

1                   **REVISOR'S TECHNICAL CORRECTIONS TO UTAH CODE**

2                                   2018 GENERAL SESSION

3                                   STATE OF UTAH

4                           **Chief Sponsor: Ralph Okerlund**

5                           House Sponsor: Brad R. Wilson

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7   **LONG TITLE**

8   **General Description:**

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10 eliminating references to repealed provisions, making minor wording changes, updating  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

12 **Highlighted Provisions:**

13           This bill:

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15 eliminating references to repealed provisions, making minor wording changes,  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

18 **Money Appropriated in this Bill:**

19           None

20 **Other Special Clauses:**

21           None

22 **Utah Code Sections Affected:**

23 AMENDS:

24           **7-1-810**, as last amended by Laws of Utah 2013, Chapters 73, and 412

25           **7-3-10**, as last amended by Laws of Utah 2013, Chapter 412

26           **7-8-3**, as last amended by Laws of Utah 2013, Chapter 412

27           **10-2a-302.5**, as enacted by Laws of Utah 2017, Chapter 452



- 28 [13-34-114](#), as last amended by Laws of Utah 2013, Chapter 412
- 29 [16-16-111](#), as last amended by Laws of Utah 2013, Chapter 412
- 30 [19-1-301](#), as last amended by Laws of Utah 2017, Chapter 206
- 31 [19-1-301.5](#), as last amended by Laws of Utah 2017, Chapter 206
- 32 [19-1-507](#), as enacted by Laws of Utah 2010, Chapter 170
- 33 [19-1-601](#), as enacted by Laws of Utah 2017, Chapter 246
- 34 [19-1-602](#), as enacted by Laws of Utah 2017, Chapter 246
- 35 [19-2-107](#), as last amended by Laws of Utah 2015, Chapter 154
- 36 [19-3-105](#), as last amended by Laws of Utah 2017, Chapter 360
- 37 [19-3-301](#), as last amended by Laws of Utah 2012, Chapter 212
- 38 [19-5-107](#), as last amended by Laws of Utah 2012, Chapter 360
- 39 [19-6-102.1](#), as last amended by Laws of Utah 2015, Chapter 451
- 40 [19-6-105](#), as last amended by Laws of Utah 2017, Chapter 281
- 41 [19-6-402](#), as last amended by Laws of Utah 2015, Chapter 451
- 42 [19-6-503](#), as last amended by Laws of Utah 2008, Chapter 89
- 43 [19-6-706](#), as last amended by Laws of Utah 2015, Chapter 340
- 44 [20A-2-201](#), as last amended by Laws of Utah 2015, Chapters 130 and 394
- 45 [20A-3-601](#), as last amended by Laws of Utah 2017, Chapter 58
- 46 [20A-4-103](#), as last amended by Laws of Utah 2006, Chapter 326
- 47 [20A-4-107](#), as last amended by Laws of Utah 2014, Chapters 98, 231 and last amended
- 48 by Coordination Clause, Laws of Utah 2014, Chapter 231
- 49 [20A-7-214](#), as last amended by Laws of Utah 2013, Chapter 310
- 50 [20A-9-405](#), as enacted by Laws of Utah 2014, Chapter 17
- 51 [26-7-8](#), as enacted by Laws of Utah 2016, Chapter 269
- 52 [26-10-10](#), as enacted by Laws of Utah 2013, Chapter 45
- 53 [26-18-3](#), as last amended by Laws of Utah 2017, Chapter 74
- 54 [26-38-2](#), as last amended by Laws of Utah 2017, Chapter 455
- 55 [31A-4-106](#), as last amended by Laws of Utah 2012, Chapter 50
- 56 [31A-27a-403](#), as enacted by Laws of Utah 2007, Chapter 309
- 57 [31A-30-206](#), as last amended by Laws of Utah 2011, Chapter 297
- 58 [31A-32a-107](#), as last amended by Laws of Utah 2008, Chapter 389

59           **32B-1-605**, as last amended by Laws of Utah 2017, Chapter 455  
60           **32B-3-102**, as last amended by Laws of Utah 2017, Chapter 455  
61           **32B-6-205.2**, as enacted by Laws of Utah 2017, Chapter 455  
62           **32B-6-305.2**, as enacted by Laws of Utah 2017, Chapter 455  
63           **32B-6-902**, as last amended by Laws of Utah 2017, Chapter 455  
64           **32B-6-905.1**, as enacted by Laws of Utah 2017, Chapter 455  
65           **32B-6-905.2**, as enacted by Laws of Utah 2017, Chapter 455  
66           **36-23-106**, as last amended by Laws of Utah 2017, Chapters 18, 133, 272 and last  
67 amended by Coordination Clause, Laws of Utah 2017, Chapter 272  
68           **49-11-609**, as last amended by Laws of Utah 2017, Chapter 94  
69           **49-20-401**, as last amended by Laws of Utah 2016, Chapter 279  
70           **53B-8-101**, as last amended by Laws of Utah 2017, Chapter 382  
71           **53B-8-202**, as renumbered and amended by Laws of Utah 2017, Chapter 386  
72           **53F-8-303**, as renumbered and amended by Laws of Utah 2018, Chapter 3  
73           **53G-3-304**, as renumbered and amended by Laws of Utah 2018, Chapter 3  
74           **55-12-116**, as renumbered and amended by Laws of Utah 2005, Chapter 155  
75           **57-19-5**, as last amended by Laws of Utah 2016, Chapter 255  
76           **58-37f-304**, as last amended by Laws of Utah 2017, Chapters 181 and 237  
77           **58-55-102**, as last amended by Laws of Utah 2017, Chapter 411  
78           **58-87-401**, as renumbered and amended by Laws of Utah 2017, Chapter 225  
79           **59-2-1346**, as last amended by Laws of Utah 2016, Chapter 368  
80           **59-12-102**, as last amended by Laws of Utah 2017, Chapters 181, 382, and 422  
81           **59-12-104**, as last amended by Laws of Utah 2017, Chapters 264, 268, and 429  
82           **59-12-104.5**, as last amended by Laws of Utah 2017, Chapter 268  
83           **59-13-301**, as last amended by Laws of Utah 2017, Chapter 234  
84           **61-2g-103**, as last amended by Laws of Utah 2013, Chapter 412  
85           **62A-4a-105**, as last amended by Laws of Utah 2017, Chapters 209 and 330  
86           **62A-15-401**, as last amended by Laws of Utah 2017, Chapter 455  
87           **63G-2-302**, as last amended by Laws of Utah 2017, Chapters 168 and 282  
88           **63G-3-102**, as last amended by Laws of Utah 2016, Chapter 193  
89           **63G-21-102**, as enacted by Laws of Utah 2017, Chapter 205

- 90            **63I-1-226**, as last amended by Laws of Utah 2017, Chapters 177 and 443
- 91            **63I-1-257**, as last amended by Laws of Utah 2016, Chapter 325
- 92            **63I-1-259**, as last amended by Laws of Utah 2017, Chapters 166 and 201
- 93            **63I-2-219**, as last amended by Laws of Utah 2016, Chapter 369
- 94            **63I-2-226**, as last amended by Laws of Utah 2017, Chapters 126, 155, 413, and 419
- 95            **63I-2-234**, as last amended by Laws of Utah 2017, Chapter 116
- 96            **63I-2-236**, as last amended by Laws of Utah 2017, Chapter 90
- 97            **63I-2-248**, as enacted by Laws of Utah 2013, Chapter 412
- 98            **63I-2-249**, as enacted by Laws of Utah 2015, Chapter 455
- 99            **63I-2-253**, as last amended by Laws of Utah 2017, Chapters 217, 223, 350, 365, 381,
- 100        386, and 468
- 101           **63I-2-278**, as last amended by Laws of Utah 2015, Chapter 217
- 102           **63N-2-104**, as last amended by Laws of Utah 2017, Chapter 310
- 103           **67-4a-501**, as repealed and reenacted by Laws of Utah 2017, Chapter 371
- 104           **70A-2-311**, as last amended by Laws of Utah 2016, Chapter 348
- 105           **70A-2-402**, as last amended by Laws of Utah 2017, Chapter 204
- 106           **70A-2-601**, as last amended by Laws of Utah 2015, Chapter 258
- 107           **70A-2-610**, as last amended by Laws of Utah 2015, Chapter 258
- 108           **72-2-118**, as last amended by Laws of Utah 2016, Chapter 222
- 109           **75-7-1011**, as last amended by Laws of Utah 2013, Chapter 412
- 110           **77-7-15**, as enacted by Laws of Utah 1980, Chapter 15
- 111           **77-10a-13**, as last amended by Laws of Utah 2012, Chapter 22
- 112           **77-15a-104**, as last amended by Laws of Utah 2015, Chapter 258
- 113           **77-20-3.5**, as renumbered and amended by Laws of Utah 2017, Chapter 289
- 114           **77-20-9**, as last amended by Laws of Utah 2016, Chapter 234
- 115           **77-23-210**, as last amended by Laws of Utah 2015, Chapter 317
- 116           **77-30-8**, as enacted by Laws of Utah 1980, Chapter 15
- 117           **77-30-18**, as enacted by Laws of Utah 1980, Chapter 15
- 118           **77-30-25**, as last amended by Laws of Utah 2007, Chapter 306
- 119           **77-32-603**, as last amended by Laws of Utah 1998, Chapter 333
- 120           **77-32a-102**, as enacted by Laws of Utah 2017, Chapter 304

121 77-38a-401, as last amended by Laws of Utah 2011, Chapter 37  
122 77-41-103, as last amended by Laws of Utah 2017, Chapter 450

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

125 Section 1. Section 7-1-810 is amended to read:

126 **7-1-810. Limited liability companies.**

127 (1) Notwithstanding any other provision of this title and subject to Subsection (8), if  
128 the conditions of this section are met, the following may be organized as or convert to a limited  
129 liability company under [~~Title 48, Chapter 2c, Utah Revised Limited Liability Company Act,~~  
130 ~~or~~] Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act[~~, as~~  
131 ~~appropriate pursuant to Section 48-3a-1405~~]:

132 (a) an industrial bank chartered under Chapter 8, Industrial Banks;

133 (b) an industrial loan company as defined in Section 7-8-21; or

134 (c) any of the following if the institution is an S Corporation, as defined in Section  
135 1361, Internal Revenue Code, immediately before becoming a limited liability company:

136 (i) a bank chartered under Chapter 3, Banks; or

137 (ii) a depository institution holding company.

138 (2) (a) Before an institution described in Subsection (1) may organize as or convert to a  
139 limited liability company, the institution shall obtain approval of the commissioner.

140 (b) (i) To obtain the approval under this section from the commissioner, the institution  
141 shall file a request for approval with the commissioner at least 30 days before the day on which  
142 the institution becomes a limited liability company.

143 (ii) If the commissioner does not disapprove the request for approval within 30 days  
144 from the day on which the commissioner receives the request, the request is considered  
145 approved.

146 (iii) When taking action on a request for approval filed under this section, the  
147 commissioner may:

148 (A) approve the request;

149 (B) approve the request subject to terms and conditions the commissioner considers  
150 necessary; or

151 (C) disapprove the request.

152 (3) To approve a request for approval, the commissioner shall find:  
153 (a) for an institution described in Subsection (1) that is required to be insured by a  
154 federal deposit insurance agency, that the institution:  
155 (i) will operate in a safe and sound manner;  
156 (ii) has the following characteristics:  
157 (A) the institution is not subject to automatic termination, dissolution, or suspension  
158 upon the happening of some event other than the passage of time;  
159 (B) the exclusive authority to manage the institution is vested in a board of managers  
160 or directors that:  
161 (I) is elected or appointed by the owners;  
162 (II) is not required to have owners of the institution included on the board;  
163 (III) possesses adequate independence and authority to supervise the operation of the  
164 institution; and  
165 (IV) operates with substantially the same rights, powers, privileges, duties, and  
166 responsibilities as the board of directors of a corporation;  
167 (C) neither state law, nor the institution's operating agreement, bylaws, or other  
168 organizational documents provide that an owner of the institution is liable for the debts,  
169 liabilities, and obligations of the institution in excess of the amount of the owner's investment;  
170 and  
171 (D) (I) neither state law, nor the institution's operating agreement, bylaws, or other  
172 organizational documents require the consent of any other owner of the institution in order for  
173 an owner to transfer an ownership interest in the institution, including voting rights; and  
174 (II) the institution is able to obtain new investment funding if needed to maintain  
175 adequate capital; and  
176 (iii) is able to comply with all legal and regulatory requirements for an insured  
177 depository institution under applicable federal and state law; and  
178 (b) for an institution described in Subsection (1) that is not required to be insured by a  
179 federal deposit insurance agency, that the institution will operate in a safe and sound manner.  
180 (4) An institution described in Subsection (3)(a) that is organized as a limited liability  
181 company shall maintain the characteristics listed in Subsection (3)(a)(ii) during such time as it  
182 is authorized to conduct business under this title as a limited liability company.

183 (5) (a) All rights, privileges, powers, duties, and obligations of an institution described  
 184 in Subsection (1) that is organized as a limited liability company and its members and  
 185 managers shall be governed by [~~Title 48, Chapter 2c, Utah Revised Limited Liability Company~~  
 186 ~~Act, or~~] Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act, [as  
 187 appropriate pursuant to Section ~~48-3a-1405~~] except:

188 [~~(i) the following do not apply to an institution that is described in Subsection (3)(a):~~]

189 [~~(A) Subsection 48-2c-402(2)(a)(ii);~~]

190 [~~(B) Section 48-2c-604;~~]

191 [~~(C) Section 48-2c-703;~~]

192 [~~(D) Section 48-2c-708;~~]

193 [~~(E) Subsection 48-2c-801(2);~~]

194 [~~(F) Section 48-2c-1102;~~]

195 [~~(G) Section 48-2c-1104; and~~]

196 [~~(H) Subsections 48-2c-1201(2) through (5);~~]

197 [~~(i)~~] (i) the following do not apply to an institution that is described in Subsection  
 198 (3)(a):

199 (A) Section 48-3a-111;

200 (B) Section 48-3a-113;

201 (C) Section 48-3a-201;

202 (D) Section 48-3a-401;

203 (E) Subsections 48-3a-407(1) and (3)(c);

204 (F) Section 48-3a-410;

205 (G) Subsection 48-3a-502(1)(c);

206 (H) Title 48, Chapter 3a, Part 6, Dissociation;

207 (I) Section 48-3a-701; and

208 (J) Title 48, Chapter 3a, Part 9, Foreign Limited Liability Companies; and

209 [~~(iii)~~] (ii) as otherwise provided in this title.

210 (b) Notwithstanding Subsection (5)(a), for an institution that is described in Subsection  
 211 (3)(a):

212 (i) for purposes of transferring a member's interests in the institution, a member's  
 213 interest in the institution shall be treated like a share of stock in a corporation; and

214 (ii) if a member's interest in the institution is transferred voluntarily or involuntarily to  
215 another person, the person who receives the member's interest shall obtain the member's entire  
216 rights associated with the member's interest in the institution including:

217 (A) all economic rights; and

218 (B) all voting rights.

219 (c) An institution described in Subsection (3)(a) may not by agreement or otherwise  
220 change the application of Subsection (5)(a) to the institution.

221 (6) Unless the context requires otherwise, for the purpose of applying this title to an  
222 institution described in Subsection (1) that is organized as a limited liability company:

223 (a) a citation to Title 16, Chapter 10a, Utah Revised Business Corporation Act,  
224 includes the equivalent citation to [~~Title 48, Chapter 2c, Utah Revised Limited Liability~~  
225 ~~Company Act, or~~] Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company  
226 Act[~~, as appropriate pursuant to Section 48-3a-1405~~];

227 (b) "articles of incorporation" includes a limited liability company's certificate of  
228 organization as that term is used in [~~Section 48-2c-403 or~~] Section 48-3a-201[~~, as appropriate~~  
229 ~~pursuant to Section 48-3a-1405~~];

230 (c) "board of directors" includes one or more persons who have, with respect to an  
231 institution described in Subsection (1), authority substantially similar to that of a board of  
232 directors of a corporation;

233 (d) "bylaws" includes a limited liability company's operating agreement as that term is  
234 defined in [~~Section 48-2c-102 or~~] Section 48-3a-201[~~, as appropriate pursuant to Section~~  
235 ~~48-3a-1405~~];

236 (e) "corporation" includes a limited liability company organized under [~~Title 48,~~  
237 ~~Chapter 2c, Utah Revised Limited Liability Company Act, or~~] Title 48, Chapter 3a, Utah  
238 Revised Uniform Limited Liability Company Act[~~, as appropriate pursuant to Section~~  
239 ~~48-3a-1405~~];

240 (f) "director" includes any of the following of a limited liability company:

241 (i) a manager;

242 (ii) a director; or

243 (iii) other person who has with respect to the institution described in Subsection (1),  
244 authority substantially similar to that of a director of a corporation;



245 (g) "dividend" includes distributions made by a limited liability company under [~~Title~~  
 246 ~~48, Chapter 2c, Part 10, Distributions, or~~] Title 48, Chapter 3a, Part 4, Relations of Members to  
 247 Each Other and to Limited Liability Company[~~, as appropriate pursuant to Section~~  
 248 ~~48-3a-1405~~];

249 (h) "incorporator" includes an organizer of a limited liability company as provided in  
 250 [~~Title 48, Chapter 2c, Part 4, Formation, or~~] Title 48, Chapter 3a, Part 2, Formation --  
 251 Certificate of Organization and Other Filings[~~, as appropriate pursuant to Section~~ ~~48-3a-1405~~];

252 (i) "officer" includes any of the following of an institution described in Subsection (1):

253 (i) an officer; or

254 (ii) other person who has with respect to the institution described in Subsection (1)  
 255 authority substantially similar to that of an officer of a corporation;

256 (j) "security," "shares," or "stock" of a corporation includes:

257 (i) a membership interest in a limited liability company as provided in [~~Title 48,~~  
 258 ~~Chapter 2c, Part 7, Members, or~~] Title 48, Chapter 3a, Part 4, Relations of Members to Each  
 259 Other and to Limited Liability Company[~~, as appropriate pursuant to Section~~ ~~48-3a-1405~~]; and

260 (ii) a certificate or other evidence of an ownership interest in a limited liability  
 261 company; and

262 (k) [~~"stockholder" or "shareholder"~~] "shareholder" or "stockholder" includes an owner  
 263 of an interest in an institution described in Subsection (1) including a member as provided in  
 264 [~~Title 48, Chapter 2c, Part 7, Members, or~~] Title 48, Chapter 3a, Part 4, Relations of Members  
 265 to Each Other and to Limited Liability Company[~~, as appropriate pursuant to Section~~  
 266 ~~48-3a-1405~~].

267 (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
 268 commissioner shall make rules governing the form of a request for approval filed under this  
 269 section.

270 (8) A depository institution organized under the laws of this state may not be organized  
 271 as or converted to a series of transferable interests in a limited liability company as provided in  
 272 [~~Section 48-2c-606, or~~] Title 48, Chapter 3a, Part 12, Series Limited Liability Companies[~~, as~~  
 273 ~~appropriate pursuant to Section~~ ~~48-3a-1405~~].

274 Section 2. Section 7-3-10 is amended to read:

275 **7-3-10. Organization -- Powers, rights, and privileges of banking corporation --**

276 **Other business activities.**

277 (1) A bank chartered under this chapter shall be:

278 (a) a domestic corporation under Title 16, Chapter 10a, Utah Revised Business  
279 Corporation Act; or280 (b) subject to Section 7-1-810, including the requirement that the bank be an S  
281 Corporation immediately before becoming a limited liability company, a limited liability  
282 company created under [~~Title 48, Chapter 2c, Utah Revised Limited Liability Company Act,~~  
283 ~~or~~] Title 48, Chapter 3a, Utah Revised Uniform Limited Liability Company Act[~~, as~~  
284 appropriate pursuant to Section ~~48-3a-1405~~].285 (2) A bank has all the rights, privileges, and powers necessary or incidental to carrying  
286 on the business of banking in addition to the powers granted:287 (a) if the bank is a corporation, under Title 16, Chapter 10a, Utah Revised Business  
288 Corporation Act; or289 (b) subject to Section 7-1-810, if the bank is a limited liability company, under [~~Title~~  
290 ~~48, Chapter 2c, Utah Revised Limited Liability Company Act, or~~] Title 48, Chapter 3a, Utah  
291 Revised Uniform Limited Liability Company Act[~~, as appropriate pursuant to Section~~  
292 ~~48-3a-1405~~].293 (3) The commissioner may, by rule or order, determine that necessary or incidental  
294 rights, privileges, and powers include:

295 (a) the rights, privileges, and powers held by national banks; or

296 (b) other business activities so long as the commissioner's determination is not  
297 inconsistent with the rules, regulations, or other actions of the board of governors of the  
298 Federal Reserve System under Section 4(c)(8) of the Bank Holding Company Act of 1956, 12  
299 U.S.C. Sec. 1843(c)(8).300 (4) The commissioner shall implement this section in a manner consistent with the  
301 purposes set forth in Section 7-1-102.

302 Section 3. Section 7-8-3 is amended to read:

303 **7-8-3. Organization -- Authorization to conduct business -- Deposit insurance.**304 (1) Subject to Subsection (4), the commissioner may authorize a person described in  
305 Subsection (2) to conduct business as an industrial bank.

306 (2) (a) Each person organized to conduct the business of an industrial bank in this state

307 shall be organized under:

308 (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act; or

309 (ii) in accordance with Section 7-1-810[, Title 48, Chapter 2c, Utah Revised Limited  
310 Liability Company Act,] or Title 48, Chapter 3a, Utah Revised Uniform Limited Liability  
311 Company Act[, as appropriate pursuant to Section 48-3a-1405].

312 (b) A person may not conduct business as an industrial bank authorized under this  
313 chapter to conduct business as an industrial bank in any form of entity other than those  
314 provided in Subsection (2)(a).

315 (3) (a) All rights, privileges, powers, duties, and obligations of a corporation  
316 authorized to conduct business as an industrial bank and its officers, directors, and stockholders  
317 shall be governed by Title 16, Chapter 10a, Utah Revised Business Corporation Act, except as  
318 otherwise provided in this title.

319 (b) All rights, privileges, powers, duties, and obligations of a limited liability company  
320 authorized to conduct business as an industrial bank and its members and managers shall be  
321 governed by [~~Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, or~~] Title 48,  
322 Chapter 3a, Utah Revised Uniform Limited Liability Company Act, [~~as appropriate pursuant to~~  
323 ~~Section 48-3a-1405;~~] except as otherwise provided in this title.

324 (4) (a) An industrial bank is authorized to receive and hold deposits.

