Substance Precursor Advisory Board created in Section 58-37c-4.

(2) "Controlled substance precursor" includes a chemical reagent and means any of the following:

- (a) Phenyl-2-propanone;
- (b) Methylamine;
- (c) Ethylamine;
- (d) D-lysergic acid;
- (e) Ergotamine and its salts;
- (f) Diethyl malonate;
- (g) Malonic acid;
- (h) Ethyl malonate;
- (i) Barbituric acid;
- (j) Piperidine and its salts;
- (k) N-acetylanthranilic acid and its salts;
- (l) Pyrrolidine;
- (m) Phenylacetic acid and its salts;
- (n) Anthranilic acid and its salts;
- (o) Morpholine;
- (p) Ephedrine;
- (q) Pseudoephedrine;

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- (r) Norpseudoephedrine;
  - (s) Phenylpropanolamine;
  - (t) Benzyl cyanide;
  - (u) Ergonovine and its salts;
  - (v) 3,4-Methylenedioxyphenyl-2-propanone;
  - (w) propionic anhydride;
  - (x) Insosafrole;
  - (y) Safrole;
  - (z) Piperonal;
  - (aa) N-Methylephedrine;
  - (bb) N-ethylephedrine;
  - (cc) N-methylpseudoephedrine;
  - (dd) N-ethylpseudoephedrine;
  - (ee) Hydriotic acid;
  - (ff) gamma butyrolactone (GBL), including butyrolactone, 1,2 butanolide, 2-oxanolone, tetrahydro-2-furanone, dihydro-2(3H)-furanone, and tetramethylene glycol, but not including gamma aminobutric acid (GABA);
  - (gg) 1,4 butanediol;
  - (hh) any salt, isomer, or salt of an isomer of the chemicals listed in Subsections (2)(a) through (gg);
  - (ii) Crystal iodine;
  - (jj) Iodine at concentrations greater than 1.5% by weight in a solution or matrix;
  - (kk) Red phosphorous, except as provided in Section 58-37c-19.7;
  - (ll) anhydrous ammonia, except as provided in Section 58-37c-19.9;
  - (mm) any controlled substance precursor listed under the provisions of the Federal Controlled Substances Act which is designated by the director under the emergency listing provisions set forth in Section 58-37c-14; and
  - (nn) any chemical which is designated by the director under the emergency listing provisions set forth in Section 58-37c-14.
- (3) "Deliver," "delivery," "transfer," or "furnish" means the actual, constructive, or attempted transfer of a controlled substance precursor.

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(4) "Matrix" means something, as a substance, in which something else originates, develops, or is contained.

(5) "Person" means any individual, group of individuals, proprietorship, partnership, joint venture, corporation, or organization of any type or kind.

(6) "Practitioner" means a physician, dentist, podiatric physician, veterinarian, pharmacist, scientific investigator, pharmacy, hospital, pharmaceutical manufacturer, or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, administer, or use in teaching[;] or chemical analysis a controlled substance in the course of professional practice or research in this state.

(7) (a) "Regulated distributor" means a person within the state who provides, sells, furnishes, transfers, or otherwise supplies a listed controlled substance precursor chemical in a regulated transaction.

(b) "Regulated distributor" does not include any person excluded from regulation under this chapter.

(8) (a) "Regulated purchaser" means any person within the state who receives a listed controlled substance precursor chemical in a regulated transaction.

(b) "Regulated purchaser" does not include any person excluded from regulation under this chapter.

(9) "Regulated transaction" means any actual, constructive or attempted:

(a) transfer, distribution, delivery, or furnishing by a person within the state to another person within or outside of the state of a threshold amount of a listed precursor chemical; or

(b) purchase or acquisition by any means by a person within the state from another person within or outside the state of a threshold amount of a listed precursor chemical.

(10) "Retail distributor" means a grocery store, general merchandise store, drug store, or other entity or person whose activities as a distributor are limited almost exclusively to sales for personal use:

(a) in both number of sales and volume of sales; and

(b) either directly to walk-in customers or in face-to-face transactions by direct sales.

(11) "Threshold amount of a listed precursor chemical" means any amount of a controlled substance precursor or a specified amount of a controlled substance precursor in a matrix; however, the division may exempt from the provisions of this chapter a specific

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controlled substance precursor in a specific amount and in certain types of transactions which provisions for exemption shall be defined by the division by rule adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(12) "Unlawful conduct" as defined in Section 58-1-501 includes knowingly and intentionally:

(a) engaging in a regulated transaction without first being appropriately licensed or exempted from licensure under this chapter;

(b) acting as a regulated distributor and selling, transferring, or in any other way conveying a controlled substance precursor to a person within the state who is not appropriately licensed or exempted from licensure as a regulated purchaser, or selling, transferring, or otherwise conveying a controlled substance precursor to a person outside of the state and failing to report the transaction as required;

(c) acting as a regulated purchaser and purchasing or in any other way obtaining a controlled substance precursor from a person within the state who is not a licensed regulated distributor, or purchasing or otherwise obtaining a controlled substance precursor from a person outside of the state and failing to report the transaction as required;

(d) engaging in a regulated transaction and failing to submit reports and keep required records of inventories required under the provisions of this chapter or rules adopted pursuant to this chapter;

(e) making any false statement in any application for license, in any record to be kept, or on any report submitted as required under this chapter;

(f) with the intent of causing the evasion of the recordkeeping or reporting requirements of this chapter and rules related to this chapter, receiving or distributing any listed controlled substance precursor chemical in any manner designed so that the making of records or filing of reports required under this chapter is not required;

(g) failing to take immediate steps to comply with licensure, reporting, or recordkeeping requirements of this chapter because of lack of knowledge of those requirements, upon becoming informed of the requirements;

(h) presenting false or fraudulent identification where or when receiving or purchasing a listed controlled substance precursor chemical;

(i) creating a chemical mixture for the purpose of evading any licensure, reporting or

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recordkeeping requirement of this chapter or rules related to this chapter, or receiving a chemical mixture created for that purpose;

(j) if the person is at least 18 years of age, employing, hiring, using, persuading, inducing, enticing, or coercing another person under 18 years of age to violate any provision of this chapter, or assisting in avoiding detection or apprehension for any violation of this chapter by any federal, state, or local law enforcement official; and

(k) obtaining or attempting to obtain or to possess any controlled substance precursor or any combination of controlled substance precursors knowing or having a reasonable cause to believe that the controlled substance precursor is intended to be used in the unlawful manufacture of any controlled substance.

(13) "Unprofessional conduct" as defined in Section 58-1-102 and as may be further defined by rule includes the following:

(a) violation of any provision of this chapter, the Controlled Substance Act of this state or any other state, or the Federal Controlled Substance Act; and

(b) refusing to allow agents or representatives of the division or authorized law enforcement personnel to inspect inventories or controlled substance precursors or records or reports relating to purchases and sales or distribution of controlled substance precursors as such records and reports are required under this chapter.

Section 39. Section **58-37c-17** is amended to read:

### **58-37c-17. Inspection authority.**

For the purpose of inspecting, copying, and auditing records and reports required under this chapter and rules adopted pursuant thereto, and for the purpose of inspecting ~~an~~ and auditing inventories of listed controlled substance precursors, the director, or his authorized agent, and law enforcement personnel of any federal, state, or local law enforcement agency is authorized to enter the premises of regulated distributors and regulated purchasers during normal business hours to conduct administrative inspections.

Section 40. Section **58-37d-2** is amended to read:

### **58-37d-2. Purpose.**

The clandestine production of methamphetamine, other amphetamines, phencyclidine, narcotic analgesic analogs, so-called "designer drugs," various hallucinogens, cocaine and methamphetamine base "crack" cocaine and methamphetamine "ice" respectively, has

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increased dramatically throughout the western states and Utah. These highly technical illegal operations create substantial dangers to the general public and environment from fire, explosions, and the release of toxic chemicals. By their very nature these activities often involve a number of persons in a conspiratorial enterprise to bring together all necessary components for clandestine production, to thwart regulation and detection, and to distribute the final product. Therefore, the Legislature enacts the following Utah Clandestine Laboratory Act for prosecution of specific illegal laboratory operations. With regard to the controlled substances specified herein, this act shall control, notwithstanding the prohibitions and penalties in Title 58, Chapter 37, Utah Controlled Substances Act.

Section 41. Section **58-47b-301** is amended to read:

### **58-47b-301. Licensure required.**

(1) An individual shall hold a license issued under this chapter in order to engage in the practice of massage therapy, except as specifically provided in Section 58-1-307 or 58-47b-304.

(2) An individual shall have a license in order to:

- (a) represent himself as a massage therapist or massage apprentice;
- (b) [~~represents~~] represent himself as providing a service that is within the practice of massage therapy or [~~uses~~] use the word massage or any other word to describe such services; or
- (c) [~~charges~~] charge or [~~receives~~] receive a fee or any consideration for providing a service that is within the practice of massage therapy.

Section 42. Section **59-2-1109** is amended to read:

### **59-2-1109. Indigent persons -- Deferral or abatement -- Application -- County authority to make refunds.**

(1) A person under the age of 65 years is not eligible for a deferral or abatement provided for poor people under Sections 59-2-1107 and 59-2-1108 unless:

- (a) the county finds that extreme hardship would prevail if the grants were not made; or
- (b) the person has a disability.

(2) (a) An application for the deferral or abatement shall be filed on or before September 1 with the county in which the property is located.

(b) The application shall include a signed statement setting forth the eligibility of the applicant for the deferral or abatement.

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(c) Both husband and wife shall sign the application if the husband and wife seek a deferral or abatement on a residence:

- (i) in which they both reside; and
- (ii) which they own as joint tenants.

(d) A county may extend the deadline for filing under Subsection (2)(a) until December 31 if the county finds that good cause exists to extend the deadline.

(3) (a) For purposes of this Subsection (3):

(i) "Property taxes due" means the taxes due on a person's property:

- (A) for which an abatement is granted by a county under Section 59-2-1107; and
- (B) for the calendar year for which the abatement is granted.

(ii) "Property taxes paid" is an amount equal to the sum of:

(A) the amount of the property taxes the person paid for the taxable year for which the person is applying for the abatement; and

(B) the amount of the abatement the county grants under Section 59-2-1107.

(b) A county granting an abatement to a person under Section 59-2-1107 shall refund to that person an amount equal to the amount by which the person's property taxes paid exceed the person's property taxes due, if that amount is \$1 or more.

(4) For purposes of this section:

(a) a poor person is any person:

(i) whose total household income as defined in Section 59-2-1202 is less than the maximum household income certified to a homeowner's credit under Subsection 59-2-1208(1);

(ii) who resides for not less than 10 months of each year in the residence for which the tax relief, deferral, or abatement is requested; and

(iii) who is unable to meet the tax assessed on the person's residential property as the tax becomes due; and

(b) "residence" includes a mobile home as defined under Section [~~70D-2-401~~]  
70D-2-102.

(5) If the claimant is the grantor of a trust holding title to real or tangible personal property on which an abatement or deferral is claimed, the claimant may claim the portion of the abatement or deferral under Section 59-2-1107 or 59-2-1108 and be treated as the owner of that portion of the property held in trust for which the claimant proves to the satisfaction of the

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county that:

(a) title to the portion of the trust will revert in the claimant upon the exercise of a power:

(i) by:

(A) the claimant as grantor of the trust;

(B) a nonadverse party; or

(C) both the claimant and a nonadverse party; and

(ii) regardless of whether the power is a power:

(A) to revoke;

(B) to terminate;

(C) to alter;

(D) to amend; or

(E) to appoint;

(b) the claimant is obligated to pay the taxes on that portion of the trust property beginning January 1 of the year the claimant claims the abatement or deferral; and

(c) the claimant meets the requirements under this part for the abatement or deferral.

(6) The commission shall adopt rules to implement this section.

(7) Any poor person may qualify for:

(a) the deferral of taxes under Section 59-2-1108;

(b) if the person meets the requisites of this section, for the abatement of taxes under Section 59-2-1107; or

(c) both:

(i) the deferral described in Subsection (7)(a); and

(ii) the abatement described in Subsection (7)(b).

Section 43. Section **63A-12-111** is amended to read:

**63A-12-111. Government records ombudsman.**

(1) (a) The director of the division shall appoint a government records ombudsman.

(b) The government records ombudsman may not be a member of the records committee.

(2) The government records ombudsman shall:

(a) be familiar with the provisions of Title 63G, Chapter 2, Government Records

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Access and Management Act;

(b) serve as a resource for a person who is making or responding to a records request or filing an appeal relating to a records request;

(c) upon request, attempt to mediate disputes between requestors and responders; and

(d) on an annual basis, report to the Government Operations [~~and Political Subdivisions~~] Interim Committee on the work performed by the government records ombudsman during the previous year.

(3) The government records ombudsman may not testify, or be compelled to testify, before the records committee, another administrative body, or a court regarding a matter that the government records ombudsman provided services in relation to under this section.

Section 44. Section **63G-6-202 (Superseded 05/01/13)** is amended to read:

### **63G-6-202 (Superseded 05/01/13). Powers and duties of board.**

(1) Except as otherwise provided in Section 63G-6-104 and Subsection 63G-6-208(1)(b), the policy board shall:

(a) make rules, consistent with this chapter, governing the procurement, management, and control of any and all supplies, services, technology, and construction to be procured by the state; and

(b) consider and decide matters of policy within the provisions of this chapter, including those referred to it by the chief procurement officer.

(2) (a) The policy board may:

(i) audit and monitor the implementation of its rules and the requirements of this chapter;

(ii) upon the request of a local public procurement unit, review that procurement unit's proposed rules to ensure that they are not inconsistent with the provisions of this chapter; and

(iii) approve the use of innovative procurement methods proposed by local public procurement units.

(b) Except as provided in Section 63G-6-807, the policy board may not exercise authority [~~over the award or administration of~~]:

(i) over the award or administration of any particular [~~contract~~] contract; or

(ii) over any dispute, claim, or litigation pertaining to any particular contract.

Section 45. Section **63G-6a-203 (Effective 05/01/13)** is amended to read:

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### 63G-6a-203 (Effective 05/01/13). Powers and duties of board.

(1) In addition to making rules in accordance with Section 63G-6a-402 and the other provisions of this chapter, the board shall consider and decide matters of policy within the provisions of this chapter, including those referred to it by the chief procurement officer.

(2) (a) The board may:

(i) audit and monitor the implementation of its rules and the requirements of this chapter;

(ii) upon the request of a local public procurement unit, review that local public procurement unit's proposed rules to ensure that they are not inconsistent with the provisions of this chapter or rules made by the board; and

(iii) approve the use of innovative procurement processes.

(b) Except as provided in Section 63G-6a-1702, the board may not exercise authority over ~~the award or administration of~~:

(i) the award or administration of any particular contract; or

(ii) any dispute, claim, or litigation pertaining to any particular contract.

(3) The board does not have authority over a matter involving:

(a) a non-executive state procurement unit;

(b) a local government unit; or

(c) except as otherwise expressly provided in this chapter, a local public procurement unit.

Section 46. Section **63G-7-701** is amended to read:

**63G-7-701. Payment of claim or judgment against state -- Presentment for payment.**

(1) ~~(a)~~ Each claim, as defined by Subsection 63G-7-102(1), that is approved by the state or any final judgment obtained against the state shall be presented for payment to:

~~(i)~~ (a) the state risk manager; or

~~(ii)~~ (b) the office, agency, institution, or other instrumentality involved, if payment by that instrumentality is otherwise permitted by law.

~~(b)~~ (2) If payment of the claim is not authorized by law, the judgment or claim shall be presented to the board of examiners for action as provided in Section 63G-9-301.

~~(c)~~ (3) If a judgment against the state is reduced by the operation of Section

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63G-7-604, the claimant may submit the excess claim to the board of examiners.

Section 47. Section **63I-1-209** is amended to read:

### **63I-1-209. Repeal dates, Title 9.**

~~[(1)]~~ Title 9, Chapter 1, Part 8, Commission on National and Community Service Act, is repealed July 1, 2014.

~~[(2) Subsection 35A-8-302(6), defining "qualifying city," is repealed January 1, 2013.]~~

~~[(3) Subsection 35A-8-305(2), related to a grant for fiscal year 2011-12 only, is repealed January 1, 2013.]~~

~~[(4) The language in Subsection 35A-8-307(2) that reads "except for Subsection 35A-8-305(2)" is repealed January 1, 2013.]~~

~~[(5) Subsection 35A-8-307(3), requiring the Permanent Community Impact Fund Board to make a finding before making a grant to a city under Subsection 35A-8-305(2), is repealed January 1, 2013.]~~

Section 48. Section ~~{63I-1-235}~~63I-1-213 is amended to read:

### ~~{63I-1-235}~~63I-1-213. Repeal dates, Title {35A}13.

~~{(1) } [Title {35A, Utah Workforce Services Code, is repealed July 1, 2015.~~

~~—— [(2) Section 35A-3-114, the Displaced Homemaker Program, together with the provision for funding that program contained in Subsection 17-16-21(2)(b); 13, Chapter 16; Motor Fuel Marketing Act, is repealed July 1, 2012.]~~

~~{ —— [(3)] (2) Title 35A, Chapter 8, Part 7, Utah Housing Corporation Act, is repealed July 1, 2016.~~

~~—— [(4)] (3) Title 35A, Chapter 8, Part 18, Transitional Housing and Community Development Advisory Council, is repealed July 1, 2014.~~

~~‡~~ Section 49. Section ~~{63I-1-258}~~63I-1-235 is amended to read:

### ~~{63I-1-258}~~63I-1-235. Repeal dates, Title {58}35A.

~~(1) Title {58}35A, {Chapter 9, Funeral}Utah Workforce Services {Licensing Act}Code, is repealed July 1, ~~{2018.~~~~

~~—— (2) Title 58, Chapter 13, Health Care Providers Immunity from Liability}2015.~~

~~[(2) Section 35A-3-114, the Displaced Homemaker Program, together with the provision for funding that program contained in Subsection 17-16-21(2)(b), is repealed July 1, 2012.]~~

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~~[(3)] (2) Title 35A, Chapter 8, Part 7, Utah Housing Corporation~~ Act, is repealed July 1, 2016.

~~[(13)] (3) Section 58-13-2.5 is repealed July 1, 2013.~~

~~[(3)] (4) Title 58, Chapter 15, Health Facility Administrator Act, is repealed July 1, 2015.~~

~~[(4)] (5) Section 58-17b-309.5 is repealed July 1, 2015.~~

~~[(5)] (6) Title 58, Chapter 20a, Environmental Health Scientist Act, is repealed July 1, 2013.~~

~~[(6)] (7) Title 58, Chapter 40, Recreational Therapy Practice Act, is repealed July 1, 2023.~~

~~[(7)] (8) Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act, is repealed July 1, 2019.~~

~~[(8)] (9) Title 58, Chapter 42a, Occupational Therapy Practice Act, is repealed July 1, 2015.~~

~~[(9)] (10) Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act, is repealed July 1, 2013.~~

~~[(10)] (11) Title 58, Chapter 47b, Massage Therapy Practice Act,~~ [(3) Title 35A, Chapter 8, Part 18, Transitional Housing and Community Development Advisory Council, is repealed July 1, 2014.

~~[(11)] (12) Section 58-69-302.5 is repealed on July 1, 2015.~~

~~[(12)] (13) Title 58, Chapter 72, Acupuncture Licensing Act, is repealed July 1, 2017.~~

~~†~~ Section 50. Section ~~{67-1a-2}~~ 63I-1-258 is amended to read:

~~{67-1a-2}~~ 63I-1-258. Duties enumerated:

~~———— (1) The lieutenant governor shall:~~

~~———— (a) perform duties delegated by the governor, including assignments to serve in any of the following capacities:~~

~~———— (i) as the head of any one department, if so qualified, with the consent of the Senate, and, upon appointment at the pleasure of the governor and without additional compensation;~~

~~———— (ii) as the chairperson of any cabinet group organized by the governor or authorized by law for the purpose of advising the governor or coordinating~~

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~~intergovernmental or interdepartmental policies or programs;~~

~~—— (iii) as liaison between the governor and the state Legislature to coordinate and facilitate the governor's programs and budget requests;~~

~~—— (iv) as liaison between the governor and other officials of local, state, federal, and international governments or any other political entities to coordinate, facilitate, and protect the interests of the state;~~

~~—— (v) as personal advisor to the governor, including advice on policies, programs, administrative and personnel matters, and fiscal or budgetary matters; and~~

~~—— (vi) as chairperson or member of any temporary or permanent boards, councils, commissions, committees, task forces, or other group appointed by the governor;~~

~~—— (b) serve on all boards and commissions in lieu of the governor, whenever so designated by the governor;~~

~~—— (c) serve as the chief election officer of the state as required by Subsection (2);~~

~~—— (d) keep custody of the Great Seal of Utah;~~

~~—— (e) keep a register of, and attest, the official acts of the governor;~~

~~—— (f) affix the Great Seal, with an attestation, to all official documents and instruments to which the official signature of the governor is required; and~~

~~—— (g) furnish a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in the office of the lieutenant governor to any person who requests it and pays the fee.~~

~~—— (2) (a) As the chief election officer, the lieutenant governor shall:~~

~~—— (i) exercise general supervisory authority over all elections;~~

~~—— (ii) exercise direct authority over the conduct of elections for federal, state, and multicounty officers and statewide or multicounty ballot propositions and any recounts involving those races;~~

~~—— (iii) assist county clerks in unifying the election ballot;~~

~~—— (iv) (A) prepare election information for the public as required by statute and as determined appropriate by the lieutenant governor; and~~

~~—— (B) make the information under Subsection (2)(a)(iv)(A) available to the public and to news media on the Internet and in other forms as required by statute or as determined appropriate by the lieutenant governor;~~

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- ~~—— (v) receive and answer election questions and maintain an election file on opinions received from the attorney general;~~
- ~~—— (vi) maintain a current list of registered political parties as defined in Section 20A-8-101;~~
- ~~—— (vii) maintain election returns and statistics;~~
- ~~—— (viii) certify to the governor the names of those persons who have received the highest number of votes for any office;~~
- ~~—— (ix) ensure that all voting equipment purchased by the state complies with the requirements of Subsection 20A-5-302(2) and Sections 20A-5-402.5 and 20A-5-402.7;~~
- ~~—— (x) conduct the study described in Section 67-1a-14; and~~
- ~~—— (xi) perform other election duties as provided in Title 20A, Election Code.~~
- ~~—— (b) As chief election officer, the lieutenant governor may not assume the responsibilities assigned to the county clerks, city recorders, town clerks, or other local election officials by Title 20A, Election Code.~~
- ~~—— (3) (a) The lieutenant governor shall:~~
  - ~~—— (i) (A) determine a new city's classification under Section 10-2-301 upon the city's incorporation under Title 10, Chapter 2, Part 1, Incorporation, based on the city's population using the population estimate from the Utah Population Estimates Committee; and~~
  - ~~—— (B) (I) prepare a certificate indicating the class in which the new city belongs based on the city's population; and~~
  - ~~—— (II) within 10 days after preparing the certificate, deliver a copy of the certificate to the city's legislative body;~~
  - ~~—— (ii) (A) determine the classification under Section 10-2-301 of a consolidated municipality upon the consolidation of multiple municipalities under Title 10, Chapter 2, Part 6, Consolidation of Municipalities, using population information from:~~
    - ~~—— (I) each official census or census estimate of the United States Bureau of the Census; or~~
    - ~~—— (II) the population estimate from the Utah Population Estimates Committee, if the population of a municipality is not available from the United States Bureau of the Census; and~~

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~~—— (B) (f) prepare a certificate indicating the class in which the consolidated municipality belongs based on the municipality's population; and~~

~~—— (H) within 10 days after preparing the certificate, deliver a copy of the certificate to the consolidated municipality's legislative body; and~~

~~—— (iii) monitor the population of each municipality using population information from:~~

~~—— (A) each official census or census estimate of the United States Bureau of the Census; or~~

~~—— (B) the population estimate from the Utah Population Estimates Committee, if the population of a municipality is not available from the United States Bureau of the Census.~~

~~—— (b) If the applicable population figure under Subsection (3)(a)(ii) or (iii) indicates that a municipality's population has increased beyond the population for its current class, the lieutenant governor shall:~~

~~—— (i) prepare a certificate indicating the class in which the municipality belongs based on the increased population figure; and~~

~~—— (ii) within 10 days after preparing the certificate, deliver a copy of the certificate to the legislative body of the municipality whose class has changed.~~

~~—— (c) (i) If the applicable population figure under Subsection (3)(a)(ii) or (iii) indicates that a municipality's population has decreased below the population for its current class, the lieutenant governor shall send written notification of that fact to the municipality's legislative body.~~

~~—— (ii) Upon receipt of a petition under Subsection 10-2-302(2) from a municipality whose population has decreased below the population for its current class, the lieutenant governor shall:~~

~~—— (A) prepare a certificate indicating the class in which the municipality belongs based on the decreased population figure; and~~

~~—— (B) within 10 days after preparing the certificate, deliver a copy of the certificate to the legislative body of the municipality whose class has changed.~~

~~Repeal dates, Title 58.~~

~~(1) Title 58, Chapter 9, Funeral Services Licensing Act, is repealed July 1, 2018.~~

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(2) Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, is repealed July 1, 2016.

