

CONSTABLE AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lincoln Fillmore

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies Title 53, Public Safety Code, by enacting the Constable Licensing Act.

Highlighted Provisions:

This bill:

- ▶ repeals provisions related to constables in Title 17, Counties;
- ▶ defines terms;
- ▶ requires a license to conduct constable work within the state;
- ▶ creates the Constable Licensing Board;
- ▶ establishes the process and requirements for licensure;
- ▶ provides for discipline of licensees; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17-16-11, as last amended by Laws of Utah 2007, Chapter 268

17-22-25, Utah Code Annotated 1953



- 28 **39-1-56**, as last amended by Laws of Utah 1989, Chapter 15
- 29 **76-6-1403**, as last amended by Laws of Utah 2014, Chapter 261
- 30 **78A-2-305**, as last amended by Laws of Utah 2010, Chapter 226
- 31 **78B-7-406**, as enacted by Laws of Utah 2013, Chapter 179
- 32 **78B-8-302**, as last amended by Laws of Utah 2015, Chapter 210

33 ENACTS:

- 34 **53-18-101**, Utah Code Annotated 1953
- 35 **53-18-102**, Utah Code Annotated 1953
- 36 **53-18-103**, Utah Code Annotated 1953
- 37 **53-18-104**, Utah Code Annotated 1953
- 38 **53-18-201**, Utah Code Annotated 1953
- 39 **53-18-202**, Utah Code Annotated 1953
- 40 **53-18-203**, Utah Code Annotated 1953
- 41 **53-18-301**, Utah Code Annotated 1953
- 42 **53-18-302**, Utah Code Annotated 1953
- 43 **53-18-303**, Utah Code Annotated 1953
- 44 **53-18-304**, Utah Code Annotated 1953
- 45 **53-18-305**, Utah Code Annotated 1953
- 46 **53-18-306**, Utah Code Annotated 1953
- 47 **53-18-401**, Utah Code Annotated 1953
- 48 **53-18-402**, Utah Code Annotated 1953
- 49 **53-18-403**, Utah Code Annotated 1953
- 50 **53-18-404**, Utah Code Annotated 1953

51 REPEALS:

- 52 **17-25-1**, as last amended by Laws of Utah 2003, Chapter 204
- 53 **17-25-2**, as renumbered and amended by Laws of Utah 2001, Chapter 46
- 54 **17-25-3**, as renumbered and amended by Laws of Utah 2001, Chapter 46
- 55 **17-25-4**, as renumbered and amended by Laws of Utah 2001, Chapter 46
- 56 **17-25-5**, as last amended by Laws of Utah 2012, Chapter 48
- 57 **17-25-6**, as last amended by Laws of Utah 2012, Chapter 48
- 58 **17-25a-1**, as last amended by Laws of Utah 1993, Chapters 38 and 234

59 [17-25a-2](#), as enacted by Laws of Utah 1990, Chapter 44
 60 [17-25a-3](#), as last amended by Laws of Utah 2012, Chapter 48
 61 [17-25a-4](#), as last amended by Laws of Utah 2001, Chapter 46

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

64 Section 1. Section **17-16-11** is amended to read:

65 **17-16-11. Fidelity bonds and theft or crime insurance.**

66 (1) As used in this section, "county officials" means:

67 (a) the members of the county legislative body;

68 (b) the county executive;

69 (c) the county clerk;

70 (d) the county auditor;

71 (e) the county sheriff;

72 (f) the county attorney;

73 (g) in a county that is within a prosecution district, the district attorney;

74 (h) the county recorder;

75 (i) the county assessor;

76 (j) the county surveyor;

77 (k) each justice court judge [~~and constable~~] within the county;

78 (l) the county treasurer; and

79 (m) each deputy or assistant of those listed in Subsections (1)(a) through (l) for whom
 80 the county legislative body determines a general fidelity bond or theft or crime insurance
 81 should be acquired.

82 (2) (a) The legislative body of each county shall prescribe the amount of each general
 83 fidelity bond or of theft or crime insurance to be acquired for county officials, except the
 84 county treasurer, before the county officials, except the county treasurer, may discharge the
 85 duties of their respective offices.

86 (b) The State Money Management Council created in Section [51-7-16](#) shall prescribe
 87 the amount of a general fidelity bond or theft or crime insurance to be acquired for the county
 88 treasurer before the county treasurer may discharge the duties of that office.

89 (c) A county legislative body may acquire a fidelity bond or theft or crime insurance on

90 all county officials as a group rather than individually.

91 (3) (a) The county legislative body shall approve the premium for each fidelity bond
92 before the bond may be filed.

93 (b) The cost of each fidelity bond and theft or crime insurance policy shall be paid
94 from county funds.

95 (4) Each fidelity bond shall be filed and maintained in the office of the county clerk.

96 (5) (a) The district attorney of each multicounty prosecution district shall:

97 (i) execute a fidelity bond or acquire theft or crime insurance in the amount specified in
98 the interlocal agreement that created the prosecution district; and

99 (ii) file each fidelity bond with the county clerk as specified in the interlocal agreement.

100 (b) The cost of each fidelity bond or theft or crime insurance policy under Subsection
101 (5)(a) shall be paid as specified in the interlocal agreement that created the prosecution district.

102 Section 2. Section 17-22-25 is amended to read:

103 **17-22-25. Service of process on sheriff -- When constable to act.**

104 In cases where it appears in any court of record that the sheriff is a party, or where an
105 affidavit is filed with the clerk of the court stating partiality, prejudice, consanguinity or
106 interest on the part of the sheriff, the clerk of the court shall direct process to any constable, ~~[of~~
107 ~~the county, whose duty it shall be to execute it]~~ who shall execute the process in the same
108 manner as if ~~[he]~~ the constable were the sheriff.