325 (b) An industrial bank may not conduct business under this chapter as an industrial  
326 bank unless the industrial bank obtains insurance from the Federal Deposit Insurance  
327 Corporation or a successor federal deposit insurance entity for any deposits received or held by  
328 the industrial bank.

329 Section 4. Section **10-2a-302.5** is amended to read:

330 **10-2a-302.5. Incorporation of a town -- Petition.**

331 (1) As used in this section:

332 (a) "Assessed value," with respect to agricultural land, means the value at which the  
333 land would be assessed without regard to a valuation for agricultural use under Section  
334 59-2-503.

335 (b) (i) "Municipal services" means any of the following that are publicly provided:

336 (A) culinary water;

337 (B) secondary water;

- 338 (C) sewer service;
- 339 (D) law enforcement service;
- 340 (E) fire protection;
- 341 (F) roads;
- 342 (G) refuse collection; or
- 343 (H) weed control.
- 344 (ii) "Municipal services" includes the physical facilities required to provide a service
- 345 described in Subsection (1)(b)(i).

346 (2) (a) This section applies to individuals who seek to initiate the process of

347 incorporating a town on or after May 9, 2017.

348 (b) Individuals who reside in a contiguous area of a county that is not within a

349 municipality may incorporate as a town as provided in this section if:

- 350 (i) the area has a population of at least 100 people, but less than 1,000 people; and
- 351 (ii) at least 50% of the voting eligible population in the area are registered voters.
- 352 (c) An area within a county of the first class is not contiguous for purposes of

353 Subsection (2)(b) if:

- 354 (i) the area includes a strip of land that connects geographically separate areas; and
- 355 (ii) the distance between the geographically separate areas is greater than the average
- 356 width of the strip of land connecting the geographically separate areas.

357 (3) (a) Individuals described in Subsection (2) may initiate the process of incorporating

358 a town by filing an application for an incorporation petition with the lieutenant governor that

359 contains:

- 360 (i) the name and residential address of at least five sponsors of the petition who meet
- 361 the qualifications described in Subsection (3)(b) for a sponsor and Subsection (7) for a petition
- 362 signer;
- 363 (ii) a statement certifying that each of the sponsors:
  - 364 (A) is a resident of the state; and
  - 365 (B) has voted in a regular general election or municipal general election in the state
  - 366 within the last three years;
- 367 (iii) the signature of each sponsor, attested to by a notary public;
- 368 (iv) the name of a sponsor who is designated as the contact sponsor;

369 (v) consistent with the requirements described in Subsection (3)(c), an accurate map or  
370 plat, prepared by a licensed surveyor, showing a legal description of the boundary of the  
371 proposed town; and

372 (vi) a statement indicating whether persons may be paid for gathering signatures for the  
373 petition.

374 (b) Sponsors may not file a petition under this section if the cumulative private real  
375 property that the petition sponsors own exceeds 40% of the total private land area within the  
376 boundaries of the proposed town.

377 (c) A map described in Subsection (3)(a)(v) may not include an area proposed for  
378 annexation in an annexation petition described in Section 10-2-403 that is pending on the day  
379 on which the application for the incorporation petition is filed.

380 (4) (a) If the lieutenant governor determines that an incorporation petition application  
381 complies with the requirements described in Subsection (3)(a), the lieutenant governor shall  
382 accept the application and mail or transmit written notification of the acceptance to:

- 383 (i) the contact sponsor; and  
384 (ii) the Utah Population Estimates Committee.

385 (b) If the lieutenant governor determines that an application does not comply with the  
386 requirements described in Subsection (3)(a), the lieutenant governor shall reject the application  
387 and mail or transmit written notification of the rejection, including the reason for the rejection,  
388 to the contact sponsor.

389 (5) (a) Within 20 days after the day on which the lieutenant governor accepts an  
390 application under Subsection (4)(a), the Utah Population Estimates Committee shall:

- 391 (i) determine the population of the proposed town as of the date the application was  
392 filed under Subsection (3) for the proposed town; and  
393 (ii) provide that determination to the lieutenant governor.

394 (b) If the Utah Population Estimates Committee determines that the population of the  
395 proposed town does not meet the requirements described in Subsection (2)(b)(i), the lieutenant  
396 governor shall rescind the acceptance described in Subsection (4)(a) and reject the application  
397 in accordance with Subsection (4)(b).

398 (6) Within 30 days after the day on which the lieutenant governor receives the  
399 determination described in Subsection (5)(b) but before collecting signatures under Subsection

400 (7), the sponsors of the incorporation petition shall hold a public hearing at which the public  
401 may:

402 (a) review the map or plat of the proposed town described in Subsection (3)(a)(v);

403 (b) ask questions and receive information about the incorporation of the proposed  
404 town; and

405 (c) express views about the proposed incorporation, including views regarding the  
406 boundary of the proposed town.

407 (7) (a) If, after holding the public hearing described in Subsection (6), the sponsors  
408 wish to proceed with the proposed incorporation, the sponsors shall circulate an incorporation  
409 petition that, in order to be declared sufficient under Subsection (8)(b)(i), must be signed by:

410 (i) the owners of private real property that:

411 (A) is located within the boundaries of the proposed town; and

412 (B) is collectively greater than or equal to 20% of the assessed value of all private real  
413 property within the boundaries of the proposed town; and

414 (ii) 20% of the registered voters residing within the boundaries of the proposed town,  
415 as of the day on which the petition is filed.

416 (b) The petition sponsors shall ensure that the petition is:

417 (i) accompanied by and circulated with a copy of the map described in Subsection  
418 (3)(a)(v); and

419 (ii) printed in substantially the following form:

420 "PETITION FOR INCORPORATION OF (insert the proposed name of the proposed  
421 town)

422 To the Honorable Lieutenant Governor:

423 We, the undersigned, respectfully petition the lieutenant governor to direct the county to  
424 submit to the registered voters residing within the area described in this petition, in an election,  
425 the question of whether the area should incorporate as a town. Each of the undersigned affirms  
426 that each has personally signed this petition and is an owner of real property located within, or  
427 is a registered voter residing within, the described area, and that the current residence address  
428 of each is correctly written after the signer's name. The area we propose for incorporation as a  
429 town is described as follows: (insert an accurate description of the area proposed to be  
430 incorporated)."

431 (c) An individual who signs a petition described in this Subsection (7) may withdraw  
432 or reinstate the individual's signature by filing a written, signed statement with the lieutenant  
433 governor before the lieutenant governor certifies the petition signatures under Subsection (8).

434 (d) The petition sponsors shall submit a completed petition to the lieutenant governor  
435 no later than 316 days after the day on which the sponsors submit the application described in  
436 Subsection (3)(a) to the lieutenant governor.

437 (8) No later than 20 days after the day on which the sponsors submit the petition to the  
438 lieutenant governor under Subsection (7)(d), the lieutenant governor shall:

439 (a) determine whether the petition complies with the requirements described in  
440 Subsection (7); and

441 (b) (i) if the lieutenant governor determines that the petition complies with the  
442 requirements described in Subsection (7):

443 (A) certify the petition as sufficient; and

444 (B) mail or deliver written notification of the certification to the contact sponsor; or

445 (ii) if the lieutenant governor determines that the petition does not comply with the  
446 requirements described in Subsection (7):

447 (A) reject the petition; and

448 (B) notify the contact sponsor in writing of the rejection and the reasons for the  
449 rejection.

450 (9) (a) Petition sponsors may amend a petition that the lieutenant governor rejected  
451 under Subsection (8)(b)(ii) by:

452 (i) correcting the reason for which the lieutenant governor rejects the petition; and

453 (ii) submitting an amended petition to the lieutenant governor no later than the deadline  
454 described in Subsection (7)(d).

455 (b) A valid signature on a petition that the lieutenant governor rejects under Subsection  
456 (8)(b)(ii) is valid for an amended petition that the petition sponsors submit to the lieutenant  
457 governor under Subsection (9)(a).

458 (c) The lieutenant governor shall review an amended petition in accordance with  
459 Subsection (8).

460 (d) The sponsors of an incorporation petition may not amend the petition more than  
461 once.

462 (10) (a) If the lieutenant governor certifies an incorporation petition as sufficient under  
463 Subsection (8), the lieutenant governor shall, within seven days after the day on which the  
464 lieutenant governor certifies the petition, mail or transmit written notice of the proposed  
465 incorporation to each person who owns private real property that:

- 466 (i) is located within the boundaries of the proposed town; and
- 467 (ii) has a value that is greater than or equal to 1% of the assessed value of all private  
468 real property within the boundaries of the proposed town.

469 (b) A person described in Subsection (10)(a) may request that the lieutenant governor  
470 exclude all or part of the person's property from boundaries of the proposed town if:

- 471 (i) the property does not require, and is not expected to require, a municipal service  
472 that the proposed town will provide; and

- 473 (ii) exclusion of the property will not leave an unincorporated island within the  
474 proposed town.

475 (c) (i) To request exclusion under this Subsection (10), a person described in  
476 Subsection (10)(a) shall file a written request with the lieutenant governor within 10 days after  
477 the day on which the person receives the notice described in Subsection (10)(a).

- 478 (ii) The notice shall describe the property for which the person requests exclusion.

479 (d) (i) The lieutenant governor shall exclude property from the boundaries of the  
480 proposed town if the property is described in a written request filed under Subsection (10)(c)  
481 and meets the requirements described in Subsection (10)(b).

- 482 (ii) Within five days after the day on which the lieutenant governor excludes the  
483 property, the lieutenant governor shall mail or transmit written notice of the exclusion to the  
484 person who filed the request and to the contact sponsor.

485 (11) (a) If the lieutenant governor certifies an incorporation petition as sufficient under  
486 Subsection (8), the lieutenant governor shall, in accordance with Title 63G, Chapter 6a, Utah  
487 Procurement Code, procure the services of a feasibility consultant to conduct a financial  
488 feasibility study on the proposed incorporation.

489 (b) The lieutenant governor shall ensure that a feasibility consultant selected under  
490 Subsection (11)(a):

- 491 (i) has expertise in the processes and economics of local government; and
- 492 (ii) is not affiliated with:



493 (A) a sponsor of the incorporation petition to which the feasibility study relates; or

494 (B) the county in which the proposed town is located.

495 (c) The lieutenant governor shall require the feasibility consultant to complete the  
496 financial feasibility study and submit written results of the study to the lieutenant governor no  
497 later than 60 days after the day on which the lieutenant governor procures the services of the  
498 feasibility consultant.

499 (d) The financial consultant shall ensure that the financial feasibility study includes:

500 (i) an analysis of the population and population density within the boundaries of the  
501 proposed town and the surrounding area;

502 (ii) the current and projected five-year demographics of, and tax base within, the  
503 boundaries of the proposed town and the surrounding area, including household size and  
504 income, commercial and industrial development, and public facilities;

505 (iii) subject to Subsection (11)(e), the current and five-year projected cost of providing  
506 municipal services to the proposed town, including administrative costs;

507 (iv) assuming the same tax categories and tax rates as currently imposed by the county  
508 and all other current municipal services providers, the present and five-year projected revenue  
509 for the proposed town;

510 (v) a projection of the tax burden per household of any new taxes that may be levied  
511 within the proposed town within five years of the town's incorporation; and

512 (vi) if the lieutenant governor excludes property from the proposed town under  
513 Subsection (10)(d), an update to the map and legal description described in Subsection  
514 (3)(a)(v).

515 (e) (i) For purposes of Subsection (11)(d)(iii), the feasibility consultant shall assume  
516 that the proposed town will provide a level and quality of municipal services that fairly and  
517 reasonably approximate the level and quality of municipal services that are provided to the  
518 proposed town at the time the feasibility consultant conducts the feasibility study.

519 (ii) In determining the present cost of municipal services, the feasibility consultant  
520 shall consider:

521 (A) the amount it would cost the proposed town to provide the municipal services for  
522 the first five years after the town's incorporation; and

523 (B) the current municipal services provider's present and five-year projected cost of

524 providing the municipal services.

525 (iii) In calculating the costs described in Subsection (11)(d)(iii), the feasibility  
526 consultant shall account for inflation and anticipated growth.

527 (f) If the five-year projected revenues described in Subsection (11)(d)(iv) exceed the  
528 five-year projected costs described in Subsection (11)(d)(iii) by more than 10%, the feasibility  
529 consultant shall project and report the expected annual revenue surplus to the contact sponsor  
530 and the lieutenant governor.

531 (g) The lieutenant governor shall publish the feasibility study on the lieutenant  
532 governor's website and make a copy of the feasibility study available for public review at the  
533 Office of the Lieutenant Governor.

534 (12) After the lieutenant governor conducts the feasibility study, the lieutenant  
535 governor shall hold a public hearing in accordance with Section 10-2a-303.

536 Section 5. Section 13-34-114 is amended to read:

537 **13-34-114. Consent to use of educational terms in business names.**

538 (1) For purposes of this section:

539 (a) "Business name" means a name filed with the Division of Corporations and  
540 Commercial Code under:

541 (i) Section 16-6a-401;

542 (ii) Section 16-10a-401;

543 (iii) Section 16-11-16;

544 (iv) Section 42-2-6.6;

545 (v) Section [~~48-2a-102~~ or] 48-2e-108[, as appropriate pursuant to Section ~~48-3a-1405~~];

546 or

547 (vi) Section [~~48-2e-106~~ or] 48-3a-108[, as appropriate pursuant to Section  
548 ~~48-3a-1405~~].

549 (b) "Educational term" means the term:

550 (i) "university";

551 (ii) "college"; or

552 (iii) "institute" or "institution."

553 (2) If a statute listed in Subsection (1)(a) requires the written consent of the division to  
554 file a business name with the Division of Corporations and Commercial Code that includes an

555 educational term, the division may consent to the use of an educational term in accordance with  
556 this statute.

557 (3) The division shall consent to the use of an educational term in a business name if  
558 the person seeking to file the name:

- 559 (a) is registered under this chapter;
- 560 (b) is exempt from the chapter under Section 13-34-105; or
- 561 (c) (i) is not engaged in educational activities; and
- 562 (ii) does not represent that it is engaged in educational activities.

563 (4) The division may withhold consent to use of an educational term in a business  
564 name if the person seeking to file the name:

- 565 (a) offers, sells, or awards a degree or any other type of educational credential; and
- 566 (b) fails to provide bona fide instruction through student-faculty interaction according  
567 to the standards and criteria established by the division under Subsection 13-34-104(5).

568 Section 6. Section 16-16-111 is amended to read:

569 **16-16-111. Name.**

570 (1) Use of the term "cooperative" or its abbreviation under this chapter is not a  
571 violation of the provisions restricting the use of the term under any other law of this state.

572 (2) (a) Notwithstanding Section [~~48-2a-102~~ or] 48-2e-108, as appropriate pursuant to  
573 Section 48-2e-1205, the name of a limited cooperative association shall contain:

- 574 (i) the words "limited cooperative association" or "limited cooperative"; or
- 575 (ii) the abbreviation "L.C.A." or "LCA".
- 576 (b) "Cooperative" may be abbreviated as "Co-op" or "Coop".
- 577 (c) "Association" may be abbreviated as "Assoc." or "Assn."
- 578 (d) "Limited" may be abbreviated as "Ltd."

579 (e) (i) Use of the term "cooperative" or its abbreviation as permitted by this chapter is  
580 not a violation of the provisions restricting the use of the term under any other law of this state.

581 (ii) A limited cooperative association or a member may enforce the restrictions on the  
582 use of the term "cooperative" under this chapter and any other law of this state.

583 (iii) A limited cooperative association or a member may enforce the restrictions on the  
584 use of the term "cooperative" under any other law of this state.

585 (3) Except as otherwise provided in Subsection (4), a limited cooperative association

586 may use only a name that is available. A name is available if it is distinguishable in the records  
587 of the division from:

- 588 (a) the name of any entity organized or authorized to transact business in this state;
- 589 (b) a name reserved under Section 16-16-112; and
- 590 (c) an alternative name approved for a foreign cooperative authorized to transact  
591 business in this state.

592 (4) A limited cooperative association may apply to the division for authorization to use  
593 a name that is not available. The division shall authorize use of the name if:

- 594 (a) the person with ownership rights to use the name consents in a record to the use and  
595 applies in a form satisfactory to the division to change the name used or reserved to a name that  
596 is distinguishable upon the records of the division from the name applied for; or
- 597 (b) the applicant delivers to the division a certified copy of the final judgment of a  
598 court establishing the applicant's right to use the name in this state.

599 Section 7. Section 19-1-301 is amended to read:

600 **19-1-301. Adjudicative proceedings.**

601 (1) As used in this section, "dispositive action" means a final agency action that:

- 602 (a) the executive director takes following an adjudicative proceeding on a request for  
603 agency action; and
- 604 (b) is subject to judicial review under Section 63G-4-403.

605 (2) This section governs adjudicative proceedings that are not special adjudicative  
606 proceedings as defined in Section 19-1-301.5.

607 (3) (a) The department and its boards shall comply with the procedures and  
608 requirements of Title 63G, Chapter 4, Administrative Procedures Act.

609 (b) The procedures for an adjudicative proceeding conducted by an administrative law  
610 judge are governed by:

- 611 (i) Title 63G, Chapter 4, Administrative Procedures Act;
- 612 (ii) this title;
- 613 (iii) rules adopted by the department under:
  - 614 (A) Subsection 63G-4-102(6); or
  - 615 (B) this title; and
- 616 (iv) the Utah Rules of Civil Procedure, in the absence of a procedure established under

617 Subsection (3)(b)(i), (ii), or (iii).

618 (4) Except as provided in Section 19-2-113, an administrative law judge shall hear a  
619 party's request for agency action.

620 (5) The executive director shall appoint an administrative law judge who:

621 (a) is a member in good standing of the Utah State Bar;

622 (b) has a minimum of:

623 (i) 10 years of experience practicing law; and

624 (ii) five years of experience practicing in the field of:

625 (A) environmental compliance;

626 (B) natural resources;

627 (C) regulation by an administrative agency; or

628 (D) a field related to a field listed in Subsections (5)(b)(ii)(A) through (C); and

629 (c) has a working knowledge of the federal laws and regulations and state statutes and  
630 rules applicable to a request for agency action.

631 (6) In appointing an administrative law judge who meets the qualifications described in  
632 Subsection (5), the executive director may:

633 (a) compile a list of persons who may be engaged as an administrative law judge pro  
634 tempore by mutual consent of the parties to an adjudicative proceeding;

635 (b) appoint an assistant attorney general as an administrative law judge pro tempore; or

636 (c) (i) appoint an administrative law judge as an employee of the department; and

637 (ii) assign the administrative law judge responsibilities in addition to conducting an  
638 adjudicative proceeding.

639 (7) (a) An administrative law judge:

640 (i) shall conduct an adjudicative proceeding;

641 (ii) may take any action that is not a dispositive action; and

642 (iii) shall submit to the executive director a proposed dispositive action, including:

643 (A) written findings of fact;

644 (B) written conclusions of law; and

645 (C) a recommended order.

646 (b) The executive director may:

647 (i) approve, approve with modifications, or disapprove a proposed dispositive action

648 submitted to the executive director under Subsection (7)(a); or

649 (ii) return the proposed dispositive action to the administrative law judge for further  
650 action as directed.

651 (c) In making a decision regarding a dispositive action, the executive director may seek  
652 the advice of, and consult with:

653 (i) the assistant attorney general assigned to the department; or

654 (ii) a special master who:

655 (A) is appointed by the executive director; and

656 (B) is an expert in the subject matter of the proposed dispositive action.

657 (d) The executive director shall base a final dispositive action on the record of the  
658 proceeding before the administrative law judge.

659 (8) To conduct an adjudicative proceeding, an administrative law judge may:

660 (a) compel:

661 (i) the attendance of a witness; and

662 (ii) the production of a document or other evidence;

663 (b) administer an oath;

664 (c) take testimony; and

665 (d) receive evidence as necessary.

666 (9) A party may appear before an administrative law judge in person, through an agent  
667 or employee, or as provided by department rule.

668 (10) (a) Except as provided in Subsection (10)(b), an administrative law judge or the  
669 executive director may not participate in an ex parte communication with a party to an  
670 adjudicative proceeding regarding the merits of the adjudicative proceeding unless notice and  
671 an opportunity to be heard are afforded to all parties.

672 (b) The executive director may discuss ongoing operational matters that require the  
673 involvement of a division director without violating Subsection (10)(a).

674 (c) Upon receiving an ex parte communication [~~with~~] from a party to a proceeding, an  
675 administrative law judge or the executive director shall place the communication in the public  
676 record of the proceeding and afford all parties to the proceeding with an opportunity to  
677 comment on the communication.

678 (d) If an administrative law judge or the executive director receives an ex parte

679 communication, the person who receives the ex parte communication shall place the  
680 communication into the public record of the proceedings and afford all parties an opportunity  
681 to comment on the information.

682 (11) Nothing in this section limits a party's right to an adjudicative proceeding under  
683 Title 63G, Chapter 4, Administrative Procedures Act.

684 Section 8. Section **19-1-301.5** is amended to read:

685 **19-1-301.5. Permit review adjudicative proceedings.**

686 (1) As used in this section:

687 (a) "Dispositive action" means a final agency action that:

688 (i) the executive director takes as part of a special adjudicative proceeding; and

689 (ii) is subject to judicial review, in accordance with Subsection (16).

690 (b) "Dispositive motion" means a motion that is equivalent to:

691 (i) a motion to dismiss under Utah Rules of Civil Procedure, Rule 12(b)(6);

692 (ii) a motion for judgment on the pleadings under Utah Rules of Civil Procedure, Rule

693 12(c); or

694 (iii) a motion for summary judgment under Utah Rules of Civil Procedure, Rule 56.

695 (c) "Financial assurance determination" means a decision on whether a facility, site,  
696 plan, party, broker, owner, operator, generator, or permittee has met financial assurance or  
697 financial responsibility requirements as determined by the director of the Division of Waste  
698 Management and Radiation Control.

699 (d) "Party" means:

700 (i) the director who issued the permit order or financial assurance determination that is  
701 being challenged in the special adjudicative proceeding under this section;

702 (ii) the permittee;

703 (iii) the person who applied for the permit, if the permit was denied;

704 (iv) the person who is subject to a financial assurance determination; or

705 (v) a person granted intervention by the administrative law judge.