[(13)] (3) Section 58-13-2.5 is repealed July 1, 2013.

[(3)] (4) Title 58, Chapter 15, Health Facility Administrator Act, is repealed July 1, 2015.

[(4)] (5) Section 58-17b-309.5 is repealed July 1, 2015.

[(5)] (6) Title 58, Chapter 20a, Environmental Health Scientist Act, is repealed July 1, 2013.

[(6)] (7) Title 58, Chapter 40, Recreational Therapy Practice Act, is repealed July 1, 2023.

[(7)] (8) Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act, is repealed July 1, 2019.

[(8)] (9) Title 58, Chapter 42a, Occupational Therapy Practice Act, is repealed July 1, 2015.

[(9)] (10) Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act, is repealed July 1, 2013.

[(10)] (11) Title 58, Chapter 47b, Massage Therapy Practice Act, is repealed July 1, 2014.

[(11)] (12) Section 58-69-302.5 is repealed on July 1, 2015.

[(12)] (13) Title 58, Chapter 72, Acupuncture Licensing Act, is repealed July 1, 2017.

Section 51. Section ~~{67-19-13.5}~~ 631-2-261 is amended to read:

~~{67-19-13.5. Department provides payroll services to executive branch agencies--~~

### **Report:**

—— (1) As used in this section:

—— (a) (i) "Executive branch entity" means a department, division, agency, board, or office within the executive branch of state government that employs a person who is paid through the central payroll system developed by the Division of Finance as of December 31, 2011.

—— (ii) "Executive branch entity" does not include the Offices of the Attorney General, State Treasurer, State Auditor, [Department] or Departments of Transportation, [Department of] Technology Services, or [the Department of] Natural Resources.

—— (b) (i) "Payroll services" means using the central payroll system as directed by the

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Division of Finance to:

~~—— (A) enter and validate payroll reimbursements, which include reimbursements for mileage, a service award, and other wage types;~~

~~—— (B) calculate, process, and validate a retirement;~~

~~—— (C) enter a leave adjustment; and~~

~~—— (D) certify payroll by ensuring an entry complies with a rule or policy adopted by the department or the Division of Finance.~~

~~—— (ii) "Payroll services" does not mean:~~

~~—— (A) a function related to payroll that is performed by an employee of the Division of Finance;~~

~~—— (B) a function related to payroll that is performed by an executive branch agency on behalf of a person who is not an employee of the executive branch agency;~~

~~—— (C) the entry of time worked by an executive branch agency employee into the central payroll system; or~~

~~—— (D) approval or verification by a supervisor or designee of the entry of time worked.~~

~~—— (2) (a) Except as provided by Subsection (2)(b), on or before September 19, 2012, the department shall provide payroll services to all executive branch entities.~~

~~—— (b) On or before June 30, 2013, the department shall provide payroll services to the Department of Public Safety for an employee who is certified by the Peace Officer Standards and Training Division.~~

~~—— (3) (a) After September 19, 2012, an executive branch entity, other than the department, the Division of Finance, or the Department of Public Safety, may not create a full-time equivalent position or part-time position, or request an appropriation to fund a full-time equivalent position or part-time position for the purpose of providing payroll services to the entity.~~

~~—— (b) After June 30, 2013, the Department of Public Safety may not create a full-time equivalent position or part-time position, or request an appropriation to fund a full-time equivalent position or part-time position for the purpose of providing payroll services.~~

~~—— (4) The Department of Transportation, the Department of Technology Services, and the Department of Natural Resources shall report on the inability to transfer payroll services to the department or the progress of transferring payroll services to the department.~~

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~~— (a) to the Government Operations Interim Committee before October 30, 2012; and~~  
~~— (b) to the Infrastructure and General Government Appropriations Subcommittee on or before February 11, 2013.~~ **63I-2-261. Repeal dates -- Title 61.**

**[Section 61-2c-205.1 is repealed July 1, 2012.]**

Section 52. Section ~~{76-1-403}~~ **63I-2-267** is amended to read:

~~{76-1-403. Former prosecution barring subsequent prosecution for offense out of same episode:~~

~~— (1) If a defendant has been prosecuted for one or more offenses arising out of a single criminal episode, a subsequent prosecution for the same or a different offense arising out of the same criminal episode is barred if:~~

~~— (a) the subsequent prosecution is for an offense that was or should have been tried under Subsection 76-1-402(2) in the former prosecution; and~~

~~— (b) the former prosecution:~~

~~— (i) resulted in acquittal; [or]~~

~~— (ii) resulted in conviction; [or]~~

~~— (iii) was improperly terminated; or~~

~~— (iv) was terminated by a final order or judgment for the defendant that has not been reversed, set aside, or vacated and that necessarily required a determination inconsistent with a fact that must be established to secure conviction in the subsequent prosecution:~~

~~— (2) There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of facts or in a determination that there was insufficient evidence to warrant conviction. A finding of guilty of a lesser included offense is an acquittal of the greater offense even though the conviction for the lesser included offense is subsequently reversed, set aside, or vacated:~~

~~— (3) There is a conviction if the prosecution resulted in a judgment of guilt that has not been reversed, set aside, or vacated; a verdict of guilty that has not been reversed, set aside, or vacated and that is capable of supporting a judgment; or a plea of guilty accepted by the court:~~

~~— (4) There is an improper termination of prosecution if the termination takes place before the verdict, is for reasons not amounting to an acquittal, and takes place after a~~

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jury has been impaneled and sworn to try the defendant, or, if the jury trial is waived, after the first witness is sworn. However, termination of prosecution is not improper if:

- (a) the defendant consents to the termination; [or]
- (b) the defendant waives his right to object to the termination; or
- (c) the court finds and states for the record that the termination is necessary because:
  - (i) it is physically impossible to proceed with the trial in conformity with the law; [or]
  - (ii) there is a legal defect in the proceeding not attributable to the state that would make any judgment entered upon a verdict reversible as a matter of law; [or]
  - (iii) prejudicial conduct in or out of the courtroom not attributable to the state makes it impossible to proceed with the trial without injustice to the defendant or the state; [or]
  - (iv) the jury is unable to agree upon a verdict; or
  - (v) false statements of a juror on voir dire prevent a fair trial; 63I-2-267. Repeal

### dates -- Title 67.

[Section 67-19a-101.5 is repealed July 1, 2012.]

Section 53. Section ~~{76-1-501}~~67-1a-2 is amended to read:

~~{76-1-501}~~67-1a-2. ~~{Presumption of innocence -- "Element of the offense"~~  
defined:

— (1) ~~A defendant in a criminal proceeding is presumed to be innocent until each element of the offense charged against him is proved beyond a reasonable doubt. In the absence of [such] this proof, the defendant shall be acquitted.~~

— (2) ~~As used in this part the words "element of the offense" mean:~~

— (a) ~~The conduct, attendant circumstances, or results of conduct proscribed, prohibited, or forbidden in the definition of the offense;~~

— (b) ~~The culpable mental state required.~~

— (3) ~~The existence of jurisdiction and venue are not elements of the offense but shall be established by a preponderance of the evidence.~~

### }Duties enumerated.

(1) The lieutenant governor shall:

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(a) perform duties delegated by the governor, including assignments to serve in any of the following capacities:

(i) as the head of any one department, if so qualified, with the consent of the Senate, and, upon appointment at the pleasure of the governor and without additional compensation;

(ii) as the chairperson of any cabinet group organized by the governor or authorized by law for the purpose of advising the governor or coordinating intergovernmental or interdepartmental policies or programs;

(iii) as liaison between the governor and the state Legislature to coordinate and facilitate the governor's programs and budget requests;

(iv) as liaison between the governor and other officials of local, state, federal, and international governments or any other political entities to coordinate, facilitate, and protect the interests of the state;

(v) as personal advisor to the governor, including advice on policies, programs, administrative and personnel matters, and fiscal or budgetary matters; and

(vi) as chairperson or member of any temporary or permanent boards, councils, commissions, committees, task forces, or other group appointed by the governor;

(b) serve on all boards and commissions in lieu of the governor, whenever so designated by the governor;

(c) serve as the chief election officer of the state as required by Subsection (2);

(d) keep custody of the Great Seal of Utah;

(e) keep a register of, and attest, the official acts of the governor;

(f) affix the Great Seal, with an attestation, to all official documents and instruments to which the official signature of the governor is required; and

(g) furnish a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in the office of the lieutenant governor to any person who requests it and pays the fee.

(2) (a) As the chief election officer, the lieutenant governor shall:

(i) exercise general supervisory authority over all elections;

(ii) exercise direct authority over the conduct of elections for federal, state, and multicounty officers and statewide or multicounty ballot propositions and any recounts involving those races;

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(iii) assist county clerks in unifying the election ballot;

(iv) (A) prepare election information for the public as required by statute and as determined appropriate by the lieutenant governor; and

(B) make the information under Subsection (2)(a)(iv)(A) available to the public and to news media on the Internet and in other forms as required by statute or as determined appropriate by the lieutenant governor;

(v) receive and answer election questions and maintain an election file on opinions received from the attorney general;

(vi) maintain a current list of registered political parties as defined in Section 20A-8-101;

(vii) maintain election returns and statistics;

(viii) certify to the governor the names of those persons who have received the highest number of votes for any office;

(ix) ensure that all voting equipment purchased by the state complies with the requirements of Subsection 20A-5-302(2) and Sections 20A-5-402.5 and 20A-5-402.7;

(x) conduct the study described in Section 67-1a-14; and

(xi) perform other election duties as provided in Title 20A, Election Code.

(b) As chief election officer, the lieutenant governor may not assume the responsibilities assigned to the county clerks, city recorders, town clerks, or other local election officials by Title 20A, Election Code.

(3) (a) The lieutenant governor shall:

(i) (A) determine a new city's classification under Section 10-2-301 upon the city's incorporation under Title 10, Chapter 2, Part 1, Incorporation, based on the city's population using the population estimate from the Utah Population Estimates Committee; and

(B) (I) prepare a certificate indicating the class in which the new city belongs based on the city's population; and

(II) within 10 days after preparing the certificate, deliver a copy of the certificate to the city's legislative body;

(ii) (A) determine the classification under Section 10-2-301 of a consolidated municipality upon the consolidation of multiple municipalities under Title 10, Chapter 2, Part 6, Consolidation of Municipalities, using population information from:

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(I) each official census or census estimate of the United States Bureau of the Census;

or

(II) the population estimate from the Utah Population Estimates Committee, if the population of a municipality is not available from the United States Bureau of the Census; and

(B) (I) prepare a certificate indicating the class in which the consolidated municipality belongs based on the municipality's population; and

(II) within 10 days after preparing the certificate, deliver a copy of the certificate to the consolidated municipality's legislative body; and

(iii) monitor the population of each municipality using population information from:

(A) each official census or census estimate of the United States Bureau of the Census;

or

(B) the population estimate from the Utah Population Estimates Committee, if the population of a municipality is not available from the United States Bureau of the Census.

(b) If the applicable population figure under Subsection (3)(a)(ii) or (iii) indicates that a municipality's population has increased beyond the population for its current class, the lieutenant governor shall:

(i) prepare a certificate indicating the class in which the municipality belongs based on the increased population figure; and

(ii) within 10 days after preparing the certificate, deliver a copy of the certificate to the legislative body of the municipality whose class has changed.

(c) (i) If the applicable population figure under Subsection (3)(a)(ii) or (iii) indicates that a municipality's population has decreased below the population for its current class, the lieutenant governor shall send written notification of that fact to the municipality's legislative body.

(ii) Upon receipt of a petition under Subsection 10-2-302(2) from a municipality whose population has decreased below the population for its current class, the lieutenant governor shall:

(A) prepare a certificate indicating the class in which the municipality belongs based on the decreased population figure; and

(B) within 10 days after preparing the certificate, deliver a copy of the certificate to the legislative body of the municipality whose class has changed.

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Section 54. Section ~~{76-3-202}~~67-19-13.5 is amended to read:

~~{76-3-202. Paroled persons -- Termination or discharge from sentence -- Time served on parole -- Discretion of Board of Pardons and Parole:~~

~~—— (1) (a) Except as provided in Subsection (1)(b), every person committed to the state prison to serve an indeterminate term and later released on parole shall, upon completion of three years on parole outside of confinement and without violation, be terminated from the person's sentence unless the parole is earlier terminated by the Board of Pardons and Parole:~~

~~—— (b) Every person committed to the state prison to serve an indeterminate term and later released on parole on or after July 1, 2008, and who was convicted of any felony offense under Title 76, Chapter 5, Offenses Against the Person, or any attempt, conspiracy, or solicitation to commit any of these felony offenses, shall complete a term of parole that extends through the expiration of the person's maximum sentence, unless the parole is earlier terminated by the Board of Pardons and Parole:~~

~~—— (2) Every person convicted of a second degree felony for violating Section 76-5-404, forcible sexual abuse, or 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child, or attempting, conspiring, or soliciting the commission of a violation of any of those sections, and who is paroled before July 1, 2008, shall, upon completion of 10 years parole outside of confinement and without violation, [shall] be terminated from the sentence unless the person is earlier terminated by the Board of Pardons and Parole:~~

~~—— (3) (a) Every person convicted of a first degree felony for committing any offense listed in Subsection (3)(b), or attempting, conspiring, or soliciting the commission of a violation of any of those sections, shall complete a term of lifetime parole outside of confinement and without violation unless the person is earlier terminated by the Board of Pardons and Parole:~~

~~—— (b) The offenses referred to in Subsection (3)(a) are:~~

~~—— (i) Section 76-5-301.1, child kidnapping;~~

~~—— (ii) Subsection 76-5-302(1)(b)(vi), aggravated kidnapping involving a sexual offense;~~

~~—— (iii) Section 76-5-402, rape;~~

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- ~~—— (iv) Section 76-5-402.1, rape of a child;~~
- ~~—— (v) Section 76-5-402.2, object rape;~~
- ~~—— (vi) Section 76-5-402.3, object rape of a child;~~
- ~~—— (vii) Subsection 76-5-403(2), forcible sodomy;~~
- ~~—— (viii) Section 76-5-403.1, sodomy on a child;~~
- ~~—— (ix) Section 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child; or~~
- ~~—— (x) Section 76-5-405, aggravated sexual assault.~~
- ~~—— (4) Any person who violates the terms of parole, while serving parole, for any offense under Subsection (1), (2), or (3), shall at the discretion of the Board of Pardons and Parole be recommitted to prison to serve the portion of the balance of the term as determined by the Board of Pardons and Parole, but not to exceed the maximum term.~~
- ~~—— (5) In order for a parolee convicted on or after May 5, 1997, to be eligible for early termination from parole, the parolee must provide to the Board of Pardons and Parole:~~
  - ~~—— (a) evidence that the parolee has completed high school classwork and has obtained a high school graduation diploma, a GED certificate, or a vocational certificate; or~~
  - ~~—— (b) documentation of the inability to obtain one of the items listed in Subsection (5)(a) because of:~~
    - ~~—— (i) a diagnosed learning disability; or~~
    - ~~—— (ii) other justified cause.~~
- ~~—— (6) Any person paroled following a former parole revocation may not be discharged from the person's sentence until:~~
  - ~~—— (a) the person has served the applicable period of parole under this section outside of confinement and without violation;~~
  - ~~—— (b) the person's maximum sentence has expired; or~~
  - ~~—— (c) the Board of Pardons and Parole orders the person to be discharged from the sentence.~~
- ~~—— (7) (a) All time served on parole, outside of confinement and without violation, constitutes service of the total sentence but does not preclude the requirement of serving~~

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~~the applicable period of parole under this section, outside of confinement and without violation:~~

~~—— (b) Any time a person spends outside of confinement after commission of a parole violation does not constitute service of the total sentence unless the person is exonerated at a parole revocation hearing:~~

~~—— (c) (i) Any time a person spends in confinement awaiting a hearing before the Board of Pardons and Parole or a decision by the board concerning revocation of parole constitutes service of the sentence:~~

~~—— (ii) In the case of exoneration by the board, the time spent is included in computing the total parole term:~~

~~—— (8) When any parolee without authority from the Board of Pardons and Parole absents himself from the state or avoids or evades parole supervision, the period of absence, avoidance, or evasion tolls the parole period:~~

~~—— (9) (a) While on parole, time spent in confinement outside the state may not be credited toward the service of any Utah sentence:~~

~~—— (b) Time in confinement outside the state or in the custody of any tribal authority or the United States government for a conviction obtained in another jurisdiction tolls the expiration of the Utah sentence:~~

~~—— (10) This section does not preclude the Board of Pardons and Parole from paroling or discharging an inmate at any time within the discretion of the Board of Pardons and Parole unless otherwise specifically provided by law:~~

~~—— (11) A parolee sentenced to lifetime parole may petition the Board of Pardons and Parole for termination of lifetime parole:~~

~~—— Section 55. Section 76-3-203.5 is amended to read:~~

~~—— 76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty:~~

~~§67-19-13.5. Department provides payroll services to executive branch agencies --~~

### Report.

(1) As used in this section:

(a) ~~{ "Felony" means any violation of a criminal statute of the state, any other state, the United States, or any district, possession, or territory of the United States for which the maximum punishment the offender may be subjected to exceeds one year in prison.~~

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~~(b) "Habitual violent offender" means a person convicted within the state of any violent felony and who on at least two previous occasions has been convicted of a violent felony and committed to either prison in Utah or an equivalent correctional institution of another state or of the United States either at initial sentencing or after revocation of probation:~~

~~(c) "Violent felony" means:~~

~~(i) any of the following offenses, or any attempt, solicitation, or conspiracy to commit any of the following offenses punishable as a felony:~~

~~(A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief, Title 76, Chapter 6, Part 1, Property Destruction;~~

~~(B) assault by prisoner, Section 76-5-102.5;~~

~~(C) disarming a police officer, Section 76-5-102.8;~~

~~(D) aggravated assault, Section 76-5-103;~~

~~(E) aggravated assault by prisoner, Section 76-5-103.5;~~

~~(F) mayhem, Section 76-5-105;~~

~~(G) stalking, Subsection 76-5-106.5(2) or (3);~~

~~(H) threat of terrorism, Section 76-5-107.3;~~

~~(I) child abuse, Subsection 76-5-109(2)(a) or (b);~~

~~(J) commission of domestic violence in the presence of a child, Section 76-5-109.1;~~

~~(K) abuse or neglect of a child with a disability, Section 76-5-110;~~

~~(L) abuse, neglect, or exploitation of a vulnerable adult, Section 76-5-111;~~

~~(M) endangerment of a child or vulnerable adult, Section 76-5-112.5;~~

~~(N) criminal homicide offenses under Title 76, Chapter 5, Part 2, Criminal Homicide;~~

~~(O) kidnapping, child kidnapping, and aggravated kidnapping under Title 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;~~

~~(P) rape, Section 76-5-402;~~

~~(Q) rape of a child, Section 76-5-402.1;~~

~~(R) object rape, Section 76-5-402.2;~~

~~(S) object rape of a child, Section 76-5-402.3;~~

~~(T) forcible sodomy, Section 76-5-403;~~

~~(U) sodomy on a child, Section 76-5-403.1;~~

~~(V) forcible sexual abuse, Section 76-5-404;~~

## HB0200S01 compared with HB0200

- ~~—— (W) aggravated sexual abuse of a child or sexual abuse of a child, Section 76-5-404.1;~~
- ~~—— (X) aggravated sexual assault, Section 76-5-405;~~
- ~~—— (Y) sexual exploitation of a minor, Section 76-5b-201;~~
- ~~—— (Z) sexual exploitation of a vulnerable adult, Section 76-5b-202;~~
- ~~—— (AA) aggravated burglary and burglary of a dwelling under Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass;~~
- ~~—— (BB) aggravated robbery and robbery under Title 76, Chapter 6, Part 3, Robbery;~~
- ~~—— (CC) theft by extortion under Subsection 76-6-406(2)(a) or (b);~~
- ~~—— (DD) tampering with a witness under Subsection 76-8-508(1);~~
- ~~—— (EE) retaliation against a witness, victim, or informant under Section 76-8-508.3;~~
- ~~—— (FF) tampering with a juror under Subsection 76-8-508.5(2)(c);~~
- ~~—— (GG) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any threat or by use of force theft by extortion has been committed pursuant to Subsections 76-6-406(2)(a), (b), and (i);~~
- ~~—— (HH) possession, use, or removal of explosive, chemical, or incendiary devices under Subsections 76-10-306(3) through (6);~~
- ~~—— (II) unlawful delivery of explosive, chemical, or incendiary devices under Section 76-10-307;~~
- ~~—— (JJ) purchase or possession of a dangerous weapon or handgun by a restricted person under Section 76-10-503;~~
- ~~—— (KK) unlawful discharge of a firearm under Section 76-10-508;~~
- ~~—— (LL) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);~~
- ~~—— (MM) bus hijacking under Section 76-10-1504; and~~
- ~~—— (NN) discharging firearms and hurling missiles under Section 76-10-1505; or~~
- ~~—— (ii) any felony violation of a criminal statute of any other state, the United States, or any district, possession, or territory of the United States which would constitute a violent felony as defined in this Subsection (1) if committed in this state.~~
- ~~—— (2) If a person is convicted in this state of a violent felony by plea or by verdict and the trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender under this section, the penalty for a:~~
  - ~~—— (a) third degree felony is as if the conviction were for a first degree felony;~~

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- ~~—— (b) second degree felony is as if the conviction were for a first degree felony; or~~
- ~~—— (c) first degree felony remains the penalty for a first degree penalty except:~~
  - ~~—— (i) the convicted person is not eligible for probation; and~~
  - ~~—— (ii) the Board of Pardons and Parole shall consider that the convicted person is a habitual violent offender as an aggravating factor in determining the length of incarceration.~~
- ~~—— (3) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall provide notice in the information or indictment that the defendant is subject to punishment as a habitual violent offender under this section. Notice shall include the case number, court, and date of conviction or commitment of any case relied upon by the prosecution:~~
- ~~—— (b) (i) The defendant shall serve notice in writing upon the prosecutor if the defendant intends to deny that:~~
  - ~~—— (A) the defendant is the person who was convicted or committed;~~
  - ~~—— (B) the defendant was represented by counsel or had waived counsel; or~~
  - ~~—— (C) the defendant's plea was understandingly or voluntarily entered.~~
- ~~—— (ii) The notice of denial shall be served not later than five days prior to trial and shall state in detail the defendant's contention regarding the previous conviction and commitment.~~
- ~~—— (4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to a jury, the jury may not be told, until after it returns its verdict on the underlying felony charge, of the:~~
  - ~~—— (i) defendant's previous convictions for violent felonies, except as otherwise provided in the Utah Rules of Evidence; or~~
  - ~~—— (ii) allegation against the defendant of being a habitual violent offender.~~
- ~~—— (b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of being an habitual violent offender by the same jury, if practicable, unless the defendant waives the jury, in which case the allegation shall be tried immediately to the court.~~
- ~~—— (c) (i) Before or at the time of sentencing the trier of fact shall determine if this section applies:~~
  - ~~—— (ii) The trier of fact shall consider any evidence presented at trial and the prosecution and the defendant shall be afforded an opportunity to present any necessary additional evidence.~~
  - ~~—— (iii) Before sentencing under this section, the trier of fact shall determine whether this~~

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section is applicable beyond a reasonable doubt.

~~—— (d) If any previous conviction and commitment is based upon a plea of guilty or no contest, there is a rebuttable presumption that the conviction and commitment were regular and lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution to establish by a preponderance of the evidence that the defendant was then represented by counsel or had lawfully waived the right to have counsel present, and that the defendant's plea was understandingly and voluntarily entered.~~

~~—— (e) If the trier of fact finds this section applicable, the court shall enter that specific finding on the record and shall indicate in the order of judgment and commitment that the defendant has been found by the trier of fact to be a habitual violent offender and is sentenced under this section.~~

~~—— (5) (a) The sentencing enhancement provisions of Section 76-3-407 supersede the provisions of this section.~~

~~—— (b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in Subsection (1)(c) shall include any felony sexual offense violation of Title 76, Chapter 5, Part 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.~~

~~—— (6) The sentencing enhancement described in this section does not apply if:~~

~~—— (a) the offense for which the person is being sentenced is:~~

~~—— (i) a grievous sexual offense;~~

~~—— (ii) child kidnapping, Section 76-5-301.1;~~

~~—— (iii) aggravated kidnapping, Section 76-5-302; or~~

~~—— (iv) forcible sexual abuse, Section 76-5-404; and~~

~~—— (b) applying the sentencing enhancement provided for in this section would result in a lower maximum penalty than the penalty provided for under the section that describes the offense for which the person is being sentenced.~~

~~—— Section 56. Section ~~76-4-203~~; (i) "Executive branch entity" means a department, division, agency, board, or office within the executive branch of state government that employs a person who is paid through the central payroll system developed by the Division of Finance as of December 31, 2011.~~

~~(ii) "Executive branch entity" does not include the Offices of the Attorney General,~~

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State Treasurer, State Auditor, [Department] or Departments of Transportation, [Department of] Technology Services, or [the Department of] Natural Resources.