109 Section 3. Section 39-1-56 is amended to read:

110 **39-1-56. Execution of a judgment imposing a fine -- Disposition of fines.**

111 (1) (a) When the sentence of a military court includes a fine and the sentence has been
112 approved by the officer ordering the court, the adjutant general shall issue a warrant for the
113 collection of the fine, directed to ~~[the sheriff or any constable]~~ a constable or the sheriff of the
114 county where the person against whom the fine is imposed resides.

115 (b) The officer executing the warrant shall collect the fine in the same manner as ~~[he]~~
116 the officer is authorized to collect debts in civil suits. ~~[He]~~

117 (c) The officer shall make returns to the adjutant general within 20 days after receiving
118 the warrant.

119 ~~[(c)]~~ (d) Warrants for the collection of fines imposed by military courts shall be issued
120 by the officer appointing the military court.

121 (2) All fines collected under this chapter and the regulations governing the National
122 Guard of the United States shall be paid to the state treasurer for the credit of the state General
123 Fund, unless otherwise provided by law.

124 Section 4. Section **53-18-101** is enacted to read:

125 **CHAPTER 18. CONSTABLE LICENSING ACT**

126 **Part 1. General Provisions**

127 **53-18-101. Title.**

128 This chapter is known as the "Constable Licensing Act."

129 Section 5. Section **53-18-102** is enacted to read:

130 **53-18-102. Definitions.**

131 As used in this chapter:

132 (1) "Applicant" means a person who submits an application or renewal application for
133 a license in accordance with this chapter.

134 (2) "Board" means the Constable Licensing Board created in Section [53-18-201](#).

135 (3) "Bureau" means the Bureau of Criminal Identification created in Section
136 [53-10-201](#).

137 (4) "Commissioner" means the commissioner of public safety appointed under Section
138 [53-1-107](#), or the commissioner's designee.

139 (5) "Constable" means a licensee who, for consideration, conducts constable work.

140 (6) (a) "Constable work" means serving process and conducting other work as
141 described in Section [53-18-104](#).

142 (b) "Constable work" does not include serving process in accordance with Title 78B,
143 Chapter 8, Part 3, Process Server Act.

144 (7) "Conviction" means an adjudication of guilt by a federal, state, or local court
145 resulting from trial or plea, including a plea of no contest, regardless of whether the imposition
146 of sentence was suspended.

147 (8) "Department" means the Department of Public Safety created in Section [53-1-103](#).

148 (9) "Deputy constable" means a person who:

149 (a) is a sworn and certified peace officer in accordance with Title 53, Chapter 6, Peace
150 Officer Standards and Training Act; and

151 (b) contracts with a constable to conduct constable work on behalf and under the

152 direction of the constable.

153 (10) "Emergency action" means a summary suspension of a license pending revocation,
154 suspension, or probation in order to protect public health, safety, or welfare.

155 (11) "Identification card" means a card described in Section 53-18-305 that the bureau
156 issues to a licensee.

157 (12) "Letter of concern" means an advisory letter to notify a constable that, while there
158 is insufficient evidence to support probation, suspension, or revocation of the constable's
159 license, the board believes:

160 (a) the constable should modify or eliminate certain practices; and

161 (b) continuation of the activities that led to the complaint may result in further
162 disciplinary action against the constable.

163 (13) "License" means an original or a renewed license issued under this chapter.

164 (14) "Licensee" means a person who is licensed to conduct constable work under this
165 chapter.

166 (15) "Renewal application" means an application to renew a license.

167 (16) "Unprofessional conduct" means:

168 (a) engaging or offering to engage by fraud or misrepresentation in any activities
169 regulated by this chapter;

170 (b) aiding or abetting a person, who is not licensed under this chapter, in representing
171 that person as a constable;

172 (c) gross negligence while conducting constable work;

173 (d) committing a felony or a misdemeanor involving any crime that is grounds for
174 disciplinary action under Section 53-18-401, shown by conviction by a court of competent
175 jurisdiction or a plea of no contest; or

176 (e) making a fraudulent or untrue statement to the commissioner, board, bureau, or the
177 bureau's investigator.

178 Section 6. Section 53-18-103 is enacted to read:

179 **53-18-103. Commissioner of public safety administers -- Bureau to issue licenses --**

180 **Rulemaking.**

181 (1) The commissioner shall administer this chapter.

182 (2) The bureau shall:

183 (a) issue a license to an applicant when the board determines that the applicant meets
184 the qualifications for licensure under this chapter;

185 (b) notify each constable when the constable's license is due for renewal;

186 (c) keep a record of any:

187 (i) application for licensure, including a statement as to whether the bureau issued a
188 license to the applicant;

189 (ii) bond and certificate of liability insurance required under this chapter; and

190 (iii) order of revocation, suspension, cancellation, denial, or probation, including the
191 date that the order is filed;

192 (d) maintain:

193 (i) a list of all current and former licensees whose license the board has revoked,
194 suspended, placed on probation, or canceled; and

195 (ii) a written record of any complaint filed against a constable; and

196 (e) investigate any complaint filed against a constable and make recommendations to
197 the board regarding disciplinary actions.

198 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
199 commissioner may make rules:

200 (a) establishing administrative procedures related to license applications and issuance;

201 (b) establishing an appeals process in accordance with Title 63G, Chapter 4,
202 Administrative Procedures Act;

203 (c) specifying the terms and conditions of a constable's probation; and

204 (d) establishing standards for any training courses or continuing education that the
205 board may require.

206 (4) Any record described in this section is open to the public under Title 63G, Chapter
207 2, Government Records Access and Management Act, except a constable's residential address
208 and telephone number.