706 (e) "Permit" means any of the following issued under this title:

707 (i) a permit;

708 (ii) a plan;

709 (iii) a license;

- 710 (iv) an approval order; or
- 711 (v) another administrative authorization made by a director.
- 712 (f) (i) "Permit order" means an order issued by a director that:
- 713 (A) approves a permit;
- 714 (B) renews a permit;
- 715 (C) denies a permit;
- 716 (D) modifies or amends a permit; or
- 717 (E) revokes and reissues a permit.
- 718 (ii) "Permit order" does not include an order terminating a permit.
- 719 (g) "Special adjudicative proceeding" means a proceeding under this section to resolve
- 720 a challenge to a:
- 721 (i) permit order; or
- 722 (ii) financial assurance determination.
- 723 (2) This section governs special adjudicative proceedings.
- 724 (3) Except as expressly provided in this section, the provisions of Title 63G, Chapter 4,
- 725 Administrative Procedures Act, do not apply to a special adjudicative proceeding under this
- 726 section.
- 727 (4) If a public comment period was provided during the permit application process or
- 728 the financial assurance determination process, a person who challenges an order or
- 729 determination may only raise an issue or argument during the special adjudicative proceeding
- 730 that:
- 731 (a) the person raised during the public comment period; and
- 732 (b) was supported with information or documentation that is cited with reasonable
- 733 specificity and sufficiently enables the director to fully consider the substance and significance
- 734 of the issue.
- 735 (5) (a) Upon request by a party, the executive director shall issue a notice of
- 736 appointment appointing an administrative law judge, in accordance with Subsections
- 737 [19-1-301](#)(5) and (6), to conduct a special adjudicative proceeding under this section.
- 738 (b) The executive director shall issue a notice of appointment within 30 days after the
- 739 day on which a party files a request.
- 740 (c) A notice of appointment shall include:



- 741 (i) the agency's file number or other reference number assigned to the special  
742 adjudicative proceeding;
- 743 (ii) the name of the special adjudicative proceeding; and  
744 (iii) the administrative law judge's name, title, mailing address, email address, and  
745 telephone number.
- 746 (6) (a) Only the following may file a petition for review of a permit order or financial  
747 assurance determination:
- 748 (i) a party; or  
749 (ii) a person who is seeking to intervene under Subsection (7).
- 750 (b) A person who files a petition for review of a permit order or a financial assurance  
751 determination shall file the petition for review within 30 days after the day on which the permit  
752 order or the financial assurance determination is issued.
- 753 (c) The department may, in accordance with Title 63G, Chapter 3, Utah Administrative  
754 Rulemaking Act, make rules allowing the extension of the filing deadline described in  
755 Subsection (6)(b).
- 756 (d) A petition for review shall:
- 757 (i) be served in accordance with department rule;  
758 (ii) include the name and address of each person to whom a copy of the petition for  
759 review is sent;
- 760 (iii) if known, include the agency's file number or other reference number assigned to  
761 the special adjudicative proceeding;
- 762 (iv) state the date on which the petition for review is served;
- 763 (v) include a statement of the petitioner's position, including, as applicable:
- 764 (A) the legal authority under which the petition for review is requested;  
765 (B) the legal authority under which the agency has jurisdiction to review the petition  
766 for review;
- 767 (C) each of the petitioner's arguments in support of the petitioner's requested relief;  
768 (D) an explanation of how each argument described in Subsection (6)(d)(v)(C) was  
769 preserved;
- 770 (E) a detailed description of any permit condition to which the petitioner is objecting;  
771 (F) any modification or addition to a permit that the petitioner is requesting;

772 (G) a demonstration that the agency's permit decision is based on a finding of fact or  
773 conclusion of law that is clearly erroneous;

774 (H) if the agency director addressed a finding of fact or conclusion of law described in  
775 Subsection (6)(d)(v)(G) in a response to public comment, a citation to the comment and  
776 response that relates to the finding of fact or conclusion of law and an explanation of why the  
777 director's response was clearly erroneous or otherwise warrants review; and

778 (I) a claim for relief.

779 (e) A person may not raise an issue or argument in a petition for review unless the  
780 issue or argument:

781 (i) was preserved in accordance with Subsection (4); or

782 (ii) was not reasonably ascertainable before or during the public comment period.

783 (f) To demonstrate that an issue or argument was preserved in accordance with  
784 Subsection (4), a petitioner shall include the following in the petitioner's petition for review:

785 (i) a citation to where the petitioner raised the issue or argument during the public  
786 comment period; and

787 (ii) for each document upon which the petitioner relies in support of an issue or  
788 argument, a description that:

789 (A) states why the document is part of the administrative record; and

790 (B) demonstrates that the petitioner cited the document with reasonable specificity in  
791 accordance with Subsection (4)(b).

792 (7) (a) A person who is not a party may not participate in a special adjudicative  
793 proceeding under this section unless the person is granted the right to intervene under this  
794 Subsection (7).

795 (b) A person who seeks to intervene in a special adjudicative proceeding under this  
796 section shall, within 30 days after the day on which the permit order or the financial assurance  
797 determination being challenged was issued, file:

798 (i) a petition to intervene that:

799 (A) meets the requirements of Subsection [63G-4-207\(1\)](#); and

800 (B) demonstrates that the person is entitled to intervention under Subsection (7)(d)(ii);

801 and

802 (ii) a timely petition for review.

803 (c) In a special adjudicative proceeding to review a permit order, the permittee is a  
804 party to the special adjudicative proceeding regardless of who files the petition for review and  
805 does not need to file a petition to intervene under Subsection (7)(b).

806 (d) An administrative law judge shall grant a petition to intervene in a special  
807 adjudicative proceeding, if:

808 (i) the petition to intervene is timely filed; and

809 (ii) the petitioner:

810 (A) demonstrates that the petitioner's legal interests may be substantially affected by  
811 the special adjudicative proceeding;

812 (B) demonstrates that the interests of justice and the orderly and prompt conduct of the  
813 special adjudicative proceeding will not be materially impaired by allowing the intervention;  
814 and

815 (C) in the petitioner's petition for review, raises issues or arguments that are preserved  
816 in accordance with Subsection (4).

817 (e) An administrative law judge:

818 (i) shall issue an order granting or denying a petition to intervene in accordance with  
819 Subsection 63G-4-207(3)(a); and

820 (ii) may impose conditions on intervenors as described in Subsections 63G-4-207(3)(b)  
821 and (c).

822 (f) The department may, in accordance with Title 63G, Chapter 3, Utah Administrative  
823 Rulemaking Act, make rules allowing the extension of the filing deadline described in  
824 Subsection (7)(b).

825 (8) (a) Unless the parties otherwise agree, or the administrative law judge otherwise  
826 orders, a special adjudicative proceeding shall be conducted as follows:

827 (i) the director shall file and serve the administrative record within 40 days after the  
828 day on which the executive director issues a notice of appointment, unless otherwise ordered  
829 by the administrative law judge;

830 (ii) any dispositive motion shall be filed and served within 15 days after the day on  
831 which the administrative record is filed and served;

832 (iii) the petitioner shall file and serve an opening brief of no more than 30 pages:

833 (A) within 30 days after the day on which the director files and serves the

834 administrative record; or

835 (B) if a party files and serves a dispositive motion, within 30 days after the day on  
836 which the administrative law judge issues a decision on the dispositive motion, including a  
837 decision to defer the motion;

838 (iv) each responding party shall file and serve a response brief of no more than 30  
839 pages within 15 days after the day on which the petitioner files and serves the opening brief;

840 (v) the petitioner may file and serve a reply brief of not more than 15 pages within 15  
841 days after the day on which the response brief is filed and served; and

842 (vi) if the petitioner files and serves a reply brief, each responding party may file and  
843 serve a surreply brief of no more than 15 pages within five business days after the day on which  
844 the petitioner files and serves the reply brief.

845 (b) (i) A reply brief may not raise an issue that was not raised in the response brief.

846 (ii) A surreply brief may not raise an issue that was not raised in the reply brief.

847 (9) (a) An administrative law judge shall conduct a special adjudicative proceeding  
848 based only on the administrative record and not as a trial de novo.

849 (b) To the extent relative to the issues and arguments raised in the petition for review,  
850 the administrative record consists of the following items, if they exist:

851 (i) (A) for review of a permit order, the permit application, draft permit, and final  
852 permit; or

853 (B) for review of a financial assurance determination, the proposed financial assurance  
854 determination from the owner or operator of the facility, the draft financial assurance  
855 determination, and the final financial assurance determination;

856 (ii) each statement of basis, fact sheet, engineering review, or other substantive  
857 explanation designated by the director as part of the basis for the decision relating to the permit  
858 order or the financial assurance determination;

859 (iii) the notice and record of each public comment period;

860 (iv) the notice and record of each public hearing, including oral comments made during  
861 the public hearing;

862 (v) written comments submitted during the public comment period;

863 (vi) responses to comments that are designated by the director as part of the basis for  
864 the decision relating to the permit order or the financial assurance determination;

- 865 (vii) any information that is:
- 866 (A) requested by and submitted to the director; and
- 867 (B) designated by the director as part of the basis for the decision relating to the permit
- 868 order or the financial assurance determination;
- 869 (viii) any additional information specified by rule;
- 870 (ix) any additional documents agreed to by the parties; and
- 871 (x) information supplementing the record under Subsection (9)(c).
- 872 (c) (i) There is a rebuttable presumption against supplementing the record.
- 873 (ii) A party may move to supplement the record described in Subsection (9)(b) with
- 874 technical or factual information.
- 875 (iii) The administrative law judge may grant a motion to supplement the record
- 876 described in Subsection (9)(b) with technical or factual information if the moving party proves
- 877 that:
- 878 (A) good cause exists for supplementing the record;
- 879 (B) supplementing the record is in the interest of justice; and
- 880 (C) supplementing the record is necessary for resolution of the issues.
- 881 (iv) The department may, in accordance with Title 63G, Chapter 3, Utah
- 882 Administrative Rulemaking Act, make rules permitting further supplementation of the record.
- 883 (10) (a) Except as otherwise provided by this section, the administrative law judge
- 884 shall review and respond to a petition for review in accordance with Subsections
- 885 [63G-4-201](#)(3)(d) and (e), following the relevant procedures for formal adjudicative
- 886 proceedings.
- 887 (b) The administrative law judge shall require the parties to file responsive briefs in
- 888 accordance with Subsection (8).
- 889 (c) If an administrative law judge enters an order of default against a party, the
- 890 administrative law judge shall enter the order of default in accordance with Section [63G-4-209](#).
- 891 (d) The administrative law judge, in conducting a special adjudicative proceeding:
- 892 (i) may not participate in an ex parte communication with a party to the special
- 893 adjudicative proceeding regarding the merits of the special adjudicative proceeding unless
- 894 notice and an opportunity to be heard are afforded to all parties; and
- 895 (ii) shall, upon receiving an ex parte communication, place the communication in the

896 public record of the proceeding and afford all parties an opportunity to comment on the  
897 information.

898 (e) In conducting a special adjudicative proceeding, the administrative law judge may  
899 take judicial notice of matters not in the administrative record, in accordance with Utah Rules  
900 of Evidence, Rule 201.

901 (f) An administrative law judge may take any action in a special adjudicative  
902 proceeding that is not a dispositive action.

903 (11) (a) A person who files a petition for review has the burden of demonstrating that  
904 an issue or argument raised in the petition for review has been preserved in accordance with  
905 Subsection (4).

906 (b) The administrative law judge shall dismiss, with prejudice, any issue or argument  
907 raised in a petition for review that has not been preserved in accordance with Subsection (4).

908 (12) In response to a dispositive motion, within 45 days after the day on which oral  
909 argument takes place, or, if there is no oral argument, within 45 days after the day on which the  
910 reply brief on the dispositive motion is due, the administrative law judge shall:

911 (a) submit a proposed dispositive action to the executive director recommending full or  
912 partial resolution of the special adjudicative proceeding, that includes:

- 913 (i) written findings of fact;
- 914 (ii) written conclusions of law; and
- 915 (iii) a recommended order; or

916 (b) if the administrative law judge determines that a full or partial resolution of the  
917 special adjudicative proceeding is not appropriate, issue an order that explains the basis for the  
918 administrative law judge's determination.

919 (13) For each issue or argument that is not dismissed or otherwise resolved under  
920 Subsection (11)(b) or (12), the administrative law judge shall:

921 (a) provide the parties an opportunity for briefing and oral argument in accordance with  
922 this section;

923 (b) conduct a review of the director's order or determination, based on the record  
924 described in Subsections (9)(b), (9)(c), and (10)(e); and

925 (c) within 60 days after the day on which the reply brief on the dispositive motion is  
926 due, submit to the executive director a proposed dispositive action, that includes:

927 (i) written findings of fact;

928 (ii) written conclusions of law; and

929 (iii) a recommended order.

930 (14) (a) When the administrative law judge submits a proposed dispositive action to  
931 the executive director, the executive director may:

932 (i) adopt, adopt with modifications, or reject the proposed dispositive action; or

933 (ii) return the proposed dispositive action to the administrative law judge for further  
934 action as directed.

935 (b) On review of a proposed dispositive action, the executive director shall uphold all  
936 factual, technical, and scientific agency determinations that are not clearly erroneous based on  
937 the petitioner's marshaling of the evidence.

938 (c) In reviewing a proposed dispositive action during a special adjudicative proceeding,  
939 the executive director may take judicial notice of matters not in the record, in accordance with  
940 Utah Rules of Evidence, Rule 201.

941 (d) The executive director may use the executive director's technical expertise in  
942 making a determination.

943 (15) (a) Except as provided in Subsection (15)(b), the executive director may not  
944 participate in an ex parte communication with a party to a special adjudicative proceeding  
945 regarding the merits of the special adjudicative proceeding, unless notice and opportunity to be  
946 heard are afforded to all parties involved in the proceeding.

947 (b) The executive director may discuss ongoing operational matters that require the  
948 involvement of a division director without violating Subsection (15)(a).

949 (c) Upon receiving an ex parte communication [~~with~~] from a party to a proceeding, the  
950 executive director shall place the communication in the public record of the proceeding and  
951 afford all parties to the proceeding with an opportunity to comment on the communication.

952 (16) (a) A party may seek judicial review in the Utah Court of Appeals of a dispositive  
953 action in a special adjudicative proceeding, in accordance with Sections [63G-4-401](#),  
954 [63G-4-403](#), and [63G-4-405](#).

955 (b) An appellate court shall limit its review of a dispositive action of a special  
956 adjudicative proceeding under this section to:

957 (i) the record described in Subsections (9)(b), (9)(c), (10)(e), and (14)(c); and

958 (ii) the record made by the administrative law judge and the executive director during  
959 the special adjudicative proceeding.

960 (c) During judicial review of a dispositive action, the appellate court shall:

961 (i) review all agency determinations in accordance with Subsection 63G-4-403(4),  
962 recognizing that the agency has been granted substantial discretion to interpret its governing  
963 statutes and rules; and

964 (ii) uphold all factual, technical, and scientific agency determinations that are not  
965 clearly erroneous based upon the petitioner's marshaling of the evidence.

966 (17) (a) The filing of a petition for review does not:

967 (i) stay a permit order or a financial assurance determination; or

968 (ii) delay the effective date of a permit order or a portion of a financial assurance  
969 determination.

970 (b) A permit order or a financial assurance determination may not be stayed or delayed  
971 unless a stay is granted under this Subsection (17).

972 (c) The administrative law judge shall:

973 (i) consider a party's motion to stay a permit order or a financial assurance  
974 determination during a special adjudicative proceeding; and

975 (ii) within 45 days after the day on which the reply brief on the motion to stay is due,  
976 submit a proposed determination on the stay to the executive director.

977 (d) The administrative law judge may not recommend to the executive director a stay  
978 of a permit order or a financial assurance determination, or a portion of a permit order or a  
979 portion of a financial assurance determination, unless:

980 (i) all parties agree to the stay; or

981 (ii) the party seeking the stay demonstrates that:

982 (A) the party seeking the stay will suffer irreparable harm unless the stay is issued;

983 (B) the threatened injury to the party seeking the stay outweighs whatever damage the  
984 proposed stay is likely to cause the party restrained or enjoined;

985 (C) the stay, if issued, would not be adverse to the public interest; and

986 (D) there is a substantial likelihood that the party seeking the stay will prevail on the  
987 merits of the underlying claim, or the case presents serious issues on the merits, which should  
988 be the subject of further adjudication.



989 (e) A party may appeal the executive director's decision regarding a stay of a permit  
990 order or a financial assurance determination to the Utah Court of Appeals, in accordance with  
991 Section 78A-4-103.

992 (18) (a) Subject to Subsection (18)(c), the administrative law judge shall issue a written  
993 response to a non-dispositive motion within 45 days after the day on which the reply brief on  
994 the non-dispositive motion is due or, if the administrative law judge grants oral argument on  
995 the non-dispositive motion, within 45 days after the day on which oral argument takes place.

996 (b) If the administrative law judge determines that the administrative law judge needs  
997 more time to issue a response to a non-dispositive motion, the administrative law judge may  
998 issue a response after the deadline described in Subsection (18)(a) if, before the deadline  
999 expires, the administrative law judge gives notice to the parties that includes:

1000 (i) the amount of additional time that the administrative law judge requires; and

1001 (ii) the reason the administrative law judge needs the additional time.

1002 (c) If the administrative law judge grants oral argument on a non-dispositive motion,  
1003 the administrative law judge shall hold the oral argument within 30 days after the day on which  
1004 the reply brief on the non-dispositive motion is due.

1005 Section 9. Section 19-1-507 is amended to read:

1006 **19-1-507. Civil action.**

1007 (1) The attorney general or a person may bring a civil action in a court of competent  
1008 jurisdiction to seek:

1009 (a) an injunction to enforce ~~the~~ this part; and

1010 (b) if the action is brought by the attorney general, a civil penalty not to exceed \$500  
1011 for each day ~~the~~ this part is violated.

1012 (2) In an action brought under this section, a court may:

1013 (a) order injunctive relief;

1014 (b) impose a civil penalty to the extent provided in Subsection (1);

1015 (c) award attorney fees and costs to the attorney general or person who brings the civil  
1016 action, if the attorney general or person prevails; or

1017 (d) take a combination of actions under this Subsection (2).

1018 (3) A civil penalty imposed under this section shall be deposited into the General Fund.

1019 Section 10. Section 19-1-601 is amended to read:

1020 **19-1-601. Title.**

1021 This [chapter] part is known as the "Environmental Mitigation and Response Act."

1022 Section 11. Section **19-1-602** is amended to read:

1023 **19-1-602. Definitions.**

1024 As used in this [chapter] part:

1025 (1) "Environmental mitigation" means an action or activity intended to remedy, reduce,  
1026 or offset known negative impacts to the environment.

1027 (2) "Environmental response action" means action taken to prevent, eliminate,  
1028 minimize, investigate, monitor, clean up, or remove contaminants in the environment.

1029 (3) "Financial assurance" means a mechanism or instrument intended to provide funds  
1030 if necessary to the department to conduct closure, monitoring, or cleanup of a specific facility  
1031 or site in accordance with the applicable environmental requirements provided in this title.

1032 (4) "Funding source" means an individual or entity that provides a monetary  
1033 contribution to the Environmental Mitigation and Response Fund.

1034 (5) "Natural resource damage" means damages to land, fish, wildlife, biota, air, water,  
1035 ground water, drinking water supplies, and other resources that are held in trust for the public  
1036 or otherwise controlled by the United States, the state, or local government.

1037 (6) "Unused funds" means the remaining funds from a specific funding source  
1038 following the complete implementation of the environmental mitigation or response actions  
1039 pursuant to the terms and conditions of the contribution.

1040 Section 12. Section **19-2-107** is amended to read:

1041 **19-2-107. Director -- Appointment -- Powers.**

1042 (1) The executive director shall appoint the director. The director shall serve under the  
1043 administrative direction of the executive director.

1044 (2) (a) The director shall:

1045 (i) prepare and develop comprehensive plans for the prevention, abatement, and control  
1046 of air pollution in Utah;

1047 (ii) advise, consult, and cooperate with other agencies of the state, the federal  
1048 government, other states and interstate agencies, and affected groups, political subdivisions,  
1049 and industries in furtherance of the purposes of this chapter;

1050 (iii) review plans, specifications, or other data relative to air pollution control

- 1051 equipment or any part of the air pollution control equipment;
- 1052 (iv) under the direction of the executive director, represent the state in all matters  
1053 relating to interstate air pollution, including interstate compacts and similar agreements;
- 1054 (v) secure necessary scientific, technical, administrative, and operational services,  
1055 including laboratory facilities, by contract or otherwise;
- 1056 (vi) encourage voluntary cooperation by persons and affected groups to achieve the  
1057 purposes of this chapter;
- 1058 (vii) encourage local units of government to handle air pollution within their respective  
1059 jurisdictions on a cooperative basis and provide technical and consulting assistance to them;
- 1060 (viii) determine by means of field studies and sampling the degree of air contamination  
1061 and air pollution in all parts of the state;
- 1062 (ix) monitor the effects of the emission of air pollutants from motor vehicles on the  
1063 quality of the outdoor atmosphere in all parts of Utah and take appropriate responsive action;
- 1064 (x) collect and disseminate information relating to air contamination and air pollution  
1065 and conduct educational and training programs relating to air contamination and air pollution;
- 1066 (xi) assess and collect noncompliance penalties as required in Section 120 of the  
1067 federal Clean Air Act, 42 U.S.C. Section 7420;
- 1068 (xii) comply with the requirements of federal air pollution laws;
- 1069 (xiii) subject to the provisions of this chapter, enforce rules through the issuance of  
1070 orders, including:
- 1071 (A) prohibiting or abating discharges of wastes affecting ambient air;
- 1072 (B) requiring the construction of new control facilities or any parts of new control  
1073 facilities or the modification, extension, or alteration of existing control facilities or any parts  
1074 of new control facilities; or
- 1075 (C) adopting other remedial measures to prevent, control, or abate air pollution; and
- 1076 (xiv) as authorized by the board and subject to the provisions of this chapter, act as  
1077 executive secretary of the board under the direction of the chairman of the board.
- 1078 (b) The director may:
- 1079 (i) employ full-time, temporary, part-time, and contract employees necessary to carry  
1080 out this chapter;
- 1081 (ii) subject to the provisions of this chapter, authorize an employee or representative of

1082 the department to enter at reasonable ~~[time]~~ times and upon reasonable notice in or upon public  
1083 or private property for the purposes of inspecting and investigating conditions and plant records  
1084 concerning possible air pollution;

1085 (iii) encourage, participate in, or conduct studies, investigations, research, and  
1086 demonstrations relating to air pollution and its causes, effects, prevention, abatement, and  
1087 control, as advisable and necessary for the discharge of duties assigned under this chapter,  
1088 including the establishment of inventories of pollution sources;

1089 (iv) collect and disseminate information relating to air pollution and the prevention,  
1090 control, and abatement of it;

1091 (v) cooperate with studies and research relating to air pollution and its control,  
1092 abatement, and prevention;

1093 (vi) subject to Subsection (3), upon request, consult concerning the following with a  
1094 person proposing to construct, install, or otherwise acquire an air pollutant source in Utah:

1095 (A) the efficacy of proposed air pollution control equipment for the source; or

1096 (B) the air pollution problem that may be related to the source;

1097 (vii) accept, receive, and administer grants or other funds or gifts from public and  
1098 private agencies, including the federal government, for the purpose of carrying out any of the  
1099 functions of this chapter;

1100 (viii) subject to Subsection 19-2-104(3)(b)(i), settle or compromise a civil action  
1101 initiated by the division to compel compliance with this chapter or the rules made under this  
1102 chapter; or

1103 (ix) subject to the provisions of this chapter, exercise all incidental powers necessary to  
1104 carry out the purposes of this chapter, including certification to state or federal authorities for  
1105 tax purposes that air pollution control equipment has been certified in conformity with Title 19,  
1106 Chapter 12, Pollution Control Act.