(b) (i) "Payroll services" means using the central payroll system as directed by the Division of Finance to:

(A) enter and validate payroll reimbursements, which include reimbursements for mileage, a service award, and other wage types;

(B) calculate, process, and validate a retirement;

(C) enter a leave adjustment; and

(D) certify payroll by ensuring an entry complies with a rule or policy adopted by the department or the Division of Finance.

(ii) "Payroll services" does not mean:

(A) a function related to payroll that is performed by an employee of the Division of Finance;

(B) a function related to payroll that is performed by an executive branch agency on behalf of a person who is not an employee of the executive branch agency;

(C) the entry of time worked by an executive branch agency employee into the central payroll system; or

(D) approval or verification by a supervisor or designee of the entry of time worked.

(2) (a) Except as provided by Subsection (2)(b), on or before September 19, 2012, the department shall provide payroll services to all executive branch entities.

(b) On or before June 30, 2013, the department shall provide payroll services to the Department of Public Safety for an employee who is certified by the Peace Officer Standards and Training Division.

(3) (a) After September 19, 2012, an executive branch entity, other than the department, the Division of Finance, or the Department of Public Safety, may not create a full-time equivalent position or part-time position, or request an appropriation to fund a full-time equivalent position or part-time position for the purpose of providing payroll services to the entity.

(b) After June 30, 2013, the Department of Public Safety may not create a full-time equivalent position or part-time position, or request an appropriation to fund a full-time equivalent position or part-time position for the purpose of providing payroll services.

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(4) The Department of Transportation, the Department of Technology Services, and the Department of Natural Resources shall report on the inability to transfer payroll services to the department or the progress of transferring payroll services to the department:

(a) to the Government Operations Interim Committee before October 30, 2012; and

(b) to the Infrastructure and General Government Appropriations Subcommittee on or before February 11, 2013.

Section 55. Section 76-1-403 is amended to read:

~~{76-4-203}~~ 76-1-403. {Criminal solicitation -- Elements.

~~—— (1) An actor commits criminal solicitation if, with intent that a felony be committed, he solicits, requests, commands, offers to hire, or importunes another person to engage in specific conduct that under the circumstances as the actor believes them to be would be a felony or would cause the other person to be a party to the commission of a felony.~~

~~—— (2) An actor may be convicted under this section only if the solicitation is made under circumstances strongly corroborative of the actor's intent that the offense be committed.~~

~~—— (3) It is not a defense under this section that the person solicited by the actor:~~

~~—— (a) does not agree to act upon the solicitation;~~

~~—— (b) does not commit an overt act;~~

~~—— (c) does not engage in conduct constituting a substantial step toward the commission of any offense;~~

~~—— (d) is not criminally responsible for the felony solicited;~~

~~—— (e) was acquitted, was not prosecuted or convicted, or was convicted of;~~ **Former prosecution barring subsequent prosecution for offense out of same episode.**

(1) If a defendant has been prosecuted for one or more offenses arising out of a single criminal episode, a subsequent prosecution for the same or a different offense {or of a different type or degree of offense; or

~~—— (f) is immune from}~~ arising out of the same criminal episode is barred if:

(a) the subsequent prosecution is for an offense that was or should have been tried under Subsection 76-1-402(2) in the former prosecution; and

(b) the former prosecution:

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(i) resulted in acquittal; [or]

(ii) resulted in conviction; [or]

(iii) was improperly terminated; or

(iv) was terminated by a final order or judgment for the defendant that has not been reversed, set aside, or vacated and that necessarily required a determination inconsistent with a fact that must be established to secure conviction in the subsequent prosecution.

~~(4) It is not a defense under this section that the actor:~~

~~— (a) belongs to a class of persons that by definition is legally incapable of committing the offense in an individual capacity; or~~

~~— (b) fails to communicate with the person he solicits to commit an offense, if the intent of the actor's conduct was to effect the communication.~~

~~— (5) Nothing in this section prevents an actor who otherwise solicits, requests, commands, encourages, or intentionally aids another person to engage in conduct which constitutes an offense from being prosecuted and convicted as a party to the offense under Section 76-2-202 if the person solicited actually commits the offense.~~

~~— Section 57. Section ~~76-4-401~~; 2) There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of facts or in a determination that there was insufficient evidence to warrant conviction. A finding of guilty of a lesser included offense is an acquittal of the greater offense even though the conviction for the lesser included offense is subsequently reversed, set aside, or vacated.~~

(3) There is a conviction if the prosecution resulted in a judgment of guilt that has not been reversed, set aside, or vacated; a verdict of guilty that has not been reversed, set aside, or vacated and that is capable of supporting a judgment; or a plea of guilty accepted by the court.

(4) There is an improper termination of prosecution if the termination takes place before the verdict, is for reasons not amounting to an acquittal, and takes place after a jury has been impaneled and sworn to try the defendant, or, if the jury trial is waived, after the first witness is sworn. However, termination of prosecution is not improper if:

(a) the defendant consents to the termination; [or]

(b) the defendant waives his right to object to the termination; or

(c) the court finds and states for the record that the termination is necessary because:

(i) it is physically impossible to proceed with the trial in conformity with the law; [or]

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(ii) there is a legal defect in the proceeding not attributable to the state that would make any judgment entered upon a verdict reversible as a matter of law; [or]

(iii) prejudicial conduct in or out of the courtroom not attributable to the state makes it impossible to proceed with the trial without injustice to the defendant or the state; [or]

(iv) the jury is unable to agree upon a verdict; or

(v) false statements of a juror on voir dire prevent a fair trial.

Section 56. Section 76-1-501 is amended to read:

~~{76-4-401}~~ 76-1-501. ~~{Enticing a minor -- Elements -- Penalties.~~

~~{1}~~ **Presumption of innocence -- "Element of the offense" defined.**

(1) A defendant in a criminal proceeding is presumed to be innocent until each element of the offense charged against him is proved beyond a reasonable doubt. In the absence of [such] this proof, the defendant shall be acquitted.

(2) As used in this {section:

~~—— (a) "Minor" means a person who is under the age of 18.~~

~~—— (b) "Text messaging" means a communication in the form of electronic text or one or more electronic images sent by the actor from a telephone or computer to another person's telephone or computer by addressing the communication to the person's telephone number.~~

~~—— (2) (a) A person commits enticement of a minor when the person knowingly uses or attempts to use the Internet or text messaging to solicit, seduce, lure, or entice a minor or another person that the actor believes to be a minor to engage in any sexual activity which is a violation of state criminal law.~~

~~—— (b) A person commits enticement of a minor when the person knowingly uses the Internet or text messaging to:~~

~~—— (i) initiate contact with a minor or a person the actor believes to be a minor; and~~

~~—— (ii) subsequently to the action under Subsection (2)(b)(i), by any electronic or written means, solicits, seduces, lures, or entices, or attempts to solicit, seduce, lure, or entice the minor or a person the actor believes to be the minor to engage in any sexual activity which is a violation of state criminal law.~~

~~—— (3) It is not a defense to the crime of enticing a minor under Subsection (2), or an attempt to commit this offense, that a law enforcement officer or an undercover operative who is working with a law enforcement agency was involved in the detection or investigation; part~~

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the words "element of the offense" mean:

(a) The conduct, attendant circumstances, or results of conduct proscribed, prohibited, or forbidden in the definition of the offense~~;~~

~~—— (4) An enticement of a minor under Subsection (2)(a) or (b) with the intent to commit:~~

~~—— (a) a first degree felony is a:~~

~~—— (i) second degree felony upon the first conviction for violation of this Subsection (4)(a); and~~

~~—— (ii) first degree felony punishable by imprisonment for an indeterminate term of not fewer than three years and which may be for life, upon a second or any subsequent conviction for a violation of this Subsection (4)(a);~~

~~—— (b) a second degree felony is a third degree felony;~~

~~—— (c) a third degree felony is a class A misdemeanor;~~

~~—— (d) a class A misdemeanor is a class B misdemeanor; and~~

~~—— (e) a class B misdemeanor is a class C misdemeanor.~~

~~—— (5) (a) When a person who commits a felony violation of this section has been previously convicted of an offense under Subsection (5)(b), the court may not in any way shorten the prison sentence, and the court may not:~~

~~—— (i) grant probation;~~

~~—— (ii) suspend the execution or imposition of the sentence;~~

~~—— (iii) enter a judgment for a lower category of offense; or~~

~~—— (iv) order hospitalization.~~

~~—— (b) The sections referred to in Subsection (5)(a) are:~~

~~—— (i) Section 76-4-401, enticing a minor;~~

~~—— (ii) Section 76-5-301.1, child kidnapping;~~

~~—— (iii) Section 76-5-402, rape;~~

~~—— (iv) Section 76-5-402.1, rape of a child;~~

~~—— (v) Section 76-5-402.2, object rape;~~

~~—— (vi) Section 76-5-402.3, object rape of a child;~~

~~—— (vii) Subsection 76-5-403(2), forcible sodomy;~~

~~—— (viii) Section 76-5-403.1, sodomy on a child;~~

~~—— (ix) Section 76-5-404, forcible sexual abuse;~~

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~~(x) Section 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child;~~  
~~(xi) Section 76-5-405, aggravated sexual assault;~~  
~~(xii) any offense in any other state or federal jurisdiction which constitutes or would constitute a crime in Subsections [(4)] (5)(b)(i) through (xi); or~~  
~~(xiii) the attempt, solicitation, or conspiracy to commit any of the offenses in Subsections [(4)] (5)(b)(i) through (xii);~~  
~~Section 58. Section 76-5-307;~~

(b) The culpable mental state required.

(3) The existence of jurisdiction and venue are not elements of the offense but shall be established by a preponderance of the evidence.

Section 57. Section 76-3-202 is amended to read:

~~76-5-307. Definitions:~~

~~As used in Sections 76-5-308 through [76-5-312] 76-5-310 of this part:~~

~~(1) "Family member" means a person's parent, grandparent, sibling, or any other person related to the person by consanguinity or affinity to the second degree;~~

~~(2) "Smuggling of human beings" means the transportation or procurement of transportation for one or more persons by an actor who knows or has reason to know that the person or persons transported or to be transported are not:~~

~~(a) citizens of the United States;~~

~~(b) permanent resident aliens; or~~

~~(c) otherwise lawfully in this state or entitled to be in this state;~~

~~Section 59. Section 76-6-107~~ is amended to read:

~~76-6-107. Graffiti defined -- Penalties -- Removal costs -- Reimbursement liability:~~

~~(1) As used in this section:~~

~~(a) "Etching" means defacing, damaging, or destroying hard surfaces by means of a chemical action which uses any caustic cream, gel, liquid, or solution;~~

~~(b) "Graffiti" means any form of unauthorized printing, writing, spraying, scratching, affixing, etching, or inscribing on the property of another regardless of the content or the nature of the material used in the commission of the act.~~

~~(c) "Victim" means the person or entity whose property was defaced by the graffiti and~~

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bears the expense for its removal:

—— (2) Graffiti is a:

—— (a) second degree felony if the damage caused is in excess of \$5,000;

—— (b) third degree felony if the damage caused is in excess of \$1,000;

—— (c) class A misdemeanor if the damage caused is equal to or in excess of \$300; and

—— (d) class B misdemeanor if the damage caused is less than \$300.

—— (3) Damages under Subsection (2) include removal costs, repair costs, or replacement costs, whichever is less:

—— (4) The court, upon conviction or adjudication, shall order restitution to the victim in the amount of removal, repair, or replacement costs:

—— (5) An additional amount of \$1,000 in restitution shall be added to removal costs if the graffiti is positioned on an overpass or an underpass, requires that traffic be interfered with in order to remove it, or the entity responsible for the area in which the clean-up is to take place must provide assistance in order for the removal to take place safely:

—— (6) A person who voluntarily, and at his own expense, removes graffiti for which he is responsible may be credited for the removal costs against restitution ordered by a court.

—— Section 60. Section ~~76-6-412~~ is amended to read:

—— ~~76-6-412. Theft -- Classification of offenses -- Action for treble damages.~~

—— (1) Theft of property and services; **76-3-202. Paroled persons -- Termination or discharge from sentence -- Time served on parole -- Discretion of Board of Pardons and Parole.**

**(1) (a) Except** as provided in {this chapter is punishable:

—— (a) as a second degree felony if the:

—— (i) value of the property or services is or exceeds \$5,000;

—— (ii) property stolen is a firearm or an operable motor vehicle;

—— (iii) actor is armed with a dangerous weapon, as defined in Section 76-1-601, at the time of the theft; or

—— (iv) property is stolen; **Subsection (1)(b), every person committed to the state prison to serve an indeterminate term and later released on parole shall, upon completion of three years on parole outside of confinement and without violation, be terminated** from the {person of another;

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~~\_\_\_\_\_ (b) as a third degree felony if:~~

~~\_\_\_\_\_ (i) the value of the property or services is or exceeds \$1,500 but is less than \$5,000;~~

~~\_\_\_\_\_ (ii) the actor has been twice before; person's sentence unless the parole is earlier terminated by the Board of Pardons and Parole.~~

(b) Every person committed to the state prison to serve an indeterminate term and later released on parole on or after July 1, 2008, and who was convicted of any ~~{of the offenses listed in this Subsection (1)(b)(ii), if each prior offense was committed within 10 years of the date of the current conviction or the date of the offense upon which the current conviction is based:~~

~~\_\_\_\_\_ (A) any theft, any robbery, or any burglary with intent to commit theft;~~

~~\_\_\_\_\_ (B) any felony offense under Title 76, Chapter ~~{6, Part }5, {Fraud;}~~ Offenses Against the Person, or ~~{~~~~

~~\_\_\_\_\_ (C) } any attempt, conspiracy, or solicitation to commit any of these felony offenses, shall complete a term of parole that extends through the expiration of the person's maximum sentence, unless the parole is earlier terminated by the Board of Pardons and Parole.~~

(2) Every person convicted of a second degree felony for violating Section 76-5-404, forcible sexual abuse, or 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child, or attempting, conspiring, or soliciting the commission of a violation of any of those sections, and who is paroled before July 1, 2008, shall, upon completion of 10 years parole outside of confinement and without violation, [shall] be terminated from the sentence unless the person is earlier terminated by the Board of Pardons and Parole.

(3) (a) Every person convicted of a first degree felony for committing any offense ~~{under}~~ listed in Subsection ~~(1)(b)(ii)(A) or (B);~~

~~\_\_\_\_\_ (iii) in a case not amounting to a second-degree felony, the property taken is a stallion, mare, colt, gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine, poultry, or a fur-bearing animal raised for commercial purposes; or~~

~~\_\_\_\_\_ (iv) (A) the value of property or services is or exceeds \$500 but is less than \$1,500;~~

~~\_\_\_\_\_ (B) the theft occurs on a property where the offender has committed any theft within the past five years; and~~

~~\_\_\_\_\_ (C) the offender has received written notice from the merchant prohibiting the offender from entering the property pursuant to Section 78B-3-108; or~~

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- ~~—— (c) as a class A misdemeanor if:~~
- ~~—— (i) the value of the property stolen is or exceeds \$500 but is less than \$1,500;~~
- ~~—— (ii) (A) the value of property or services is less than \$500;~~
- ~~—— (B) the theft occurs on a property where the offender has committed any theft within the past five years; and~~
- ~~—— (C) the offender has received written notice from the merchant prohibiting the offender from entering the property pursuant to Section 78B-3-108; or~~
- ~~—— (d) as a class B misdemeanor if the value of the property stolen is less than \$500 and the theft is not an offense under Subsection (1)(c):~~
- ~~—— (2) Any individual who violates Subsection 76-6-408(1) or Section 76-6-413, or commits theft of property described in Subsection 76-6-412(1)(b)(iii), is civilly liable for three times the amount of actual damages, if any sustained by the plaintiff, and for costs of suit and reasonable attorney fees:~~
- ~~—— Section 61. Section 76-6-1102 is amended to read:~~
- ~~—— **76-6-1102. Identity fraud crime:**~~
- ~~—— (1) As used in this part, "personal identifying information" may include:~~
- ~~—— (a) name;~~
- ~~—— (b) birth date;~~
- ~~—— (c) address;~~
- ~~—— (d) telephone number;~~
- ~~—— (e) drivers license number;~~
- ~~—— (f) Social Security number;~~
- ~~—— (g) place of employment;~~
- ~~—— (h) employee identification numbers or other personal identification numbers;~~
- ~~—— (i) mother's maiden name;~~
- ~~—— (j) electronic identification numbers;~~
- ~~—— (k) electronic signatures under Title 46, Chapter 4, Uniform Electronic Transactions Act; or~~
- ~~—— (l) any other numbers or information that can be used to access a person's financial resources or medical information, except for numbers or information that can be prosecuted as financial transaction card offenses under Sections 76-6-506 through [76-6-506.4] 76-6-506.6.~~

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- ~~—— (2) (a) A person is guilty of identity fraud when that person:~~
- ~~—— (i) obtains personal identifying information of another person whether that person is alive or deceased; and~~
- ~~—— (ii) knowingly or intentionally uses, or attempts to use, that information with fraudulent intent, including to obtain, or attempt to obtain, credit, goods, services, employment, any other thing of value, or medical information.~~
- ~~—— (b) It is not a defense to a violation of Subsection (2)(a) that the person did not know that the personal information belonged to another person.~~
- ~~—— (3) Identity fraud is:~~
- ~~—— (a) except as provided in Subsection (3)(b)(ii), a third degree felony if the value of the credit, goods, services, employment, or any other thing of value is less than \$5,000; or~~
- ~~—— (b) a second degree felony if:~~
- ~~—— (i) the value of the credit, goods, services, employment, or any other thing of value is or exceeds \$5,000; or~~
- ~~—— (ii) the use described in Subsection (2)(a)(ii) of personal identifying information results, directly or indirectly, in bodily injury to another person.~~
- ~~—— (4) Multiple violations may be aggregated into a single offense, and the degree of the offense is determined by the total value of all credit, goods, services, or any other thing of value used, or attempted to be used, through the multiple violations.~~
- ~~—— (5) When a defendant is convicted, 3)(b), or attempting, conspiring, or soliciting the commission of a violation of {this section} any of those sections, ~~{ the court shall order the defendant to make restitution to any victim of the offense or state on the record the reason the court does not find ordering restitution to be appropriate.~~~~
- ~~—— (6) Restitution under Subsection (5) may include:~~
- ~~—— (a) payment for any costs incurred, including attorney fees, lost wages, and replacement of checks; and~~
- ~~—— (b) the value of the victim's time incurred due to the offense:~~
- ~~—— (i) in clearing the victim's credit history or credit rating;~~
- ~~—— (ii) in any civil or administrative proceedings necessary to satisfy or resolve any debt, lien, or other obligation of the victim or imputed to the victim and arising from the offense; and~~
- ~~—— (iii) in attempting to remedy any other intended or actual harm to the victim incurred as~~

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~~a result of the offense.~~

~~Section 62. Section 76-7-305.5 is amended to read:~~

~~76-7-305.5. Requirements for printed materials and informational video.~~

~~(1) In order to ensure that a woman's consent to an abortion is truly an informed consent, the Department of Health shall, in accordance with the requirements of this section:~~

~~(a) publish printed materials; and~~

~~(b) produce an informational video.~~

~~(2) The printed materials and the informational video described in Subsection (1) shall:~~

~~(a) be scientifically accurate, comprehensible, and presented in a truthful, nonmisleading manner;~~

~~(b) present adoption as a preferred and positive choice and alternative to abortion;~~

~~(c) be printed and produced in a manner that conveys the state's preference for childbirth over abortion;~~

~~(d) state that the state prefers childbirth over abortion;~~

~~(e) state that it is unlawful for any person to coerce a woman to undergo an abortion;~~

~~(f) state that any physician who performs an abortion without obtaining the woman's informed consent or without providing her a private medical consultation in accordance with the requirements of this section, may be liable to her for damages in a civil action at law;~~

~~(g) provide information on resources and public and private services available to assist a pregnant woman, financially or otherwise, during pregnancy, at childbirth, and while the child is dependent, including:~~

~~(i) medical assistance benefits for prenatal care, childbirth, and neonatal care;~~

~~(ii) services and supports available under Section 35A-3-308;~~

~~(iii) other financial aid that may be available during an adoption; and~~

~~(iv) services available from public adoption agencies, private adoption agencies, and private attorneys whose practice includes adoption;~~

~~(h) describe the adoption-related expenses that may be paid under Section 76-7-203;~~

~~(i) describe the persons who may pay the adoption related expenses described in Subsection (2)(h);~~

~~(j) describe the legal responsibility of the father of a child to assist in child support, even if the father has agreed to pay for an abortion;~~

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~~—— (k) describe the services available through the Office of Recovery Services, within the Department of Human Services, to establish and collect the support described in Subsection (2)(j);~~

~~—— (l) state that private adoption is legal;~~

~~—— (m) in accordance with Subsection (3), describe the probable anatomical and physiological characteristics of an unborn child at two-week gestational increments from fertilization to full term, including:~~

~~—— (i) brain and heart function; and~~

~~—— (ii) the presence and development of external members and internal organs;~~

~~—— (n) describe abortion procedures used in current medical practice at the various stages of growth of the unborn child, including:~~

~~—— (i) the medical risks associated with each procedure;~~

~~—— (ii) the risk related to subsequent childbearing that are associated with each procedure;~~  
and

~~—— (iii) the consequences of each procedure to the unborn child at various stages of fetal development;~~

~~—— (o) describe the possible detrimental psychological effects of abortion;~~

~~—— (p) describe the medical risks associated with carrying a child to term; and~~

~~—— (q) include relevant information on the possibility of an unborn child's survival at the two-week gestational increments described in Subsection (2)(m):~~

~~—— (3) The information described in Subsection (2)(m) shall be accompanied by the following for each gestational increment described in Subsection (2)(m):~~

~~—— (a) pictures or video segments that accurately represent the normal development of an unborn child at that stage of development; and~~

~~—— (b) the dimensions of the fetus at that stage of development.~~

~~—— (4) The printed material and video described in Subsection (1) may include a toll-free 24-hour telephone number that may be called in order to obtain, orally, a list and description of services, agencies, and adoption attorneys in the locality of the caller.~~

~~—— (5) In addition to the requirements described in Subsection (2), the printed material described in Subsection (1)(a) shall:~~

~~—— (a) be printed in a typeface large enough to be clearly legible;~~

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~~—— (b) in accordance with Subsection (6), include a geographically indexed list of public and private services and agencies available to assist a woman, financially or otherwise, through pregnancy, at childbirth, and while the child is dependent;~~

~~—— (c) except as provided in Subsection (7), include a separate brochure that contains truthful, nonmisleading information regarding:~~

~~—— (i) the ability of an unborn child to experience pain during an abortion procedure;~~

~~—— (ii) the measures that may be taken, including the administration of an anesthetic or analgesic to an unborn child, to alleviate or eliminate pain to an unborn child during an abortion procedure;~~

~~—— (iii) the effectiveness and advisability of taking the measures described in Subsection (5)(c)(ii); and~~

~~—— (iv) potential medical risks to a pregnant woman that are associated with the administration of an anesthetic or analgesic to an unborn child during an abortion procedure.~~

~~—— (6) The list described in Subsection (5)(b) shall include:~~

~~—— (a) private attorneys whose practice includes adoption; and~~

~~—— (b) the names, addresses, and telephone numbers of each person listed under Subsection (5)(b) or (6)(a).~~

~~—— (7) A person or facility is not required to provide the information described in Subsection (5)(c) to a patient or potential patient, if the abortion is to be performed:~~

~~—— (a) on an unborn child who is less than 20 weeks gestational age at the time of the abortion; or~~

~~—— (b) on an unborn child who is at least 20 weeks gestational age at the time of the abortion, if:~~

~~—— (i) the abortion is being performed for a reason described in Subsection 76-7-302(3)(b)(i); and~~

~~—— (ii) due to a serious medical emergency, time does not permit compliance with the requirement to provide the information described in Subsection (5)(c).~~

~~—— (8) In addition to the requirements described in Subsection (2), the video described in Subsection (1)(b) shall:~~

~~—— (a) make reference to the list described in Subsection (5)(b); and~~

~~—— (b) show an ultrasound of the heartbeat of an unborn child at:~~

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~~—— (i) four weeks from conception;~~

~~—— (ii) six to eight weeks from conception; and~~

~~—— (iii) each month after [ten] 10 weeks gestational age, up to 14 weeks gestational age.~~

~~—— Section 63. Section 76-8-109 is amended to read:~~

~~—— 76-8-109. Failure to disclose conflict of interest.~~

~~—— (1) As used in this section:~~

~~—— (a) "Conflict of interest" means an action that is taken by a regulated officeholder that the officeholder reasonably believes may cause direct financial benefit or detriment to the officeholder, a member of the officeholder's immediate family, or an entity that the officeholder is required to disclose under the provisions of this section, and that benefit or detriment is distinguishable from the effects of that action on the public or on the officeholder's profession, occupation, or association generally.~~

~~—— (b) "Entity" means a corporation, a partnership, a limited liability company, a limited partnership, a sole proprietorship, an association, a cooperative, a trust, an organization, a joint venture, a governmental entity, an unincorporated organization, or any other legal entity, whether established primarily for the purpose of gain or economic profit or not.~~