209 Section 7. Section **53-18-104** is enacted to read:

210 **53-18-104. Constable work -- Deputy constables -- Fees for service.**

211 (1) A constable may:

212 (a) attend a justice court when required by contract or court order;

213 (b) execute, serve, and return all processes directed or delivered to the constable by a

214 judge of any court of the state;

215 (c) serve any process throughout the state;

216 (d) serve process when the use of force is authorized or when a breach of peace is
217 imminent or likely under the totality of the circumstances;

218 (e) contract with a person or a public entity to provide constable work on behalf of the
219 person or the public entity; and

220 (f) contract with a deputy constable to provide constable work on behalf and under the
221 direction of the constable.

222 (2) (a) A constable may collect the same fees charged by a sheriff under Section
223 17-22-2.5 as compensation in civil matters.

224 (b) A constable may recover fees that exceed the amounts described in Section
225 17-22-2.5 only if the party requesting constable work approves the increased fees before the
226 constable performs the work.

227 (c) In litigation for which a constable has charged fees for constable work, a prevailing
228 party may recover from the losing party the constable's fees that exceed the amounts described
229 in Section 17-22-2.5 only if the court finds that the constable work and the increased fees are
230 justifiable.

231 (3) (a) A constable may collect fees as compensation in criminal matters as follows:

232 (i) for each copy of a summons, subpoena, notice, court order, or other criminal paper,
233 except a warrant of arrest:

234 (A) \$5 for each defendant served; and

235 (B) except as provided in Subsection (3)(b)(i), \$1 per mile for each mile that the
236 constable necessarily travels in going to a defendant's address from the courthouse, or when the
237 constable receives by mail a document described in this Subsection (3)(a)(i), going to the
238 defendant's address from the post office where the constable received the document; and

239 (ii) for a warrant of arrest:

240 (A) \$15 for arresting each prisoner and bringing each prisoner into court, or otherwise
241 satisfying a warrant; and

242 (B) except as provided in Subsection (3)(b)(ii), \$1 for each mile that the constable
243 necessarily travels both in going to and returning from a defendant's address.

244 (b) (i) When multiple trips are necessary to serve or diligently attempt to serve process

245 described in Subsection (3)(a)(i), a party may compensate a constable for mileage charges for
246 more than one trip only if the party requesting constable work approves the additional mileage
247 charges before the constable makes the additional trips.

248 (ii) When multiple trips are necessary to serve or diligently attempt to serve a warrant
249 of arrest described in Subsection (3)(a)(ii), a party may compensate a constable for a total of no
250 more than three mileage charges.

251 (4) A constable shall document each charge individually on the affidavit of return of
252 service.

253 (5) A constable may enter into a contract for services under which the constable
254 receives less compensation than described in this section.

255 (6) If a constable serves process in a county other than the county where the process
256 originated, the constable may not charge for travel expenses that exceed the fee that would be
257 charged if the process was served by the sheriff of that county.

258 Section 8. Section **53-18-201** is enacted to read:

259 **Part 2. Board**

260 **53-18-201. Constable Licensing Board -- Creation -- Qualifications --**

261 **Appointments -- Terms -- Immunity.**

262 (1) There is created a Constable Licensing Board consisting of five members as
263 follows:

264 (a) two members who are constables;

265 (b) one member who is an attorney licensed to practice in Utah;

266 (c) one member who is a chief of police or a sheriff; and

267 (d) one member of the public for whom a constable is not an immediate family
268 member, a household member, or a personal or professional acquaintance.

269 (2) The commissioner shall appoint board members in accordance with this section.

270 (3) Each board member shall, at the time of appointment, be:

271 (a) a citizen of the United States; and

272 (b) a Utah resident.

273 (4) (a) Except as provided in Subsections (4)(b) and (d), a board member appointed
274 under Subsection (2) shall serve a four-year term.

275 (b) The commissioner shall, at the time of appointment, adjust the length of a board

276 member's term to ensure that the board members' terms are staggered so that approximately
277 half of the board is appointed every two years.

278 (c) When a board member's term expires, the commissioner shall appoint a new
279 member to a four-year term.

280 (d) When a vacancy occurs in the board's membership for any reason, the
281 commissioner shall appoint a replacement for the unexpired term.

282 (e) Except as provided in Subsection (4)(f), a board member may not serve more than
283 one term.

284 (f) Notwithstanding Subsection (4)(e), the commissioner may reappoint for one full
285 term a board member that the commissioner appointed for an initial term of less than four years
286 under Subsection (4)(b) or appointed to fill a vacancy under Subsection (4)(d).

287 (5) The commissioner, after a board hearing and recommendation, may remove any
288 board member for misconduct, incompetency, or neglect of duty.

289 (6) At the board's first meeting every year, the board shall elect a chair, vice chair, and
290 secretary from the board's membership.

291 (7) A board member may not receive compensation or benefits for the member's
292 service, but may receive per diem and travel expenses in accordance with:

293 (a) Section [63A-3-106](#);

294 (b) Section [63A-3-107](#); and

295 (c) rules made by the Division of Finance in accordance with Sections [63A-3-106](#) and
296 [63A-3-107](#).

297 (8) Board members are immune from suit with respect to actions taken in good faith
298 and in accordance with this chapter.

299 Section 9. Section **53-18-202** is enacted to read:

300 **53-18-202. Powers and duties of board.**

301 (1) The board shall, in accordance with this chapter:

302 (a) review an application for a licensee that the bureau submits;

303 (b) approve or deny an application;

304 (c) notify the bureau of each application approval or denial, noting the basis for each
305 denial; and

306 (d) hold a hearing regarding a complaint filed against a constable.

307 (2) The board may take disciplinary action against a constable in accordance with Part
308 4, Licensee Discipline and Penalties.

309 (3) While holding a hearing described in Subsection (1)(d), the board may:

310 (a) take and hear evidence;

311 (b) administer oaths and affirmations; and

312 (c) compel by subpoena the attendance of witnesses and the production of books,
313 papers, records, documents, electronically stored information, and other information.