1107 (3) A consultation described in Subsection (2)(b)(vi) does not relieve a person from the  
1108 requirements of this chapter, the rules adopted under this chapter, or any other provision of  
1109 law.

1110 Section 13. Section 19-3-105 is amended to read:

1111 **19-3-105. Definitions -- Legislative and gubernatorial approval required for**  
1112 **radioactive waste license -- Exceptions -- Application for new, renewed, or amended**

1113 **license.**

1114 (1) As used in this section:

1115 (a) "Alternate feed material" has the same definition as provided in Section [59-24-102](#).

1116 (b) "Approval application" means an application by a radioactive waste facility  
1117 regulated under this chapter or Title 19, Chapter 5, Water Quality Act, for a permit, license,  
1118 registration, certification, or other authorization.

1119 (c) (i) "Class A low-level radioactive waste" means:

1120 (A) radioactive waste that is classified as class A waste under 10 C.F.R. 61.55; and

1121 (B) radium-226 up to a maximum radionuclide concentration level of 10,000  
1122 picocuries per gram.

1123 (ii) "Class A low-level radioactive waste" does not include:

1124 (A) uranium mill tailings;

1125 (B) naturally occurring radioactive materials; or

1126 (C) the following radionuclides if classified as "special nuclear material" under the  
1127 Atomic Energy Act of 1954, 42 U.S.C. 2014:

1128 (I) uranium-233; and

1129 (II) uranium-235 with a radionuclide concentration level greater than the concentration  
1130 limits for specific conditions and enrichments established by an order of the Nuclear  
1131 Regulatory Commission:

1132 (Aa) to ensure criticality safety for a radioactive waste facility in the state; and

1133 (Bb) in response to a request, submitted prior to January 1, 2004, from a radioactive  
1134 waste facility in the state to the Nuclear Regulatory Commission to amend the facility's special  
1135 nuclear material exemption order.

1136 (d) (i) "Radioactive waste facility" or "facility" means a facility that decays radioactive  
1137 waste in storage, treats radioactive waste, or disposes of radioactive waste:

1138 (A) commercially for profit; or

1139 (B) generated at locations other than the radioactive waste facility.

1140 (ii) "Radioactive waste facility" does not include a facility that receives:

1141 (A) alternate feed material for reprocessing; or

1142 (B) radioactive waste from a location in the state designated as a processing site under  
1143 42 U.S.C. 7912(f).

1144 (e) "Radioactive waste license" or "license" means a radioactive material license issued  
1145 by the director [~~under Subsection 19-3-108(2)(d),~~] to own, construct, modify, or operate a  
1146 radioactive waste facility.

1147 (2) The provisions of this section are subject to the prohibition under Section  
1148 19-3-103.7.

1149 (3) Subject to Subsection (8), a person may not own, construct, modify, or operate a  
1150 radioactive waste facility without:

1151 (a) having received a radioactive waste license for the facility;

1152 (b) meeting the requirements established by rule under Section 19-3-104;

1153 (c) the approval of the governing body of the municipality or county responsible for  
1154 local planning and zoning where the radioactive waste is or will be located; and

1155 (d) subsequent to meeting the requirements of Subsections (3)(a) through (c), the  
1156 approval of the governor and the Legislature.

1157 (4) Subject to Subsection (8), a new radioactive waste license application, or an  
1158 application to renew or amend an existing radioactive waste license, is subject to the  
1159 requirements of Subsections (3)(b) through (d) if the application, renewal, or amendment:

1160 (a) specifies a different geographic site than a previously submitted application;

1161 (b) would cost 50% or more of the cost of construction of the original radioactive  
1162 waste facility or the modification would result in an increase in capacity or throughput of a  
1163 cumulative total of 50% of the total capacity or throughput which was approved in the facility  
1164 license as of January 1, 1990, or the initial approval facility license if the initial license  
1165 approval is subsequent to January 1, 1990; or

1166 (c) requests approval to decay radioactive waste in storage, treat radioactive waste, or  
1167 dispose of radioactive waste having a higher radionuclide concentration limit than allowed,  
1168 under an existing approved license held by the facility, for the specific type of waste to be  
1169 decayed in storage, treated, or disposed of.

1170 (5) The requirements of Subsection (4)(c) do not apply to an application to renew or  
1171 amend an existing radioactive waste license if:

1172 (a) the radioactive waste facility requesting the renewal or amendment has received a  
1173 license prior to January 1, 2004; and

1174 (b) the application to renew or amend its license is limited to a request to approve the

1175 receipt, transfer, storage, decay in storage, treatment, or disposal of class A low-level  
1176 radioactive waste.

1177 (6) A radioactive waste facility that receives a new radioactive waste license after May  
1178 3, 2004, is subject to the requirements of Subsections (3)(b) through (d) for any license  
1179 application, renewal, or amendment that requests approval to decay radioactive waste in  
1180 storage, treat radioactive waste, or dispose of radioactive waste not previously approved under  
1181 an existing license held by the facility.

1182 (7) If the board finds that approval of additional radioactive waste license applications,  
1183 renewals, or amendments will result in inadequate oversight, monitoring, or licensure  
1184 compliance and enforcement of existing and any additional radioactive waste facilities, the  
1185 board shall suspend acceptance of further applications for radioactive waste licenses. The  
1186 board shall report the suspension to the Legislative Management Committee.

1187 (8) The requirements of Subsections (3)(c) and (d) and Subsection 19-3-104(10) do not  
1188 apply to:

1189 (a) a radioactive waste license that is in effect on December 31, 2006, including all  
1190 amendments to the license that have taken effect as of December 31, 2006;

1191 (b) a license application for a facility in existence as of December 31, 2006, unless the  
1192 license application includes an area beyond the facility boundary approved in the license  
1193 described in Subsection (8)(a); or

1194 (c) an application to renew or amend a license described in Subsection (8)(a), unless  
1195 the renewal or amendment includes an area beyond the facility boundary approved in the  
1196 license described in Subsection (8)(a).

1197 (9) (a) The director shall review an approval application to determine whether the  
1198 application complies with the requirements of this chapter and the rules of the board.

1199 (b) Within 60 days after the day on which the director receives an approval application  
1200 described in Subsection (10)(a)(ii) or (iii), the director shall:

1201 (i) determine whether the application is complete and contains all the information  
1202 necessary to process the application for approval; and

1203 (ii) (A) issue a notice of completeness to the applicant; or

1204 (B) issue a notice of deficiency to the applicant and list the additional information  
1205 necessary to complete the application.

1206 (c) The director shall review information submitted in response to a notice of  
1207 deficiency within 30 days after the day on which the director receives the information.

1208 (10) The board shall make rules, in accordance with Title 63G, Chapter 3, Utah  
1209 Administrative Rulemaking Act, to:

1210 (a) categorize approval applications as follows:

1211 (i) approval applications that:

1212 (A) are administrative in nature;

1213 (B) require limited scrutiny by the director; and

1214 (C) do not require public input;

1215 (ii) approval applications that:

1216 (A) require substantial scrutiny by the director;

1217 (B) require public input; and

1218 (C) are not described in Subsection (10)(a)(iii); and

1219 (iii) approval applications for:

1220 (A) the granting or renewal of a radioactive waste license;

1221 (B) the granting or renewal of a groundwater permit issued by the director for a  
1222 radioactive waste facility;

1223 (C) an amendment to a radioactive waste license, or a groundwater permit, that allows  
1224 the design and approval of a new disposal cell;

1225 (D) an amendment to a radioactive waste license or groundwater discharge permit for a  
1226 radioactive waste facility to eliminate groundwater monitoring; and

1227 (E) a radioactive waste facility closure plan;

1228 (b) provide time periods for the director to review, and approve or deny, an application  
1229 described in Subsection (10)(a) as follows:

1230 (i) for applications categorized under Subsection (10)(a)(i), within 30 days after the day  
1231 on which the director receives the application;

1232 (ii) for applications categorized under Subsection (10)(a)(ii), within 180 days after the  
1233 day on which the director receives the application;

1234 (iii) for applications categorized under Subsection (10)(a)(iii), as follows:

1235 (A) for a new radioactive waste license, within 540 days after the day on which the  
1236 director receives the application;



1237 (B) for a new groundwater permit issued by the director for a radioactive waste facility  
1238 consistent with the provisions of Title 19, Chapter 5, Water Quality Act, within 540 days after  
1239 the day on which the director receives the application;

1240 (C) for a radioactive waste license renewal, within 365 days after the day on which the  
1241 director receives the application;

1242 (D) for a groundwater permit renewal issued by the director for a radioactive waste  
1243 facility, within 365 days after the day on which the director receives the application;

1244 (E) for an amendment to a radioactive waste license, or a groundwater permit, that  
1245 allows the design and approval of a new disposal cell, within 365 days after the day on which  
1246 the director receives the application;

1247 (F) for an amendment to a radioactive waste license, or a groundwater discharge  
1248 permit, for a radioactive waste facility to eliminate groundwater monitoring, within 365 days  
1249 after the day on which the director receives the application; and

1250 (G) for a radioactive waste facility closure plan, within 365 days after the day on which  
1251 the director receives the application;

1252 (c) toll the time periods described in Subsection (10)(b):

1253 (i) while an owner or operator of a facility responds to the director's request for  
1254 information;

1255 (ii) during a public comment period; or

1256 (iii) while the federal government reviews the application; and

1257 (d) require the director to prepare a detailed written explanation of the basis for the  
1258 director's approval or denial of an approval application.

1259 Section 14. Section **19-3-301** is amended to read:

1260 **19-3-301. Restrictions on nuclear waste placement in state.**

1261 (1) The placement, including transfer, storage, decay in storage, treatment, or disposal,  
1262 within the exterior boundaries of Utah of high-level nuclear waste or greater than class C  
1263 radioactive waste is prohibited.

1264 (2) Notwithstanding Subsection (1) the governor, after consultation with the county  
1265 executive and county legislative body of the affected county and with concurrence of the  
1266 Legislature, may specifically approve the placement as provided in this part, but only if:

1267 (a) (i) the federal Nuclear Regulatory Commission issues a license, pursuant to the

1268 Nuclear Waste Policy Act, 42 U.S.C.A. 10101 et seq., or the Atomic Energy Act, 42 U.S.C.A.  
1269 2011 et seq., for the placement within the exterior boundaries of Utah of high-level nuclear  
1270 waste or greater than class C radioactive waste; and

1271 (ii) the authority of the federal Nuclear Regulatory Commission to grant a license  
1272 under Subsection (2)(a)(i) is clearly upheld by a final judgment of a court of competent  
1273 jurisdiction; or

1274 (b) an agency of the federal government is transporting the waste, and all state and  
1275 federal requirements to proceed with the transportation have been met.

1276 (3) The requirement for the approval of a final court of competent jurisdiction shall be  
1277 met in all of the following categories, in order for a state license proceeding regarding waste to  
1278 begin:

1279 (a) transfer or transportation, by rail, truck, or other mechanisms;

1280 (b) storage, including any temporary storage at a site away from the generating reactor;

1281 (c) decay in storage;

1282 (d) treatment; and

1283 (e) disposal.

1284 (4) (a) Upon satisfaction of the requirements of Subsection (2)(a), for each category  
1285 listed in Subsection (3), or satisfaction of the requirements under Subsection (2)(b), the  
1286 governor, with the concurrence of the attorney general, shall certify in writing to the executive  
1287 director of the Department of Environmental Quality that all of the requirements have been  
1288 met, and that any necessary state licensing processes may begin.

1289 (b) Separate certification under this Subsection (4) shall be given for each category in  
1290 Subsection (3).

1291 (5) (a) The department shall make, by rule, a determination of the dollar amount of the  
1292 health and economic costs expected to result from a reasonably foreseeable accidental release  
1293 of waste involving a transfer facility or storage facility, or during transportation of waste,  
1294 within the exterior boundaries of the state. The department may initiate rulemaking under this  
1295 Subsection (5)(a) on or after March 15, 2001.

1296 (b) (i) The department shall also determine the dollar amount currently available to  
1297 cover the costs as determined in Subsection (5)(a):

1298 (A) under nuclear industry self-insurance;

- 1299 (B) under federal insurance requirements; and  
1300 (C) in federal money.
- 1301 (ii) The department may not include any calculations of federal money that may be  
1302 appropriated in the future in determining the amount under Subsection (5)(b)(i).
- 1303 (c) The department shall use the information compiled under Subsections (5)(a) and (b)  
1304 to determine the amount of unfunded potential liability in the event of a release of waste from a  
1305 storage or transfer facility, or a release during the transportation of waste.
- 1306 (6) (a) State agencies may not, for the purpose of providing any goods, services, or  
1307 municipal-type services to a storage facility or transfer facility, or to any organization engaged  
1308 in the transportation of waste, enter into any contracts or any other agreements prior to:
- 1309 (i) the satisfaction of the conditions in Subsection (4); and  
1310 (ii) the executive director of the department having certified that the requirements of  
1311 Sections 19-3-304 through 19-3-308 have been met for the purposes of a license application  
1312 proceeding for a storage facility or transfer facility.
- 1313 (b) Political subdivisions of the state may not enter into any contracts or any other  
1314 agreements for the purpose of providing any goods, services, or municipal-type services to a  
1315 storage facility or transfer facility, or to any organization engaged in the transportation of  
1316 waste.
- 1317 (c) This Subsection (6) does not prohibit a state agency from exercising the regulatory  
1318 authority granted to it by law.
- 1319 (7) (a) Notwithstanding any other provision of law, any political subdivision may not  
1320 be formed pursuant to the laws of Utah for the purpose of providing any goods, services, or  
1321 municipal-type services to a storage facility or transfer facility prior to the satisfaction of the  
1322 conditions in Subsection (4). These political subdivisions include:
- 1323 (i) a cooperative;  
1324 (ii) a local district authorized by Title 17B, Limited Purpose Local Government  
1325 Entities - Local Districts;  
1326 (iii) a special service district under Title 17D, Chapter 1, Special Service District Act;  
1327 (iv) a limited purpose local governmental ~~[entities]~~ entity authorized by Title 17,  
1328 Counties;  
1329 (v) any joint power agreement authorized by Title 11, Cities, Counties, and Local

1330 Taxing Units; and

1331 (vi) the formation of a municipality, or any authority of a municipality authorized by  
1332 Title 10, Utah Municipal Code.

1333 (b) (i) Subsection (7)(a) shall be strictly interpreted. Any political subdivision  
1334 authorized and formed under the laws of the state on or after March 15, 2001, which  
1335 subsequently contracts to, or in any manner agrees to provide, or does provide goods, services,  
1336 or municipal-type services to a storage facility or transfer facility is formed in violation of  
1337 Subsection (7)(a).

1338 (ii) If the conditions of Subsection (7)(b)(i) apply, the persons who formed the political  
1339 subdivision are considered to have knowingly violated a provision of this part, and the  
1340 penalties of Section 19-3-312 apply.

1341 (8) (a) An organization may not be formed for the purpose of providing any goods,  
1342 services, or municipal-type services to a storage facility or transfer facility prior to:

1343 (i) the satisfaction of the conditions in Subsection (4); and

1344 (ii) the executive director of the department having certified that the requirements of  
1345 Sections 19-3-304 through 19-3-308 have been met.

1346 (b) A foreign organization may not be registered to do business in the state for the  
1347 purpose of providing any goods, services, or municipal-type services to a storage facility or  
1348 transfer facility prior to:

1349 (i) the satisfaction of the conditions in Subsection (4); and

1350 (ii) the executive director of the department having certified that the requirements of  
1351 Sections 19-3-304 through 19-3-308 have been met.

1352 (c) The prohibitions of Subsections (8)(a) and (b) shall be strictly applied, and:

1353 (i) the formation of a new organization or registration of a foreign organization within  
1354 the state, any of whose purposes are to provide goods, services, or municipal-type services to a  
1355 storage facility or transfer facility may not be licensed or registered in the state, and the local or  
1356 foreign organization is void and does not have authority to operate within the state;

1357 (ii) any organization which is formed or registered on or after March 15, 2001, and  
1358 which subsequently contracts to, or in any manner agrees to provide, or does provide goods,  
1359 services, or municipal-type services to a storage facility or transfer facility has been formed or  
1360 registered in violation of Subsection (8)(a) or (b) respectively; and

1361 (iii) if the conditions of Subsection (8)(c)(ii) apply, the persons who formed the  
1362 organization or the principals of the foreign organization, are considered to have knowingly  
1363 violated a provision of this part, and are subject to the penalties in Section 19-3-312.

1364 (9) (a) (i) Any contract or agreement to provide any goods, services, or municipal-type  
1365 services to any organization engaging in, or attempting to engage in the placement of high-level  
1366 nuclear waste or greater than class C radioactive waste at a storage facility or transfer facility  
1367 within the state are declared to be against the greater public interest, health, and welfare of the  
1368 state, by promoting an activity which has the great potential to cause extreme public harm.

1369 (ii) These contracts or agreements under Subsection (9)(a)(i), whether formal or  
1370 informal, are declared to be void from inception, agreement, or execution as against public  
1371 policy.

1372 (b) (i) Any contract or other agreement to provide goods, services, or municipal-type  
1373 services to storage or transfer facilities may not be executed within the state.

1374 (ii) Any contract or other agreement, existing or executed on or after March 15, 2001,  
1375 is considered void from the time of agreement or execution.

1376 (10) (a) All contracts and agreements under Subsection (10)(b) are assessed an annual  
1377 transaction fee of 75% of the gross value of the contract to the party providing the goods,  
1378 services, or municipal-type services to the storage facility or transfer facility or transportation  
1379 entity. The fee shall be assessed per calendar year, and is payable on a prorated basis on or  
1380 before the last day of each month in accordance with rules established under Subsection  
1381 (10)(d), and as follows:

1382 (i) 25% of the gross value of the contract to the department; and

1383 (ii) 50% of the gross value of the contract to the Department of Heritage and Arts, to be  
1384 used by the Utah Division of Indian Affairs as provided in Subsection (11).

1385 (b) Contracts and agreements subject to the fee under Subsection (10)(a) are those  
1386 contracts and agreements to provide goods, services, or municipal-type services to a storage or  
1387 transfer facility, or to any organization engaged in the transportation of high-level nuclear  
1388 waste or greater than class C radioactive waste to a transfer facility or storage facility, and  
1389 which:

1390 (i) are in existence on March 15, 2001; or

1391 (ii) become effective notwithstanding Subsection (9)(a).

1392 (c) Any governmental agency which regulates the charges to consumers for services  
1393 provided by utilities or other organizations shall require the regulated utility or organization to  
1394 include the fees under Subsection (10)(a) in the rates charged to the purchaser of the goods,  
1395 services, or municipal-type services affected by Subsection (10)(b).

1396 (d) (i) The department, in consultation with the State Tax Commission, shall establish  
1397 rules for the valuation of the contracts and assessment and collection of the fees, and other  
1398 rules as necessary to determine the amount of and collection of the fee under Subsection  
1399 (10)(a). The department may initiate rulemaking under this Subsection (10)(d)(i) on or after  
1400 March 15, 2001.

1401 (ii) Persons and organizations holding contracts affected by Subsection (10)(b) shall  
1402 make a good faith estimate of the fee under Subsection (10)(a) for calendar year 2001, and  
1403 remit that amount to the department on or before July 31, 2001.

1404 (11) (a) The portion of the fees imposed under Subsection (10) which is to be paid to  
1405 the Department of Heritage and Arts for use by the Utah Division of Indian Affairs shall be  
1406 used for establishment of a statewide community and economic development program for the  
1407 tribes of Native American people within the exterior boundaries of the state who have by tribal  
1408 procedure established a position rejecting siting of any nuclear waste facility on their  
1409 reservation lands.

1410 (b) The program under Subsection (11)(a) shall include:

- 1411 (i) educational services and facilities;
- 1412 (ii) health care services and facilities;
- 1413 (iii) programs of economic development;
- 1414 (iv) utilities;
- 1415 (v) sewer;
- 1416 (vi) street lighting;
- 1417 (vii) roads and other infrastructure; and
- 1418 (viii) oversight and staff support for the program.

1419 (12) It is the intent of the Legislature that this part does not prohibit or interfere with a  
1420 person's exercise of the rights under the First Amendment to the Constitution of the United  
1421 States or under Utah Constitution Article I, Sec. 15, by an organization attempting to site a  
1422 storage facility or transfer facility within the borders of the state for the placement of high-level

1423 nuclear waste or greater than class C radioactive waste.

1424 Section 15. Section **19-5-107** is amended to read:

1425 **19-5-107. Discharge of pollutants unlawful -- Discharge permit required.**

1426 (1) (a) Except as provided in this chapter or rules made under it, it is unlawful for any  
1427 person to discharge a pollutant into waters of the state or to cause pollution which constitutes a  
1428 menace to public health and welfare, or is harmful to wildlife, fish, or aquatic life, or impairs  
1429 domestic, agricultural, industrial, recreational, or other beneficial uses of water, or to place or  
1430 cause to be placed any [~~wastes~~] waste in a location where there is probable cause to believe it  
1431 will cause pollution.

1432 (b) For purposes of injunctive relief, any violation of this subsection is a public  
1433 nuisance.

1434 (2) (a) A person may not generate, store, treat, process, use, transport, dispose, or  
1435 otherwise manage sewage sludge, except in compliance with this chapter and rules made under  
1436 it.

1437 (b) For purposes of injunctive relief, any violation of this subsection is a public  
1438 nuisance.

1439 (3) It is unlawful for any person, without first securing a permit from the director, to:

1440 (a) make any discharge or manage sewage sludge not authorized under an existing  
1441 valid discharge permit; or

1442 (b) construct, install, modify, or operate any treatment works or part of any treatment  
1443 works or any extension or addition to any treatment works, or construct, install, or operate any  
1444 establishment or extension or modification of or addition to any treatment works, the operation  
1445 of which would probably result in a discharge.