~~—— (c) "Filer" means the individual filing a financial declaration under this section.~~

~~—— (d) "Immediate family" means the regulated officeholder's spouse and children living in the officeholder's immediate household.~~

~~—— (e) "Income" means earnings, compensation, or any other payment made to an individual for gain, regardless of source, whether denominated as wages, salary, commission, pay, bonus, severance pay, incentive pay, contract payment, interest, per diem, expenses, reimbursement, dividends, or otherwise.~~

~~—— (f) "Regulated officeholder" means an individual that is required to file a financial disclosure under the provisions and requirements of this section.~~

~~—— (g) "State constitutional officer" means the governor, the lieutenant governor, the state auditor, the state treasurer, or the attorney general.~~

~~—— (2) (a) Before or during the execution of any order, settlement, declaration, contract, or any other official act of office in which a state constitutional officer has actual knowledge that the officer has a conflict of interest which is not stated on the financial disclosure form required under Subsection (4), the officer shall publicly declare that the officer may have a conflict of~~

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~~interest and what that conflict of interest is:~~

~~—— (b) Before or during any vote on legislation or any legislative matter in which a legislator has actual knowledge that the legislator has a conflict of interest which is not stated on the [the] financial disclosure form required under Subsection (4), the legislator shall orally declare to the committee or body before which the matter is pending that the legislator may have a conflict of interest and what that conflict is:~~

~~—— (c) Before or during any vote on any rule, resolution, order, or any other board matter in which a member of the State Board of Education has actual knowledge that the member has a conflict of interest which is not stated on the financial disclosure form required under Subsection (4), the member shall orally declare to the board that the member may have a conflict of interest and what that conflict of interest is:~~

~~—— (3) Any public declaration of a conflict of interest that is made under Subsection (2) shall be noted:~~

~~—— (a) on the official record of the action taken, for a state constitutional officer;~~

~~—— (b) in the minutes of the committee meeting or in the Senate or House Journal, as applicable, for a legislator; or~~

~~—— (c) in the minutes of the meeting or on the official record of the action taken, for a member of the State Board of Education:~~

~~—— (4) (a) The following individuals shall file a financial disclosure form:~~

~~—— (i) a state constitutional officer, to be due on the tenth day of January of each year, or the following business day if the due date falls on a weekend or holiday;~~

~~—— (ii) a legislator, at the following times:~~

~~—— (A) on the first day of each general session of the Legislature; and~~

~~—— (B) each time the legislator changes employment;~~

~~—— (iii) a member of the State Board of Education, at the following times:~~

~~—— (A) on the tenth day of January of each year, or the following business day if the due date falls on a weekend or holiday; and~~

~~—— (B) each time the member changes employment.~~

~~—— (b) The financial disclosure form shall include:~~

~~—— (i) the filer's name;~~

~~—— (ii) the name and address of the filer's primary employer;~~

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- ~~—— (iii) a brief description of the filer's employment, including the filer's occupation and, as applicable, job title;~~
- ~~—— (iv) for each entity in which the filer is an owner or an officer:
  - ~~—— (A) the name of the entity;~~
  - ~~—— (B) a brief description of the type of business or activity conducted by the entity; and~~
  - ~~—— (C) the filer's position in the entity;~~~~
- ~~—— (v) for each entity that has paid \$5,000 or more in income to the filer within the one-year period ending immediately before the date of the disclosure form:
  - ~~—— (A) the name of the entity; and~~
  - ~~—— (B) a brief description of the type of business [of] or activity conducted by the entity;~~~~
- ~~—— (vi) for each entity in which the filer holds any stocks or bonds having a fair market value of \$5,000 or more as of the date of the disclosure form, but excluding funds that are managed by a third party, including blind trusts, managed investment accounts, and mutual funds:
  - ~~—— (A) the name of the entity; and~~
  - ~~—— (B) a brief description of the type of business or activity conducted by the entity;~~~~
- ~~—— (vii) for each entity not listed in Subsections (4)(b)(iv) through (4)(b)(vi), in which the filer serves on the board of directors or in any other type of formal advisory capacity:
  - ~~—— (A) the name of the entity or organization;~~
  - ~~—— (B) a brief description of the type of business or activity conducted by the entity; and~~
  - ~~—— (C) the type of advisory position held by the filer;~~~~
- ~~—— (viii) at the option of the filer, any real property in which the filer holds an ownership or other financial interest that the filer believes may constitute a conflict of interest, including:
  - ~~—— (A) a description of the real property; and~~
  - ~~—— (B) a description of the type of interest held by the filer in the property;~~~~
- ~~—— (ix) the name of the filer's spouse and any other adult residing in the filer's household that is not related by blood or marriage, as applicable;~~
- ~~—— (x) a brief description of the employment and occupation of the filer's spouse and any other adult residing in the filer's household that is not related by blood or marriage, as applicable;~~
- ~~—— (xi) at the option of the filer, a description of any other matter or interest that the filer~~

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~~believes may constitute a conflict of interest;~~

~~—— (xii) the date the form was completed;~~

~~—— (xiii) a statement that the filer believes that the form is true and accurate to the best of the filer's knowledge; and~~

~~—— (xiv) the signature of the filer.~~

~~—— (c) (i) The financial disclosure shall be filed with:~~

~~—— (A) the secretary of the Senate, for a legislator that is a senator;~~

~~—— (B) the chief clerk of the House of Representatives, for a legislator that is a representative; or~~

~~—— (C) the lieutenant governor, for all other regulated officeholders.~~

~~—— (ii) The lieutenant governor, the secretary of the Senate, and the chief clerk of the House of Representatives shall ensure that blank financial disclosure forms are available on the Internet and at their offices.~~

~~—— (d) Financial disclosure forms that are filed under the procedures and requirements of this section shall be made available to the public:~~

~~—— (i) on the Internet; and~~

~~—— (ii) at the office where the form was filed.~~

~~—— (e) This section's requirement to disclose a conflict of interest does not prohibit a regulated officeholder from voting or acting on any matter.~~

~~—— (5) A regulated officeholder who violates the requirements of Subsection (2) is guilty of a class B misdemeanor.~~

~~—— Section 64. Section ~~76-9-702~~ is amended to read:~~

~~—— **76-9-702. Lewdness.**~~

~~—— (1) A person is guilty of lewdness if the person under circumstances not amounting to rape, object rape, forcible sodomy, forcible sexual abuse, aggravated sexual assault, or an attempt to commit any of these offenses, performs any of the following acts in a public place or under circumstances which the person should know will likely cause affront or alarm to, on, or in the presence of another who is 14 years of age or older:~~

~~—— (a) an act of sexual intercourse or sodomy;~~

~~—— (b) exposes his or her genitals, the female breast below the top of the areola, the buttocks, the anus, or the pubic area;~~

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~~—— (c) masturbates; or~~

~~—— (d) any other act of lewdness:~~

~~—— (2) (a) A person convicted the first or second time of a violation of Subsection (1) is guilty of a class B misdemeanor, except under Subsection (2)(b):~~

~~—— (b) A person convicted of a violation of Subsection (1) is guilty of a third degree felony if at the time of the violation:~~

~~—— (i) the person is a sex offender as defined in Section 77-27-21.7;~~

~~—— (ii) the person has been previously convicted two or more times of violating Subsection (1); or~~

~~—— (iii) the person has previously been convicted of a violation of Subsection (1) and has also previously been convicted of a violation of Section 76-9-702.5:~~

~~—— (c) (i) For purposes of this Subsection (2) and Subsection [77-27-21.5(1)(n)] 77-41-102(16), a plea of guilty or nolo contendere to a charge under this section that is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction.~~

~~—— (ii) This Subsection (2)(c) also applies if the charge under this Subsection (2) has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.~~

~~—— (3) A woman's breast feeding, including breast feeding in any location where the woman otherwise may rightfully be, does not under any circumstance constitute a lewd act, irrespective of whether or not the breast is covered during or incidental to feeding:~~

~~—— Section 65. Section 76-9-702.1 is amended to read:~~

~~—— **76-9-702.1. Sexual battery.**~~

~~—— (1) A person is guilty of sexual battery if the person, under circumstances not amounting to an offense under Subsection (2), intentionally touches, whether or not through clothing, the anus, buttocks, or any part of the genitals of another person, or the breast of a female person, and the actor's conduct is under circumstances the actor knows or should know will likely cause affront or alarm to the person touched:~~

~~—— (2) Offenses } shall complete a term of lifetime parole outside of confinement and without violation unless the person is earlier terminated by the Board of Pardons and Parole.~~

~~(b) The offenses referred to in Subsection (~~1~~) are:~~

~~—— (a) rape, } 3(a) are:~~

~~(i) Section 76-5-301.1, child kidnapping;~~

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(ii) Subsection 76-5-302(1)(b)(vi), aggravated kidnapping involving a sexual offense;

(iii) Section 76-5-402;

~~(b) rape of a child;~~

(iv) Section 76-5-402.1;

~~(c) object rape of a child;~~

(v) Section 76-5-402.2, object rape;

~~(d) (vi) Section 76-5-402.3, object rape of a child, Section 76-5-402.3;~~

~~(e) (vii) forcible sodomy, Subsection 76-5-403(2);~~

~~(f) forcible sodomy on a child;~~

(viii) Section 76-5-403.1, sodomy on a child;

~~(g) (ix) forcible sexual abuse, Section 76-5-404;~~

~~(h) 1, sexual abuse of a child, Subsection 76-5-404.1(2);~~

~~(i) and aggravated sexual abuse of a child, Subsection 76-5-404.1(4);~~

~~(j) or~~

(x) Section 76-5-405, aggravated sexual assault, Section 76-5-405; and

~~(k) an attempt to commit;~~

(4) Any person who violates the terms of parole, while serving parole, for any offense under ~~this Subsection (2).~~

~~(3) Sexual battery is a class A misdemeanor.~~

~~(4) For purposes of Subsection [77-27-21.5(1)(n)] 77-41-102(16) only, a plea of guilty or nolo contendere to a charge~~Subsection (1), (2), or (3), shall at the discretion of the Board of Pardons and Parole be recommitted to prison to serve the portion of the balance of the term as determined by the Board of Pardons and Parole, but not to exceed the maximum term.

(5) In order for a parolee convicted on or after May 5, 1997, to be eligible for early termination from parole, the parolee must provide to the Board of Pardons and Parole:

(a) evidence that the parolee has completed high school classwork and has obtained a high school graduation diploma, a GED certificate, or a vocational certificate; or

(b) documentation of the inability to obtain one of the items listed in Subsection (5)(a) because of:

(i) a diagnosed learning disability; or

(ii) other justified cause.

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(6) Any person paroled following a former parole revocation may not be discharged from the person's sentence until:

(a) the person has served the applicable period of parole under this section ~~{that is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction. This Subsection (4) also applies if the charge}~~ outside of confinement and without violation;

(b) the person's maximum sentence has expired; or

(c) the Board of Pardons and Parole orders the person to be discharged from the sentence.

(7) (a) All time served on parole, outside of confinement and without violation, constitutes service of the total sentence but does not preclude the requirement of serving the applicable period of parole under this section ~~{has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.~~

~~Section 66. Section 76-9-702}~~ outside of confinement and without violation.

(b) Any time a person spends outside of confinement after commission of a parole violation does not constitute service of the total sentence unless the person is exonerated at a parole revocation hearing.

(c) (i) Any time a person spends in confinement awaiting a hearing before the Board of Pardons and Parole or a decision by the board concerning revocation of parole constitutes service of the sentence.

(ii) In the case of exoneration by the board, the time spent is included in computing the total parole term.

(8) When any parolee without authority from the Board of Pardons and Parole absents himself from the state or avoids or evades parole supervision, the period of absence, avoidance, or evasion tolls the parole period.

(9) (a) While on parole, time spent in confinement outside the state may not be credited toward the service of any Utah sentence.

(b) Time in confinement outside the state or in the custody of any tribal authority or the United States government for a conviction obtained in another jurisdiction tolls the expiration of the Utah sentence.

(10) This section does not preclude the Board of Pardons and Parole from paroling or discharging an inmate at any time within the discretion of the Board of Pardons and Parole

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unless otherwise specifically provided by law.

(11) A parolee sentenced to lifetime parole may petition the Board of Pardons and Parole for termination of lifetime parole.

Section 58. Section 76-3-203.5 is amended to read:

~~76-9-702.5. Lewdness involving a child.~~

~~(1) A person is guilty of lewdness involving a child if the person under circumstances not amounting to rape of a child, object rape of a child, sodomy upon a child, sexual abuse of a child, aggravated sexual abuse of a child, or an attempt to commit any of those offenses, intentionally or knowingly does any of the following to, or in the presence of, a child who is under 14 years of age:~~

~~(a) performs an act of sexual intercourse or sodomy;~~

~~(b) exposes his or her genitals, the female breast below the top of the areola, the buttocks, the anus, or the pubic area:~~

~~(i) in a public place; or~~

~~(ii) in a private place:~~

~~(A) under circumstances the person should know will likely cause affront or alarm; or~~

~~(B) with the intent to arouse or gratify the sexual desire of the actor or the child;~~

~~(c) masturbates;~~

~~(d) under circumstances not amounting to sexual exploitation of a child under Section 76-5b-201, causes a child under the age of 14 years to expose his or her genitals, anus, or breast, if female, to the actor, with the intent to arouse or gratify the sexual desire of the actor or the child; or~~

~~(e) performs any other act of lewdness.~~

~~(2) (a) Lewdness involving a child is a class A misdemeanor, except under Subsection (2)(b).~~

~~(b) Lewdness involving a child is a third degree felony if at the time of the violation:~~

~~(i) the person is a sex offender as defined in Section 77-27-21.7; or~~

~~(ii) the person has previously been convicted of a violation of this section.~~

~~Section 67. Section 76-9-1008~~ is amended to read:

~~76-9-1008. Proof of immigration status required to receive public benefits.~~

~~(1) (a) An agency that provides state or local public benefits as defined in 8 U.S.C. Sec.~~

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~~1621 shall comply with Section [63G-11-104] 63G-12-402 and shall also comply with this section, except:~~

- ~~—— (i) as provided in Subsection [63G-11-104(4)] 63G-12-402(3)(g) or (k); or~~
- ~~—— (ii) when compliance is exempted by federal law or when compliance could reasonably be expected to be grounds for the federal government to withhold federal Medicaid funding.~~
- ~~—— (b) The agency shall verify a person's lawful presence in the United States by requiring that the applicant under this section sign a certificate under penalty of perjury, stating that the applicant:~~
  - ~~—— (i) is a United States citizen; or~~
  - ~~—— (ii) is a qualified alien as defined by 8 U.S.C. Sec. 1641.~~
  - ~~—— (c) The certificate under Subsection (1)(b) shall include a statement advising the signer that providing false information subjects the signer to penalties for perjury.~~
  - ~~—— (d) The signature under this Subsection (1) may be executed in person or electronically.~~
  - ~~—— (e) When an applicant who is a qualified alien has executed the certificate under this section, the applicant's eligibility for benefits shall be verified by the agency through the federal SAVE program or an equivalent program designated by the United States Department of Homeland Security.~~
- ~~—— (2) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement of representation in a certificate executed under this section is guilty of public assistance fraud under Section 76-8-1205.~~
- ~~—— (3) If the certificate constitutes a false claim of United States citizenship under 18 U.S.C. Sec. 911, the agency requiring the certificate shall file a complaint with the United States Attorney for the applicable federal judicial district based upon the venue in which the certificate was executed.~~
- ~~—— (4) Agencies may, with the concurrence of the Utah Attorney General, adopt variations to the requirements of the provisions of this section that provide for adjudication of unique individual circumstances where the verification procedures in this section would impose unusual hardship on a legal resident of this state.~~
- ~~—— (5) If an agency under Subsection (1) receives verification that a person making an application for any benefit, service, or license is not a qualified alien, the agency shall provide~~

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~~the information to the local law enforcement agency for enforcement of Section 76-8-1205 unless prohibited by federal mandate:~~

~~Section 68. Section 76-10-104.1 is amended to read:~~

~~76-10-104.1. Providing tobacco paraphernalia to minors -- Penalties:~~

~~(1) For purposes of;~~ 76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.

(1) As used in this section:

(a) "~~Provides~~":

~~(i) includes selling, giving, furnishing, sending, or causing to be sent; and~~

~~(ii) does not include the acts;~~ Felony" means any violation of a criminal statute of the state, any other state, the United States, or any district, possession, or territory of the United States ~~{Postal Service or other common carrier when engaged in the business of transporting and delivering packages for others or the acts of a person, whether compensated or not, who transports or delivers a package for another person without any reason to know of the package's content.~~

~~(b) "Tobacco paraphernalia":~~

~~(i) means any equipment, product, or material of any kind which is used, intended for use, or designed for use to package, repackage, store, contain, conceal, ingest, inhale, or otherwise introduce a cigar, cigarette, or tobacco in any form into the human body, including:~~

~~(A) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;~~

~~(B) water pipes;~~

~~(C) carburetion tubes and devices;~~

~~(D) smoking and carburetion masks;~~

~~(E) roach clips: meaning objects used to hold burning material, such as a cigarette, that has become too small or too short to be held in the hand;~~

~~(F) chamber pipes;~~

~~(G) carburetor pipes;~~

~~(H) electric pipes;~~

~~(I) air-driven pipes;~~

~~(J) chillums;~~

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~~(K) bongs; and~~

~~(L) ice pipes or chillers; and~~

~~(ii) does not include matches or lighters.~~

~~(2) (a) It is unlawful for a person to[, ] knowingly, intentionally, recklessly, or with criminal negligence provide any tobacco paraphernalia to any person under 19 years of age.~~

~~(b) A person who violates } for which the maximum punishment the offender may be subjected to exceeds one year in prison.~~

(b) "Habitual violent offender" means a person convicted within the state of any violent felony and who on at least two previous occasions has been convicted of a violent felony and committed to either prison in Utah or an equivalent correctional institution of another state or of the United States either at initial sentencing or after revocation of probation.

(c) "Violent felony" means:

(i) any of the following offenses, or any attempt, solicitation, or conspiracy to commit any of the following offenses punishable as a felony:

(A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief,

Title 76, Chapter 6, Part 1, Property Destruction;

(B) assault by prisoner, Section 76-5-102.5;

(C) disarming a police officer, Section 76-5-102.8;

(D) aggravated assault, Section 76-5-103;

(E) aggravated assault by prisoner, Section 76-5-103.5;

(F) mayhem, Section 76-5-105;

(G) stalking, Subsection 76-5-106.5(2) or (3);

(H) threat of terrorism, Section 76-5-107.3;

(I) child abuse, Subsection 76-5-109(2)(a) or (b);

(J) commission of domestic violence in the presence of a child, Section 76-5-109.1;

(K) abuse or neglect of a child with a disability, Section 76-5-110;

(L) abuse, neglect, or exploitation of a vulnerable adult, Section 76-5-111;

(M) endangerment of a child or vulnerable adult, Section 76-5-112.5;

(N) criminal homicide offenses under Title 76, Chapter 5, Part 2, Criminal Homicide;

(O) kidnapping, child kidnapping, and aggravated kidnapping under Title 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;

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(P) rape, Section 76-5-402;

(Q) rape of a child, Section 76-5-402.1;

(R) object rape, Section 76-5-402.2;

(S) object rape of a child, Section 76-5-402.3;

(T) forcible sodomy, Section 76-5-403;

(U) sodomy on a child, Section 76-5-403.1;

(V) forcible sexual abuse, Section 76-5-404;

(W) aggravated sexual abuse of a child or sexual abuse of a child, Section 76-5-404.1;

(X) aggravated sexual assault, Section 76-5-405;

(Y) sexual exploitation of a minor, Section 76-5b-201;

(Z) sexual exploitation of a vulnerable adult, Section 76-5b-202;

(AA) aggravated burglary and burglary of a dwelling under Title 76, Chapter 6, Part 2,

### Burglary and Criminal Trespass:

(BB) aggravated robbery and robbery under Title 76, Chapter 6, Part 3, Robbery;

(CC) theft by extortion under Subsection 76-6-406(2)(a) or (b);

(DD) tampering with a witness under Subsection 76-8-508(1);

(EE) retaliation against a witness, victim, or informant under Section 76-8-508.3;

(FF) tampering with a juror under Subsection 76-8-508.5(2)(c);

(GG) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any threat or by use of force theft by extortion has been committed pursuant to Subsections 76-6-406(2)(a), (b), and (i);

(HH) possession, use, or removal of explosive, chemical, or incendiary devices under Subsections 76-10-306(3) through (6);

(II) unlawful delivery of explosive, chemical, or incendiary devices under Section 76-10-307;

(JJ) purchase or possession of a dangerous weapon or handgun by a restricted person under Section 76-10-503;

(KK) unlawful discharge of a firearm under Section 76-10-508;

(LL) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);

(MM) bus hijacking under Section 76-10-1504; and

(NN) discharging firearms and hurling missiles under Section 76-10-1505; or

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(ii) any felony violation of a criminal statute of any other state, the United States, or any district, possession, or territory of the United States which would constitute a violent felony as defined in this Subsection (1) if committed in this state.

(2) If a person is convicted in this state of a violent felony by plea or by verdict and the trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender under this section, the penalty for a:

(a) third degree felony is as if the conviction were for a first degree felony;

(b) second degree felony is as if the conviction were for a first degree felony; or

(c) first degree felony remains the penalty for a first degree penalty except:

(i) the convicted person is not eligible for probation; and

(ii) the Board of Pardons and Parole shall consider that the convicted person is a habitual violent offender as an aggravating factor in determining the length of incarceration.

(3) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall provide notice in the information or indictment that the defendant is subject to punishment as a habitual violent offender under this section. Notice shall include the case number, court, and date of conviction or commitment of any case relied upon by the prosecution.

(b) (i) The defendant shall serve notice in writing upon the prosecutor if the defendant intends to deny that:

(A) the defendant is the person who was convicted or committed;

(B) the defendant was represented by counsel or had waived counsel; or

(C) the defendant's plea was understandingly or voluntarily entered.

(ii) The notice of denial shall be served not later than five days prior to trial and shall state in detail the defendant's contention regarding the previous conviction and commitment.

(4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to a jury, the jury may not be told, until after it returns its verdict on the underlying felony charge, of the:

(i) defendant's previous convictions for violent felonies, except as otherwise provided in the Utah Rules of Evidence; or

(ii) allegation against the defendant of being a habitual violent offender.

(b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of being an habitual violent offender by the same jury, if practicable, unless the defendant waives

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the jury, in which case the allegation shall be tried immediately to the court.

(c) (i) Before or at the time of sentencing the trier of fact shall determine if this section applies.

(ii) The trier of fact shall consider any evidence presented at trial and the prosecution and the defendant shall be afforded an opportunity to present any necessary additional evidence.

(iii) Before sentencing under this section, the trier of fact shall determine whether this section is ~~{guilty of a class C misdemeanor on the first offense and a class B misdemeanor on subsequent offenses:~~

~~Section 69}~~ applicable beyond a reasonable doubt.

(d) If any previous conviction and commitment is based upon a plea of guilty or no contest, there is a rebuttable presumption that the conviction and commitment were regular and lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution to establish by a preponderance of the evidence that the defendant was then represented by counsel or had lawfully waived the right to have counsel present, and that the defendant's plea was understandingly and voluntarily entered.

(e) If the trier of fact finds this section applicable, the court shall enter that specific finding on the record and shall indicate in the order of judgment and commitment that the defendant has been found by the trier of fact to be a habitual violent offender and is sentenced under this section.

(5) (a) The sentencing enhancement provisions of Section 76-3-407 supersede the provisions of this section.

(b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in Subsection (1)(c) shall include any felony sexual offense violation of Title 76, Chapter 5, Part 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.

(6) The sentencing enhancement described in this section does not apply if:

(a) the offense for which the person is being sentenced is:

(i) a grievous sexual offense;

(ii) child kidnapping, Section 76-5-301.1;

(iii) aggravated kidnapping, Section 76-5-302; or

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(iv) forcible sexual abuse, Section 76-5-404; and

(b) applying the sentencing enhancement provided for in this section would result in a lower maximum penalty than the penalty provided for under the section that describes the offense for which the person is being sentenced.