314 Section 10. Section **53-18-203** is enacted to read:

315 **53-18-203. Board meetings and hearings.**

316 (1) The board shall meet at the call of the chair, but not less than once each calendar
317 quarter.

318 (2) A quorum consists of three board members.

319 (3) If a board member has three or more absences within a 12-month period that the
320 chair does not excuse, the commissioner shall consider removing that member from the board
321 in accordance with Subsection [53-18-201\(5\)](#).

322 Section 11. Section **53-18-301** is enacted to read:

323 **Part 3. Licensing**

324 **53-18-301. License required to act.**

325 (1) Except as provided in Subsection (2), a person may not conduct constable work
326 without a license issued by the bureau.

327 (2) (a) A deputy constable under contract with a constable may conduct constable work
328 on behalf and under the direction of the constable without obtaining a license under this
329 chapter.

330 (b) A person acting in the capacity of a law enforcement officer as described in Section
331 [53-13-103](#) is not required to obtain a license to conduct constable work.

332 (3) A license issued under this chapter is not transferable or assignable.

333 Section 12. Section **53-18-302** is enacted to read:

334 **53-18-302. Qualifications for licensure.**

335 (1) (a) Before approving an application for a license, the board shall ensure that the
336 applicant is:

337 (i) at least 21 years old;

338 (ii) a legal resident of Utah;
339 (iii) a citizen of the United States; and
340 (iv) a sworn and certified peace officer in accordance with Title 53, Chapter 6, Peace
341 Officer Standards and Training Act.

342 (b) Before approving an application for a license, the board shall ensure that an
343 applicant has not been:

- 344 (i) convicted of:
345 (A) a felony;
346 (B) an act involving illegally using, carrying, or possessing a dangerous weapon;
347 (C) an act of personal violence or force on any person;
348 (D) threatening to commit an act of personal violence or force against another person;
349 (E) an act involving moral turpitude;
350 (F) an act constituting dishonesty or fraud; or
351 (G) illegally obtaining or disclosing private, controlled, or protected records as
352 described in Section [63G-2-801](#);
353 (ii) placed on probation or parole; or
354 (iii) named in an outstanding arrest warrant.

355 (2) If the applicant is currently or was previously licensed in another state or
356 jurisdiction, the board shall ensure the good standing of the applicant's license in that state or
357 jurisdiction.

358 Section 13. Section **53-18-303** is enacted to read:

359 **53-18-303. Application process -- Grounds for denial.**

360 (1) (a) To be considered for a license, an individual shall submit to the bureau an
361 application or a renewal application in a form that the bureau prescribes.

362 (b) The bureau may not accept a renewal application more than 180 days after the day
363 on which a license expires.

364 (c) The bureau shall notify an applicant if the applicant's application is incomplete.

365 (d) (i) Upon notification described in Subsection (1)(c), the applicant shall complete
366 the application process and provide any additional information within 90 days from the day on
367 which the applicant receives the notification.

368 (ii) The bureau shall cancel an application and retain any fees paid by the applicant if

369 the applicant fails to complete the application in accordance with Subsection (1)(d)(i).

370 (iii) An applicant who subsequently applies after a cancellation described in Subsection
371 (1)(d)(ii) shall pay all application and license fees described in Section 53-18-306.

372 (2) Upon receipt of a complete application, the bureau shall submit the application to
373 the board for review.

374 (3) The board shall approve an application for a license if the board determines that the
375 applicant meets the qualifications described in Section 53-18-302.

376 (4) The board may deny an application for a license or a renewal application if the
377 applicant:

378 (a) has committed an act that, if committed by a licensee, would be grounds for
379 disciplinary action under Part 4, Licensee Discipline and Penalties;

380 (b) while licensed under this chapter, contracts a person to work as a deputy constable
381 who is not a sworn and certified peace officer;

382 (c) while not licensed under this chapter, commits, or aids and abets, any act for which
383 a license is required by this chapter; or

384 (d) knowingly makes a material misstatement in connection with an application or
385 renewal application.

386 (5) (a) If the board denies an application for a license, the board shall notify the
387 applicant of the denial in writing.

388 (b) The board shall ensure that the notification described in Subsection (5)(a):

389 (i) describes the basis for the denial; and

390 (ii) informs the applicant that the applicant may appeal the denial in accordance with
391 department rule.

392 Section 14. Section **53-18-304** is enacted to read:

393 **53-18-304. License issuance -- License period and renewal.**

394 (1) The bureau shall ensure that each license issued under this chapter:

395 (a) contains the licensee's name and address and the license number; and

396 (b) expires two years after issuance.

397 (2) Before the bureau may issue a license to an applicant that the board approves, the
398 applicant shall submit to the bureau:

399 (a) a certificate of liability insurance described in Subsection (3)(a);

400 (b) any fees determined by the bureau under Section 53-18-306; and
401 (c) a \$10,000 surety bond that:
402 (i) is in effect throughout the entire licensing period; and
403 (ii) provides that the issuer of the surety bond is required to notify the bureau if the
404 bond is canceled or expires.
405 (3) (a) The bureau shall ensure that the liability insurance described in Subsection
406 (2)(a):
407 (i) protects against liability to third persons;
408 (ii) contains a limit of liability in an amount of not less than \$500,000;
409 (iii) is continuous in form and runs concurrently with the license period; and
410 (iv) provides for notice to the bureau if the liability insurance is canceled or expires.
411 (b) (i) If the bureau receives notice that a licensee's liability insurance expired or has
412 been canceled, the bureau shall cancel the license and notify the licensee that the license is
413 canceled.
414 (ii) The bureau shall reinstate a license canceled under Subsection (3)(b)(i) when the
415 person whose license was canceled:
416 (A) submits proof of liability insurance for the remainder of the license period to the
417 bureau; and
418 (B) pays the reinstatement fee described in Section 53-18-306.
419 (4) (a) The bureau may issue a renewed license if:
420 (i) the board approves the renewal application; and
421 (ii) the renewing licensee:
422 (A) pays the fees described in Section 53-18-306; and
423 (B) provides a certificate of insurance and proof of surety bond as required by this
424 chapter.
425 (b) A person may not engage in constable work during the period between the
426 expiration date of the person's license and the renewal date of the person's license.
427 (5) (a) A licensee shall notify the bureau of any change in the licensee's name or
428 address within 60 days of the date of the change.
429 (b) If a licensee fails to notify the bureau as described in Subsection (5)(a), the bureau
430 shall automatically suspend the licensee's license.