1446 Section 16. Section **19-6-102.1** is amended to read:

1447 **19-6-102.1. Treatment and disposal -- Exclusions.**

1448 As used in Subsections **19-6-104(3)(e)(ii)(B)**, **19-6-108(3)(b)**, **19-6-108(3)(c)(ii)(B)**,  
1449 and 19-6-119(1)(a), [~~and 19-3-103.5(2)(f)(i) and (ii);~~] the term "treatment and disposal"  
1450 specifically excludes the recycling, use, reuse, or reprocessing of fly ash waste, bottom ash  
1451 waste, slag waste, or flue gas emission control waste generated primarily from the combustion  
1452 of coal or other fossil fuels; waste from the extraction, beneficiation, and processing of ores  
1453 and minerals; or cement kiln dust, including recycle, reuse, use, or reprocessing for road

1454 sanding, sand blasting, road construction, railway ballast, construction fill, aggregate, and other  
1455 construction-related purposes.

1456 Section 17. Section **19-6-105** is amended to read:

1457 **19-6-105. Rules of board.**

1458 (1) The board may make rules in accordance with Title 63G, Chapter 3, Utah  
1459 Administrative Rulemaking Act:

1460 (a) establishing minimum standards for protection of human health and the  
1461 environment, for the storage, collection, transport, transfer, recovery, treatment, and disposal of  
1462 solid waste, including requirements for the approval by the director of plans for the  
1463 construction, extension, operation, and closure of solid waste disposal sites;

1464 (b) identifying wastes which are determined to be hazardous, including wastes  
1465 designated as hazardous under Sec. 3001 of the Resource Conservation and Recovery Act of  
1466 1976, 42 U.S.C., Sec. 6921, et seq.;

1467 (c) governing generators and transporters of hazardous wastes and owners and  
1468 operators of hazardous waste treatment, storage, and disposal facilities, including requirements  
1469 for keeping records, monitoring, submitting reports, and using a manifest, without treating  
1470 high-volume wastes such as cement kiln dust, mining wastes, utility waste, gas and oil drilling  
1471 muds, and oil production brines in a manner more stringent than they are treated under federal  
1472 standards;

1473 (d) requiring an owner or operator of a treatment, storage, or disposal facility that is  
1474 subject to a plan approval under Section **19-6-108** or which received waste after July 26, 1982,  
1475 to take appropriate corrective action or other response measures for releases of hazardous waste  
1476 or hazardous waste constituents from the facility, including releases beyond the boundaries of  
1477 the facility;

1478 (e) specifying the terms and conditions under which the director shall approve,  
1479 disapprove, revoke, or review hazardous wastes operation plans;

1480 (f) governing public hearings and participation under this part;

1481 (g) establishing standards governing underground storage tanks, in accordance with  
1482 Title 19, Chapter 6, Part 4, Underground Storage Tank Act;

1483 (h) relating to the collection, transportation, processing, treatment, storage, and  
1484 disposal of infectious waste in health facilities in accordance with the requirements of Section



1485 19-6-106;

1486 (i) defining closure plans as major or minor;

1487 (j) defining modification plans as major or minor; and

1488 (k) prohibiting refuse, offal, garbage, dead animals, decaying vegetable matter, or  
1489 organic waste substance of any kind to be thrown, or remain upon or in any street, road, ditch,  
1490 canal, gutter, public place, private premises, vacant lot, watercourse, lake, pond, spring, or  
1491 well.

1492 (2) If any of the following are determined to be hazardous waste and are therefore  
1493 subjected to the provisions of this part, the board shall, in the case of landfills or surface  
1494 impoundments that receive the solid wastes, take into account the special characteristics of the  
1495 wastes, the practical difficulties associated with applying requirements for other wastes to the  
1496 wastes, and [~~site specific~~] site-specific characteristics, including the climate, geology,  
1497 hydrology, and soil chemistry at the site, if the modified requirements assure protection of  
1498 human health and the environment and are no more stringent than federal standards applicable  
1499 to [~~wastes~~] waste:

1500 (a) solid waste from the extraction, beneficiation, or processing of ores and minerals,  
1501 including phosphate rock and overburden from the mining of uranium;

1502 (b) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste  
1503 generated primarily from the combustion of coal or other fossil fuels; and

1504 (c) cement kiln dust waste.

1505 (3) The board shall establish criteria for siting commercial hazardous waste treatment,  
1506 storage, and disposal facilities, including commercial hazardous waste incinerators. Those  
1507 criteria shall apply to any facility or incinerator for which plan approval is required under  
1508 Section 19-6-108.

1509 Section 18. Section **19-6-402** is amended to read:

1510 **19-6-402. Definitions.**

1511 As used in this part:

1512 (1) "Abatement action" means action taken to limit, reduce, mitigate, or eliminate:

1513 (a) a release from an underground storage tank or petroleum storage tank; or

1514 (b) the damage caused by that release.

1515 (2) "Board" means the Waste Management and Radiation Control Board created in

1516 Section 19-1-106.

1517 (3) "Bodily injury" means bodily harm, sickness, disease, or death sustained by a  
1518 person.

1519 (4) "Certificate of compliance" means a certificate issued to a facility by the director:

1520 (a) demonstrating that an owner or operator of a facility containing one or more  
1521 petroleum storage tanks has met the requirements of this part; and

1522 (b) listing all tanks at the facility, specifying:

1523 (i) which tanks may receive petroleum; and

1524 (ii) which tanks have not met the requirements for compliance.

1525 (5) "Certificate of registration" means a certificate issued to a facility by the director  
1526 demonstrating that an owner or operator of a facility containing one or more underground  
1527 storage tanks has:

1528 (a) registered the tanks; and

1529 (b) paid the annual underground storage tank fee.

1530 (6) (a) "Certified underground storage tank consultant" means a person who:

1531 (i) for a fee, or in connection with services for which a fee is charged, provides or  
1532 contracts to provide information, opinions, or advice relating to underground storage tank  
1533 release:

1534 (A) management;

1535 (B) abatement;

1536 (C) investigation;

1537 (D) corrective action; or

1538 (E) evaluation;

1539 (ii) has submitted an application to the director;

1540 (iii) received a written statement of certification from the director; and

1541 (iv) meets the education and experience standards established by the board under

1542 Subsection 19-6-403(1)(a)(vii).

1543 (b) "Certified underground storage tank consultant" does not include:

1544 (i) (A) an employee of the owner or operator of the underground storage tank; or

1545 (B) an employee of a business operation that has a business relationship with the owner  
1546 or operator of the underground storage tank, and markets petroleum products or manages

- 1547 underground storage tanks; or
- 1548 (ii) a person licensed to practice law in this state who offers only legal advice on
- 1549 underground storage tank release:
- 1550 (A) management;
- 1551 (B) abatement;
- 1552 (C) investigation;
- 1553 (D) corrective action; or
- 1554 (E) evaluation.
- 1555 (7) "Closed" means an underground storage tank no longer in use that has been:
- 1556 (a) emptied and cleaned to remove all liquids and accumulated sludges; and
- 1557 (b) (i) removed from the ground; or
- 1558 (ii) filled with an inert solid material.
- 1559 (8) "Corrective action plan" means a plan for correcting a release from a petroleum
- 1560 storage tank that includes provisions for any of the following:
- 1561 (a) cleanup or removal of the release;
- 1562 (b) containment or isolation of the release;
- 1563 (c) treatment of the release;
- 1564 (d) correction of the cause of the release;
- 1565 (e) monitoring and maintenance of the site of the release;
- 1566 (f) provision of alternative water supplies to a person whose drinking water has
- 1567 become contaminated by the release; or
- 1568 (g) temporary or permanent relocation, whichever is determined by the director to be
- 1569 more cost-effective, of a person whose dwelling has been determined by the director to be no
- 1570 longer habitable due to the release.
- 1571 (9) "Costs" means money expended for:
- 1572 (a) investigation;
- 1573 (b) abatement action;
- 1574 (c) corrective action;
- 1575 (d) judgments, awards, and settlements for bodily injury or property damage to third
- 1576 parties;
- 1577 (e) legal and claims adjusting costs incurred by the state in connection with judgments,

1578 awards, or settlements for bodily injury or property damage to third parties; or  
1579 (f) costs incurred by the state risk manager in determining the actuarial soundness of  
1580 the fund.

1581 (10) "Covered by the fund" means the requirements of Section 19-6-424 have been  
1582 met.

1583 (11) "Director" means the director of the Division of Environmental Response and  
1584 Remediation.

1585 (12) "Division" means the Division of Environmental Response and Remediation,  
1586 created in Subsection 19-1-105(1)(c).

1587 (13) "Dwelling" means a building that is usually occupied by a person lodging there at  
1588 night.

1589 (14) "Enforcement proceedings" means a civil action or the procedures to enforce  
1590 orders established by Section 19-6-425.

1591 (15) "Facility" means all underground storage tanks located on a single parcel of  
1592 property or on any property adjacent or contiguous to that parcel.

1593 (16) "Fund" means the Petroleum Storage Tank Trust Fund created in Section  
1594 19-6-409.

1595 (17) "Operator" means a person in control of or who is responsible on a daily basis for  
1596 the maintenance of an underground storage tank that is in use for the storage, use, or dispensing  
1597 of a regulated substance.

1598 (18) "Owner" means:

1599 (a) in the case of an underground storage tank in use on or after November 8, 1984, a  
1600 person who owns an underground storage tank used for the storage, use, or dispensing of a  
1601 regulated substance; and

1602 (b) in the case of an underground storage tank in use before November 8, 1984, but not  
1603 in use on or after November 8, 1984, a person who owned the tank immediately before the  
1604 discontinuance of its use for the storage, use, or dispensing of a regulated substance.

1605 (19) "Petroleum" includes crude oil or a fraction of crude oil that is liquid at:

1606 (a) 60 degrees Fahrenheit; and

1607 (b) a pressure of 14.7 pounds per square inch absolute.

1608 (20) "Petroleum storage tank" means a tank that:

- 1609 (a) (i) is underground;
- 1610 (ii) is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42
- 1611 U.S.C. Sec. 6991c, et seq.; and
- 1612 (iii) contains petroleum; or
- 1613 (b) the owner or operator voluntarily submits for participation in the Petroleum Storage
- 1614 Tank Trust Fund under Section 19-6-415.
- 1615 (21) "Petroleum Storage Tank Restricted Account" means the account created in
- 1616 Section 19-6-405.5.
- 1617 (22) "Program" means the Environmental Assurance Program under Section
- 1618 19-6-410.5.
- 1619 (23) "Property damage" means physical injury to, destruction of, or loss of use of
- 1620 tangible property.
- 1621 (24) (a) "Regulated substance" means petroleum and petroleum-based substances
- 1622 comprised of a complex blend of hydrocarbons derived from crude oil through processes of
- 1623 separation, conversion, upgrading, and finishing.
- 1624 (b) "Regulated substance" includes motor fuels, jet fuels, distillate fuel oils, residual
- 1625 fuel oils, lubricants, petroleum solvents, and used oils.
- 1626 (25) (a) "Release" means spilling, leaking, emitting, discharging, escaping, leaching, or
- 1627 disposing a regulated substance from an underground storage tank or petroleum storage tank.
- 1628 (b) A release of a regulated substance from an underground storage tank or petroleum
- 1629 storage tank is considered a single release from that tank system.
- 1630 (26) (a) "Responsible party" means a person who:
- 1631 (i) is the owner or operator of a facility;
- 1632 (ii) owns or has legal or equitable title in a facility or an underground storage tank;
- 1633 (iii) owned or had legal or equitable title in a facility at the time petroleum was
- 1634 received or contained at the facility;
- 1635 (iv) operated or otherwise controlled activities at a facility at the time petroleum was
- 1636 received or contained at the facility; or
- 1637 (v) is an underground storage tank installation company.
- 1638 (b) "Responsible party" is as defined in Subsections (26)(a)(i), (ii), and (iii) does not
- 1639 include:

1640 (i) a person who is not an operator and, without participating in the management of a  
1641 facility and otherwise not engaged in petroleum production, refining, and marketing, holds  
1642 indicia of ownership:

1643 (A) primarily to protect the person's security interest in the facility; or

1644 (B) as a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an  
1645 employee benefit plan; or

1646 (ii) governmental ownership or control of property by involuntary transfers as provided  
1647 in CERCLA Section 101(20)(D), 42 U.S.C. Sec. 9601(20)(D).

1648 (c) The exemption created by Subsection (26)(b)(i)(B) does not apply to actions taken  
1649 by the state or its officials or agencies under this part.

1650 (d) The terms and activities "indicia of ownership," "primarily to protect a security  
1651 interest," "participation in management," and "security interest" under this part are in  
1652 accordance with 40 C.F.R. Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9).

1653 (e) The terms "participate in management" and "indicia of ownership" as defined in 40  
1654 C.F.R. Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9) include and apply to  
1655 the fiduciaries listed in Subsection (26)(b)(i)(B).

1656 (27) "Soil test" means a test, established or approved by board rule, to detect the  
1657 presence of petroleum in soil.

1658 (28) "State cleanup appropriation" means money appropriated by the Legislature to the  
1659 department to fund the investigation, abatement, and corrective action regarding releases not  
1660 covered by the fund.

1661 (29) "Underground storage tank" means a tank regulated under Subtitle I, Resource  
1662 Conservation and Recovery Act, 42 U.S.C. Sec. 6991c, et seq., including:

1663 (a) a petroleum storage tank;

1664 (b) underground pipes and lines connected to a storage tank;

1665 (c) underground ancillary equipment;

1666 (d) a containment system; and

1667 (e) each compartment of a multi-compartment storage tank.

1668 (30) "Underground storage tank installation company" means a person, firm,  
1669 partnership, corporation, governmental entity, association, or other organization [~~who~~] that  
1670 installs underground storage tanks.

1671 (31) "Underground storage tank installation company permit" means a permit issued to  
1672 an underground storage tank installation company by the director.

1673 (32) "Underground storage tank technician" means a person employed by and acting  
1674 under the direct supervision of a certified underground storage tank consultant to assist in  
1675 carrying out the functions described in Subsection (6)(a).

1676 Section 19. Section **19-6-503** is amended to read:

1677 **19-6-503. Powers and duties of public entities.**

1678 (1) Subject to the powers and rules of the department and except as provided by  
1679 Section **19-6-507**, a governing body of a public entity may:

1680 (a) supervise and regulate the collection, transportation, and disposition of solid waste  
1681 generated within its jurisdiction;

1682 (b) provide a solid waste management facility to adequately handle solid waste  
1683 generated or existing within or without its jurisdiction;

1684 (c) assume, by agreement, responsibility for the collection and disposition of solid  
1685 waste whether generated within or without its jurisdiction;

1686 (d) enter into a short- or long-term interlocal agreement to provide for or operate a  
1687 solid waste management facility with:

1688 (i) another public entity;

1689 (ii) a public agency, as defined in Section **11-13-103**;

1690 (iii) a private person; or

1691 (iv) a combination of persons listed in Subsections (1)(d)(i) through (iii);

1692 (e) levy and collect a tax, fee, or charge or require a license as may be appropriate to  
1693 discharge its responsibility for the acquisition, construction, operation, maintenance, and  
1694 improvement of a solid waste management facility, including licensing a private collector  
1695 operating within its jurisdiction;

1696 (f) require that solid waste generated within its jurisdiction be delivered to a solid  
1697 waste management facility;

1698 (g) control the right to collect, transport, and dispose of solid waste generated within its  
1699 jurisdiction;

1700 (h) agree that, according to Section **19-6-505**, the exclusive right to collect, transport,  
1701 and dispose of solid waste within its jurisdiction may be assumed by:

- 1702 (i) another public entity;
- 1703 (ii) a private person; or
- 1704 (iii) a combination of persons listed in Subsections (1)(h)(i) through (ii);
- 1705 (i) accept and disburse funds derived from a federal or state grant, a private source, or
- 1706 money that may be appropriated by the Legislature for the acquisition, construction, ownership,
- 1707 operation, maintenance, and improvement of a solid waste management facility;
- 1708 (j) contract for the lease or purchase of land, a facility, or a vehicle for the operation of
- 1709 a solid waste management facility;
- 1710 (k) establish one or more policies for the operation of a solid waste management
- 1711 facility, including:
- 1712 (i) hours of operation;
- 1713 (ii) character and kind of wastes accepted at a disposal site; and
- 1714 (iii) ~~another~~ any other policy necessary for the safety of the operating personnel;
- 1715 (l) sell or contract for the sale, according to a short or long-term agreement, of usable
- 1716 material, energy, fuel, or heat separated, extracted, recycled, or recovered from solid waste in a
- 1717 solid waste management facility, on terms in its best interest;
- 1718 (m) pledge, assign, or otherwise convey as security for the payment of bonds, revenues
- 1719 and receipts derived from the sale or contract or from the operation and ownership of a solid
- 1720 waste management facility or an interest in it;
- 1721 (n) issue a bond according to Title 11, Chapter 14, Local Government Bonding Act;
- 1722 (o) issue industrial development revenue bonds according to Title 11, Chapter 17, Utah
- 1723 Industrial Facilities and Development Act, to pay the costs of financing a project consisting of
- 1724 a solid waste management facility on behalf of an entity that constitutes the users of a solid
- 1725 waste management facility project within the meaning of Section [11-17-2](#);
- 1726 (p) agree to construct and operate or to provide for the construction and operation of a
- 1727 solid waste management facility project, which project manages the solid waste of a public
- 1728 entity or private person, according to one or more contracts and other arrangements provided
- 1729 for in a proceeding according to which a bond is issued; and
- 1730 (q) issue a bond to pay the cost of establishing reserves to pay principal and interest on
- 1731 the bonds as provided for in the proceedings according to which the bonds are issued.
- 1732 (2) The power to issue a bond under this section is in addition to the power to issue a



1733 bond under Title 11, Chapter 17, Utah Industrial Facilities and Development Act.

1734 Section 20. Section **19-6-706** is amended to read:

1735 **19-6-706. Disposal of used oil -- Prohibitions.**

1736 (1) (a) Except as authorized by the director, or by rule of the board, or as exempted in  
1737 this section, a person may not place, discard, or otherwise dispose of used oil:

1738 (i) in any solid waste treatment, storage, or disposal facility operated by a political  
1739 subdivision or a private entity, except as authorized for the disposal of used oil that is  
1740 hazardous waste under state law;

1741 (ii) in sewers, drainage systems, septic tanks, surface or ground waters, watercourses,  
1742 or any body of water; or

1743 (iii) on the ground.

1744 (b) A person who unknowingly disposes of used oil in violation of Subsection (1)(a)(i)  
1745 is not guilty of a violation of this section.

1746 (2) (a) A person may dispose of an item or substance that contains de minimis amounts  
1747 of oil in disposal facilities under Subsection (1)(a)(i) if:

1748 (i) to the extent reasonably possible all oil has been removed from the item or  
1749 substance; and

1750 (ii) no free flowing oil remains in the item or substance.

1751 (b) (i) A nonterne plated used oil filter complies with this section if it is not mixed with  
1752 hazardous waste and the oil filter has been gravity hot-drained by one of the following  
1753 methods:

1754 (A) puncturing the filter antidrain back valve or the filter dome end and gravity  
1755 hot-draining;

1756 (B) gravity hot-draining and crushing;

1757 (C) dismantling and gravity hot-draining; or

1758 (D) any other equivalent gravity hot-draining method that will remove used oil from  
1759 the filter at least as effectively as the methods listed in this Subsection (2)(b)(i).

1760 (ii) As used in this Subsection (2), "gravity hot-drained" means drained for not less  
1761 than 12 hours near operating temperature but above 60 degrees Fahrenheit.

1762 (iii) This Subsection (2) does not require a person who recycles an engine block to  
1763 drain a used oil filter or remove a used oil filter from that engine block.

1764 (3) A person may not mix or commingle used oil with the following substances, except  
1765 as incidental to the normal course of processing, mechanical, or industrial operations:

1766 (a) solid waste that is to be disposed of in any solid waste treatment, storage, or  
1767 disposal facility, except as authorized by the director under this chapter; or

1768 (b) any hazardous waste so the resulting mixture may not be recycled or used for  
1769 [~~other~~] another beneficial purpose as authorized under this part.

1770 (4) (a) This section does not apply to releases to land or water of de minimis quantities  
1771 of used oil, except:

1772 (i) the release of de minimis quantities of used oil is subject to any regulation or  
1773 prohibition under the authority of the department; and

1774 (ii) the release of de minimis quantities of used oil is subject to any rule made by the  
1775 board under this part prohibiting the release of de minimis quantities of used oil to the land or  
1776 water from tanks, pipes, or other equipment in which used oil is processed, stored, or otherwise  
1777 managed by used oil handlers, except wastewater under Subsection 19-6-708(2)(j).

1778 (b) As used in this Subsection (4), "de minimis quantities of used oil:"

1779 (i) means small spills, leaks, or drippings from pumps, machinery, pipes, and other  
1780 similar equipment during normal operations; and

1781 (ii) does not include used oil discarded as a result of abnormal operations resulting in  
1782 substantial leaks, spills, or other releases.

1783 (5) Used oil may not be used for road oiling, dust control, weed abatement, or other  
1784 similar uses that have the potential to release used oil in the environment, except in compliance  
1785 with Section 19-6-711 and board rule.

1786 (6) (a) (i) Facilities in existence on July 1, 1993, and subject to this section may apply  
1787 to the director for an extension of time beyond that date to meet the requirements of this  
1788 section.

1789 (ii) The director may grant an extension of time beyond July 1, 1993, upon a finding of  
1790 need under Subsection (6)(b) or (c).

1791 (iii) The total of all extensions of time granted to one applicant under this Subsection  
1792 (6)(a) may not extend beyond January 1, 1995.

1793 (b) The director upon receipt of a request for an extension of time may request from the  
1794 facility any information the director finds reasonably necessary to evaluate the need for an

1795 extension. This information may include:

1796 (i) why the facility is unable to comply with the requirements of this section on or  
1797 before July 1, 1993;

1798 (ii) the processes or functions which prevent compliance on or before July 1, 1993;

1799 (iii) measures the facility has taken and will take to achieve compliance; and

1800 (iv) a proposed compliance schedule, including a proposed date for being in  
1801 compliance with this section.

1802 (c) Additional extensions of time may be granted by the director upon application by  
1803 the facility and a showing by the facility that:

1804 (i) the additional extension is reasonably necessary; and

1805 (ii) the facility has made a diligent and good faith effort to comply with this section  
1806 within the time frame of the prior extension.

1807 Section 21. Section **20A-2-201** is amended to read:

1808 **20A-2-201. Registering to vote at office of county clerk.**

1809 (1) Except as provided in Subsection (3), the county clerk shall register to vote each  
1810 individual who registers in person at the county clerk's office during designated office hours if  
1811 the individual will, on the date of the election, be legally eligible to vote in a voting precinct in  
1812 the county in accordance with Section [20A-2-101](#).