Section 59. Section ~~{76-10-501}~~76-4-203 is amended to read:

~~76-10-501.~~ **Definitions:**

~~As used in this part:~~

~~(1) (a) "Antique firearm" means:~~

~~(i) any firearm, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898; or~~

~~(ii) a firearm that is a replica of any firearm described in this Subsection (1)(a), if the replica:~~

~~(A) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or~~

~~(B) uses rimfire or centerfire fixed ammunition which is:~~

~~(I) no longer manufactured in the United States; and~~

~~(II) is not readily available in ordinary channels of commercial trade; or~~

~~(iii) (A) that is a muzzle loading rifle, shotgun, or pistol; and~~

~~(B) is designed to use black powder, or a black powder substitute, and cannot use fixed ammunition:~~

~~(b) "Antique firearm" does not include:~~

~~(i) a weapon that incorporates a firearm frame or receiver;~~

~~(ii) a firearm that is converted into a muzzle loading weapon; or~~

~~(iii) a muzzle loading weapon that can be readily converted to fire fixed ammunition by replacing the:~~

~~(A) barrel;~~

~~(B) bolt;~~

~~(C) breechblock; or~~

~~(D) any combination of Subsection (1)(b)(iii)(A), (B), or (C).~~

~~(2) "Bureau" means the Bureau of Criminal Identification created in Section 53-10-201 within the Department of Public Safety.~~

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- ~~(3) (a) "Concealed dangerous weapon" means a dangerous weapon that is:~~
- ~~(i) covered, hidden, or secreted in a manner that the public would not be aware of its presence; and~~
  - ~~(ii) readily accessible for immediate use.~~
- ~~(b) A dangerous weapon is not a concealed dangerous weapon if it is a firearm which is unloaded and is securely encased.~~
- ~~(4) "Criminal history background check" means a criminal background check conducted by a licensed firearms dealer on every purchaser of a handgun, except a Federal Firearms Licensee, through the bureau or the local law enforcement agency where the firearms dealer conducts business.~~
- ~~(5) "Curio or relic firearm" means a firearm that:~~
- ~~(a) is of special interest to a collector because of a quality that is not associated with firearms intended for:
    - ~~(i) sporting use;~~
    - ~~(ii) use as an offensive weapon; or~~
    - ~~(iii) use as a defensive weapon;~~~~
  - ~~(b) (i) was manufactured at least 50 years before the current date; and~~
  - ~~(ii) is not a replica of a firearm described in Subsection (5)(b)(i);~~
  - ~~(c) is certified by the curator of a municipal, state, or federal museum that exhibits firearms to be a curio or relic of museum interest;~~
  - ~~(d) derives a substantial part of its monetary value:
    - ~~(i) from the fact that the firearm is:
      - ~~(A) novel;~~
      - ~~(B) rare; or~~
      - ~~(C) bizarre; or~~~~
    - ~~(ii) because of the firearm's association with an historical:
      - ~~(A) figure;~~
      - ~~(B) period; or~~
      - ~~(C) event; and~~~~~~
  - ~~(e) has been designated as a curio or relic firearm by the director of the United States Treasury Department Bureau of Alcohol, Tobacco, and Firearms under 27 C.F.R. Sec. [178.11]~~

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~~478.11.~~

~~———— (6) (a) "Dangerous weapon" means an item that in the manner of its use or intended use is capable of causing death or serious bodily injury.~~

~~———— (b) The following factors shall be used in determining whether a knife, or another item, object, or thing not commonly known as a dangerous weapon is a dangerous weapon:~~

~~———— (i) the character of the instrument, object, or thing;~~

~~———— (ii) the character of the wound produced, if any;~~

~~———— (iii) the manner in which the instrument, object, or thing was used; and~~

~~———— (iv) the other lawful purposes for which the instrument, object, or thing may be used.~~

~~———— (c) "Dangerous weapon" does not include an explosive, chemical, or incendiary device as defined by Section 76-10-306.~~

~~———— (7) "Dealer" means a person who is:~~

~~———— (a) licensed under 18 U.S.C. Sec. 923; and~~

~~———— (b) engaged in the business of selling, leasing, or otherwise transferring a handgun, whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.~~

~~———— (8) "Enter" means intrusion of the entire body.~~

~~———— (9) "Federal Firearms Licensee" means a person who:~~

~~———— (a) holds a valid Federal Firearms License issued under 18 U.S.C. Sec. 923; and~~

~~———— (b) is engaged in the activities authorized by the specific category of license held.~~

~~———— (10) (a) "Firearm" means a pistol, revolver, shotgun, short barrel shotgun, rifle or short barrel rifle, or a device that could be used as a dangerous weapon from which is expelled a projectile by action of an explosive.~~

~~———— (b) As used in Sections 76-10-526 and 76-10-527, "firearm" does not include an antique firearm.~~

~~———— (11) "Firearms transaction record form" means a form created by the bureau to be completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.~~

~~———— (12) "Fully automatic weapon" means a firearm which fires, is designed to fire, or can be readily restored to fire, automatically more than one shot without manual reloading by a single function of the trigger.~~

~~———— (13) (a) "Handgun" means a pistol, revolver, or other firearm of any description, loaded or unloaded, from which a shot, bullet, or other missile can be discharged, the length of which,~~

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~~not including any revolving, detachable, or magazine breech, does not exceed 12 inches.~~

~~—— (b) As used in Sections 76-10-520, 76-10-521, and 76-10-522, "handgun" and "pistol or revolver" do not include an antique firearm.~~

~~—— (14) "House of worship" means a church, temple, synagogue, mosque, or other building set apart primarily for the purpose of worship in which religious services are held and the main body of which is kept for that use and not put to any other use inconsistent with its primary purpose.~~

~~—— (15) "Prohibited area" means a place where it is unlawful to discharge a firearm.~~

~~—— (16) "Readily accessible for immediate use" means that a firearm or other dangerous weapon is carried on the person or within such close proximity and in such a manner that it can be retrieved and used as readily as if carried on the person.~~

~~—— (17) "Residence" means an improvement to real property used or occupied as a primary or secondary residence.~~

~~—— (18) "Securely encased" means not readily accessible for immediate use, such as held in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other storage area of a motor vehicle, not including a glove box or console box.~~

~~—— (19) "Short barrel shotgun" or "short barrel rifle" means a shotgun having a barrel or barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels of fewer than 16 inches in length, or a dangerous weapon made from a rifle or shotgun by alteration, modification, or otherwise, if the weapon as modified has an overall length of fewer than 26 inches.~~

~~—— (20) "State entity" means a department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.~~

~~—— (21) "Violent felony" has the same meaning as defined in Section 76-3-203.5.~~

~~—— Section 70}~~ **76-4-203. Criminal solicitation -- Elements.**

**(1) An actor commits criminal solicitation if, with intent that a felony be committed, he solicits, requests, commands, offers to hire, or importunes another person to engage in specific conduct that under the circumstances as the actor believes them to be would be a felony or would cause the other person to be a party to the commission of a felony.**

**(2) An actor may be convicted under this section only if the solicitation is made under**

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circumstances strongly corroborative of the actor's intent that the offense be committed.

(3) It is not a defense under this section that the person solicited by the actor:

(a) does not agree to act upon the solicitation;

(b) does not commit an overt act;

(c) does not engage in conduct constituting a substantial step toward the commission of any offense;

(d) is not criminally responsible for the felony solicited;

(e) was acquitted, was not prosecuted or convicted, or was convicted of a different offense or of a different type or degree of offense; or

(f) is immune from prosecution.

(4) It is not a defense under this section that the actor:

(a) belongs to a class of persons that by definition is legally incapable of committing the offense in an individual capacity; or

(b) fails to communicate with the person he solicits to commit an offense, if the intent of the actor's conduct was to effect the communication.

(5) Nothing in this section prevents an actor who otherwise solicits, requests, commands, encourages, or intentionally aids another person to engage in conduct which constitutes an offense from being prosecuted and convicted as a party to the offense under Section 76-2-202 if the person solicited actually commits the offense.

Section 60. Section ~~{76-10-526}~~ 76-4-401 is amended to read:

~~{76-10-526. Criminal background check prior to purchase of a firearm -- Fee --~~

~~Exemption for concealed firearm permit holders and law enforcement officers:~~

~~—— (1) For purposes of this section, "valid permit to carry a concealed firearm" does not include a temporary permit issued under Section 53-5-705.~~

~~—— (2) (a) To establish personal identification and residence in this state for purposes of this part, a dealer shall require an individual receiving a firearm to present one photo identification on a form issued by a governmental agency of the state.~~

~~—— (b) A dealer may not accept a driving privilege card issued under Section 53-3-207 as proof of identification for the purpose of establishing personal identification and residence in this state as required under this Subsection (2).~~

~~—— (3) (a) A criminal history background check is required for the sale of a firearm by a~~

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~~licensed firearm dealer in the state:~~

~~—— (b) Subsection (3)(a) does not apply to the sale of a firearm to a Federal Firearms Licensee.~~

~~—— (4) (a) An individual purchasing a firearm from a dealer shall consent in writing to a criminal background check, on a form provided by the bureau.~~

~~—— (b) The form shall contain the following information:~~

~~—— (i) the dealer identification number;~~

~~—— (ii) the name and address of the individual receiving the firearm;~~

~~—— (iii) the date of birth, height, weight, eye color, and hair color of the individual receiving the firearm; and~~

~~—— (iv) the Social Security number or any other identification number of the individual receiving the firearm.~~

~~—— (5) (a) The dealer shall send the information required by Subsection (4) to the bureau immediately upon its receipt by the dealer.~~

~~—— (b) A dealer may not sell or transfer a firearm to an individual until the dealer has provided the bureau with the information in Subsection (4) and has received approval from the bureau under Subsection (7):~~

~~—— (6) The dealer shall make a request for criminal history background information by telephone or other electronic means to the bureau and shall receive approval or denial of the inquiry by telephone or other electronic means.~~

~~—— (7) When the dealer calls for or requests a criminal history background check, the bureau shall:~~

~~—— (a) review the criminal history files, including juvenile court records, to determine if the individual is prohibited from purchasing, possessing, or transferring a firearm by state or federal law;~~

~~—— (b) inform the dealer that:~~

~~—— (i) the records indicate the individual is prohibited; or~~

~~—— (ii) the individual is approved for purchasing, possessing, or transferring a firearm;~~

~~—— (c) provide the dealer with a unique transaction number for that inquiry; and~~

~~—— (d) provide a response to the requesting dealer during the call for a criminal background check, or by return call, or other electronic means, without delay, except in case of~~

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~~electronic failure or other circumstances beyond the control of the bureau, the bureau shall advise the dealer of the reason for the delay and give the dealer an estimate of the length of the delay.~~

~~—— (8) (a) The bureau may not maintain any records of the criminal history background check longer than 20 days from the date of the dealer's request, if the bureau determines that the individual receiving the firearm is not prohibited from purchasing, possessing, or transferring the firearm under state or federal law.~~

~~—— (b) However, the bureau shall maintain a log of requests containing the dealer's federal firearms number, the transaction number, and the transaction date for a period of 12 months.~~

~~—— (9) If the criminal history background check discloses information indicating that the individual attempting to purchase the firearm is prohibited from purchasing, possessing, or transferring a firearm, the bureau shall inform the law enforcement agency in the jurisdiction where the individual resides.~~

~~—— (10) If an individual is denied the right to purchase a firearm under this section, the individual may review the individual's criminal history information and may challenge or amend the information as provided in Section 53-10-108.~~

~~—— (11) The bureau shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to ensure the identity, confidentiality, and security of all records provided by the bureau under this part are in conformance with the requirements of the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).~~

~~—— (12) (a) (i) A dealer shall collect a criminal history background check fee of \$7.50 for the sale of a firearm under this section.~~

~~—— (ii) This fee remains in effect until changed by the bureau through the process under Section 63J-1-504.~~

~~—— (b) (i) The dealer shall forward at one time all fees collected for criminal history background checks performed during the month to the bureau by the last day of the month following the sale of a firearm.~~

~~—— (ii) The bureau shall deposit the fees in the General Fund as dedicated credits to cover the cost of administering and conducting the criminal history background check program.~~

~~—— (13) An individual with a concealed firearm permit issued under Title 53, Chapter 5, Part 7, Concealed Firearm Act, is exempt from the background check and corresponding fee~~

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~~required in this section for the purchase of a firearm if:~~

~~—— (a) the individual presents the individual's concealed firearm permit to the dealer prior to purchase of the firearm; and~~

~~—— (b) the dealer verifies with the bureau that the individual's concealed firearm permit is valid.~~

~~—— (14) A law enforcement officer, as defined in Section 53-13-103, is exempt from the background check fee required in this section for the purchase of a personal firearm to be carried while off-duty if the law enforcement officer verifies current employment by providing a letter of good standing from the officer's commanding officer and current law enforcement photo identification. This section may only be used by a law enforcement officer to purchase a personal firearm once in a 24-month period.~~

~~—— Section 71. Section ~~76-10-919~~ is amended to read:~~

~~—— **76-10-919. Person may bring action for injunctive relief and damages -- Treble damages -- Recovery of actual damages or civil penalty by state or political subdivisions -- Immunity of political subdivisions from damages, costs, or attorney fees.**~~

~~—— (1) (a) A person who is a citizen of this state or a resident of this state and who is injured or is threatened with injury in his business or property by a violation of the Utah Antitrust Act may bring an action for injunctive relief and damages, regardless of whether the person dealt directly or indirectly with the defendant. This remedy is in addition to any other remedies provided by law. It may not diminish or offset any other remedy.~~

~~—— (b) Subject to the provisions of Subsections (3), (4), and (5), the court shall award three times the amount of damages sustained, plus the cost of suit and [a] reasonable attorney fees, in addition to granting any appropriate temporary, preliminary, or permanent injunctive relief.~~

~~—— (2) (a) If the court determines that a judgment in the amount of three times the damages awarded plus attorney fees and costs will directly cause the insolvency of the defendant, the court shall reduce the amount of judgment to the highest sum that would not cause the defendant's insolvency.~~

~~—— (b) The court may not reduce a judgment to an amount less than the amount of damages sustained plus the costs of suit and [a] reasonable attorney fees.~~

~~—— (3) The state or any of its political subdivisions may recover the actual damages it sustains, or the civil penalty provided by the Utah Antitrust Act, in addition to injunctive relief;~~

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~~costs of suit, and reasonable attorney fees:~~

~~—— (4) No damages, costs, or attorney fees may be recovered under this section:~~

~~—— (a) from any political subdivision;~~

~~—— (b) from the official or employee of any political subdivision acting in an official capacity; or~~

~~—— (c) against any person based on any official action directed by a political subdivision or its official or employee acting in an official capacity.~~

~~—— (5) Subsection (4) does not apply to cases filed before April 27, 1987, unless the defendant establishes and the court determines that in light of all the circumstances, including the posture of litigation and the availability of alternative relief, it would be inequitable not to apply Subsection (4) to a pending case.~~

~~—— (6) When a defendant has been sued in one or more actions by both direct and indirect purchasers, whether in state court or federal court, a defendant shall be entitled to prove as a partial or complete defense to a claim for damages that the damages incurred by the plaintiff or plaintiffs have been passed on to others who are entitled to recover so as to avoid duplication of recovery of damages. In an action by indirect purchasers, any damages or settlement amounts paid to direct purchasers for the same alleged antitrust violations shall constitute a defense in the amount paid on a claim by indirect purchasers under this chapter so as to avoid duplication of recovery of damages.~~

~~—— (7) It shall be presumed, in the absence of proof to the contrary, that the injured persons who dealt directly with the defendant incurred at least 1/3 of the damages, and shall, therefore, recover at least 1/3 of the awarded damages. It shall also be presumed, in the absence of proof to the contrary, that the injured persons who dealt indirectly with the defendant incurred at least 1/3 of the damages, and shall, therefore, recover at least 1/3 of the awarded damages. The final 1/3 of the damages shall be awarded by the court to those injured persons determined by the court as most likely to have absorbed the damages.~~

~~—— (8) There is a presumption, in the absence of proof to the contrary and subject to Subsection (7), that each level in a product's or service's distribution chain passed on any and all increments in its cost due to an increase in the cost of an ingredient or a component product or service that was caused by a violation of this chapter. This amount will be presumed, in the absence of evidence to the contrary, to be equal to the change in the cost, in dollars and cents,~~

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of the ingredient, component product, or service to its first purchaser.

~~—— (9) The attorney general shall be notified by the plaintiff about the filing of any class action involving antitrust violations that includes plaintiffs from this state. The attorney general shall receive a copy of each filing from each plaintiff. The attorney general may, in his or her discretion, intervene or file amicus briefs in the case, and may be heard on the question of the fairness or appropriateness of any proposed settlement agreement.~~

~~—— (10) If, in a class action or parens patriae action filed under this chapter, including the settlement of any action, it is not feasible to return any part of the recovery to the injured plaintiffs, the court shall order the residual funds be applied to benefit the specific class of injured plaintiffs, to improve antitrust enforcement generally by depositing the residual funds into the Attorney General Litigation Fund created by Section 76-10-922, or both.~~

~~—— (11) In any action brought under this chapter, the court shall approve all attorney fees and arrangements for the payment of attorney fees, including contingency fee agreements.~~

~~—— Section 72. Section 76-10-1201 is amended to read:~~

~~—— **76-10-1201. Definitions.**~~

~~—— For the purpose of this part:~~

~~—— (1) "Blinder rack" means an opaque cover that covers the lower 2/3 of a material so that the lower 2/3 of the material is concealed from view.~~

~~—— (2) "Contemporary community standards" means those current standards in the vicinage where an offense alleged under this part has occurred, is occurring, or will occur.~~

~~—— (3) "Distribute" means to transfer possession of materials whether with or without consideration.~~

~~—— (4) "Exhibit" means to show.~~

~~—— (5) (a) "Harmful to minors" means that quality of any description or representation, in whatsoever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when it:~~

~~—— (i) taken as a whole, appeals to the prurient interest in sex of minors;~~

~~—— (ii) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and~~

~~—— (iii) taken as a whole, does not have serious value for minors.~~

~~—— (b) Serious value includes only serious literary, artistic, political or scientific value for~~

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~~minors:~~

~~—— (6) (a) "Knowingly," regarding material or a performance, means an awareness, whether actual or constructive, of the character of the material or performance.~~

~~—— (b) As used in this Subsection (6), a person has constructive knowledge if a reasonable inspection or observation under the circumstances would have disclosed the nature of the subject matter and if a failure to inspect or observe is either for the purpose of avoiding the disclosure or is criminally negligent as described in Section 76-2-103.~~

~~—— (7) "Material" means anything printed or written or any picture, drawing, photograph, motion picture, or pictorial representation, or any statue or other figure, or any recording or transcription, or any mechanical, chemical, or electrical reproduction, or anything which is or may be used as a means of communication. Material includes undeveloped photographs, molds, printing plates, and other latent representational objects.~~

~~—— (8) "Minor" means any person less than 18 years of age.~~

~~—— (9) "Negligently" means simple negligence, the failure to exercise that degree of care that a reasonable and prudent person would exercise under like or similar circumstances.~~

~~—— (10) "Nudity" means:~~

~~—— (a) the showing of the human male or female genitals, pubic area, or buttocks, with less than an opaque covering;~~

~~—— (b) the showing of a female breast with less than an opaque covering, or any portion of the female breast below the top of the areola; or~~

~~—— (c) the depiction of covered male genitals in a discernibly turgid state.~~

~~—— (11) "Performance" means any physical human bodily activity, whether engaged in alone or with other persons, including singing, speaking, dancing, acting, simulating, or pantomiming.~~

~~—— (12) "Public place" includes a place to which admission is gained by payment of a membership or admission fee, however designated, notwithstanding its being designated a private club or by words of like import.~~

~~—— (13) "Sado[-]masochistic abuse" means:~~

~~—— (a) flagellation or torture by or upon a person who is nude or clad in undergarments, a mask, or in a revealing or bizarre costume; or~~

~~—— (b) the condition of being fettered, bound, or otherwise physically restrained on the part~~

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~~of a person clothed as described in Subsection (13)(a).~~

~~—— (14) "Sexual conduct" means acts of masturbation, sexual intercourse, or any touching of a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is a female, breast, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent or actual sexual stimulation or gratification.~~

~~—— (15) "Sexual excitement" means a condition of human male or female genitals when in a state of sexual stimulation or arousal, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.~~

~~—— Section 73. Section 77-38-302 is amended to read:~~

~~—— **77-38-302. Definitions.**~~

~~—— As used in this part:~~

~~—— (1) "Convicted person" means a person who has been convicted of a crime.~~

~~—— (2) "Conviction" means an adjudication by a federal or state court resulting from a trial or plea, including a plea of no contest, nolo contendere, a finding of not guilty due to insanity, or not guilty but having a mental illness regardless of whether the sentence was imposed or suspended.~~

~~—— (3) "Fund" means the Crime Victim Reparations Fund created in Section 51-9-404.~~

~~—— (4) "Memorabilia" means any tangible property of a [defendant] convicted person or a representative or assignee of a [defendant] convicted person, the value of which is enhanced by the notoriety gained from the criminal activity for which the person was convicted.~~

~~—— (5) "Notoriety of crimes contract" means a contract or other agreement with a convicted person, or a representative or assignee of a convicted person, with respect to:~~

~~—— (a) the reenactment of a crime in any manner including a movie, book, magazine article, Internet website, recording, phonograph record, radio or television presentation, or live entertainment of any kind;~~

~~—— (b) the expression of the convicted person's thoughts, feelings, opinions, or emotions regarding a crime involving or causing personal injury, death, or property loss as a direct result of the crime; or~~

~~—— (c) the payment or exchange of any money or other consideration or the proceeds or profits that directly or indirectly result from the notoriety of the crime.~~

~~—— (6) "Office" means the Utah Office for Victims of Crime.~~

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~~———— (7) "Profit" means any income or benefit:~~

~~———— (a) over and above the fair market value of tangible property that is received upon the sale or transfer of memorabilia; or~~

~~———— (b) any money, negotiable instruments, securities, or other consideration received or contracted for gain which is traceable to a notoriety of crimes contract.~~

~~———— Section 74. Section 77-38-303 is amended to read:~~

~~———— 77-38-303. Profit from sale of memorabilia or notoriety of crimes contract ==~~

### **Deposit in Crime Victim Reparations Fund -- Penalty.**

~~———— (1) Any convicted person or a representative or assignee of a convicted person who receives a profit from the sale or transfer of memorabilia shall remit to the fund:~~

~~———— (a) a complete, itemized accounting of the transaction, including:~~

~~———— (i) a description of each item sold;~~

~~———— (ii) the amount received for each item;~~

~~———— (iii) the estimated fair market value of each item; and~~

~~———— (iv) the name and address of the purchaser of each item; and~~

~~———— (b) a check or money order for the amount of the profit, which shall be the difference between the amount received for the item and the estimated fair market value of the item.~~

~~———— (2) Any person who willfully violates Subsection (1) may be assessed a civil penalty of up to \$1,000 per item sold or transferred or three times the amount of the unremitted profit, whichever is greater.~~

~~———— (3) (a) Any person or entity who enters into a notoriety of crime contract with a convicted person or with a representative or assignee of a convicted person shall pay to the fund any profit which by the terms of the contract would otherwise be owing to the convicted person or representative or assignee of the convicted person:~~

~~———— (b) A convicted person or a representative or assignee of a convicted person who has received any profit from a notoriety of crime contract shall remit the profit to the fund. Any future profit which, by the terms of the contract, would otherwise be owing to the convicted person or a representative or assignee of a convicted person shall be paid to the fund as required under Subsection (3)(a):~~

~~———— (4) Upon receipt of [monies] money under Subsection (3), the office shall distribute the amounts to the victim of the crime from which the profits are derived if any restitution remains~~

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~~outstanding. If no restitution is outstanding, the [monies] money shall be deposited into the fund.~~

~~—— (5) (a) Any person or entity who willfully violates Subsection (3) may be assessed a civil penalty of up to \$1,000,000.00, or up to three times the total value of the original notoriety of crime contract, whichever is greater.~~

~~—— (b) Any civil penalty ordered under this Subsection shall be paid to the fund.~~

~~—— (6) The prosecuting agency or the attorney general may bring an action to enforce the provisions of this chapter in the court of conviction.~~

~~—— (7) A court shall enter an order to remit funds as provided in this chapter if it finds by a preponderance of the evidence any violation of Subsection (1) or (3).~~

~~—— Section 75. Section ~~77-41-103~~ is amended to read:~~

~~—— **77-41-103. Department duties.**~~

~~—— (1) The department, to assist in investigating kidnapping and sex-related crimes, and in apprehending offenders, shall:~~

~~—— (a) develop and operate a system to collect, analyze, maintain, and disseminate information on offenders and sex and kidnap offenses;~~

~~—— (b) make information listed in Subsection 77-41-110(4) available to the public; and~~

~~—— (c) share information provided by an offender under this chapter that may not be made available to the public under Subsection 77-41-110(4), but only:~~

~~—— (i) for the purposes under this chapter; or~~

~~—— (ii) in accordance with Section 63G-2-206.~~

~~—— (2) Any law enforcement agency shall, in the manner prescribed by the department, inform the department of:~~

~~—— (a) the receipt of a report or complaint of an offense listed in Subsection 77-41-102[(7)](9) or [(14)](16), within three business days; and~~

~~—— (b) the arrest of a person suspected of any of the offenses listed in Subsection 77-41-102[(7)](9) or [(14)](16), within five business days.~~

~~—— (3) Upon convicting a person of any of the offenses listed in Subsection 77-41-102[(7)](9) or [(14)](16), the convicting court shall within three business days forward a copy of the judgment and sentence to the department.~~