431 (c) In order to relieve the suspension described in Subsection (5)(b), the licensee shall
432 apply to the bureau for reinstatement and pay the fee described in Section [53-18-306](#).

433 Section 15. Section **53-18-305** is enacted to read:

434 **53-18-305. Identification card.**

435 (1) Upon the issuance of a license under Section [53-18-304](#), the bureau shall issue an
436 identification card without charge to the licensee.

437 (2) (a) The board shall create a design for the identification card described in
438 Subsection (1) that includes:

439 (i) the license number; and

440 (ii) a current photo of the licensee.

441 (b) The board shall ensure that the design described in Subsection (2)(a) not resemble
442 any identification card currently in use by a law enforcement agency within the state.

443 (3) (a) A constable shall carry an identification card when conducting constable work.

444 (b) Upon request by any person, a constable shall immediately produce the constable's
445 identification card.

446 Section 16. Section **53-18-306** is enacted to read:

447 **53-18-306. Fees.**

448 (1) The bureau shall establish a schedule of fees in accordance with Section [63J-1-504](#)
449 that may be assessed to recover the bureau's costs to:

450 (a) process an original license application, including:

451 (i) processing fingerprints, provided that the amount of the fee does not exceed the
452 amount charged by the Federal Bureau of Investigation for fingerprint processing for the
453 purpose of obtaining federal criminal history record information; and

454 (ii) conducting a background investigation;

455 (b) issue a license and an identification card;

456 (c) process a renewal application; and

457 (d) reinstate a license.

458 (2) The bureau shall deposit any fees that the bureau receives under this section into
459 the General Fund as a dedicated credit.

460 Section 17. Section **53-18-401** is enacted to read:

461 **Part 4. Licensee Discipline and Penalties**

462 **53-18-401. Grounds for disciplinary action.**463 (1) The board may discipline a constable if the board finds that the constable:464 (a) makes a fraudulent or willful misrepresentation in applying for an original license
465 or license renewal;466 (b) uses any letterhead, advertising, or other printed material in any manner
467 representing that the constable is a law enforcement officer or an employee of the United
468 States, any state, or a political subdivision of the state, except to indicate that the constable
469 holds a valid license to conduct constable work;470 (c) uses a name different from that under which the constable is currently licensed for
471 any advertising, solicitation, or contract to secure business, unless the name is an authorized
472 fictitious name;473 (d) impersonates, permits, or aids and abets a deputy constable to impersonate a law
474 enforcement officer or employee of the United States, any state, or a political subdivision of the
475 state;476 (e) knowingly violates, advises, encourages, or assists in the violation of any statute,
477 court order, or injunction in the course of conducting constable work;478 (f) falsifies fingerprints or photographs while conducting constable work;479 (g) is convicted of:480 (i) a felony;481 (ii) any act involving illegally using, carrying, or possessing a dangerous weapon;482 (iii) any act involving moral turpitude;483 (iv) any act of personal violence or force against any person or any conviction of
484 threatening to commit any act of personal violence or force against any person;485 (v) any act constituting dishonesty or fraud; or486 (vi) any act of illegally obtaining or disseminating private, controlled, or protected
487 records under Section [63G-2-801](#);488 (h) solicits business for an attorney in return for compensation;489 (i) is placed on probation, parole, compensatory service, or named in an outstanding
490 arrest warrant;491 (j) conducts constable work during the period between the expiration of a license for
492 failure to renew and the reinstatement of the license;

493 (k) willfully neglects to provide constable work or a report as agreed between the
494 parties for which the client has paid or tendered compensation;

495 (l) fails or refuses to cooperate with, fails to provide truthful information to, or refuses
496 access to an authorized representative of the department engaged in an official investigation;

497 (m) contracts a person to work as a deputy constable who is not qualified to be a
498 deputy constable if the person's qualification status is known to the constable or can be
499 determined by reasonable inquiry;

500 (n) advertises in a false, deceptive, or misleading manner;

501 (o) refuses to produce the identification card described in Section [53-18-305](#) to any
502 person that requests validation of the constable's authority to act;

503 (p) commits any act of unprofessional conduct; or

504 (q) engages in any other conduct prohibited by this chapter.

505 Section 18. Section **53-18-402** is enacted to read:

506 **53-18-402. Complaints against constables -- Investigation -- Disciplinary action.**

507 (1) Any person may file a complaint against a constable with the bureau.

508 (2) (a) Upon receipt of a complaint, the bureau shall:

509 (i) initiate an investigation; and

510 (ii) mail a copy of the complaint to the constable.

511 (b) No later than 15 days after the day on which a constable receives a complaint under
512 Subsection (2)(a)(ii), the constable may submit a written response to the bureau.

513 (3) A constable against whom a complaint is filed shall cooperate with an investigation
514 by providing requested records and truthfully responding to questions during the investigation.

515 (4) Upon completion of an investigation, the bureau shall:

516 (a) determine whether the constable committed an act for which discipline is warranted
517 under Section [53-18-401](#); and

518 (b) submit a report to the board that summarizes the bureau's findings and, if
519 applicable, provides recommendations for disciplinary action.