1813 (2) If an individual who is registering to vote submits a registration form in person at  
1814 the office of the county clerk during designated office hours, during the period beginning on  
1815 the date after the voter registration deadline and ending on the date that is 15 calendar days  
1816 before the date of the election, the county clerk shall:

1817 (a) accept the form if the individual, on the date of the election, will be legally  
1818 qualified and entitled to vote in a voting precinct in the county; and

1819 (b) inform the individual that the individual will be registered to vote in the pending  
1820 election.

1821 (3) If an individual who is registering to vote and who will be legally qualified and  
1822 entitled to vote in a voting precinct in the county on the date of an election appears in person,  
1823 during designated office hours, and submits a registration form on the date of the election or  
1824 during the 14 calendar days before an election, the county clerk shall:

1825 (a) accept the registration form; and

- 1826 (b) (i) if it is seven or more calendar days before the date of an election:
- 1827 (A) inform the individual that the individual is registered to vote in the pending
- 1828 election; and
- 1829 (B) for the pending election, the individual must vote on the day of the election and is
- 1830 not eligible to vote using early voting under Chapter 3, Part 6, Early Voting, because the
- 1831 individual registered too late; or
- 1832 (ii) ~~[except as provided in Subsection 20A-4-108(5),]~~ if it is on the date of an election
- 1833 or during the six calendar days before an election, inform the individual that the individual will
- 1834 be registered to vote but may not vote in the pending election because the individual registered
- 1835 too late.

1836 Section 22. Section **20A-3-601** is amended to read:

1837 **20A-3-601. Early voting.**

1838 (1) ~~[(a)]~~ An individual who is registered to vote may vote before the election date in

1839 accordance with this section.

1840 ~~[(b) An individual who is not registered to vote may register to vote and vote before the~~

1841 ~~election date in accordance with this section if the individual:]~~

1842 ~~[(i) is otherwise legally entitled to vote the ballot in a jurisdiction that is approved by~~

1843 ~~the lieutenant governor to participate in the pilot project described in Section 20A-4-108, and]~~

1844 ~~[(ii) casts a provisional ballot in accordance with Section 20A-4-108.]~~

1845 (2) Except as provided in Section 20A-1-308 or Subsection (3), the early voting period

1846 shall:

1847 (a) begin on the date that is 14 days before the date of the election; and

1848 (b) continue through the Friday before the election if the election date is a Tuesday.

1849 (3) An election officer may extend the end of the early voting period to the day before

1850 the election date if the election officer provides notice of the extension in accordance with

1851 Section 20A-3-604.

1852 (4) Except as provided in Section 20A-1-308, during the early voting period, the

1853 election officer:

1854 (a) for a local special election, a municipal primary election, and a municipal general

1855 election:

1856 (i) shall conduct early voting on a minimum of four days during each week of the early

- 1857 voting period; and
- 1858 (ii) shall conduct early voting on the last day of the early voting period; and
- 1859 (b) for all other elections:
- 1860 (i) shall conduct early voting on each weekday; and
- 1861 (ii) may elect to conduct early voting on a Saturday, Sunday, or holiday.
- 1862 (5) Except as specifically provided in this Part 6, Early Voting, or Section 20A-1-308,
- 1863 early voting shall be administered according to the requirements of this title.
- 1864 Section 23. Section 20A-4-103 is amended to read:
- 1865 **20A-4-103. Preparing ballot sheets for the counting center.**
- 1866 (1) (a) In voting precincts using ballot sheets, as soon as the polls have been closed and
- 1867 the last qualified voter has voted, the poll workers shall prepare the ballot sheets for delivery to
- 1868 the counting center as provided in this section.
- 1869 (b) The poll workers, election officers, and other persons may not manually count any
- 1870 votes before delivering the ballots to the counting center.
- 1871 (2) The poll workers shall:
- 1872 (a) place all of the provisional ballot envelopes in the envelope or container provided
- 1873 for them for return to the counting center; and
- 1874 (b) seal that envelope or container.
- 1875 (3) (a) The poll workers shall check each secrecy envelope to see if ~~either~~ the
- 1876 envelope contains any write-in votes.
- 1877 (b) If a secrecy envelope does not contain any write-in votes, the poll workers shall
- 1878 remove the ballot sheet from the secrecy envelope.
- 1879 (c) If a secrecy envelope contains any write-in votes, the poll workers may not separate
- 1880 the ballot sheet from the secrecy envelope.
- 1881 (4) The poll workers shall place:
- 1882 (a) the voted ballot sheets and one copy of the statement of disposition of ballots in the
- 1883 transfer case;
- 1884 (b) the other copy of the statement of disposition of ballots, the pollbook, any
- 1885 unprocessed absentee ballots, the poll workers' pay vouchers, the official register, and the
- 1886 spoiled ballot envelope in the carrier envelope provided; and
- 1887 (c) the other election materials in the election supply box.

1888 Section 24. Section **20A-4-107** is amended to read:

1889 **20A-4-107. Review and disposition of provisional ballot envelopes.**

1890 (1) As used in this section, a person is "legally entitled to vote" if:

1891 (a) the person:

1892 (i) is registered to vote in the state;

1893 (ii) votes the ballot for the voting precinct in which the person resides; and

1894 (iii) provides valid voter identification to the poll worker;

1895 (b) the person:

1896 (i) is registered to vote in the state;

1897 (ii) (A) provided valid voter identification to the poll worker; or

1898 (B) either failed to provide valid voter identification or the documents provided as

1899 valid voter identification were inadequate and the poll worker recorded that fact in the official

1900 register but the county clerk verifies the person's identity and residence through some other

1901 means; and

1902 (iii) did not vote in the person's precinct of residence, but the ballot that the person

1903 voted was from the person's county of residence and includes one or more candidates or ballot

1904 propositions on the ballot voted in the person's precinct of residence; or

1905 (c) the person:

1906 (i) is registered to vote in the state;

1907 (ii) either failed to provide valid voter identification or the documents provided as

1908 valid voter identification were inadequate and the poll worker recorded that fact in the official

1909 register; and

1910 (iii) (A) the county clerk verifies the person's identity and residence through some other

1911 means as reliable as photo identification; or

1912 (B) the person provides valid voter identification to the county clerk or an election

1913 officer who is administering the election by the close of normal office hours on Monday after

1914 the date of the election.

1915 (2) (a) Upon receipt of provisional ballot envelopes, the election officer shall review

1916 the affirmation on the face of each provisional ballot envelope and determine if the person

1917 signing the affirmation is:

1918 (i) registered to vote in this state; and

1919 (ii) legally entitled to vote:

1920 (A) the ballot that the person voted; or

1921 (B) if the ballot is from the person's county of residence, for at least one ballot

1922 proposition or candidate on the ballot that the person voted.

1923 (b) If the election officer determines that the person is not registered to vote in this

1924 state or is not legally entitled to vote in the county or for any of the ballot propositions or

1925 candidates on the ballot that the person voted, the election officer shall retain the ballot

1926 envelope, unopened, for the period specified in Section [20A-4-202](#) unless ordered by a court to

1927 produce or count it.

1928 (c) If the election officer determines that the person is registered to vote in this state

1929 and is legally entitled to vote in the county and for at least one of the ballot propositions or

1930 candidates on the ballot that the person voted, the election officer shall remove the ballot from

1931 the provisional ballot envelope and place the ballot with the absentee ballots to be counted with

1932 those ballots at the canvass.

1933 (d) The election officer may not count, or allow to be counted a provisional ballot

1934 unless the person's identity and residence is established by a preponderance of the evidence.

1935 (3) If the election officer determines that the person is registered to vote in this state,

1936 the election officer shall ensure that the voter registration records are updated to reflect the

1937 information provided on the provisional ballot envelope.

1938 (4) If the election officer determines that the person is not registered to vote in this

1939 state and the information on the provisional ballot envelope is complete, the election officer

1940 shall:

1941 (a) consider the provisional ballot envelope a voter registration form for the person's

1942 county of residence; and

1943 (b) (i) register the person if the voter's county of residence is within the county; or

1944 (ii) forward the voter registration form to the election officer of the person's county of

1945 residence, which election officer shall register the person.

1946 (5) Notwithstanding any provision of this section, the election officer shall remove the

1947 ballot from a provisional ballot envelope and place the ballot with the absentee ballots to be

1948 counted with those ballots at the canvass, if:

1949 (a) ~~(i)~~ the election officer determines, in accordance with the provisions of this

1950 section, that the sole reason a provisional ballot may not otherwise be counted is because the  
 1951 voter registration was filed less than eight days before the election;

1952 ~~[(iv)]~~ (b) eight or more days before the election, the individual who cast the provisional  
 1953 ballot:

1954 ~~[(A)]~~ (i) completed and signed the voter registration; and

1955 ~~[(B)]~~ (ii) provided the voter registration to another person to file;

1956 ~~[(iii)]~~ (c) the late filing was made due to the person described in Subsection

1957 ~~[(5)(a)(ii)(B)]~~ (5)(b)(ii) filing the voter registration less than eight days before the election; and

1958 ~~[(iv)]~~ (d) the election officer receives the voter registration no later than one day before  
 1959 the day of the election~~[-or]~~.

1960 ~~[(b) the provisional ballot is cast on or before election day in a county or municipality  
 1961 that is approved by the lieutenant governor to participate in the pilot project and the provisional  
 1962 ballot is not otherwise prohibited from being counted under the provisions of this chapter.]~~

1963 Section 25. Section **20A-7-214** is amended to read:

1964 **20A-7-214. Fiscal review -- Repeal, amendment, or resubmission.**

1965 (1) No later than 60 days after the date of an election in which the voters approve an  
 1966 initiative petition, the Governor's Office of Management and Budget shall:

1967 (a) for each initiative approved by the voters, prepare a final fiscal impact statement,  
 1968 using current financial information and containing the information required by Subsection  
 1969 [20A-7-202.5\(2\)](#); and

1970 (b) deliver a copy of the final fiscal impact statement to:

1971 (i) the president of the Senate;

1972 (ii) the minority leader of the Senate;

1973 (iii) the speaker of the House of Representatives;

1974 (iv) the minority leader of the House of Representatives; and

1975 (v) the first five sponsors listed on the initiative application.

1976 (2) If the final fiscal impact statement exceeds the initial fiscal impact estimate by 25%  
 1977 or more, the Legislature shall review the final fiscal impact statement and may, in any

1978 legislative session following the election in which the voters approved the initiative petition:

1979 (a) repeal the law established by passage of the initiative;

1980 (b) amend the law established by passage of the initiative; or



1981 (c) pass a joint or concurrent resolution informing the voters that they may file an  
1982 initiative petition to repeal the law enacted by the passage of the initiative.

1983 Section 26. Section **20A-9-405** is amended to read:

1984 **20A-9-405. Nomination petitions for regular primary elections.**

1985 (1) This section shall apply to the form and circulation of nomination petitions for  
1986 regular primary elections described in Subsection **20A-9-403(3)(a)**.

1987 (2) A candidate for elective office, and the agents of the candidate, may not circulate  
1988 nomination petitions until the candidate has submitted a declaration of candidacy in accordance  
1989 with Subsection **20A-9-202(1)**.

1990 (3) The nomination petitions shall be in substantially the following form:

1991 (a) the petition shall be printed on paper 8-1/2 inches long and 11 inches wide;

1992 (b) the petition shall be ruled with a horizontal line 3/4 inch from the top, with the  
1993 space above that line blank for purposes of binding;

1994 (c) the petition shall be headed by a caption stating the purpose of the petition and the  
1995 name of the proposed candidate;

1996 (d) the petition shall feature the word "Warning" followed by the following statement  
1997 in no less than eight-point, single leaded type: "It is a class A misdemeanor for anyone to  
1998 knowingly sign a certificate of nomination signature sheet with any name other than the  
1999 person's own name or more than once for the same candidate or if the person is not registered  
2000 to vote in this state and does not intend to become registered to vote in this state before  
2001 signatures are certified by a filing officer.";

2002 (e) the petition shall feature 10 lines spaced one-half inch apart and consecutively  
2003 numbered one through 10;

2004 (f) the signature portion of the petition shall be divided into columns headed by the  
2005 following titles:

2006 (i) Registered Voter's Printed Name;

2007 (ii) Signature of Registered Voter;

2008 (iii) Party Affiliation of Registered Voter;

2009 (iv) Birth Date or Age (Optional);

2010 (v) Street Address, City, Zip Code; and

2011 (vi) Date of Signature; and

2012 (g) a photograph of the candidate may appear on the nomination petition.

2013 (4) If one or more nomination petitions are bound together, a page shall be bound to  
2014 the nomination petition(s) that features the following printed verification statement to be signed  
2015 and dated by the petition circulator:

2016 "Verification

2017 State of Utah, County of \_\_\_\_\_

2018 I, \_\_\_\_\_, of \_\_\_\_\_, hereby state [~~under~~] that:

2019 I am a Utah resident and am at least 18 years old;

2020 All the names that appear on the signature sheets bound to this page were, to the best of  
2021 my knowledge, signed by the persons who professed to be the persons whose names appear on  
2022 the signature sheets, and each of them signed the person's name on the signature sheets in my  
2023 presence;

2024 I believe that each has printed and signed the person's name and written the person's  
2025 street address correctly, and that each signer is registered to vote in Utah or will register to vote  
2026 in Utah before the county clerk certifies the signatures on the signature sheet."

2027 (5) The lieutenant governor shall prepare and make public model nomination petition  
2028 forms and associated instructions.

2029 (6) A nomination petition circulator must be at least 18 years old and a resident of the  
2030 state, but may affiliate with any political party.

2031 (7) It is unlawful for any person to:

2032 (a) knowingly sign the nomination petition sheet described in Subsection (3):

2033 (i) with any name other than the person's own name;

2034 (ii) more than once for the same candidate; or

2035 (iii) if the person is not registered to vote in this state and does not intend to become  
2036 registered to vote in this state prior to 5 p.m. on the final day in March;

2037 (b) sign the verification of a certificate of nomination signature sheet described in  
2038 Subsection (4) if the person:

2039 (i) does not meet the residency requirements of Section [20A-2-105](#);

2040 (ii) has not witnessed the signing by those persons whose names appear on the  
2041 certificate of nomination signature sheet; or

2042 (iii) knows that a person whose signature appears on the certificate of nomination

2043 signature sheet is not registered to vote in this state and does not intend to become registered to  
2044 vote in this state;

2045 (c) pay compensation to any person to sign a nomination petition; or

2046 (d) pay compensation to any person to circulate a nomination petition, if the  
2047 compensation is based directly on the number of signatures submitted to a filing officer rather  
2048 than on the number of signatures verified or on some other basis.

2049 (8) Any person violating Subsection (7) is guilty of a class A misdemeanor.

2050 (9) Withdrawal of petition signatures shall not be permitted.

2051 Section 27. Section **26-7-8** is amended to read:

2052 **26-7-8. Syringe exchange and education.**

2053 (1) The following may operate a syringe exchange program in the state to prevent the  
2054 transmission of disease and reduce morbidity and mortality among individuals who inject  
2055 drugs, and those individuals' contacts:

2056 (a) a government entity, including:

2057 (i) the department;

2058 (ii) a local health department, as defined in Section [26A-1-102](#);

2059 (iii) the Division of Substance Abuse and Mental Health within the Department of  
2060 Human Services; or

2061 (iv) a local substance abuse authority, as defined in Section [62A-15-102](#);

2062 (b) a nongovernment entity, including:

2063 (i) a nonprofit organization; or

2064 (ii) a for-profit organization; or

2065 (c) any other entity that complies with Subsections (2) and ~~[(3)]~~ (4).

2066 (2) An entity operating a syringe exchange program in the state shall:

2067 (a) facilitate the exchange of an individual's used syringe for one or more new syringes  
2068 in sealed sterile packages;

2069 (b) ensure that a recipient of a new syringe is given verbal and written instruction on:

2070 (i) methods for preventing the transmission of blood-borne diseases, including hepatitis

2071 C and human immunodeficiency virus; and

2072 (ii) options for obtaining:

2073 (A) services for the treatment of a substance use disorder;

2074 (B) testing for a blood-borne disease; and  
2075 (C) an opiate antagonist under Chapter 55, Opiate Overdose Response Act; and  
2076 (c) report annually to the department the following information about the program's  
2077 activities:  
2078 (i) the number of individuals who have exchanged syringes;  
2079 (ii) the number of used syringes exchanged for new syringes; and  
2080 (iii) the number of new syringes provided in exchange for used syringes.  
2081 (3) No later than October 1, 2017, and every two years thereafter, the department shall  
2082 report to the Legislature's Health and Human Services Interim Committee on:  
2083 (a) the activities and outcomes of syringe programs operating in the state, including:  
2084 (i) the number of individuals who have exchanged syringes;  
2085 (ii) the number of used syringes exchanged for new syringes;  
2086 (iii) the number of new syringes provided in exchange for used syringes;  
2087 (iv) the impact of the programs on blood-borne infection rates; and  
2088 (v) the impact of the programs on the number of individuals receiving treatment for a  
2089 substance use disorder;  
2090 (b) the potential for additional reductions in the number of syringes contaminated with  
2091 blood-borne disease if the programs receive additional funding;  
2092 (c) the potential for additional reductions in state and local government spending if the  
2093 programs receive additional funding;  
2094 (d) whether the programs promote illicit use of drugs; and  
2095 (e) whether the programs should be continued, continued with modifications, or  
2096 terminated.  
2097 (4) The department shall make rules, in accordance with Title 63G, Chapter 3, Utah  
2098 Administrative Rulemaking Act, specifying how and when an entity operating a syringe  
2099 exchange program shall make the report required by Subsection (2)(c).  
2100 Section 28. Section **26-10-10** is amended to read:  
2101 **26-10-10. Cytomegalovirus (CMV) public education and testing.**  
2102 (1) As used in this section "CMV" means cytomegalovirus.  
2103 (2) The department shall establish and conduct a public education program to inform  
2104 pregnant women and women who may become pregnant regarding:

- 2105 (a) the incidence of CMV;
- 2106 (b) the transmission of CMV to pregnant women and women who may become  
2107 pregnant;
- 2108 (c) birth defects caused by congenital CMV;
- 2109 (d) methods of diagnosing congenital CMV; and
- 2110 (e) available preventative measures.
- 2111 (3) The department shall provide the information described in Subsection (2) to:
- 2112 (a) child care programs licensed under Title 26, Chapter 39, Utah Child Care Licensing  
2113 Act, and their employees;
- 2114 (b) a person described in Subsection ~~26-39-403[(1)(c), (f), (g), (h), (j), or (k)]~~ (1)(c) or  
2115 (f), or (2)(a), (b), (c), or (e);
- 2116 (c) a person serving as a school nurse under Section ~~53A-11-204~~;
- 2117 (d) a person offering health education in a school district;
- 2118 (e) health care providers offering care to pregnant women and infants; and
- 2119 (f) religious, ecclesiastical, or denominational organizations offering children's  
2120 programs as a part of worship services.
- 2121 (4) If a newborn infant fails the newborn hearing screening test(s) under Subsection  
2122 ~~26-10-6(1)~~, a medical practitioner shall:
- 2123 (a) test the newborn infant for CMV before the newborn is 21 days of age, unless a  
2124 parent of the newborn infant objects; and
- 2125 (b) provide to the parents of the newborn infant information regarding:
- 2126 (i) birth defects caused by congenital CMV; and
- 2127 (ii) available methods of treatment.
- 2128 (5) The department shall provide to the family and the medical practitioner, if known,  
2129 information regarding the testing requirements under Subsection (4) when providing results  
2130 indicating that an infant has failed the newborn hearing screening test(s) under Subsection  
2131 ~~26-10-6(1)~~.
- 2132 (6) The department may make rules in accordance with Title 63G, Chapter 3, Utah  
2133 Administrative Rulemaking Act, as necessary to administer the provisions of this section.  
2134 Section 29. Section ~~26-18-3~~ is amended to read:
- 2135 **26-18-3. Administration of Medicaid program by department -- Reporting to the**

2136 **Legislature -- Disciplinary measures and sanctions -- Funds collected -- Eligibility**  
2137 **standards -- Internal audits -- Health opportunity accounts.**

2138 (1) The department shall be the single state agency responsible for the administration  
2139 of the Medicaid program in connection with the United States Department of Health and  
2140 Human Services pursuant to Title XIX of the Social Security Act.

2141 (2) (a) The department shall implement the Medicaid program through administrative  
2142 rules in conformity with this chapter, Title 63G, Chapter 3, Utah Administrative Rulemaking  
2143 Act, the requirements of Title XIX, and applicable federal regulations.

2144 (b) The rules adopted under Subsection (2)(a) shall include, in addition to other rules  
2145 necessary to implement the program:

2146 (i) the standards used by the department for determining eligibility for Medicaid  
2147 services;

2148 (ii) the services and benefits to be covered by the Medicaid program;

2149 (iii) reimbursement methodologies for providers under the Medicaid program; and

2150 (iv) a requirement that:

2151 (A) a person receiving Medicaid services shall participate in the electronic exchange of  
2152 clinical health records established in accordance with Section [26-1-37](#) unless the individual  
2153 opts out of participation;

2154 (B) prior to enrollment in the electronic exchange of clinical health records the enrollee  
2155 shall receive notice of enrollment in the electronic exchange of clinical health records and the  
2156 right to opt out of participation at any time; and

2157 (C) beginning July 1, 2012, when the program sends enrollment or renewal information  
2158 to the enrollee and when the enrollee logs onto the program's website, the enrollee shall receive  
2159 notice of the right to opt out of the electronic exchange of clinical health records.