~~—— (4) The department shall:~~

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- ~~—— (a) provide the following additional information when available:~~
- ~~—— (i) the crimes the offender has been convicted of or adjudicated delinquent for;~~
  - ~~—— (ii) a description of the offender's primary and secondary targets; and~~
  - ~~—— (iii) any other relevant identifying information as determined by the department;~~
- ~~—— (b) maintain the Sex Offender and Kidnap Offender Notification and Registration website; and~~
- ~~—— (c) ensure that the registration information collected regarding an offender's enrollment or employment at an educational institution is:~~
- ~~—— (i) (A) promptly made available to any law enforcement agency that has jurisdiction where the institution is located if the educational institution is an institution of higher education; or~~
  - ~~—— (B) promptly made available to the district superintendent of the school district where the offender is enrolled if the educational institution is an institution of primary education; and~~
  - ~~—— (ii) entered into the appropriate state records or data system.~~
- ~~—— Section 76. Section 78A-6-1302 is amended to read:~~
- ~~—— 78A-6-1302. Procedure -- Standard.~~
- ~~—— (1) When a motion is filed pursuant to Section 78A-6-1301 raising the issue of a minor's competency to proceed, or when the court raises the issue of a minor's competency to proceed, the juvenile court in which proceedings are pending shall stay all delinquency proceedings:~~
  - ~~—— (2) If a motion for inquiry is opposed by either party, the court shall, prior to granting or denying the motion, hold a limited hearing solely for the purpose of determining the sufficiency of the motion. If the court finds that the allegations of incompetency raise a bona fide doubt as to the minor's competency to proceed, it shall enter an order for an evaluation of the minor's competency to proceed, and shall set a date for a hearing on the issue of the minor's competency:~~
  - ~~—— (3) After the granting of a motion, and prior to a full competency hearing, the court may order the Department of Human Services to evaluate the minor and to report to the court concerning the minor's mental condition.~~
  - ~~—— (4) The minor shall be evaluated by a mental health examiner with experience in juvenile forensic evaluations and juvenile brain development, who is not involved in the~~

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~~current treatment of the minor. If it becomes apparent that the minor may be not competent due to an intellectual disability or related condition, the examiner shall be experienced in intellectual disability or related condition evaluations of minors.~~

~~—— (5) The petitioner or other party, as directed by the court, shall provide all information and materials to the examiners relevant to a determination of the minor's competency including:~~

~~—— (a) the motion;~~

~~—— (b) the arrest or incident reports pertaining to the charged offense;~~

~~—— (c) the minor's known delinquency history information;~~

~~—— (d) known prior mental health evaluations and treatments; and~~

~~—— (e) consistent with 20 U.S.C. Sec. 1232G (b)(1)(E)(ii)(I), records pertaining to the minor's education.~~

~~—— (6) The minor's parents or guardian, the prosecutor, defense attorney, and guardian ad litem, shall cooperate in providing the relevant information and materials to the examiners.~~

~~—— (7) In conducting the evaluation and in the report determining if a minor is competent to proceed as defined in Subsection 78A-6-105(30), the examiner shall consider the impact of a mental disorder, intellectual disability, or related condition on a minor's present capacity to:~~

~~—— (a) comprehend and appreciate the charges or allegations;~~

~~—— (b) disclose to counsel pertinent facts, events, or states of mind;~~

~~—— (c) comprehend and appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the minor;~~

~~—— (d) engage in reasoned choice of legal strategies and options;~~

~~—— (e) understand the adversarial nature of the proceedings;~~

~~—— (f) manifest appropriate courtroom behavior; and~~

~~—— (g) testify relevantly, if applicable.~~

~~—— (8) In addition to the requirements of Subsection (7), the examiner's written report shall:~~

~~—— (a) identify the specific matters referred for evaluation;~~

~~—— (b) describe the procedures, techniques, and tests used in the evaluation and the purpose or purposes for each;~~

~~—— (c) state the examiner's clinical observations, findings, and opinions on each issue~~

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~~referred for evaluation by the court, and indicate specifically those issues, if any, on which the examiner could not give an opinion;~~

~~—— (d) state the likelihood that the minor will attain competency and the amount of time estimated to achieve it; and~~

~~—— (e) identify the sources of information used by the examiner and present the basis for the examiner's clinical findings and opinions.~~

~~—— (9) The examiner shall provide an initial report to the court, the prosecuting and defense attorneys, and the guardian ad litem, if applicable, within 30 days of the receipt of the court's order. If the examiner informs the court that additional time is needed, the court may grant, taking into consideration the custody status of the minor, up to an additional 30 days to provide the report to the court and counsel. The examiner must provide the report within 60 days from the receipt of the court's order unless, for good cause shown, the court authorizes an additional period of time to complete the evaluation and provide the report. The report shall inform the court of the examiner's opinion concerning the competency and the likelihood of the minor to attain competency within a year. In the alternative, the examiner may inform the court in writing that additional time is needed to complete the report.~~

~~—— (10) Any statement made by the minor in the course of any competency evaluation, whether the evaluation is with or without the consent of the minor, any testimony by the examiner based upon any statement, and any other fruits of the statement may not be admitted in evidence against the minor in any delinquency or criminal proceeding except on an issue respecting the mental condition on which the minor has introduced evidence. The evidence may be admitted, however, where relevant to a determination of the minor's competency.~~

~~—— (11) Prior to evaluating the minor, examiners shall specifically advise the minor and the parents or guardian of the limits of confidentiality as provided under Subsection (10):~~

~~—— (12) When the report is received the court shall set a date for a competency hearing which shall be held in not less than five and not more than 15 days, unless the court enlarges the time for good cause:~~

~~—— (13) A minor shall be presumed competent unless the court, by a preponderance of the evidence, finds the minor not competent to proceed. The burden of proof is upon the proponent of incompetency to proceed:~~

~~—— (14) (a) Following the hearing, the court shall determine by a preponderance of~~

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evidence whether the minor is:

~~—— (i) competent to proceed;~~

~~—— (ii) not competent to proceed with a substantial probability that the minor may attain competency in the foreseeable future; or~~

~~—— (iii) not competent to proceed without a substantial probability that the minor may attain competency in the foreseeable future.~~

~~—— (b) If the court enters a finding pursuant to Subsection (14)(a)(i), the court shall proceed with the delinquency proceedings.~~

~~—— (c) If the court enters a finding pursuant to Subsection (14)(a)(ii), the court shall proceed consistent with Section 78A-6-1303.~~

~~—— (d) If the court enters a finding pursuant to Subsection (14)(a)(iii), the court shall terminate the competency proceeding, dismiss the delinquency charges without prejudice, and release the minor from any custody order related to the pending delinquency proceeding, unless the prosecutor informs the court that commitment proceedings pursuant to Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, will be initiated. These commitment proceedings shall be initiated within seven days after the court's order, unless the court enlarges the time for good cause shown. The minor may be ordered to remain in custody until the commitment proceedings have been concluded.~~

~~—— (15) If the court finds the minor not competent to proceed, its order shall contain findings addressing each of the factors in Subsection (7).~~

~~—— Section 77. Section 78B-2-313 is amended to read:~~

~~—— 78B-2-313. Action to recover deficiency after short sale.~~

~~‡ **76-4-401. Enticing a minor -- Elements -- Penalties.**~~

~~(1) As used in this section:~~

~~(a) "Deficiency" means the balance owed to a secured lender under a secured loan after completion of a short sale of the secured property.~~

~~—— (b) "Obligor" means the person or persons obligated to pay a secured loan.~~

~~—— (c) "Secured lender" means the person or persons to whom the obligation under a secured loan is owed.~~

~~—— (d) "Secured loan" means a loan or other credit for personal, family, or household~~

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~~purposes secured by a mortgage or trust deed on secured property:~~

~~—— (e) "Secured property" means single-family, residential real property located in the state that is the subject of a mortgage or trust deed to secure a secured loan:~~

~~—— (f) "Short sale" means a sale:~~

~~—— (i) of secured property;~~

~~—— (ii) by the owner of the secured property;~~

~~—— (iii) that results in the secured lender being paid less than the balance owing under the secured loan; and~~

~~—— (iv) made with the secured lender's consent and resulting in the secured lender releasing the mortgage or reconveying the trust deed on the secured property.~~

~~—— (2) An action to recover a deficiency is barred unless it is commenced no more than three months after the date of recording of a release of mortgage or reconveyance of trust deed with respect to secured property and resulting from a short sale of that property.~~

~~—— (3) Subsection (2) does not apply if the obligor or owner engaged in fraud in connection with the short sale.~~

~~—— (4) Subsection (2) does not apply to an agreement that:~~

~~—— (a) is executed:~~

~~—— (i) between one or more obligors under a [secure] secured loan and the secured lender; and~~

~~—— (ii) in connection with a short sale; and~~

~~—— (b) obligates an obligor to pay some or all of a deficiency.~~

~~Section 78. Section ~~78B-6-121~~ Minor" means a person who is under the age of 18.~~

~~(b) "Text messaging" means a communication in the form of electronic text or one or more electronic images sent by the actor from a telephone or computer to another person's telephone or computer by addressing the communication to the person's telephone number.~~

~~(2) (a) A person commits enticement of a minor when the person knowingly uses or attempts to use the Internet or text messaging to solicit, seduce, lure, or entice a minor or another person that the actor believes to be a minor to engage in any sexual activity which is a violation of state criminal law.~~

~~(b) A person commits enticement of a minor when the person knowingly uses the Internet or text messaging to:~~

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(i) initiate contact with a minor or a person the actor believes to be a minor; and  
(ii) subsequently to the action under Subsection (2)(b)(i), by any electronic or written means, solicits, seduces, lures, or entices, or attempts to solicit, seduce, lure, or entice the minor or a person the actor believes to be the minor to engage in any sexual activity which is a violation of state criminal law.

(3) It is not a defense to the crime of enticing a minor under Subsection (2), or an attempt to commit this offense, that a law enforcement officer or an undercover operative who is working with a law enforcement agency was involved in the detection or investigation of the offense.

(4) An enticement of a minor under Subsection (2)(a) or (b) with the intent to commit:

(a) a first degree felony is a:

(i) second degree felony upon the first conviction for violation of this Subsection

(4)(a); and

(ii) first degree felony punishable by imprisonment for an indeterminate term of not fewer than three years and which may be for life, upon a second or any subsequent conviction for a violation of this Subsection (4)(a);

(b) a second degree felony is a third degree felony;

(c) a third degree felony is a class A misdemeanor;

(d) a class A misdemeanor is a class B misdemeanor; and

(e) a class B misdemeanor is a class C misdemeanor.

(5) (a) When a person who commits a felony violation of this section has been previously convicted of an offense under Subsection (5)(b), the court may not in any way shorten the prison sentence, and the court may not:

(i) grant probation;

(ii) suspend the execution or imposition of the sentence;

(iii) enter a judgment for a lower category of offense; or

(iv) order hospitalization.

(b) The sections referred to in Subsection (5)(a) are:

(i) Section 76-4-401, enticing a minor;

(ii) Section 76-5-301.1, child kidnapping;

(iii) Section 76-5-402, rape;

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(iv) Section 76-5-402.1, rape of a child;

(v) Section 76-5-402.2, object rape;

(vi) Section 76-5-402.3, object rape of a child;

(vii) Subsection 76-5-403(2), forcible sodomy;

(viii) Section 76-5-403.1, sodomy on a child;

(ix) Section 76-5-404, forcible sexual abuse;

(x) Section 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child;

(xi) Section 76-5-405, aggravated sexual assault;

(xii) any offense in any other state or federal jurisdiction which constitutes or would constitute a crime in Subsections ~~[(4)]~~ (5)(b)(i) through (xi); or

(xiii) the attempt, solicitation, or conspiracy to commit any of the offenses in Subsections ~~[(4)]~~ (5)(b)(i) through (xii).

Section 61. Section 76-5-307 is amended to read:

### 76-5-307. Definitions.

As used in Sections 76-5-308 through ~~[76-5-312]~~ 76-5-310 of this part:

(1) "Family member" means a person's parent, grandparent, sibling, or any other person related to the person by consanguinity or affinity to the second degree.

(2) "Smuggling of human beings" means the transportation or procurement of transportation for one or more persons by an actor who knows or has reason to know that the person or persons transported or to be transported are not:

(a) citizens of the United States;

(b) permanent resident aliens; or

(c) otherwise lawfully in this state or entitled to be in this state.

Section 62. Section 76-6-107 is amended to read:

76-6-107. Graffiti defined -- Penalties -- Removal costs -- Reimbursement liability.

(1) As used in this section:

(a) "Etching" means defacing, damaging, or destroying hard surfaces by means of a chemical action which uses any caustic cream, gel, liquid, or solution.

(b) "Graffiti" means any form of unauthorized printing, writing, spraying, scratching, affixing, etching, or inscribing on the property of another regardless of the content or the nature

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of the material used in the commission of the act.

(c) "Victim" means the person or entity whose property was defaced by the graffiti and bears the expense for its removal.

(2) Graffiti is a:

(a) second degree felony if the damage caused is in excess of \$5,000;

(b) third degree felony if the damage caused is in excess of \$1,000;

(c) class A misdemeanor if the damage caused is equal to or in excess of \$300; and

(d) class B misdemeanor if the damage caused is less than \$300.

(3) Damages under Subsection (2) include removal costs, repair costs, or replacement costs, whichever is less.

(4) The court, upon conviction or adjudication, shall order restitution to the victim in the amount of removal, repair, or replacement costs.

(5) An additional amount of \$1,000 in restitution shall be added to removal costs if the graffiti is positioned on an overpass or an underpass, requires that traffic be interfered with in order to remove it, or the entity responsible for the area in which the clean-up is to take place must provide assistance in order for the removal to take place safely.

(6) A person who voluntarily, and at his own expense, removes graffiti for which he is responsible may be credited for the removal costs against restitution ordered by a court.

Section 63. Section 76-6-412 is amended to read:

**76-6-412. Theft -- Classification of offenses -- Action for treble damages.**

(1) Theft of property and services as provided in this chapter is punishable:

(a) as a second degree felony if the:

(i) value of the property or services is or exceeds \$5,000;

(ii) property stolen is a firearm or an operable motor vehicle;

(iii) actor is armed with a dangerous weapon, as defined in Section 76-1-601, at the time of the theft; or

(iv) property is stolen from the person of another;

(b) as a third degree felony if:

(i) the value of the property or services is or exceeds \$1,500 but is less than \$5,000;

(ii) the actor has been twice before convicted of any of the offenses listed in this Subsection (1)(b)(ii), if each prior offense was committed within 10 years of the date of the

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current conviction or the date of the offense upon which the current conviction is based:

(A) any theft, any robbery, or any burglary with intent to commit theft;

(B) any offense under Title 76, Chapter 6, Part 5, Fraud; or

(C) any attempt to commit any offense under Subsection (1)(b)(ii)(A) or (B);

(iii) in a case not amounting to a second-degree felony, the property taken is a stallion, mare, colt, gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine, poultry, or a fur-bearing animal raised for commercial purposes; or

(iv) (A) the value of property or services is or exceeds \$500 but is less than \$1,500;

(B) the theft occurs on a property where the offender has committed any theft within the past five years; and

(C) the offender has received written notice from the merchant prohibiting the offender from entering the property pursuant to Section 78B-3-108; or

(c) as a class A misdemeanor if:

(i) the value of the property stolen is or exceeds \$500 but is less than \$1,500;

(ii) (A) the value of property or services is less than \$500;

(B) the theft occurs on a property where the offender has committed any theft within the past five years; and

(C) the offender has received written notice from the merchant prohibiting the offender from entering the property pursuant to Section 78B-3-108; or

(d) as a class B misdemeanor if the value of the property stolen is less than \$500 and the theft is not an offense under Subsection (1)(c).

(2) Any individual who violates Subsection 76-6-408(1) or Section 76-6-413, or commits theft of property described in Subsection 76-6-412(1)(b)(iii), is civilly liable for three times the amount of actual damages, if any sustained by the plaintiff, and for costs of suit and reasonable attorney fees.

Section 64. Section 76-6-1102 is amended to read:

**76-6-1102. Identity fraud crime.**

(1) As used in this part, "personal identifying information" may include:

(a) name;

(b) birth date;

(c) address;

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(d) telephone number;

(e) drivers license number;

(f) Social Security number;

(g) place of employment;

(h) employee identification numbers or other personal identification numbers;

(i) mother's maiden name;

(j) electronic identification numbers;

(k) electronic signatures under Title 46, Chapter 4, Uniform Electronic Transactions

Act; or

(l) any other numbers or information that can be used to access a person's financial resources or medical information, except for numbers or information that can be prosecuted as financial transaction card offenses under Sections 76-6-506 through [76-6-506.4] 76-6-506.6.

(2) (a) A person is guilty of identity fraud when that person:

(i) obtains personal identifying information of another person whether that person is alive or deceased; and

(ii) knowingly or intentionally uses, or attempts to use, that information with fraudulent intent, including to obtain, or attempt to obtain, credit, goods, services, employment, any other thing of value, or medical information.

(b) It is not a defense to a violation of Subsection (2)(a) that the person did not know that the personal information belonged to another person.

(3) Identity fraud is:

(a) except as provided in Subsection (3)(b)(ii), a third degree felony if the value of the credit, goods, services, employment, or any other thing of value is less than \$5,000; or

(b) a second degree felony if:

(i) the value of the credit, goods, services, employment, or any other thing of value is or exceeds \$5,000; or

(ii) the use described in Subsection (2)(a)(ii) of personal identifying information results, directly or indirectly, in bodily injury to another person.

(4) Multiple violations may be aggregated into a single offense, and the degree of the offense is determined by the total value of all credit, goods, services, or any other thing of value used, or attempted to be used, through the multiple violations.

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(5) When a defendant is convicted of a violation of this section, the court shall order the defendant to make restitution to any victim of the offense or state on the record the reason the court does not find ordering restitution to be appropriate.

(6) Restitution under Subsection (5) may include:

(a) payment for any costs incurred, including attorney fees, lost wages, and replacement of checks; and

(b) the value of the victim's time incurred due to the offense:

(i) in clearing the victim's credit history or credit rating;

(ii) in any civil or administrative proceedings necessary to satisfy or resolve any debt, lien, or other obligation of the victim or imputed to the victim and arising from the offense; and

(iii) in attempting to remedy any other intended or actual harm to the victim incurred as a result of the offense.

Section 65. Section 76-7-305.5 is amended to read:

**76-7-305.5. Requirements for printed materials and informational video.**

(1) In order to ensure that a woman's consent to an abortion is truly an informed consent, the Department of Health shall, in accordance with the requirements of this section:

(a) publish printed materials; and

(b) produce an informational video.

(2) The printed materials and the informational video described in Subsection (1) shall:

(a) be scientifically accurate, comprehensible, and presented in a truthful, nonmisleading manner;

(b) present adoption as a preferred and positive choice and alternative to abortion;

(c) be printed and produced in a manner that conveys the state's preference for childbirth over abortion;

(d) state that the state prefers childbirth over abortion;

(e) state that it is unlawful for any person to coerce a woman to undergo an abortion;

(f) state that any physician who performs an abortion without obtaining the woman's informed consent or without providing her a private medical consultation in accordance with the requirements of this section, may be liable to her for damages in a civil action at law;

(g) provide information on resources and public and private services available to assist a pregnant woman, financially or otherwise, during pregnancy, at childbirth, and while the

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child is dependent, including:

- (i) medical assistance benefits for prenatal care, childbirth, and neonatal care;
- (ii) services and supports available under Section 35A-3-308;
- (iii) other financial aid that may be available during an adoption; and
- (iv) services available from public adoption agencies, private adoption agencies, and

private attorneys whose practice includes adoption:

- (h) describe the adoption-related expenses that may be paid under Section 76-7-203;
- (i) describe the persons who may pay the adoption related expenses described in

Subsection (2)(h):

(j) describe the legal responsibility of the father of a child to assist in child support, even if the father has agreed to pay for an abortion;

(k) describe the services available through the Office of Recovery Services, within the Department of Human Services, to establish and collect the support described in Subsection

(2)(j):

(l) state that private adoption is legal;

(m) in accordance with Subsection (3), describe the probable anatomical and physiological characteristics of an unborn child at two-week gestational increments from fertilization to full term, including:

(i) brain and heart function; and

(ii) the presence and development of external members and internal organs;

(n) describe abortion procedures used in current medical practice at the various stages of growth of the unborn child, including:

(i) the medical risks associated with each procedure;

(ii) the risk related to subsequent childbearing that are associated with each procedure;

and

(iii) the consequences of each procedure to the unborn child at various stages of fetal development;

(o) describe the possible detrimental psychological effects of abortion;

(p) describe the medical risks associated with carrying a child to term; and

(q) include relevant information on the possibility of an unborn child's survival at the two-week gestational increments described in Subsection (2)(m).

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(3) The information described in Subsection (2)(m) shall be accompanied by the following for each gestational increment described in Subsection (2)(m):

(a) pictures or video segments that accurately represent the normal development of an unborn child at that stage of development; and

(b) the dimensions of the fetus at that stage of development.

(4) The printed material and video described in Subsection (1) may include a toll-free 24-hour telephone number that may be called in order to obtain, orally, a list and description of services, agencies, and adoption attorneys in the locality of the caller.

(5) In addition to the requirements described in Subsection (2), the printed material described in Subsection (1)(a) shall:

(a) be printed in a typeface large enough to be clearly legible;

(b) in accordance with Subsection (6), include a geographically indexed list of public and private services and agencies available to assist a woman, financially or otherwise, through pregnancy, at childbirth, and while the child is dependent;

(c) except as provided in Subsection (7), include a separate brochure that contains truthful, nonmisleading information regarding:

(i) the ability of an unborn child to experience pain during an abortion procedure;

(ii) the measures that may be taken, including the administration of an anesthetic or analgesic to an unborn child, to alleviate or eliminate pain to an unborn child during an abortion procedure;

(iii) the effectiveness and advisability of taking the measures described in Subsection (5)(c)(ii); and

(iv) potential medical risks to a pregnant woman that are associated with the administration of an anesthetic or analgesic to an unborn child during an abortion procedure.

(6) The list described in Subsection (5)(b) shall include:

(a) private attorneys whose practice includes adoption; and

(b) the names, addresses, and telephone numbers of each person listed under Subsection (5)(b) or (6)(a).

(7) A person or facility is not required to provide the information described in Subsection (5)(c) to a patient or potential patient, if the abortion is to be performed:

(a) on an unborn child who is less than 20 weeks gestational age at the time of the

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abortion; or

(b) on an unborn child who is at least 20 weeks gestational age at the time of the abortion, if:

(i) the abortion is being performed for a reason described in Subsection 76-7-302(3)(b)(i); and

(ii) due to a serious medical emergency, time does not permit compliance with the requirement to provide the information described in Subsection (5)(c).

(8) In addition to the requirements described in Subsection (2), the video described in Subsection (1)(b) shall:

(a) make reference to the list described in Subsection (5)(b); and

(b) show an ultrasound of the heartbeat of an unborn child at:

(i) four weeks from conception;

(ii) six to eight weeks from conception; and

(iii) each month after ~~ten~~ 10 weeks gestational age, up to 14 weeks gestational age.

Section 66. Section 76-8-109 is amended to read:

**76-8-109. Failure to disclose conflict of interest.**

(1) As used in this section:

(a) "Conflict of interest" means an action that is taken by a regulated officeholder that the officeholder reasonably believes may cause direct financial benefit or detriment to the officeholder, a member of the officeholder's immediate family, or an entity that the officeholder is required to disclose under the provisions of this section, and that benefit or detriment is distinguishable from the effects of that action on the public or on the officeholder's profession, occupation, or association generally.

(b) "Entity" means a corporation, a partnership, a limited liability company, a limited partnership, a sole proprietorship, an association, a cooperative, a trust, an organization, a joint venture, a governmental entity, an unincorporated organization, or any other legal entity, whether established primarily for the purpose of gain or economic profit or not.

(c) "Filer" means the individual filing a financial declaration under this section.

(d) "Immediate family" means the regulated officeholder's spouse and children living in the officeholder's immediate household.

(e) "Income" means earnings, compensation, or any other payment made to an

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individual for gain, regardless of source, whether denominated as wages, salary, commission, pay, bonus, severance pay, incentive pay, contract payment, interest, per diem, expenses, reimbursement, dividends, or otherwise.

(f) "Regulated officeholder" means an individual that is required to file a financial disclosure under the provisions and requirements of this section.

(g) "State constitutional officer" means the governor, the lieutenant governor, the state auditor, the state treasurer, or the attorney general.

(2) (a) Before or during the execution of any order, settlement, declaration, contract, or any other official act of office in which a state constitutional officer has actual knowledge that the officer has a conflict of interest which is not stated on the financial disclosure form required under Subsection (4), the officer shall publicly declare that the officer may have a conflict of interest and what that conflict of interest is.

(b) Before or during any vote on legislation or any legislative matter in which a legislator has actual knowledge that the legislator has a conflict of interest which is not stated on the [the] financial disclosure form required under Subsection (4), the legislator shall orally declare to the committee or body before which the matter is pending that the legislator may have a conflict of interest and what that conflict is.

(c) Before or during any vote on any rule, resolution, order, or any other board matter in which a member of the State Board of Education has actual knowledge that the member has a conflict of interest which is not stated on the financial disclosure form required under Subsection (4), the member shall orally declare to the board that the member may have a conflict of interest and what that conflict of interest is.

(3) Any public declaration of a conflict of interest that is made under Subsection (2) shall be noted:

(a) on the official record of the action taken, for a state constitutional officer;

(b) in the minutes of the committee meeting or in the Senate or House Journal, as applicable, for a legislator; or

(c) in the minutes of the meeting or on the official record of the action taken, for a member of the State Board of Education.