520 (5) Upon receiving the bureau's report described in Subsection (4)(b), the board shall
521 hold a hearing to consider the bureau's findings and recommendations.

522 (6) (a) If the bureau recommends that the board take disciplinary action, the bureau
523 shall notify the constable of the bureau's recommendation in writing by certified mail.

524 (b) The bureau shall ensure that the notice described in Subsection (6)(a):
525 (i) includes the date and time of the hearing during which the board will consider the
526 bureau's recommendation; and
527 (ii) informs the constable that the board will allow the constable to present testimony
528 and evidence in response to the bureau's recommendation.
529 (7) (a) Based on the bureau's report described in Subsection (4)(b), or information the
530 board receives during a hearing described in Subsection (5), the board shall determine whether
531 to:
532 (i) dismiss the complaint if the board finds the complaint is without merit;
533 (ii) issue a letter of concern;
534 (iii) impose a civil penalty not to exceed \$500;
535 (iv) suspend the constable's license;
536 (v) revoke the constable's license;
537 (vi) place the constable on probation; or
538 (vii) place all records, evidence, findings, conclusions, and any other information
539 pertinent to the investigation in the confidential and protected records section of the file that
540 the bureau maintains.
541 (b) The board shall notify the constable of the board's determination under Subsection
542 (7)(a) in writing by certified mail, return receipt requested.
543 (8) (a) The bureau shall retain a letter of concern described in Subsection (7)(a)(ii).
544 (b) The board may use a letter of concern in future disciplinary actions against a
545 constable.
546 (9) (a) If, during investigation, the bureau finds that a constable's actions pose an
547 immediate threat to public health, safety, or welfare, the bureau may recommend that the board
548 take emergency action before the board holds the hearing described in Subsection (5).
549 (b) If the board takes emergency action, the board shall issue a written notice to the
550 constable that:
551 (i) states the charges made against the constable;
552 (ii) informs the constable that the constable's license is suspended; and
553 (iii) provides the date and time of the hearing during which the board will consider the
554 bureau's investigation and additional recommendations for disciplinary action, if any.

555 (10) (a) If the board suspends or revokes a constable's license, or places a constable on
556 probation, the constable shall:

557 (i) terminate any contract between the constable and a deputy constable; or

558 (ii) ensure that no deputy constable performs any constable work until the constable is
559 fully licensed in good standing.

560 (b) If a deputy constable commits an act described in Section 53-18-401, the constable
561 shall immediately:

562 (i) terminate the deputy constable's contract; or

563 (ii) ensure that the deputy constable does not perform constable work on behalf of the
564 constable.

565 (11) A constable may appeal the board's decision under this section in accordance with
566 department rule.

567 (12) The bureau may retain any penalties collected under this section as a dedicated
568 credit.

569 Section 19. Section **53-18-403** is enacted to read:

570 **53-18-403. False representation as a constable -- Identifying clothing.**

571 (1) When conducting constable work, a constable or a deputy constable:

572 (a) may not wear a uniform, use a title or identification card other than the one issued
573 under this chapter, or make any statement that would lead a reasonable person to believe the
574 constable or deputy constable is connected in any way with the federal government, any state,
575 or any political subdivision, unless the constable has received authorization in writing from a
576 governmental entity to represent a connection to that governmental entity; and

577 (b) may wear a jacket of a distinctive design or style that bears a printed, embroidered,
578 or otherwise permanently attached symbol, emblem, or insignia that:

579 (i) clearly identifies the wearer as a constable or a deputy constable; and

580 (ii) is approved by the board.

581 (2) When a constable or a deputy constable interacts with a law enforcement officer,
582 the constable or deputy constable shall, at the first opportunity:

583 (a) identify himself or herself to the law enforcement officer; and

584 (b) provide identification as a constable or a deputy constable.

585 Section 20. Section **53-18-404** is enacted to read:

586 **53-18-404. Penalties.**

587 A person who conducts constable work without a license is guilty of a class A
588 misdemeanor.

589 Section 21. Section **76-6-1403** is amended to read:

590 **76-6-1403. Records of sales and purchases -- Identification required.**

591 (1) Every dealer shall:

592 (a) require the information under Subsection (2) for each transaction of regulated
593 metal, except under Subsection 76-6-1406(4); and

594 (b) maintain for each purchase of regulated metal the information required by this part
595 in a written or electronic log, in the English language.

596 (2) The dealer shall require the following information of the seller and shall record the
597 information as required under Subsection (1) for each purchase of regulated metal:

598 (a) a complete description of the regulated metal, including weight and metallic
599 description, in accordance with scrap metal recycling industry standards;

600 (b) the full name and residence of each person selling the regulated metal;

601 (c) the vehicle type and license plate number, if applicable, of the vehicle transporting
602 the regulated metal to the dealer;

603 (d) the price per pound and the amount paid for each type of regulated metal purchased
604 by the dealer;

605 (e) the date, time, and place of the purchase;

606 (f) the type and the identifying number of the identification provided in Subsection
607 (2)(g);

608 (g) a form of identification that is a valid United States federal or state-issued photo ID,
609 which includes a driver license, a United States passport, a United States passport card, or a
610 United States military identification card;

611 (h) the seller's signature on a certificate stating that he has the legal right to sell the
612 scrap metal or junk; and

613 (i) a digital photograph or still video of the seller, taken at the time of the sale, or a
614 clearly legible photocopy of the seller's identification.

615 (3) No entry in the log may be erased, deleted, mutilated, or changed.

616 (4) The log and entries shall be open to inspection by the following officials having

617 jurisdiction over the area in which the dealer does business during regular business hours:

618 (a) the county sheriff or deputies;

619 (b) any law enforcement agency; ~~and~~

620 (c) a constable or deputy constable; and

621 ~~[(c)]~~ (d) any ~~constable or~~ other state, municipal, or county official in the county in
622 which the dealer does business.