2160 (3) (a) The department shall, in accordance with Subsection (3)(b), report to the Social  
2161 Services Appropriations Subcommittee when the department:

2162 (i) implements a change in the Medicaid State Plan;

2163 (ii) initiates a new Medicaid waiver;

2164 (iii) initiates an amendment to an existing Medicaid waiver;

2165 (iv) applies for an extension of an application for a waiver or an existing Medicaid  
2166 waiver; or

- 2167 (v) initiates a rate change that requires public notice under state or federal law.
- 2168 (b) The report required by Subsection (3)(a) shall:
- 2169 (i) be submitted to the Social Services Appropriations Subcommittee prior to the
- 2170 department implementing the proposed change; and
- 2171 (ii) include:
- 2172 (A) a description of the department's current practice or policy that the department is
- 2173 proposing to change;
- 2174 (B) an explanation of why the department is proposing the change;
- 2175 (C) the proposed change in services or reimbursement, including a description of the
- 2176 effect of the change;
- 2177 (D) the effect of an increase or decrease in services or benefits on individuals and
- 2178 families;
- 2179 (E) the degree to which any proposed cut may result in cost-shifting to more expensive
- 2180 services in health or human service programs; and
- 2181 (F) the fiscal impact of the proposed change, including:
- 2182 (I) the effect of the proposed change on current or future appropriations from the
- 2183 Legislature to the department;
- 2184 (II) the effect the proposed change may have on federal matching dollars received by
- 2185 the state Medicaid program;
- 2186 (III) any cost shifting or cost savings within the department's budget that may result
- 2187 from the proposed change; and
- 2188 (IV) identification of the funds that will be used for the proposed change, including any
- 2189 transfer of funds within the department's budget.
- 2190 (4) Any rules adopted by the department under Subsection (2) are subject to review and
- 2191 reauthorization by the Legislature in accordance with Section [63G-3-502](#).
- 2192 (5) The department may, in its discretion, contract with the Department of Human
- 2193 Services or other qualified agencies for services in connection with the administration of the
- 2194 Medicaid program, including:
- 2195 (a) the determination of the eligibility of individuals for the program;
- 2196 (b) recovery of overpayments; and
- 2197 (c) consistent with Section [26-20-13](#), and to the extent permitted by law and quality

2198 control services, enforcement of fraud and abuse laws.

2199 (6) The department shall provide, by rule, disciplinary measures and sanctions for  
2200 Medicaid providers who fail to comply with the rules and procedures of the program, provided  
2201 that sanctions imposed administratively may not extend beyond:

2202 (a) termination from the program;

2203 (b) recovery of claim reimbursements incorrectly paid; and

2204 (c) those specified in Section 1919 of Title XIX of the federal Social Security Act.

2205 (7) Funds collected as a result of a sanction imposed under Section 1919 of Title XIX  
2206 of the federal Social Security Act shall be deposited in the General Fund as dedicated credits to  
2207 be used by the division in accordance with the requirements of Section 1919 of Title XIX of  
2208 the federal Social Security Act.

2209 (8) (a) In determining whether an applicant or recipient is eligible for a service or  
2210 benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department  
2211 shall, if Subsection (8)(b) is satisfied, exclude from consideration one passenger vehicle  
2212 designated by the applicant or recipient.

2213 (b) Before Subsection (8)(a) may be applied:

2214 (i) the federal government shall:

2215 (A) determine that Subsection (8)(a) may be implemented within the state's existing  
2216 public assistance-related waivers as of January 1, 1999;

2217 (B) extend a waiver to the state permitting the implementation of Subsection (8)(a); or

2218 (C) determine that the state's waivers that permit dual eligibility determinations for  
2219 cash assistance and Medicaid are no longer valid; and

2220 (ii) the department shall determine that Subsection (8)(a) can be implemented within  
2221 existing funding.

2222 (9) (a) For purposes of this Subsection (9):

2223 (i) "aged, blind, or has a disability" means an aged, blind, or disabled individual, as  
2224 defined in 42 U.S.C. Sec. 1382c(a)(1); and

2225 (ii) "spend down" means an amount of income in excess of the allowable income  
2226 standard that shall be paid in cash to the department or incurred through the medical services  
2227 not paid by Medicaid.

2228 (b) In determining whether an applicant or recipient who is aged, blind, or has a



2229 disability is eligible for a service or benefit under this chapter, the department shall use 100%  
2230 of the federal poverty level as:

2231 (i) the allowable income standard for eligibility for services or benefits; and

2232 (ii) the allowable income standard for eligibility as a result of spend down.

2233 (10) The department shall conduct internal audits of the Medicaid program.

2234 (11) (a) The department may apply for and, if approved, implement a demonstration  
2235 program for health opportunity accounts, as provided for in 42 U.S.C. Sec. 1396u-8.

2236 (b) A health opportunity account established under Subsection (11)(a) shall be an  
2237 alternative to the existing benefits received by an individual eligible to receive Medicaid under  
2238 this chapter.

2239 (c) Subsection (11)(a) is not intended to expand the coverage of the Medicaid program.

2240 (12) (a) (i) The department shall apply for, and if approved, implement an amendment  
2241 to the state plan under this Subsection (12) for benefits for:

2242 (A) medically needy pregnant women;

2243 (B) medically needy children; and

2244 (C) medically needy parents and caretaker relatives.

2245 (ii) The department may implement the eligibility standards of Subsection (12)(b) for  
2246 eligibility determinations made on or after the date of the approval of the amendment to the  
2247 state plan.

2248 (b) In determining whether an applicant is eligible for benefits described in Subsection  
2249 (12)(a)(i), the department shall:

2250 (i) disregard resources held in an account in the savings plan created under Title 53B,  
2251 Chapter 8a, Utah Educational Savings Plan, if the beneficiary of the account is:

2252 (A) under the age of 26; and

2253 (B) living with the account owner, as that term is defined in Section [53B-8a-102](#), or  
2254 temporarily absent from the residence of the account owner; and

2255 (ii) include the withdrawals from an account in the Utah Educational Savings Plan as  
2256 resources for a benefit determination, if the withdrawal was not used for qualified higher  
2257 education costs as that term is defined in Section [\[53B-8a-102\]](#) [53B-8a-102.5](#).

2258 Section 30. Section **26-38-2** is amended to read:

2259 **26-38-2. Definitions.**

- 2260 As used in this chapter:
- 2261 (1) "E-cigarette":
- 2262 (a) means any electronic oral device:
- 2263 (i) that provides a vapor of nicotine or other substance; and
- 2264 (ii) which simulates smoking through its use or through inhalation of the device; and
- 2265 (b) includes an oral device that is:
- 2266 (i) composed of a heating element, battery, or electronic circuit; and
- 2267 (ii) marketed, manufactured, distributed, or sold as:
- 2268 (A) an e-cigarette;
- 2269 (B) e-cigar;
- 2270 (C) e-pipe; or
- 2271 (D) any other product name or descriptor, if the function of the product meets the
- 2272 definition of Subsection (1)(a).
- 2273 (2) "Place of public access" means any enclosed indoor place of business, commerce,
- 2274 banking, financial service, or other service-related activity, whether publicly or privately owned
- 2275 and whether operated for profit or not, to which persons not employed at the place of public
- 2276 access have general and regular access or which the public uses, including:
- 2277 (a) buildings, offices, shops, elevators, or restrooms;
- 2278 (b) means of transportation or common carrier waiting rooms;
- 2279 (c) restaurants, cafes, or cafeterias;
- 2280 (d) taverns as defined in Section [32B-1-102](#), or cabarets;
- 2281 (e) shopping malls, retail stores, grocery stores, or arcades;
- 2282 (f) libraries, theaters, concert halls, museums, art galleries, planetariums, historical
- 2283 sites, auditoriums, or arenas;
- 2284 (g) barber shops, hair salons, or laundromats;
- 2285 (h) sports or fitness facilities;
- 2286 (i) common areas of nursing homes, hospitals, resorts, hotels, motels, "bed and
- 2287 breakfast" lodging facilities, and other similar lodging facilities, including the lobbies,
- 2288 hallways, elevators, restaurants, cafeterias, other designated dining areas, and restrooms of any
- 2289 of these;
- 2290 (j) (i) any child care facility or program subject to licensure or certification under this

2291 title, including those operated in private homes, when any child cared for under that license is  
2292 present; and

2293 (ii) any child care, other than child care as defined in Section 26-39-102, that is not  
2294 subject to licensure or certification under this title, when any child cared for by the provider,  
2295 other than the child of the provider, is present;

2296 (k) public or private elementary or secondary school buildings and educational  
2297 facilities or the property on which those facilities are located;

2298 (l) any building owned, rented, leased, or otherwise operated by a social, fraternal, or  
2299 religious organization when used solely by the organization members or their guests or  
2300 families;

2301 (m) any facility rented or leased for private functions from which the general public is  
2302 excluded and arrangements for the function are under the control of the function sponsor;

2303 (n) any workplace that is not a place of public access or a publicly owned building or  
2304 office but has one or more employees who are not owner-operators of the business;

2305 (o) any area where the proprietor or manager of the area has posted a conspicuous sign  
2306 stating "no smoking", "thank you for not smoking", or similar statement; and

2307 (p) a holder of a bar establishment license, as defined in Section 32B-1-102.

2308 (3) "Publicly owned building or office" means any enclosed indoor place or portion of  
2309 a place owned, leased, or rented by any state, county, or municipal government, or by any  
2310 agency supported by appropriation of, or by contracts or grants from, funds derived from the  
2311 collection of federal, state, county, or municipal taxes.

2312 (4) "Smoking" means:

2313 (a) the possession of any lighted or heated tobacco product in any form;

2314 (b) inhaling, exhaling, burning, or heating a substance containing tobacco or nicotine  
2315 intended for inhalation through a cigar, cigarette, pipe, or hookah;

2316 (c) ~~[except as provided in Section 26-38-2.6,]~~ using an e-cigarette; or

2317 (d) using an oral smoking device intended to circumvent the prohibition of smoking in  
2318 this chapter.

2319 Section 31. Section 31A-4-106 is amended to read:

2320 **31A-4-106. Provision of health care.**

2321 (1) As used in this section, "health care provider" has the same definition as in Section

2322 78B-3-403.

2323 (2) Except under Subsection (3) or (4), unless authorized to do so or employed by  
2324 someone authorized to do so under Chapter 5, Domestic Stock and Mutual Insurance  
2325 Corporations, Chapter 7, Nonprofit Health Service Insurance Corporations, Chapter 8, Health  
2326 Maintenance Organizations and Limited Health Plans, Chapter 9, Insurance Fraternal, or  
2327 Chapter 14, Foreign Insurers, a person may not:

- 2328 (a) directly or indirectly provide health care;  
2329 (b) arrange for health care;  
2330 (c) manage or administer the provision or arrangement of health care;  
2331 (d) collect advance payments for health care; or  
2332 (e) compensate a provider of health care.

2333 (3) Subsection (2) does not apply to:

2334 (a) a natural person or professional corporation that alone or with others professionally  
2335 associated with the natural person or professional corporation, and except as provided in  
2336 Subsection (3)(f), without receiving consideration for services in advance of the need for a  
2337 particular service, provides the service personally with the aid of nonprofessional assistants;

2338 (b) a health care facility as defined in Section 26-21-2 that:

2339 (i) is licensed or exempt from licensing under Title 26, Chapter 21, Health Care  
2340 Facility Licensing and Inspection Act; and

2341 (ii) does not engage in health care insurance as defined under Section 31A-1-301;

2342 (c) a person who files with the commissioner a certificate from the United States  
2343 Department of Labor, or other evidence satisfactory to the commissioner, showing that the laws  
2344 of Utah are preempted under Section 514 of the Employee Retirement Income Security Act of  
2345 1974 or other federal law;

2346 (d) a person licensed under Chapter 23a, Insurance Marketing - Licensing Producers,  
2347 Consultants, and Reinsurance Intermediaries, who~~[(t)]~~ arranges for the insurance of all  
2348 services under:

2349 ~~[(A)]~~ (i) Subsection (2) by an insurer authorized to do business in Utah; or

2350 ~~[(B)]~~ (ii) Section 31A-15-103; or

2351 ~~[(ii) works for an uninsured employer that complies with Chapter 13, Employee  
2352 Welfare Funds and Plans;]~~

2353 ~~[(e) an employer that self-funds its obligations to provide health care services or~~  
 2354 ~~indemnity for its employees if the employer complies with Chapter 13, Employee Welfare~~  
 2355 ~~Funds and Plans; or]~~

2356 [(f)] (e) notwithstanding the provisions of Subsection (3)(a), a natural person or  
 2357 professional corporation that alone or with others professionally associated with the natural  
 2358 person or professional corporation enters into a medical retainer agreement in accordance with  
 2359 Section 31A-4-106.5.

2360 (4) A person may not provide administrative or management services for another  
 2361 person subject to Subsection (2) and not exempt under Subsection (3) unless the person:

2362 (a) is an authorized insurer under Chapter 5, Domestic Stock and Mutual Insurance  
 2363 Corporations, Chapter 7, Nonprofit Health Service Insurance Corporations, Chapter 8, Health  
 2364 Maintenance Organizations and Limited Health Plans, Chapter 9, Insurance Fraternal, or  
 2365 Chapter 14, Foreign Insurers; or

2366 (b) complies with Chapter 25, Third Party Administrators.

2367 (5) An insurer or person who provides, administers, or manages health care insurance  
 2368 under Chapter 5, Domestic Stock and Mutual Insurance Corporations, Chapter 7, Nonprofit  
 2369 Health Service Insurance Corporations, Chapter 8, Health Maintenance Organizations and  
 2370 Limited Health Plans, Chapter 9, Insurance Fraternal, or Chapter 14, Foreign Insurers, may not  
 2371 enter into a contract that limits a health care provider's ability to advise the health care  
 2372 provider's patients or clients fully about treatment options or other issues that affect the health  
 2373 care of the health care provider's patients or clients.

2374 Section 32. Section 31A-27a-403 is amended to read:

2375 **31A-27a-403. Continuance of coverage -- Health maintenance organizations.**

2376 (1) As used in this section:

2377 (a) "Basic health care services" is as defined in Section 31A-8-101.

2378 (b) "Enrollee" is as defined in Section 31A-8-101.

2379 (c) "Health care" is as defined in Section 31A-1-301.

2380 (d) "Health maintenance organization" is as defined in Section 31A-8-101.

2381 (e) "Limited health plan" is as defined in Section 31A-8-101.

2382 (f) (i) "Managed care organization" means an entity licensed by, or holding a certificate  
 2383 of authority from, the department to furnish health care services or health insurance.

- 2384 (ii) "Managed care organization" includes:
- 2385 (A) a limited health plan;
- 2386 (B) a health maintenance organization;
- 2387 (C) a preferred provider organization;
- 2388 (D) a fraternal benefit society; or
- 2389 (E) an entity similar to an entity described in Subsections (1)(f)(ii)(A) through (D).
- 2390 (iii) "Managed care organization" does not include:
- 2391 (A) an insurer or other person that is eligible for membership in a guaranty association
- 2392 under Chapter 28, Guaranty Associations;
- 2393 (B) a mandatory state pooling plan;
- 2394 (C) a mutual assessment company or an entity that operates on an assessment basis; or
- 2395 (D) an entity similar to an entity described in Subsections (1)(f)(iii)(A) through (C).
- 2396 (g) "Participating provider" means a provider who, under a contract with a managed
- 2397 care organization authorized under Section [31A-8-407](#), agrees to provide health care services to
- 2398 enrollees with an expectation of receiving payment:
- 2399 (i) directly or indirectly, from the managed care organization; and
- 2400 (ii) other than a copayment.
- 2401 (h) "Participating provider contract" means the agreement between a participating
- 2402 provider and a managed care organization authorized under Section [31A-8-407](#).
- 2403 (i) "Preferred provider" means a provider who agrees to provide health care services
- 2404 under an agreement authorized under Subsection [~~31A-22-617(1)~~] [31A-45-303\(2\)](#).
- 2405 (j) "Preferred provider contract" means the written agreement between a preferred
- 2406 provider and a managed care organization authorized under Subsection [~~31A-22-617(1)~~]
- 2407 [31A-45-303\(2\)](#).
- 2408 (k) (i) Except as provided in Subsection (1)(k)(ii), "preferred provider organization"
- 2409 means a person that:
- 2410 (A) furnishes at a minimum, through a preferred provider, basic health care services to
- 2411 an enrollee in return for prepaid periodic payments in an amount agreed to before the time
- 2412 during which the health care may be furnished;
- 2413 (B) is obligated to the enrollee to arrange for the services described in Subsection
- 2414 (1)(k)(i)(A); and

2415 (C) permits the enrollee to obtain health care services from a provider who is not a  
2416 preferred provider.

2417 (ii) "Preferred provider organization" does not include:

2418 (A) an insurer licensed under Chapter 7, Nonprofit Health Service Insurance  
2419 Corporations; or

2420 (B) an individual who contracts to render professional or personal services that the  
2421 individual performs.

2422 (l) "Provider" is as defined in Section [31A-8-101](#).

2423 (m) "Uncovered expenditure" means a cost of health care services that is covered by an  
2424 organization for which an enrollee is liable in the event of the managed care organization's  
2425 insolvency.

2426 (2) The rehabilitator or liquidator may take one or more of the actions described in  
2427 Subsections (2)(a) through (g) to assure continuation of health care coverage for enrollees of an  
2428 insolvent managed care organization.

2429 (a) (i) Subject to Subsection (2)(a)(ii), a rehabilitator or liquidator may require a  
2430 participating provider or preferred provider to continue to provide the health care services the  
2431 provider is required to provide under the provider's participating provider contract or preferred  
2432 provider contract until the earlier of:

2433 (A) 90 days after the day on which the following is filed:

2434 (I) a petition for rehabilitation; or

2435 (II) a petition for liquidation; or

2436 (B) the day on which the term of the contract ends.

2437 (ii) A requirement by the rehabilitator or liquidator under Subsection (2)(a)(i) that a  
2438 participating provider or preferred provider continue to provide health care services under the  
2439 provider's participating provider contract or preferred provider contract expires when health  
2440 care coverage for all enrollees of the insolvent managed care organization is obtained from  
2441 another managed care organization or insurer.

2442 (b) (i) Subject to Subsection (2)(b)(ii), a rehabilitator or liquidator may reduce the fees  
2443 a participating provider or preferred provider is otherwise entitled to receive from the managed  
2444 care organization under the provider's participating provider contract or preferred provider  
2445 contract during the time period in Subsection (2)(a)(i).

2446 (ii) Notwithstanding Subsection (2)(b)(i), a rehabilitator or liquidator may not reduce a  
2447 fee to less than 75% of the regular fee set forth in the provider's participating provider contract  
2448 or preferred provider contract.

2449 (iii) An enrollee shall continue to pay the same copayments, deductibles, and other  
2450 payments for services received from a participating provider or preferred provider that the  
2451 enrollee is required to pay before the day on which the following is filed:

2452 (A) the petition for rehabilitation; or

2453 (B) the petition for liquidation.

2454 (c) A participating provider or preferred provider shall:

2455 (i) accept the amounts specified in Subsection (2)(b) as payment in full; and

2456 (ii) relinquish the right to collect additional amounts from the insolvent managed care  
2457 organization's enrollee.

2458 (d) Subsections (2)(b) and (c) apply to the fees paid to a provider who agrees to  
2459 provide health care services to an enrollee but is not a preferred or participating provider.

2460 (e) If the managed care organization is a health maintenance organization, Subsections  
2461 (2)(e)(i) through (vi) apply.

2462 (i) A solvent health maintenance organization licensed under Chapter 8, Health  
2463 Maintenance Organizations and Limited Health Plans, shall extend to the enrollees of an  
2464 insolvent health maintenance organization all rights, privileges, and obligations of being an  
2465 enrollee in the accepting health maintenance organization:

2466 (A) subject to Subsections (2)(e)(ii), (iii), and (v);

2467 (B) upon notification from and subject to the direction of the rehabilitator or liquidator  
2468 of an insolvent health maintenance organization licensed under Chapter 8, Health Maintenance  
2469 Organizations and Limited Health Plans; and

2470 (C) if the solvent health maintenance organization operates within a portion of the  
2471 insolvent health maintenance organization's service area.

2472 (ii) Notwithstanding Subsection (2)(e)(i), the accepting health maintenance  
2473 organization shall give credit to an enrollee for any waiting period already satisfied under the  
2474 enrollee's contract with the insolvent health maintenance organization.

2475 (iii) A health maintenance organization accepting an enrollee of an insolvent health  
2476 maintenance organization under Subsection (2)(e)(i) shall charge the enrollee the premiums



2477 applicable to the existing business of the accepting health maintenance organization.

2478 (iv) A health maintenance organization's obligation to accept an enrollee under  
2479 Subsection (2)(e)(i) is limited in number to the accepting health maintenance organization's pro  
2480 rata share of all health maintenance organization enrollees in this state, as determined after  
2481 excluding the enrollees of the insolvent insurer.

2482 (v) (A) The rehabilitator or liquidator of an insolvent health maintenance organization  
2483 shall take those measures that are possible to ensure that no health maintenance organization is  
2484 required to accept more than its pro rata share of the adverse risk represented by the enrollees  
2485 of the insolvent health maintenance organization.

2486 (B) If the methodology used by the rehabilitator or liquidator to assign an enrollee is  
2487 one that can be expected to produce a reasonably equitable distribution of adverse risk, that  
2488 methodology and its results are acceptable under this Subsection (2)(e)(v).

2489 (vi) (A) Notwithstanding Section [31A-27a-402](#), the rehabilitator or liquidator may  
2490 require all solvent health maintenance organizations to pay for the covered claims incurred by  
2491 the enrollees of the insolvent health maintenance organization.

2492 (B) As determined by the rehabilitator or liquidator, payments required under this  
2493 Subsection (2)(e)(vi) may:

2494 (I) begin as of the day on which the following is filed:

2495 (Aa) the petition for rehabilitation; or

2496 (Bb) the petition for liquidation; and

2497 (II) continue for a maximum period through the time all enrollees are assigned pursuant  
2498 to this section.

2499 (C) If the rehabilitator or liquidator makes an assessment under this Subsection  
2500 (2)(e)(vi), the rehabilitator or liquidator shall assess each solvent health maintenance  
2501 organization its pro rata share of the total assessment based upon its premiums from the  
2502 previous calendar year.

2503 (D) (I) A solvent health maintenance organization required to pay for covered claims  
2504 under this Subsection (2)(e)(vi) may file a claim against the estate of the insolvent health  
2505 maintenance organization.

2506 (II) Any claim described in Subsection (2)(e)(vi)(D)(I), if allowed by the rehabilitator  
2507 or liquidator, shall share in any distributions from the estate of the insolvent health

2508 maintenance organization as a Class 3 claim.

2509 (f) (i) A rehabilitator or liquidator may transfer, through sale or otherwise, the group  
2510 and individual health care obligations of the insolvent managed care organization to one or  
2511 more other managed care organizations or other insurers, if those other managed care  
2512 organizations and other insurers:

2513 (A) are licensed to provide the same health care services in this state that are held by  
2514 the insolvent managed care organization; or

2515 (B) have a certificate of authority to provide the same health care services in this state  
2516 that is held by the insolvent managed care organization.

2517 (ii) The rehabilitator or liquidator may combine group and individual health care  
2518 obligations of the insolvent managed care organization in any manner the rehabilitator or  
2519 liquidator considers best to provide for continuous health care coverage for the maximum  
2520 number of enrollees of the insolvent managed care organization.