(4) (a) The following individuals shall file a financial disclosure form:

(i) a state constitutional officer, to be due on the tenth day of January of each year, or

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the following business day if the due date falls on a weekend or holiday:

(ii) a legislator, at the following times:

(A) on the first day of each general session of the Legislature; and

(B) each time the legislator changes employment;

(iii) a member of the State Board of Education, at the following times:

(A) on the tenth day of January of each year, or the following business day if the due

date falls on a weekend or holiday; and

(B) each time the member changes employment.

(b) The financial disclosure form shall include:

(i) the filer's name;

(ii) the name and address of the filer's primary employer;

(iii) a brief description of the filer's employment, including the filer's occupation and,

as applicable, job title;

(iv) for each entity in which the filer is an owner or an officer:

(A) the name of the entity;

(B) a brief description of the type of business or activity conducted by the entity; and

(C) the filer's position in the entity;

(v) for each entity that has paid \$5,000 or more in income to the filer within the

one-year period ending immediately before the date of the disclosure form:

(A) the name of the entity; and

(B) a brief description of the type of business [of] or activity conducted by the entity;

(vi) for each entity in which the filer holds any stocks or bonds having a fair market value of \$5,000 or more as of the date of the disclosure form, but excluding funds that are managed by a third party, including blind trusts, managed investment accounts, and mutual funds:

(A) the name of the entity; and

(B) a brief description of the type of business or activity conducted by the entity;

(vii) for each entity not listed in Subsections (4)(b)(iv) through (4)(b)(vi), in which the filer serves on the board of directors or in any other type of formal advisory capacity:

(A) the name of the entity or organization;

(B) a brief description of the type of business or activity conducted by the entity; and

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(C) the type of advisory position held by the filer;

(viii) at the option of the filer, any real property in which the filer holds an ownership or other financial interest that the filer believes may constitute a conflict of interest, including:

(A) a description of the real property; and

(B) a description of the type of interest held by the filer in the property;

(ix) the name of the filer's spouse and any other adult residing in the filer's household that is not related by blood or marriage, as applicable;

(x) a brief description of the employment and occupation of the filer's spouse and any other adult residing in the filer's household that is not related by blood or marriage, as applicable;

(xi) at the option of the filer, a description of any other matter or interest that the filer believes may constitute a conflict of interest;

(xii) the date the form was completed;

(xiii) a statement that the filer believes that the form is true and accurate to the best of the filer's knowledge; and

(xiv) the signature of the filer.

(c) (i) The financial disclosure shall be filed with:

(A) the secretary of the Senate, for a legislator that is a senator;

(B) the chief clerk of the House of Representatives, for a legislator that is a representative; or

(C) the lieutenant governor, for all other regulated officeholders.

(ii) The lieutenant governor, the secretary of the Senate, and the chief clerk of the House of Representatives shall ensure that blank financial disclosure forms are available on the Internet and at their offices.

(d) Financial disclosure forms that are filed under the procedures and requirements of this section shall be made available to the public:

(i) on the Internet; and

(ii) at the office where the form was filed.

(e) This section's requirement to disclose a conflict of interest does not prohibit a regulated officeholder from voting or acting on any matter.

(5) A regulated officeholder who violates the requirements of Subsection (2) is guilty

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of a class B misdemeanor.

Section 67. Section 76-9-702 is amended to read:

### 76-9-702. Lewdness.

(1) A person is guilty of lewdness if the person under circumstances not amounting to rape, object rape, forcible sodomy, forcible sexual abuse, aggravated sexual assault, or an attempt to commit any of these offenses, performs any of the following acts in a public place or under circumstances which the person should know will likely cause affront or alarm to, on, or in the presence of another who is 14 years of age or older:

(a) an act of sexual intercourse or sodomy;

(b) exposes his or her genitals, the female breast below the top of the areola, the buttocks, the anus, or the pubic area;

(c) masturbates; or

(d) any other act of lewdness.

(2) (a) A person convicted the first or second time of a violation of Subsection (1) is guilty of a class B misdemeanor, except under Subsection (2)(b).

(b) A person convicted of a violation of Subsection (1) is guilty of a third degree felony if at the time of the violation:

(i) the person is a sex offender as defined in Section 77-27-21.7;

(ii) the person has been previously convicted two or more times of violating Subsection (1); or

(iii) the person has previously been convicted of a violation of Subsection (1) and has also previously been convicted of a violation of Section 76-9-702.5.

(c) (i) For purposes of this Subsection (2) and Subsection [77-27-21.5(1)(n)] 77-41-102(16), a plea of guilty or nolo contendere to a charge under this section that is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction.

(ii) This Subsection (2)(c) also applies if the charge under this Subsection (2) has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

(3) A woman's breast feeding, including breast feeding in any location where the woman otherwise may rightfully be, does not under any circumstance constitute a lewd act, irrespective of whether or not the breast is covered during or incidental to feeding.

Section 68. Section 76-9-702.1 is amended to read:

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### **76-9-702.1. Sexual battery.**

(1) A person is guilty of sexual battery if the person, under circumstances not amounting to an offense under Subsection (2), intentionally touches, whether or not through clothing, the anus, buttocks, or any part of the genitals of another person, or the breast of a female person, and the actor's conduct is under circumstances the actor knows or should know will likely cause affront or alarm to the person touched.

(2) Offenses referred to in Subsection (1) are:

(a) rape, Section 76-5-402;

(b) rape of a child, Section 76-5-402.1;

(c) object rape, Section 76-5-402.2;

(d) object rape of a child, Section 76-5-402.3;

(e) forcible sodomy, Subsection 76-5-403(2);

(f) sodomy on a child, Section 76-5-403.1;

(g) forcible sexual abuse, Section 76-5-404;

(h) sexual abuse of a child, Subsection 76-5-404.1(2);

(i) aggravated sexual abuse of a child, Subsection 76-5-404.1(4);

(j) aggravated sexual assault, Section 76-5-405; and

(k) an attempt to commit any offense under this Subsection (2).

(3) Sexual battery is a class A misdemeanor.

(4) For purposes of Subsection [~~77-27-21.5(1)(n)~~] 77-41-102(16) only, a plea of guilty or nolo contendere to a charge under this section that is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction. This Subsection (4) also applies if the charge under this section has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

Section 69. Section 76-9-702.5 is amended to read:

### **76-9-702.5. Lewdness involving a child.**

(1) A person is guilty of lewdness involving a child if the person under circumstances not amounting to rape of a child, object rape of a child, sodomy upon a child, sexual abuse of a child, aggravated sexual abuse of a child, or an attempt to commit any of those offenses, intentionally or knowingly does any of the following to, or in the presence of, a child who is under 14 years of age:

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(a) performs an act of sexual intercourse or sodomy;

(b) exposes his or her genitals, the female breast below the top of the areola, the buttocks, the anus, or the pubic area:

(i) in a public place; or

(ii) in a private place:

(A) under circumstances the person should know will likely cause affront or alarm; or

(B) with the intent to arouse or gratify the sexual desire of the actor or the child;

(c) masturbates;

(d) under circumstances not amounting to sexual exploitation of a child under Section 76-5b-201, causes a child under the age of 14 years to expose his or her genitals, anus, or breast, if female, to the actor, with the intent to arouse or gratify the sexual desire of the actor or the child; or

(e) performs any other act of lewdness.

(2) (a) Lewdness involving a child is a class A misdemeanor, except under Subsection (2)(b).

(b) Lewdness involving a child is a third degree felony if at the time of the violation:

(i) the person is a sex offender as defined in Section 77-27-21.7; or

(ii) the person has previously been convicted of a violation of this section.

Section 70. Section 76-9-1008 is amended to read:

**76-9-1008. Proof of immigration status required to receive public benefits.**

(1) (a) An agency that provides state or local public benefits as defined in 8 U.S.C. Sec. 1621 shall comply with Section [63G-11-104] 63G-12-402 and shall also comply with this section, except:

(i) as provided in Subsection [63G-11-104(4)] 63G-12-402(3)(g) or (k); or

(ii) when compliance is exempted by federal law or when compliance could reasonably be expected to be grounds for the federal government to withhold federal Medicaid funding.

(b) The agency shall verify a person's lawful presence in the United States by requiring that the applicant under this section sign a certificate under penalty of perjury, stating that the applicant:

(i) is a United States citizen; or

(ii) is a qualified alien as defined by 8 U.S.C. Sec. 1641.

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(c) The certificate under Subsection (1)(b) shall include a statement advising the signer that providing false information subjects the signer to penalties for perjury.

(d) The signature under this Subsection (1) may be executed in person or electronically.

(e) When an applicant who is a qualified alien has executed the certificate under this section, the applicant's eligibility for benefits shall be verified by the agency through the federal SAVE program or an equivalent program designated by the United States Department of Homeland Security.

(2) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement of representation in a certificate executed under this section is guilty of public assistance fraud under Section 76-8-1205.

(3) If the certificate constitutes a false claim of United States citizenship under 18 U.S.C. Sec. 911, the agency requiring the certificate shall file a complaint with the United States Attorney for the applicable federal judicial district based upon the venue in which the certificate was executed.

(4) Agencies may, with the concurrence of the Utah Attorney General, adopt variations to the requirements of the provisions of this section that provide for adjudication of unique individual circumstances where the verification procedures in this section would impose unusual hardship on a legal resident of this state.

(5) If an agency under Subsection (1) receives verification that a person making an application for any benefit, service, or license is not a qualified alien, the agency shall provide the information to the local law enforcement agency for enforcement of Section 76-8-1205 unless prohibited by federal mandate.

Section 71. Section 76-10-104.1 is amended to read:

### 76-10-104.1. Providing tobacco paraphernalia to minors -- Penalties.

(1) For purposes of this section:

(a) "Provides":

(i) includes selling, giving, furnishing, sending, or causing to be sent; and

(ii) does not include the acts of the United States Postal Service or other common carrier when engaged in the business of transporting and delivering packages for others or the acts of a person, whether compensated or not, who transports or delivers a package for another

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person without any reason to know of the package's content.

(b) "Tobacco paraphernalia":

(i) means any equipment, product, or material of any kind which is used, intended for use, or designed for use to package, repackage, store, contain, conceal, ingest, inhale, or otherwise introduce a cigar, cigarette, or tobacco in any form into the human body, including:

(A) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(B) water pipes;

(C) carburetion tubes and devices;

(D) smoking and carburetion masks;

(E) roach clips: meaning objects used to hold burning material, such as a cigarette, that has become too small or too short to be held in the hand;

(F) chamber pipes;

(G) carburetor pipes;

(H) electric pipes;

(I) air-driven pipes;

(J) chillums;

(K) bongs; and

(L) ice pipes or chillers; and

(ii) does not include matches or lighters.

(2) (a) It is unlawful for a person to[;] knowingly, intentionally, recklessly, or with criminal negligence provide any tobacco paraphernalia to any person under 19 years of age.

(b) A person who violates this section is guilty of a class C misdemeanor on the first offense and a class B misdemeanor on subsequent offenses.

Section 72. Section 76-10-501 is amended to read:

### 76-10-501. Definitions.

As used in this part:

(1) (a) "Antique firearm" means:

(i) any firearm, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898; or

(ii) a firearm that is a replica of any firearm described in this Subsection (1)(a), if the

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replica:

(A) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or

(B) uses rimfire or centerfire fixed ammunition which is:

(I) no longer manufactured in the United States; and

(II) is not readily available in ordinary channels of commercial trade; or

(iii) (A) that is a muzzle loading rifle, shotgun, or pistol; and

(B) is designed to use black powder, or a black powder substitute, and cannot use fixed ammunition.

(b) "Antique firearm" does not include:

(i) a weapon that incorporates a firearm frame or receiver;

(ii) a firearm that is converted into a muzzle loading weapon; or

(iii) a muzzle loading weapon that can be readily converted to fire fixed ammunition by

replacing the:

(A) barrel;

(B) bolt;

(C) breechblock; or

(D) any combination of Subsection (1)(b)(iii)(A), (B), or (C).

(2) "Bureau" means the Bureau of Criminal Identification created in Section 53-10-201 within the Department of Public Safety.

(3) (a) "Concealed dangerous weapon" means a dangerous weapon that is:

(i) covered, hidden, or secreted in a manner that the public would not be aware of its presence; and

(ii) readily accessible for immediate use.

(b) A dangerous weapon is not a concealed dangerous weapon if it is a firearm which is unloaded and is securely encased.

(4) "Criminal history background check" means a criminal background check conducted by a licensed firearms dealer on every purchaser of a handgun, except a Federal Firearms Licensee, through the bureau or the local law enforcement agency where the firearms dealer conducts business.

(5) "Curio or relic firearm" means a firearm that:

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(a) is of special interest to a collector because of a quality that is not associated with firearms intended for:

(i) sporting use;

(ii) use as an offensive weapon; or

(iii) use as a defensive weapon;

(b) (i) was manufactured at least 50 years before the current date; and

(ii) is not a replica of a firearm described in Subsection (5)(b)(i);

(c) is certified by the curator of a municipal, state, or federal museum that exhibits firearms to be a curio or relic of museum interest;

(d) derives a substantial part of its monetary value:

(i) from the fact that the firearm is:

(A) novel;

(B) rare; or

(C) bizarre; or

(ii) because of the firearm's association with an historical:

(A) figure;

(B) period; or

(C) event; and

(e) has been designated as a curio or relic firearm by the director of the United States Treasury Department Bureau of Alcohol, Tobacco, and Firearms under 27 C.F.R. Sec. ~~[178.11]~~ 478.11.

(6) (a) "Dangerous weapon" means an item that in the manner of its use or intended use is capable of causing death or serious bodily injury.

(b) The following factors shall be used in determining whether a knife, or another item, object, or thing not commonly known as a dangerous weapon is a dangerous weapon:

(i) the character of the instrument, object, or thing;

(ii) the character of the wound produced, if any;

(iii) the manner in which the instrument, object, or thing was used; and

(iv) the other lawful purposes for which the instrument, object, or thing may be used.

(c) "Dangerous weapon" does not include an explosive, chemical, or incendiary device as defined by Section 76-10-306.

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(7) "Dealer" means a person who is:

(a) licensed under 18 U.S.C. Sec. 923; and

(b) engaged in the business of selling, leasing, or otherwise transferring a handgun, whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

(8) "Enter" means intrusion of the entire body.

(9) "Federal Firearms Licensee" means a person who:

(a) holds a valid Federal Firearms License issued under 18 U.S.C. Sec. 923; and

(b) is engaged in the activities authorized by the specific category of license held.

(10) (a) "Firearm" means a pistol, revolver, shotgun, short barrel shotgun, rifle or short barrel rifle, or a device that could be used as a dangerous weapon from which is expelled a projectile by action of an explosive.

(b) As used in Sections 76-10-526 and 76-10-527, "firearm" does not include an antique firearm.

(11) "Firearms transaction record form" means a form created by the bureau to be completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.

(12) "Fully automatic weapon" means a firearm which fires, is designed to fire, or can be readily restored to fire, automatically more than one shot without manual reloading by a single function of the trigger.

(13) (a) "Handgun" means a pistol, revolver, or other firearm of any description, loaded or unloaded, from which a shot, bullet, or other missile can be discharged, the length of which, not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

(b) As used in Sections 76-10-520, 76-10-521, and 76-10-522, "handgun" and "pistol or revolver" do not include an antique firearm.

(14) "House of worship" means a church, temple, synagogue, mosque, or other building set apart primarily for the purpose of worship in which religious services are held and the main body of which is kept for that use and not put to any other use inconsistent with its primary purpose.

(15) "Prohibited area" means a place where it is unlawful to discharge a firearm.

(16) "Readily accessible for immediate use" means that a firearm or other dangerous weapon is carried on the person or within such close proximity and in such a manner that it can be retrieved and used as readily as if carried on the person.

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(17) "Residence" means an improvement to real property used or occupied as a primary or secondary residence.

(18) "Securely encased" means not readily accessible for immediate use, such as held in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other storage area of a motor vehicle, not including a glove box or console box.

(19) "Short barrel shotgun" or "short barrel rifle" means a shotgun having a barrel or barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels of fewer than 16 inches in length, or a dangerous weapon made from a rifle or shotgun by alteration, modification, or otherwise, if the weapon as modified has an overall length of fewer than 26 inches.

(20) "State entity" means a department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

(21) "Violent felony" has the same meaning as defined in Section 76-3-203.5.

Section 73. Section 76-10-526 is amended to read:

**76-10-526. Criminal background check prior to purchase of a firearm -- Fee -- Exemption for concealed firearm permit holders and law enforcement officers.**

(1) For purposes of this section, "valid permit to carry a concealed firearm" does not include a temporary permit issued under Section 53-5-705.

(2) (a) To establish personal identification and residence in this state for purposes of this part, a dealer shall require an individual receiving a firearm to present one photo identification on a form issued by a governmental agency of the state.

(b) A dealer may not accept a driving privilege card issued under Section 53-3-207 as proof of identification for the purpose of establishing personal identification and residence in this state as required under this Subsection (2).

(3) (a) A criminal history background check is required for the sale of a firearm by a licensed firearm dealer in the state.

(b) Subsection (3)(a) does not apply to the sale of a firearm to a Federal Firearms Licensee.

(4) (a) An individual purchasing a firearm from a dealer shall consent in writing to a criminal background check, on a form provided by the bureau.

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(b) The form shall contain the following information:

(i) the dealer identification number;

(ii) the name and address of the individual receiving the firearm;

(iii) the date of birth, height, weight, eye color, and hair color of the individual receiving the firearm; and

(iv) the Social Security number or any other identification number of the individual receiving the firearm.

(5) (a) The dealer shall send the information required by Subsection (4) to the bureau immediately upon its receipt by the dealer.

(b) A dealer may not sell or transfer a firearm to an individual until the dealer has provided the bureau with the information in Subsection (4) and has received approval from the bureau under Subsection (7).

(6) The dealer shall make a request for criminal history background information by telephone or other electronic means to the bureau and shall receive approval or denial of the inquiry by telephone or other electronic means.

(7) When the dealer calls for or requests a criminal history background check, the bureau shall:

(a) review the criminal history files, including juvenile court records, to determine if the individual is prohibited from purchasing, possessing, or transferring a firearm by state or federal law;

(b) inform the dealer that:

(i) the records indicate the individual is prohibited; or

(ii) the individual is approved for purchasing, possessing, or transferring a firearm;

(c) provide the dealer with a unique transaction number for that inquiry; and

(d) provide a response to the requesting dealer during the call for a criminal background check, or by return call, or other electronic means, without delay, except in case of electronic failure or other circumstances beyond the control of the bureau, the bureau shall advise the dealer of the reason for the delay and give the dealer an estimate of the length of the delay.

(8) (a) The bureau may not maintain any records of the criminal history background check longer than 20 days from the date of the dealer's request, if the bureau determines that

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the individual receiving the firearm is not prohibited from purchasing, possessing, or transferring the firearm under state or federal law.

(b) However, the bureau shall maintain a log of requests containing the dealer's federal firearms number, the transaction number, and the transaction date for a period of 12 months.

(9) If the criminal history background check discloses information indicating that the individual attempting to purchase the firearm is prohibited from purchasing, possessing, or transferring a firearm, the bureau shall inform the law enforcement agency in the jurisdiction where the individual resides.

(10) If an individual is denied the right to purchase a firearm under this section, the individual may review the individual's criminal history information and may challenge or amend the information as provided in Section 53-10-108.

(11) The bureau shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to ensure the identity, confidentiality, and security of all records provided by the bureau under this part are in conformance with the requirements of the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

(12) (a) (i) A dealer shall collect a criminal history background check fee of \$7.50 for the sale of a firearm under this section.

(ii) This fee remains in effect until changed by the bureau through the process under Section 63J-1-504.

(b) (i) The dealer shall forward at one time all fees collected for criminal history background checks performed during the month to the bureau by the last day of the month following the sale of a firearm.

(ii) The bureau shall deposit the fees in the General Fund as dedicated credits to cover the cost of administering and conducting the criminal history background check program.

(13) An individual with a concealed firearm permit issued under Title 53, Chapter 5, Part 7, Concealed Firearm Act, is exempt from the background check and corresponding fee required in this section for the purchase of a firearm if:

(a) the individual presents the individual's concealed firearm permit to the dealer prior to purchase of the firearm; and

(b) the dealer verifies with the bureau that the individual's concealed firearm permit is valid.

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(14) A law enforcement officer, as defined in Section 53-13-103, is exempt from the background check fee required in this section for the purchase of a personal firearm to be carried while off-duty if the law enforcement officer verifies current employment by providing a letter of good standing from the officer's commanding officer and current law enforcement photo identification. This section may only be used by a law enforcement officer to purchase a personal firearm once in a 24-month period.

Section 74. Section 76-10-919 is amended to read:

**76-10-919. Person may bring action for injunctive relief and damages -- Treble damages -- Recovery of actual damages or civil penalty by state or political subdivisions -- Immunity of political subdivisions from damages, costs, or attorney fees.**

(1) (a) A person who is a citizen of this state or a resident of this state and who is injured or is threatened with injury in his business or property by a violation of the Utah Antitrust Act may bring an action for injunctive relief and damages, regardless of whether the person dealt directly or indirectly with the defendant. This remedy is in addition to any other remedies provided by law. It may not diminish or offset any other remedy.

(b) Subject to the provisions of Subsections (3), (4), and (5), the court shall award three times the amount of damages sustained, plus the cost of suit and [a] reasonable attorney fees, in addition to granting any appropriate temporary, preliminary, or permanent injunctive relief.

(2) (a) If the court determines that a judgment in the amount of three times the damages awarded plus attorney fees and costs will directly cause the insolvency of the defendant, the court shall reduce the amount of judgment to the highest sum that would not cause the defendant's insolvency.

(b) The court may not reduce a judgment to an amount less than the amount of damages sustained plus the costs of suit and [a] reasonable attorney fees.

(3) The state or any of its political subdivisions may recover the actual damages it sustains, or the civil penalty provided by the Utah Antitrust Act, in addition to injunctive relief, costs of suit, and reasonable attorney fees.

(4) No damages, costs, or attorney fees may be recovered under this section:

(a) from any political subdivision;

(b) from the official or employee of any political subdivision acting in an official capacity; or

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(c) against any person based on any official action directed by a political subdivision or its official or employee acting in an official capacity.

(5) Subsection (4) does not apply to cases filed before April 27, 1987, unless the defendant establishes and the court determines that in light of all the circumstances, including the posture of litigation and the availability of alternative relief, it would be inequitable not to apply Subsection (4) to a pending case.

(6) When a defendant has been sued in one or more actions by both direct and indirect purchasers, whether in state court or federal court, a defendant shall be entitled to prove as a partial or complete defense to a claim for damages that the damages incurred by the plaintiff or plaintiffs have been passed on to others who are entitled to recover so as to avoid duplication of recovery of damages. In an action by indirect purchasers, any damages or settlement amounts paid to direct purchasers for the same alleged antitrust violations shall constitute a defense in the amount paid on a claim by indirect purchasers under this chapter so as to avoid duplication of recovery of damages.

(7) It shall be presumed, in the absence of proof to the contrary, that the injured persons who dealt directly with the defendant incurred at least 1/3 of the damages, and shall, therefore, recover at least 1/3 of the awarded damages. It shall also be presumed, in the absence of proof to the contrary, that the injured persons who dealt indirectly with the defendant incurred at least 1/3 of the damages, and shall, therefore, recover at least 1/3 of the awarded damages. The final 1/3 of the damages shall be awarded by the court to those injured persons determined by the court as most likely to have absorbed the damages.

(8) There is a presumption, in the absence of proof to the contrary and subject to Subsection (7), that each level in a product's or service's distribution chain passed on any and all increments in its cost due to an increase in the cost of an ingredient or a component product or service that was caused by a violation of this chapter. This amount will be presumed, in the absence of evidence to the contrary, to be equal to the change in the cost, in dollars and cents, of the ingredient, component product, or service to its first purchaser.

(9) The attorney general shall be notified by the plaintiff about the filing of any class action involving antitrust violations that includes plaintiffs from this state. The attorney general shall receive a copy of each filing from each plaintiff. The attorney general may, in his or her discretion, intervene or file amicus briefs in the case, and may be heard on the question

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of the fairness or appropriateness of any proposed settlement agreement.

(10) If, in a class action or parens patriae action filed under this chapter, including the settlement of any action, it is not feasible to return any part of the recovery to the injured plaintiffs, the court shall order the residual funds be applied to benefit the specific class of injured plaintiffs, to improve antitrust enforcement generally by depositing the residual funds into the Attorney General Litigation Fund created by Section 76-10-922, or both.

(11) In any action brought under this chapter, the court shall approve all attorney fees and arrangements for the payment of attorney fees, including contingency fee agreements.

Section 75. Section 76-10-1201 is amended to read:

### **76-10-1201. Definitions.**

For the purpose of this part:

(1) "Blinder rack" means an opaque cover that covers the lower 2/3 of a material so that the lower 2/3 of the material is concealed from view.

(2) "Contemporary community standards" means those current standards in the vicinage where an offense alleged under this part has occurred, is occurring, or will occur.