623 (5) A dealer shall make these records available for inspection by any law enforcement
624 agency, upon request, at the dealer's place of business during the dealer's regular business
625 hours.

626 (6) Log entries made under this section shall be maintained for not less than three years
627 from date of entry.

628 (7) (a) The dealer may maintain the information required by Subsection (2) for repeat
629 sellers who use the same vehicle to bring regulated metal for each transaction in a relational
630 database that allows the dealer to enter an initial record of the seller's information and then
631 relate subsequent transaction records to that initial information, except under Subsection (7)(b).

632 (b) The dealer shall obtain regarding each transaction with repeat sellers:

633 (i) a photograph of the seller; and

634 (ii) a signature from the seller.

635 Section 22. Section **78A-2-305** is amended to read:

636 **78A-2-305. Effect of filing affidavit -- Procedure for review and collection.**

637 (1) (a) Upon receipt of the oath or affirmation filed with any Utah court by a prisoner,
638 the court shall immediately request the institution or facility where the prisoner is incarcerated
639 to provide an account statement detailing all financial activities in the prisoner's trust account
640 for the previous six months or since the time of incarceration, whichever is shorter.

641 (b) The incarcerating facility shall:

642 (i) prepare and produce to the court the prisoner's six-month trust account statement,
643 current trust account balance, and aggregate disposable income; and

644 (ii) calculate aggregate disposable income by totaling all deposits made in the
645 prisoner's trust account during the six-month period and subtracting all funds automatically
646 deducted or otherwise garnished from the account during the same period.

647 (2) The court shall:

648 (a) review both the affidavit of impecuniosity and the financial account statement; and

649 (b) based upon the review, independently determine whether or not the prisoner is
650 financially capable of paying all the regular fees and costs associated with filing the action.

651 (3) When the court concludes that the prisoner is unable to pay full fees and costs, the
652 court shall assess an initial partial filing fee equal to 50% of the prisoner's current trust account
653 balance or 10% of the prisoner's six-month aggregate disposable income, whichever is greater.

654 (4) (a) After payment of the initial partial filing fee, the court shall require the prisoner
655 to make monthly payments of 20% of the preceding month's aggregate disposable income until
656 the regular filing fee associated with the civil action is paid in full.

657 (b) The agency having custody of the prisoner shall:

658 (i) garnish the prisoner's account each month; and

659 (ii) once the collected fees exceed \$10, forward payments to the clerk of the court until
660 the filing fees are paid.

661 (c) Nothing in this section may be construed to prevent the agency having custody of
662 the prisoner from withdrawing funds from the prisoner's account to pay court-ordered
663 restitution.

664 (5) Collection of the filing fees continues despite dismissal of the action.

665 (6) The filing fee collected may not exceed the amount of fees permitted by statute for
666 the commencement of a civil action or an appeal of a civil action.

667 (7) If the prisoner is filing an initial divorce action or an action to obtain custody of the
668 prisoner's children, the following procedures shall apply for review and collection of fees and
669 costs:

670 (a) Upon filing an oath or affirmation with any Utah court by a prisoner, the court shall
671 review the affidavit and make an independent determination based on the information provided
672 whether court costs and fees should be paid in full or be waived in whole or in part. The court
673 shall require a full or partial filing fee when the prisoner's financial information demonstrates
674 an ability to pay the applicable court fees or costs.

675 (b) (i) If a prisoner's court fees or costs are completely waived, and if the prisoner files
676 an appeal, the court shall immediately file any complaint or papers on appeal and complete all
677 necessary action as promptly as if the litigant had paid all the fees and costs in full.

678 (ii) If a prisoner is impecunious, the [~~constable and~~] sheriff or a constable shall

679 immediately serve any summonses, writs, process and subpoenas, and papers necessary in the
680 prosecution or defense of the cause as if all the necessary fees and costs had been paid in full.

681 (c) (i) If a prisoner files an affidavit of impecuniosity, the judge shall question the
682 prisoner at the time of the hearing on the merits of the case as to the prisoner's ability to pay.

683 (ii) If the judge determines that the prisoner is reasonably able to pay court fees and
684 costs, the final order or decree shall be entered, however the prisoner may not seek enforcement
685 or modification of the decree or order until the prisoner has paid the fees or costs in full.

686 (iii) A judge may waive the restrictions placed on the prisoner in Subsection (7)(c)(ii)
687 upon a showing of good cause.

688 Section 23. Section **78B-7-406** is amended to read:

689 **78B-7-406. Fees -- Service of process.**

690 (1) Protective orders issued under this part shall be served by [~~the sheriff's office;~~
691 ~~constable's office~~] a sheriff, a constable, or any law enforcement agency or peace officer, in
692 accordance with Subsection **78B-7-404**(8).

693 (2) Fees may not be imposed by a court clerk, sheriff, constable, or law enforcement
694 agency for:

695 (a) filing a petition under this part;

696 (b) obtaining a protective order under this part; or

697 (c) service of a protective order issued under this part.

698 (3) (a) The offices of the court clerk shall provide forms and nonlegal assistance to an
699 individual seeking to proceed under this part.

700 (b) The Administrative Office of the Courts shall:

701 (i) develop and adopt uniform forms for petitions and orders for protection in
702 accordance with the provisions of this chapter; and

703 (ii) provide the forms described in Subsection (3)(b)(i) to the clerk of each court
704 authorized to issue protective orders.

705 (c) The forms described in Subsection (3)(b)(i) shall include:

706 (i) a statement notifying the petitioner for an ex parte dating violence protective order
707 that knowing falsification of any statement or information provided for the purpose of
708 obtaining a protective order may subject the petitioner to felony prosecution;

709 (ii) language stating violating of any criminal provision is a class B misdemeanor; and

710 (iii) a space for any information the petitioner is able to provide to facilitate
711 identification of the respondent, including social security number, driver license number, date
712 of birth, address, telephone number, and physical description.

713 (4) If the individual seeking to proceed under this chapter is not represented by an
714 attorney, it is the responsibility of the court clerk's office to provide:

715 (a) the forms adopted pursuant to Subsection (3);

716 (b) all other forms required to petition for an order for protection, including forms for
717 service;

718 (c) except for as provided by Subsection (5), clerical assistance in filling out the forms
719 and filing the petition, in accordance with Subsection (3)(a);

720 (d) information regarding the means available for the service of process;

721 (e) a list of legal service organizations that may represent the petitioner in an action
722 brought under this part, with the phone numbers of those organizations; and

723 (f) written information regarding the procedure for transporting a jailed or imprisoned
724 respondent to the protective order hearing, including an explanation for the use of
725 transportation order forms when necessary.

726 (5) A court clerk's office may designate any other entity, agency, or individual to
727 provide the service described in Subsection (4)(c), but the court clerk's office is responsible to
728 see that the service is provided.

729 (6) A petition for a dating violence protective order or ex parte dating violence
730 protective order shall be in writing and verified.

731 (7) (a) All protective orders issued under this part shall be issued in the form adopted
732 by the Administrative Office of the Courts under Subsection (3)(b).

733 (b) Each protective order issued under this part, except orders issued ex parte, shall
734 include the following language:

735 "Respondent was afforded both notice and opportunity to be heard in the hearing that
736 gave rise to this order. Pursuant to the Violence Against Women Act of 1994, P.L. 103-322,
737 108 Stat. 1796, 18 U.S.C.A. 2265, this order is valid in all the United States, the District of
738 Columbia, tribal lands, and United States territories. This order complies with the Uniform
739 Interstate Enforcement of Domestic Violence Protection Orders Act."

740 Section 24. Section **78B-8-302** is amended to read:

741 **78B-8-302. Process servers.**

742 (1) Complaints, summonses, and subpoenas may be served by a person who is:

743 (a) 18 years of age or older at the time of service; and

744 (b) not a party to the action or a party's attorney.

745 (2) Except as provided in Subsection (5), the following may serve all process issued by
746 the courts of this state:

747 (a) a peace officer employed by a political subdivision of the state acting within the
748 scope and jurisdiction of the peace officer's employment;

749 (b) a sheriff or appointed deputy sheriff employed by a county of the state;

750 (c) a constable~~[, or the constable's deputy]~~ or a deputy constable, serving in compliance
751 with applicable law;

752 (d) an investigator employed by the state and authorized by law to serve civil process;
753 and

754 (e) a private investigator licensed in accordance with Title 53, Chapter 9, Private
755 Investigator Regulation Act.

756 (3) A private investigator licensed in accordance with Title 53, Chapter 9, Private
757 Investigator Regulation Act, may not make an arrest pursuant to a bench warrant.

758 (4) While serving process, a private investigator shall:

759 (a) have on the investigator's person a visible form of credentials and identification
760 identifying:

761 (i) the investigator's name;

762 (ii) that the investigator is a licensed private investigator; and

763 (iii) the name and address of the agency employing the investigator or, if the
764 investigator is self-employed, the address of the investigator's place of business;

765 (b) verbally communicate to the person being served that the investigator is acting as a
766 process server; and

767 (c) print on the first page of each document served:

768 (i) the investigator's name and identification number as a private investigator; and

769 (ii) the address and phone number for the investigator's place of business.

770 (5) Any service under this section when the use of force is authorized on the face of the
771 document, or when a breach of the peace is imminent or likely under the totality of the

772 circumstances, may only be served by:

- 773 (a) a law enforcement officer, as defined in Section 53-13-103; or
- 774 (b) a constable, as defined in [~~Subsection 53-13-105(1)(b)(ii)~~] Section 53-18-102.

775 (6) The following may not serve process issued by a court:

- 776 (a) a person convicted of a felony violation of an offense listed in Subsection
- 777 77-41-102(17); or
- 778 (b) a person who is a respondent in a proceeding described in Title 78B, Chapter 7,
- 779 Protective Orders, in which a court has granted the petitioner a protective order.

780 (7) A person serving process shall:

- 781 (a) legibly document the date and time of service on the front page of the document
- 782 being served;
- 783 (b) legibly print the process server's name, address, and telephone number on the return
- 784 of service;
- 785 (c) sign the return of service in substantial compliance with Section 78B-5-705;
- 786 (d) if the process server is a peace officer, sheriff, or deputy sheriff, legibly print the
- 787 badge number of the process server on the return of service; and
- 788 (e) if the process server is a private investigator, legibly print the private investigator's
- 789 identification number on the return of service.

790 Section 25. **Repealer.**

791 This bill repeals:

- 792 Section 17-25-1, **General powers and duties.**
- 793 Section 17-25-2, **Fees for constables -- Civil.**
- 794 Section 17-25-3, **Fees for constables -- Criminal.**
- 795 Section 17-25-4, **Constables' fees in criminal cases -- Procedure.**
- 796 Section 17-25-5, **Contracts for constable services.**
- 797 Section 17-25-6, **Identification of constables -- Uniform requirements.**
- 798 Section 17-25a-1, **Constables -- Nomination -- Appointment -- Authority.**
- 799 Section 17-25a-2, **Constable -- Qualifications -- Duties.**
- 800 Section 17-25a-3, **County and city constables -- Terms -- Authority -- Deputies.**
- 801 Section 17-25a-4, **Rates recoverable -- Exception.**

Legislative Review Note
Office of Legislative Research and General Counsel