(3) "Distribute" means to transfer possession of materials whether with or without consideration.

(4) "Exhibit" means to show.

(5) (a) "Harmful to minors" means that quality of any description or representation, in whatsoever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when it:

(i) taken as a whole, appeals to the prurient interest in sex of minors;

(ii) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(iii) taken as a whole, does not have serious value for minors.

(b) Serious value includes only serious literary, artistic, political or scientific value for minors.

(6) (a) "Knowingly," regarding material or a performance, means an awareness, whether actual or constructive, of the character of the material or performance.

(b) As used in this Subsection (6), a person has constructive knowledge if a reasonable inspection or observation under the circumstances would have disclosed the nature of the

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subject matter and if a failure to inspect or observe is either for the purpose of avoiding the disclosure or is criminally negligent as described in Section 76-2-103.

(7) "Material" means anything printed or written or any picture, drawing, photograph, motion picture, or pictorial representation, or any statue or other figure, or any recording or transcription, or any mechanical, chemical, or electrical reproduction, or anything which is or may be used as a means of communication. Material includes undeveloped photographs, molds, printing plates, and other latent representational objects.

(8) "Minor" means any person less than 18 years of age.

(9) "Negligently" means simple negligence, the failure to exercise that degree of care that a reasonable and prudent person would exercise under like or similar circumstances.

(10) "Nudity" means:

(a) the showing of the human male or female genitals, pubic area, or buttocks, with less than an opaque covering;

(b) the showing of a female breast with less than an opaque covering, or any portion of the female breast below the top of the areola; or

(c) the depiction of covered male genitals in a discernibly turgid state.

(11) "Performance" means any physical human bodily activity, whether engaged in alone or with other persons, including singing, speaking, dancing, acting, simulating, or pantomiming.

(12) "Public place" includes a place to which admission is gained by payment of a membership or admission fee, however designated, notwithstanding its being designated a private club or by words of like import.

(13) "Sado[=]masochistic abuse" means:

(a) flagellation or torture by or upon a person who is nude or clad in undergarments, a mask, or in a revealing or bizarre costume; or

(b) the condition of being fettered, bound, or otherwise physically restrained on the part of a person clothed as described in Subsection (13)(a).

(14) "Sexual conduct" means acts of masturbation, sexual intercourse, or any touching of a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is a female, breast, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent or actual sexual stimulation or gratification.

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(15) "Sexual excitement" means a condition of human male or female genitals when in a state of sexual stimulation or arousal, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

Section 76. Section 77-36-2.5 is amended to read:

**77-36-2.5. Conditions for release after arrest for domestic violence -- Jail release agreements -- Jail release court orders.**

(1) (a) Upon arrest for domestic violence, and before the person is released on bail, recognizance, or otherwise, the person may not personally contact the alleged victim of domestic violence.

(b) A person who violates Subsection (1)(a) is guilty of a class B misdemeanor.

(2) Upon arrest for domestic violence, a person may not be released on bail, recognizance, or otherwise prior to the close of the next court day following the arrest, unless as a condition of that release the person is ordered by the court or agrees in writing that until further order of the court, the person will:

(a) have no personal contact with the alleged victim;

(b) not threaten or harass the alleged victim; and

(c) not knowingly enter onto the premises of the alleged victim's residence or any premises temporarily occupied by the alleged victim.

(3) (a) The jail release agreement or jail release court order expires at midnight on the day on which the person arrested appears in person or by video for arraignment or an initial appearance.

(b) (i) If criminal charges have not been filed against the arrested person, the court may, for good cause and in writing, extend the jail release agreement or jail release court order beyond the time period under Subsection (3)(a) as provided in Subsection (3)(b)(ii).

(ii) (A) The court may extend a jail release agreement or jail release court order under Subsection (3)(b)(i) to no longer than midnight of the third business day after the arrested person's first court appearance.

(B) If criminal charges are filed against the arrested person within the three business days under Subsection (3)(b)(ii)(A), the jail release agreement or the jail release court order continues in effect until the arrested person appears in person or by video at the arrested person's next scheduled court appearance.

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(c) If criminal charges have been filed against the arrested person the court may, upon the request of the prosecutor or the victim or upon the court's own motion, issue a pretrial protective order.

(4) As a condition of release, the court may order the defendant to participate in an electronic or other monitoring program and to pay the costs associated with the program.

(5) (a) Subsequent to an arrest for domestic violence, an alleged victim may waive in writing any or all of the release conditions described in Subsection (2)(a) or (c). Upon waiver, those release conditions do not apply to the alleged perpetrator.

(b) A court or magistrate may modify the release conditions described in Subsections ~~[(1)]~~ (2)(a) or (c), in writing or on the record, and only for good cause shown.

(6) (a) When a person is released pursuant to Subsection (2), the releasing agency shall notify the arresting law enforcement agency of the release, conditions of release, and any available information concerning the location of the victim. The arresting law enforcement agency shall then make a reasonable effort to notify the victim of that release.

(b) (i) When a person is released pursuant to Subsection (2) based on a written jail release agreement, the releasing agency shall transmit that information to the statewide domestic violence network described in Section 78B-7-113.

(ii) When a person is released pursuant to Subsection (2) or (3) based upon a jail release court order or if a jail release agreement is modified pursuant to Subsection (5)(b), the court shall transmit that order to the statewide domestic violence network described in Section 78B-7-113.

(iii) A copy of the jail release court order or written jail release agreement shall be given to the person by the releasing agency before the person is released.

(c) This Subsection (6) does not create or increase liability of a law enforcement officer or agency, and the good faith immunity provided by Section 77-36-8 is applicable.

(7) (a) If a law enforcement officer has probable cause to believe that a person has violated a jail release court order or jail release agreement executed pursuant to Subsection (2) the officer shall, without a warrant, arrest the alleged violator.

(b) Any person who knowingly violates a jail release court order or jail release agreement executed pursuant to Subsection (2) is guilty as follows:

(i) if the original arrest was for a felony, an offense under this section is a third degree

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felony; or

(ii) if the original arrest was for a misdemeanor, an offense under this section is a class A misdemeanor.

(c) City attorneys may prosecute class A misdemeanor violations under this section.

(8) An individual who was originally arrested for a felony under this chapter and released pursuant to this section may subsequently be held without bail if there is substantial evidence to support a new felony charge against him.

(9) At the time an arrest for domestic violence is made, the arresting officer shall provide the alleged victim with written notice containing:

(a) the release conditions described in Subsection (2), and notice that those release conditions shall be ordered by a court or must be agreed to by the alleged perpetrator prior to release;

(b) notification of the penalties for violation of any jail release court order or any jail release agreement executed under Subsection (2);

(c) notification that the alleged perpetrator is to personally appear in court on the next day the court is open for business after the day of the arrest;

(d) the address of the appropriate court in the district or county in which the alleged victim resides;

(e) the availability and effect of any waiver of the release conditions; and

(f) information regarding the availability of and procedures for obtaining civil and criminal protective orders with or without the assistance of an attorney.

(10) At the time an arrest for domestic violence is made, the arresting officer shall provide the alleged perpetrator with written notice containing:

(a) notification that the alleged perpetrator may not contact the alleged victim before being released;

(b) the release conditions described in Subsection (2) and notice that those release conditions shall be ordered by a court or shall be agreed to by the alleged perpetrator prior to release;

(c) notification of the penalties for violation of any jail release court order or any written jail release agreement executed under Subsection (2); and

(d) notification that the alleged perpetrator is to personally appear in court on the next

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day the court is open for business after the day of the arrest.

(11) (a) If the alleged perpetrator fails to personally appear in court as scheduled, the jail release court order or jail release agreement does not expire and continues in effect until the alleged perpetrator makes the personal appearance in court as required by Section 77-36-2.6.

(b) If, when the alleged perpetrator personally appears in court as required by Section 77-36-2.6, criminal charges have not been filed against the arrested person, the court may allow the jail release court order or jail release agreement to expire at midnight on the day of the court appearance or may extend it for good cause.

(12) In addition to the provisions of Subsections (2) through (8), because of the unique and highly emotional nature of domestic violence crimes, the high recidivism rate of violent offenders, and the demonstrated increased risk of continued acts of violence subsequent to the release of an offender who has been arrested for domestic violence, it is the finding of the Legislature that domestic violence crimes, as defined in Section 77-36-1, are crimes for which bail may be denied if there is substantial evidence to support the charge, and if the court finds by clear and convincing evidence that the alleged perpetrator would constitute a substantial danger to an alleged victim of domestic violence if released on bail.

Section 77. Section 77-38-302 is amended to read:

### 77-38-302. Definitions.

As used in this part:

(1) "Convicted person" means a person who has been convicted of a crime.

(2) "Conviction" means an adjudication by a federal or state court resulting from a trial or plea, including a plea of no contest, nolo contendere, a finding of not guilty due to insanity, or not guilty but having a mental illness regardless of whether the sentence was imposed or suspended.

(3) "Fund" means the Crime Victim Reparations Fund created in Section 51-9-404.

(4) "Memorabilia" means any tangible property of a [defendant] convicted person or a representative or assignee of a [defendant] convicted person, the value of which is enhanced by the notoriety gained from the criminal activity for which the person was convicted.

(5) "Notoriety of crimes contract" means a contract or other agreement with a convicted person, or a representative or assignee of a convicted person, with respect to:

(a) the reenactment of a crime in any manner including a movie, book, magazine

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article, Internet website, recording, phonograph record, radio or television presentation, or live entertainment of any kind;

(b) the expression of the convicted person's thoughts, feelings, opinions, or emotions regarding a crime involving or causing personal injury, death, or property loss as a direct result of the crime; or

(c) the payment or exchange of any money or other consideration or the proceeds or profits that directly or indirectly result from the notoriety of the crime.

(6) "Office" means the Utah Office for Victims of Crime.

(7) "Profit" means any income or benefit:

(a) over and above the fair market value of tangible property that is received upon the sale or transfer of memorabilia; or

(b) any money, negotiable instruments, securities, or other consideration received or contracted for gain which is traceable to a notoriety of crimes contract.

Section 78. Section 77-38-303 is amended to read:

**77-38-303. Profit from sale of memorabilia or notoriety of crimes contract --**

**Deposit in Crime Victim Reparations Fund -- Penalty.**

(1) Any convicted person or a representative or assignee of a convicted person who receives a profit from the sale or transfer of memorabilia shall remit to the fund:

(a) a complete, itemized accounting of the transaction, including:

(i) a description of each item sold;

(ii) the amount received for each item;

(iii) the estimated fair market value of each item; and

(iv) the name and address of the purchaser of each item; and

(b) a check or money order for the amount of the profit, which shall be the difference between the amount received for the item and the estimated fair market value of the item.

(2) Any person who willfully violates Subsection (1) may be assessed a civil penalty of up to \$1,000 per item sold or transferred or three times the amount of the unremitted profit, whichever is greater.

(3) (a) Any person or entity who enters into a notoriety of crime contract with a convicted person or with a representative or assignee of a convicted person shall pay to the fund any profit which by the terms of the contract would otherwise be owing to the convicted

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person or representative or assignee of the convicted person.

(b) A convicted person or a representative or assignee of a convicted person who has received any profit from a notoriety of crime contract shall remit the profit to the fund. Any future profit which, by the terms of the contract, would otherwise be owing to the convicted person or a representative or assignee of a convicted person shall be paid to the fund as required under Subsection (3)(a).

(4) Upon receipt of [monies] money under Subsection (3), the office shall distribute the amounts to the victim of the crime from which the profits are derived if any restitution remains outstanding. If no restitution is outstanding, the [monies] money shall be deposited into the fund.

(5) (a) Any person or entity who willfully violates Subsection (3) may be assessed a civil penalty of up to \$1,000,000.00, or up to three times the total value of the original notoriety of crime contract, whichever is greater.

(b) Any civil penalty ordered under this Subsection shall be paid to the fund.

(6) The prosecuting agency or the attorney general may bring an action to enforce the provisions of this chapter in the court of conviction.

(7) A court shall enter an order to remit funds as provided in this chapter if it finds by a preponderance of the evidence any violation of Subsection (1) or (3).

Section 79. Section 77-41-103 is amended to read:

### **77-41-103. Department duties.**

(1) The department, to assist in investigating kidnapping and sex-related crimes, and in apprehending offenders, shall:

(a) develop and operate a system to collect, analyze, maintain, and disseminate information on offenders and sex and kidnap offenses;

(b) make information listed in Subsection 77-41-110(4) available to the public; and

(c) share information provided by an offender under this chapter that may not be made available to the public under Subsection 77-41-110(4), but only:

(i) for the purposes under this chapter; or

(ii) in accordance with Section 63G-2-206.

(2) Any law enforcement agency shall, in the manner prescribed by the department, inform the department of:

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(a) the receipt of a report or complaint of an offense listed in Subsection 77-41-102[(7)](9) or [(14)] (16), within three business days; and

(b) the arrest of a person suspected of any of the offenses listed in Subsection 77-41-102[(7)](9) or [(14)] (16), within five business days.

(3) Upon convicting a person of any of the offenses listed in Subsection 77-41-102[(7)](9) or [(14)] (16), the convicting court shall within three business days forward a copy of the judgment and sentence to the department.

(4) The department shall:

(a) provide the following additional information when available:

(i) the crimes the offender has been convicted of or adjudicated delinquent for;

(ii) a description of the offender's primary and secondary targets; and

(iii) any other relevant identifying information as determined by the department;

(b) maintain the Sex Offender and Kidnap Offender Notification and Registration website; and

(c) ensure that the registration information collected regarding an offender's enrollment or employment at an educational institution is:

(i) (A) promptly made available to any law enforcement agency that has jurisdiction where the institution is located if the educational institution is an institution of higher education; or

(B) promptly made available to the district superintendent of the school district where the offender is enrolled if the educational institution is an institution of primary education; and

(ii) entered into the appropriate state records or data system.

Section 80. Section 78A-6-1302 is amended to read:

**78A-6-1302. Procedure -- Standard.**

(1) When a motion is filed pursuant to Section 78A-6-1301 raising the issue of a minor's competency to proceed, or when the court raises the issue of a minor's competency to proceed, the juvenile court in which proceedings are pending shall stay all delinquency proceedings.

(2) If a motion for inquiry is opposed by either party, the court shall, prior to granting or denying the motion, hold a limited hearing solely for the purpose of determining the sufficiency of the motion. If the court finds that the allegations of incompetency raise a bona

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if there is any doubt as to the minor's competency to proceed, it shall enter an order for an evaluation of the minor's competency to proceed, and shall set a date for a hearing on the issue of the minor's competency.

(3) After the granting of a motion, and prior to a full competency hearing, the court may order the Department of Human Services to evaluate the minor and to report to the court concerning the minor's mental condition.

(4) The minor shall be evaluated by a mental health examiner with experience in juvenile forensic evaluations and juvenile brain development, who is not involved in the current treatment of the minor. If it becomes apparent that the minor may be not competent due to an intellectual disability or related condition, the examiner shall be experienced in intellectual disability or related condition evaluations of minors.

(5) The petitioner or other party, as directed by the court, shall provide all information and materials to the examiners relevant to a determination of the minor's competency including:

(a) the motion;

(b) the arrest or incident reports pertaining to the charged offense;

(c) the minor's known delinquency history information;

(d) known prior mental health evaluations and treatments; and

(e) consistent with 20 U.S.C. Sec. 1232G (b)(1)(E)(ii)(I), records pertaining to the minor's education.

(6) The minor's parents or guardian, the prosecutor, defense attorney, and guardian ad litem, shall cooperate in providing the relevant information and materials to the examiners.

(7) In conducting the evaluation and in the report determining if a minor is competent to proceed as defined in Subsection 78A-6-105(30), the examiner shall consider the impact of a mental disorder, intellectual disability, or related condition on a minor's present capacity to:

(a) comprehend and appreciate the charges or allegations;

(b) disclose to counsel pertinent facts, events, or states of mind;

(c) comprehend and appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings against the minor;

(d) engage in reasoned choice of legal strategies and options;

(e) understand the adversarial nature of the proceedings;

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(f) manifest appropriate courtroom behavior; and

(g) testify relevantly, if applicable.

(8) In addition to the requirements of Subsection (7), the examiner's written report shall:

(a) identify the specific matters referred for evaluation;

(b) describe the procedures, techniques, and tests used in the evaluation and the purpose or purposes for each;

(c) state the examiner's clinical observations, findings, and opinions on each issue referred for evaluation by the court, and indicate specifically those issues, if any, on which the examiner could not give an opinion;

(d) state the likelihood that the minor will attain competency and the amount of time estimated to achieve it; and

(e) identify the sources of information used by the examiner and present the basis for the examiner's clinical findings and opinions.

(9) The examiner shall provide an initial report to the court, the prosecuting and defense attorneys, and the guardian ad litem, if applicable, within 30 days of the receipt of the court's order. If the examiner informs the court that additional time is needed, the court may grant, taking into consideration the custody status of the minor, up to an additional 30 days to provide the report to the court and counsel. The examiner must provide the report within 60 days from the receipt of the court's order unless, for good cause shown, the court authorizes an additional period of time to complete the evaluation and provide the report. The report shall inform the court of the examiner's opinion concerning the competency and the likelihood of the minor to attain competency within a year. In the alternative, the examiner may inform the court in writing that additional time is needed to complete the report.

(10) Any statement made by the minor in the course of any competency evaluation, whether the evaluation is with or without the consent of the minor, any testimony by the examiner based upon any statement, and any other fruits of the statement may not be admitted in evidence against the minor in any delinquency or criminal proceeding except on an issue respecting the mental condition on which the minor has introduced evidence. The evidence may be admitted, however, where relevant to a determination of the minor's competency.

(11) Prior to evaluating the minor, examiners shall specifically advise the minor and

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the parents or guardian of the limits of confidentiality as provided under Subsection (10).

(12) When the report is received the court shall set a date for a competency hearing which shall be held in not less than five and not more than 15 days, unless the court enlarges the time for good cause.

(13) A minor shall be presumed competent unless the court, by a preponderance of the evidence, finds the minor not competent to proceed. The burden of proof is upon the proponent of incompetency to proceed.

(14) (a) Following the hearing, the court shall determine by a preponderance of evidence whether the minor is:

(i) competent to proceed;

(ii) not competent to proceed with a substantial probability that the minor may attain competency in the foreseeable future; or

(iii) not competent to proceed without a substantial probability that the minor may attain competency in the foreseeable future.

(b) If the court enters a finding pursuant to Subsection (14)(a)(i), the court shall proceed with the delinquency proceedings.

(c) If the court enters a finding pursuant to Subsection (14)(a)(ii), the court shall proceed consistent with Section 78A-6-1303.

(d) If the court enters a finding pursuant to Subsection (14)(a)(iii), the court shall terminate the competency proceeding, dismiss the delinquency charges without prejudice, and release the minor from any custody order related to the pending delinquency proceeding, unless the prosecutor informs the court that commitment proceedings pursuant to Title 62A, Chapter 5, Services for People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act, will be initiated. These commitment proceedings shall be initiated within seven days after the court's order, unless the court enlarges the time for good cause shown. The minor may be ordered to remain in custody until the commitment proceedings have been concluded.

(15) If the court finds the minor not competent to proceed, its order shall contain findings addressing each of the factors in Subsection (7).

Section 81. Section 78B-2-313 is amended to read:

**78B-2-313. Action to recover deficiency after short sale.**

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(1) As used in this section:

(a) "Deficiency" means the balance owed to a secured lender under a secured loan after completion of a short sale of the secured property.

(b) "Obligor" means the person or persons obligated to pay a secured loan.

(c) "Secured lender" means the person or persons to whom the obligation under a secured loan is owed.

(d) "Secured loan" means a loan or other credit for personal, family, or household purposes secured by a mortgage or trust deed on secured property.

(e) "Secured property" means single-family, residential real property located in the state that is the subject of a mortgage or trust deed to secure a secured loan.

(f) "Short sale" means a sale:

(i) of secured property;

(ii) by the owner of the secured property;

(iii) that results in the secured lender being paid less than the balance owing under the secured loan; and

(iv) made with the secured lender's consent and resulting in the secured lender releasing the mortgage or reconveying the trust deed on the secured property.

(2) An action to recover a deficiency is barred unless it is commenced no more than three months after the date of recording of a release of mortgage or reconveyance of trust deed with respect to secured property and resulting from a short sale of that property.

(3) Subsection (2) does not apply if the obligor or owner engaged in fraud in connection with the short sale.

(4) Subsection (2) does not apply to an agreement that:

(a) is executed:

(i) between one or more obligors under a [secure] secured loan and the secured lender;

and

(ii) in connection with a short sale; and

(b) obligates an obligor to pay some or all of a deficiency.

Section 82. Section 78B-6-121 is amended to read:

**78B-6-121. Consent of unmarried biological father.**

(1) Except as provided in Subsections (2)(a) and 78B-6-122(1), and subject to

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[Subsection] Subsections (5) and (6), with regard to a child who is placed with prospective adoptive parents more than six months after birth, consent of an unmarried biological father is not required unless the unmarried biological father:

(a) (i) developed a substantial relationship with the child by:

(A) visiting the child monthly, unless the unmarried biological father was physically or financially unable to visit the child on a monthly basis; or

(B) engaging in regular communication with the child or with the person or authorized agency that has lawful custody of the child;

(ii) took some measure of responsibility for the child and the child's future; and

(iii) demonstrated a full commitment to the responsibilities of parenthood by financial support of the child of a fair and reasonable sum in accordance with the father's ability; or

(b) (i) openly lived with the child:

(A) (I) for a period of at least six months during the one-year period immediately preceding the day on which the child is placed with prospective adoptive parents; or

(II) if the child is less than one year old, for a period of at least six months during the period of time beginning on the day on which the child is born and ending on the day on which the child is placed with prospective adoptive parents; and

(B) immediately preceding placement of the child with prospective adoptive parents; and

(ii) openly held himself out to be the father of the child during the six-month period described in Subsection (1)(b)(i)(A).

(2) (a) If an unmarried biological father was prevented from complying with a requirement of Subsection (1) by the person or authorized agency having lawful custody of the child, the unmarried biological father is not required to comply with that requirement.

(b) The subjective intent of an unmarried biological father, whether expressed or otherwise, that is unsupported by evidence that the requirements in Subsection (1) have been met, shall not preclude a determination that the father failed to meet the requirements of Subsection (1).

(3) Except as provided in Subsections (6) and 78B-6-122(1), and subject to Subsection (5), with regard to a child who is six months of age or less at the time the child is placed with prospective adoptive parents, consent of an unmarried biological father is not required unless,

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prior to the time the mother executes her consent for adoption or relinquishes the child for adoption, the unmarried biological father:

(a) initiates proceedings in a district court of Utah to establish paternity under Title 78B, Chapter 15, Utah Uniform Parentage Act;

(b) files with the court that is presiding over the paternity proceeding a sworn affidavit:

(i) stating that he is fully able and willing to have full custody of the child;

(ii) setting forth his plans for care of the child; and

(iii) agreeing to a court order of child support and the payment of expenses incurred in connection with the mother's pregnancy and the child's birth;

(c) consistent with Subsection (4), files notice of the commencement of paternity proceedings, described in Subsection (3)(a), with the state registrar of vital statistics within the Department of Health, in a confidential registry established by the department for that purpose; and

(d) offered to pay and paid, during the pregnancy and after the child's birth, a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with his financial ability, unless:

(i) he did not have actual knowledge of the pregnancy;

(ii) he was prevented from paying the expenses by the person or authorized agency having lawful custody of the child; or

(iii) the mother refuses to accept the unmarried biological father's offer to pay the expenses described in this Subsection (3)(d).

(4) The notice described in Subsection (3)(c) is considered filed when it is entered into the registry described in Subsection (3)(c).

(5) Unless his ability to assert the right to consent has been lost for failure to comply with Section 78B-6-110.1, or lost under another provision of Utah law, an unmarried biological father shall have at least one business day after the child's birth to fully and strictly comply with the requirements of Subsection (3).

(6) Consent of an unmarried biological father is not required under this section if:

(a) the court determines, in accordance with the requirements and procedures of Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, that the unmarried biological father's rights should be terminated, based on the petition of any interested party;

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(b) (i) a declaration of paternity declaring the unmarried biological father to be the father of the child is rescinded under Section 78B-15-306; and

(ii) the unmarried biological father fails to comply with Subsection (3) within 10 business days after the day that notice of the rescission described in Subsection (6)(b)(i) is mailed by the Office of Vital Records within the Department of Health as provided in Section 78B-15-306; or

(c) the unmarried biological father is notified under Section 78B-6-110.1 and fails to preserve his rights in accordance with the requirements of that section.

(7) Unless the adoptee is conceived or born within a marriage, the petitioner in an adoption proceeding shall, prior to entrance of a final decree of adoption, file with the court a certificate from the state registrar of vital statistics within the Department of Health, stating:

(a) that a diligent search has been made of the registry of notices from unmarried biological fathers described in Subsection (3)(c); and

(b) (i) that no filing has been found pertaining to the father of the child in question; or

(ii) if a filing is found, the name of the putative father and the time and date of filing.

Section ~~{79}~~83. **Repealer.**

This bill repeals:

Section 53A-8-101, **Short title.**

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~~