2521 (iii) If the terms of a proposed transfer of the same combination of group and  
2522 individual policy obligations to more than one other managed care organization or insurer are  
2523 otherwise equal, the rehabilitator or liquidator shall give preference to the transfer of the group  
2524 and individual policy obligations of an insolvent managed care organization as follows:

2525 (A) from one category of managed care organization to another managed care  
2526 organization of the same category, as follows:

2527 (I) from a limited health plan to a limited health plan;

2528 (II) from a health maintenance organization to a health maintenance organization;

2529 (III) from a preferred provider organization to a preferred provider organization;

2530 (IV) from a fraternal benefit society to a fraternal benefit society; and

2531 (V) from an entity similar to an entity described in this Subsection (2)(f)(iii)(A) to a  
2532 category that is similar;

2533 (B) from one category of managed care organization to another managed care  
2534 organization, regardless of the category of the transferee managed care organization; and

2535 (C) from a managed care organization to a nonmanaged care provider of health care  
2536 coverage, including insurers.

2537 (g) If an insolvent managed care organization has required surplus, a rehabilitator or  
2538 liquidator may use the insolvent managed care organization's required surplus to continue to

2539 provide coverage for the insolvent managed care organization's enrollees, including paying  
2540 uncovered expenditures.

2541 Section 33. Section **31A-30-206** is amended to read:

2542 **31A-30-206. Minimum participation and contribution levels -- Premium**  
2543 **payments.**

2544 An insurer who offers a health benefit plan for which an employer has established a  
2545 defined contribution arrangement under the provisions of this part:

2546 (1) may not:

2547 (a) establish an employer minimum contribution level for the health benefit plan  
2548 premium under Section [31A-30-112](#), or any other law; or

2549 (b) discontinue or non-renew a policy under Subsection [~~31A-30-107(4)~~]

2550 [31A-22-618.6\(2\)\(a\)](#) for failure to maintain a minimum employer contribution level;

2551 (2) shall accept premium payments for an enrollee from multiple sources through the  
2552 Internet portal, including:

2553 (a) government assistance programs;

2554 (b) contributions from a Section 125 Cafeteria plan, a health reimbursement  
2555 arrangement, or other qualified mechanism for pre-tax payments established by any employer  
2556 of the enrollee;

2557 (c) contributions from a Section 125 Cafeteria plan, a health reimbursement  
2558 arrangement, or other qualified mechanism for pre-tax payments established by an employer of  
2559 a spouse or dependent of the enrollee; and

2560 (d) contributions from private sources of premium assistance; and

2561 (3) may require, as a condition of coverage, a minimum participation level for eligible  
2562 employees of an employer, which for purposes of the defined contribution arrangement market  
2563 may not exceed 75% participation.

2564 Section 34. Section **31A-32a-107** is amended to read:

2565 **31A-32a-107. Penalties for noncompliance with tax provisions.**

2566 (1) An account administrator who fails to comply with a provision described in  
2567 Subsection (2) is subject to:

2568 (a) the civil penalties provided in Section [59-1-401](#); and

2569 (b) interest at the rate and in the manner provided in Section [59-1-402](#).

2570 (2) The following provisions apply to Subsection (1):

2571 (a) a provision of this chapter relating to~~[(t)]~~ an addition to income made in  
2572 accordance with Section 59-10-114; or

2573 ~~[(ii) a tax credit allowed by Section 59-10-1021; or]~~

2574 (b) a provision of Title 59, Chapter 10, Individual Income Tax Act, relating to~~[(t)]~~ an  
2575 addition to income made in accordance with Section 59-10-114~~[-or]~~.

2576 ~~[(ii) a tax credit allowed by Section 59-10-1021.]~~

2577 Section 35. Section 32B-1-605 is amended to read:

2578 **32B-1-605. General procedure for approval.**

2579 (1) To obtain approval of the label and packaging of a malted beverage, the  
2580 manufacturer of the malted beverage shall submit an application to the department for  
2581 approval.

2582 (2) The application described in Subsection (1) shall be on a form approved by the  
2583 department and include the following for each brand and label for which the manufacturer  
2584 seeks approval:

2585 (a) (i) a copy of a federal certificate of label approval from the United States  
2586 Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau; or

2587 (ii) if the United States Department of Treasury, Alcohol and Tobacco Tax and Trade  
2588 Bureau does not require label approval, a copy of formula approval from the United States  
2589 Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau;

2590 (b) a complete set of original labels for each size of container of the malted beverage;

2591 (c) a description of the size of the container on which a label will be placed;

2592 (d) a description of each type of container of the malted beverage; and

2593 (e) a description of any packaging for the malted beverage.

2594 (3) The department may assess a reasonable fee for reviewing a label and packaging for  
2595 approval.

2596 (4) (a) The department shall notify a manufacturer within 30 days after the day on  
2597 which the manufacturer submits an application whether the label and packaging is approved or  
2598 denied.

2599 (b) If the department determines that an unusual circumstance requires additional time,  
2600 the department may extend the time period described in Subsection (4)(a).

2601 (5) A manufacturer shall obtain the approval of the department of a revision of a  
2602 previously approved label and packaging before a malted beverage using the revised label and  
2603 packaging may be distributed or sold in this state.

2604 (6) (a) The department may revoke a label and packaging previously approved upon a  
2605 finding that the label and packaging is not in compliance with this title or rules of the  
2606 commission.

2607 (b) The department shall notify the person who applies for the approval of a label and  
2608 packaging at least five business days before the day on which a label and packaging approval is  
2609 considered revoked.

2610 (c) After receiving notice under Subsection (6)(b), a manufacturer may present written  
2611 argument or evidence to the department on why the revocation should not occur.

2612 (7) A manufacturer that applies for approval of a label and packaging may appeal a  
2613 denial or revocation of a label and packaging approval to the commission.

2614 Section 36. Section **32B-3-102** is amended to read:

2615 **32B-3-102. Definitions.**

2616 As used in this chapter:

2617 (1) "Aggravating circumstances" means:

2618 (a) prior warnings about compliance problems;

2619 (b) a prior violation history;

2620 (c) a lack of written policies governing employee conduct;

2621 (d) multiple violations during the course of an investigation;

2622 (e) efforts to conceal a violation;

2623 (f) an intentional violation;

2624 (g) the violation involved more than one patron or employee; or

2625 (h) a violation that results in injury or death.

2626 (2) "Final adjudication" means an adjudication for which a final judgment or order is  
2627 issued that:

2628 (a) is not appealed, and the time to appeal the judgment has expired; or

2629 (b) is appealed, and is affirmed, in whole or in part, on appeal.

2630 (3) "Mitigating circumstances" means:

2631 (a) no prior violation history for the licensee or permittee;

- 2632 (b) no prior violation history for the individual who committed the violation;
- 2633 (c) motive for the individual who engaged in or allowed the violation to retaliate
- 2634 against the licensee or permittee; or
- 2635 (d) extraordinary cooperation with the investigation of the violation that demonstrates
- 2636 that the licensee or permittee and the individual who committed the violation accept
- 2637 responsibility for the violation.

2638 Section 37. Section **32B-6-205.2** is amended to read:

2639 **32B-6-205.2. Specific operational requirements for a full-service restaurant**  
2640 **license -- On and after July 1, 2018, or July 1, 2022.**

2641 (1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational  
2642 Requirements, a full-service restaurant licensee and staff of the full-service restaurant licensee  
2643 shall comply with this section.

2644 (b) Failure to comply with Subsection (1)(a) may result in disciplinary action in  
2645 accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

- 2646 (i) a full-service restaurant licensee;
- 2647 (ii) individual staff of a full-service restaurant licensee; or
- 2648 (iii) both a full-service restaurant licensee and staff of the full-service restaurant
- 2649 licensee.

2650 (2) In addition to complying with Subsection **32B-5-301(3)**, a full-service restaurant  
2651 licensee shall display in a conspicuous place at the entrance to the licensed premises a sign  
2652 approved by the commission that:

- 2653 (a) measures at least 8-1/2 inches long and 11 inches wide; and
- 2654 (b) clearly states that the full-service restaurant licensee is a restaurant and not a bar.

2655 (3) In addition to complying with Section **32B-5-303**, a full-service restaurant licensee  
2656 shall store an alcoholic product in a storage area described in Subsection (13)(a).

2657 (4) (a) An individual who serves an alcoholic product in a full-service restaurant  
2658 licensee's premises shall make a beverage tab for each table or group that orders or consumes  
2659 an alcoholic product on the premises.

2660 (b) A beverage tab described in this Subsection (4) shall state the type and amount of  
2661 each alcoholic product ordered or consumed.

2662 (5) A full-service restaurant licensee may not make an individual's willingness to serve

- 2663 an alcoholic product a condition of employment with a full-service restaurant licensee.
- 2664 (6) (a) A full-service restaurant licensee may sell, offer for sale, or furnish liquor at the  
2665 licensed premises during the following time periods only:
- 2666 (i) on a weekday, during the period that begins at 11:30 a.m. and ends at 11:59 p.m.; or  
2667 (ii) on a weekend or a state or federal legal holiday or for a private event, during the  
2668 period that begins at 10:30 a.m. and ends at 11:59 p.m.
- 2669 (b) A full-service restaurant licensee may sell, offer for sale, or furnish beer at the  
2670 licensed premises during the following time periods only:
- 2671 (i) on a weekday, during the period that begins at 11:30 a.m. and ends at 12:59 a.m.; or  
2672 (ii) on a weekend or a state or federal legal holiday or for a private event, during the  
2673 period that begins at 10:30 a.m. and ends at 12:59 a.m.
- 2674 (7) A full-service restaurant licensee shall maintain at least 70% of the full-service  
2675 restaurant licensee's total restaurant business from the sale of food, which does not include:
- 2676 (a) mix for an alcoholic product; or  
2677 (b) a service charge.
- 2678 (8) (a) A full-service restaurant licensee may not sell, offer for sale, or furnish an  
2679 alcoholic product except after:
- 2680 (i) the patron to whom the full-service restaurant licensee sells, offers for sale, or  
2681 furnishes the alcoholic product is seated at:
- 2682 (A) a table that is located in a dining area or a dispensing area;  
2683 (B) a counter that is located in a dining area or a dispensing area; or  
2684 (C) a dispensing structure that is located in a dispensing area; and
- 2685 (ii) the full-service restaurant licensee confirms that the patron intends to:
- 2686 (A) order food prepared, sold, and furnished at the licensed premises; and  
2687 (B) except as provided in Subsection (8)(b), consume the food at the same location  
2688 where the patron is seated and sold, offered for sale, or furnished the alcoholic product.
- 2689 (b) (i) While a patron waits for a seat at a table or counter in the dining area of a  
2690 full-service restaurant licensee, the full-service restaurant licensee may sell, offer for sale, or  
2691 furnish to the patron one drink that contains a single portion of an alcoholic product as  
2692 described in Section [32B-5-304](#) if:
- 2693 (A) the patron is in a dispensing area and seated at a table, counter, or dispensing

2694 structure; and

2695 (B) the full-service restaurant licensee first confirms that after the patron is seated in  
2696 the dining area, the patron intends to order food prepared, sold, and furnished at the licensed  
2697 premises.

2698 (ii) If the patron does not finish the patron's alcoholic product before moving to a seat  
2699 in the dining area, an employee of the full-service restaurant licensee who is qualified to sell  
2700 and serve an alcoholic product under Section 32B-5-306 shall transport any unfinished portion  
2701 of the patron's alcoholic product to the patron's seat in the dining area.

2702 (iii) For purposes of Subsection (8)(b)(i) a single portion of wine is 5 ounces or less.

2703 (c) A full-service restaurant licensee shall maintain on the licensed premises adequate  
2704 culinary facilities for food preparation and dining accommodations.

2705 (9) A patron may consume an alcoholic product only if the patron is seated at:

2706 (a) a table that is located in a dining area or dispensing area;

2707 (b) a counter that is located in a dining area or dispensing area; or

2708 (c) a dispensing structure located in a dispensing area.

2709 (10) (a) Subject to the other provisions of this Subsection (10), a patron may not have  
2710 more than two alcoholic products of any kind at a time before the patron.

2711 (b) A patron may not have more than one spirituous liquor drink at a time before the  
2712 patron.

2713 (c) An individual portion of wine is considered to be one alcoholic product under  
2714 Subsection (10)(a).

2715 (11) In accordance with the provisions of this section, an individual who is at least 21  
2716 years of age may consume food and beverages in a dispensing area.

2717 (12) (a) Except as provided in Subsection (12)(b), a minor may not sit, remain, or  
2718 consume food or beverages in a dispensing area.

2719 (b) (i) A minor may be in a dispensing area if the minor is employed by the full-service  
2720 restaurant licensee:

2721 (A) in accordance with Subsection 32B-5-308(2); or

2722 (B) to perform maintenance and cleaning services when the full-service restaurant  
2723 licensee is not open for business.

2724 (ii) If there is no alternative route available, a minor may momentarily pass through a



2725 dispensing area without remaining or sitting in the dispensing area en route to an area of the  
2726 full-service restaurant licensee's premises in which the minor is permitted to be.

2727 (13) Except as provided in Subsection 32B-5-307(3), a full-service restaurant licensee  
2728 may dispense an alcoholic product only if:

2729 (a) the alcoholic product is dispensed from:

2730 (i) a dispensing structure that is located in a dispensing area;

2731 (ii) an area that is:

2732 (A) separated from an area for the consumption of food by a patron by a solid,  
2733 translucent, permanent structural barrier such that the facilities for the storage or dispensing of  
2734 an alcoholic product are not readily visible to a patron and not accessible by a patron; and

2735 (B) apart from an area used for dining, for staging, or as a ~~lobby or~~ waiting area; or

2736 (iii) the premises of a bar licensee that is:

2737 (A) owned by the same person or persons as the full-service restaurant licensee; and

2738 (B) located immediately adjacent to the premises of the full-service restaurant licensee;

2739 (b) the full-service restaurant licensee uses an alcoholic product that is stored in an area  
2740 described in Subsection (13)(a) or in accordance with Section 32B-5-303; and

2741 (c) any instrument or equipment used to dispense alcoholic product is located in an  
2742 area described in Subsection (13)(a).

2743 (14) (a) A full-service restaurant licensee may have more than one dispensing area in  
2744 the licensed premises.

2745 (b) Each dispensing area in a licensed premises may satisfy the requirements for a  
2746 dispensing area under Subsection 32B-6-202(2)(a)(i), (ii), or (iii), regardless of how any other  
2747 dispensing area in the licensed premises satisfies the requirements for a dispensing area.

2748 (15) A full-service restaurant licensee may not:

2749 (a) transfer, dispense, or serve an alcoholic product on or from a movable cart; or

2750 (b) display an alcoholic product or a product intended to appear like an alcoholic  
2751 product by moving a cart or similar device around the licensed premises.

2752 (16) A full-service restaurant licensee may state in a food or alcoholic product menu a  
2753 charge or fee made in connection with the sale, service, or consumption of liquor, including:

2754 (a) a set-up charge;

2755 (b) a service charge; or

2756 (c) a chilling fee.

2757 (17) (a) In addition to the requirements described in Section 32B-5-302, a full-service  
2758 restaurant licensee shall maintain each of the following records for at least three years:

2759 (i) a record required by Section 32B-5-302; and

2760 (ii) a record that the commission requires a full-service restaurant licensee to use or  
2761 maintain under a rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
2762 Rulemaking Act.

2763 (b) The department shall audit the records of a full-service restaurant licensee at least  
2764 once each calendar year.

2765 (18) (a) In accordance with Section 32B-6-205.3, a full-service restaurant licensee:

2766 (i) may comply with the provisions of this section beginning on or after July 1, 2017;  
2767 and

2768 (ii) shall comply with the provisions of this section:

2769 (A) for a full-service restaurant licensee that does not have a grandfathered bar  
2770 structure, on and after July 1, 2018; or

2771 (B) for a full-service restaurant licensee that has a grandfathered bar structure, on and  
2772 after July 1, 2022.

2773 (b) A full-service restaurant licensee that elects to comply with the provisions of this  
2774 section before the latest applicable date described in Subsection (18)(a)(ii):

2775 (i) shall comply with each provision of this section; and

2776 (ii) is not required to comply with the provisions of Section 32B-6-205.

2777 Section 38. Section 32B-6-305.2 is amended to read:

2778 **32B-6-305.2. Specific operational requirements for a limited-service restaurant**  
2779 **license -- On and after July 1, 2018, or July 1, 2022.**

2780 (1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational  
2781 Requirements, a limited-service restaurant licensee and staff of the limited-service restaurant  
2782 licensee shall comply with this section.

2783 (b) Failure to comply with Subsection (1)(a) may result in disciplinary action in  
2784 accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

2785 (i) a limited-service restaurant licensee;

2786 (ii) individual staff of a limited-service restaurant licensee; or

2787 (iii) both a limited-service restaurant licensee and staff of the limited-service restaurant  
2788 licensee.

2789 (2) In addition to complying with Subsection 32B-5-301(3), a limited-service  
2790 restaurant licensee shall display in a conspicuous place at the entrance to the licensed premises  
2791 a sign approved by the commission that:

2792 (a) measures at least 8-1/2 inches long and 11 inches wide; and

2793 (b) clearly states that the limited-service restaurant licensee is a restaurant and not a  
2794 bar.

2795 (3) In addition to complying with Section 32B-5-303, a limited-service restaurant  
2796 licensee shall store an alcoholic product in a storage area described in Subsection (13)(a).

2797 (4) (a) An individual who serves an alcoholic product in a limited-service restaurant  
2798 licensee's premises shall make a beverage tab for each table or group that orders or consumes  
2799 an alcoholic product on the premises.

2800 (b) A beverage tab described in this Subsection (4) shall state the type and amount of  
2801 each alcoholic product ordered or consumed.

2802 (5) A limited-service restaurant licensee may not make an individual's willingness to  
2803 serve an alcoholic product a condition of employment with a limited-service restaurant  
2804 licensee.

2805 (6) (a) A limited-service restaurant licensee may sell, offer for sale, or furnish wine or  
2806 heavy beer at the licensed premises during the following time periods only:

2807 (i) on a weekday, during the period that begins at 11:30 a.m. and ends at 11:59 p.m.; or

2808 (ii) on a weekend or a state or federal legal holiday or for a private event, during the  
2809 period that begins at 10:30 a.m. and ends at 11:59 p.m.

2810 (b) A limited-service restaurant licensee may sell, offer for sale, or furnish beer at the  
2811 licensed premises during the following time periods only:

2812 (i) on a weekday, during the period that begins at 11:30 a.m. and ends at 12:59 a.m.; or

2813 (ii) on a weekend or a state or federal legal holiday or for a private event, during the  
2814 period that begins at 10:30 a.m. and ends at 12:59 a.m.

2815 (7) A limited-service restaurant licensee shall maintain at least 70% of the  
2816 limited-service restaurant licensee's total restaurant business from the sale of food, which does  
2817 not include a service charge.

2818 (8) (a) A limited-service restaurant licensee may not sell, offer for sale, or furnish an  
2819 alcoholic product except after:

2820 (i) the patron to whom the limited-service restaurant licensee sells, offers for sale, or  
2821 furnishes the alcoholic product is seated at:

2822 (A) a table that is located in a dining area or a dispensing area;

2823 (B) a counter that is located in a dining area or a dispensing area; or

2824 (C) a dispensing structure that is located in a dispensing area; and

2825 (ii) the limited-service restaurant licensee confirms that the patron intends to:

2826 (A) order food prepared, sold, and furnished at the licensed premises; and

2827 (B) except as provided in Subsection (8)(b), consume the food at the same location  
2828 where the patron is seated and sold, offered for sale, or furnished the alcoholic product.

2829 (b) (i) While a patron waits for a seat at a table or counter in the dining area of a  
2830 limited-service restaurant licensee, the limited-service restaurant licensee may sell, offer for  
2831 sale, or furnish to the patron one drink that contains a single portion of an alcoholic product as  
2832 described in Section [32B-5-304](#) if:

2833 (A) the patron is in a dispensing area and seated at a table, counter, or dispensing  
2834 structure; and

2835 (B) the limited-service restaurant licensee first confirms that after the patron is seated  
2836 in the dining area, the patron intends to order food prepared, sold, and furnished at the licensed  
2837 premises.

2838 (ii) If the patron does not finish the patron's alcoholic product before moving to a seat  
2839 in the dining area, an employee of the limited-service restaurant licensee who is qualified to  
2840 sell and serve an alcoholic product under Section [32B-5-306](#) shall transport any unfinished  
2841 portion of the patron's alcoholic product to the patron's seat in the dining area.

2842 (iii) For purposes of Subsection (8)(b)(i) a single portion of wine is 5 ounces or less.

2843 (c) A limited-service restaurant licensee shall maintain on the licensed premises  
2844 adequate culinary facilities for food preparation and dining accommodations.

2845 (9) A patron may consume an alcoholic product only if the patron is seated at:

2846 (a) a table that is located in a dining area or a dispensing area;

2847 (b) a counter that is located in a dining area or a dispensing area; or

2848 (c) a dispensing structure located in a dispensing area.

2849 (10) (a) Subject to the other provisions of this Subsection (10), a patron may not have  
2850 more than two alcoholic products of any kind at a time before the patron.

2851 (b) An individual portion of wine is considered to be one alcoholic product under  
2852 Subsection (10)(a).

2853 (11) In accordance with the provisions of this section, an individual who is at least 21  
2854 years of age may consume food and beverages in a dispensing area.

2855 (12) (a) Except as provided in Subsection (12)(b), a minor may not sit, remain, or  
2856 consume food or beverages in a dispensing area.

2857 (b) (i) A minor may be in a dispensing area if the minor is employed by the  
2858 limited-service restaurant licensee:

2859 (A) in accordance with Subsection 32B-5-308(2); or

2860 (B) to perform maintenance and cleaning services when the limited-service restaurant  
2861 licensee is not open for business.

2862 (ii) If there is no alternative route available, a minor may momentarily pass through a  
2863 dispensing area without remaining or sitting in the dispensing area en route to an area of the  
2864 limited-service restaurant licensee's premises in which the minor is permitted to be.

2865 (13) Except as provided in Subsection 32B-5-307(3), a limited-service restaurant  
2866 licensee may dispense an alcoholic product only if:

2867 (a) the alcoholic product is dispensed from:

2868 (i) a dispensing structure that is located in a dispensing area;

2869 (ii) an area that is:

2870 (A) separated from an area for the consumption of food by a patron by a solid,  
2871 translucent, permanent structural barrier such that the facilities for the storage or dispensing of  
2872 an alcoholic product are not readily visible to a patron and not accessible by a patron; and

2873 (B) apart from an area used for dining, for staging, or as a ~~lobby or~~ waiting area; or

2874 (iii) the premises of a bar licensee that is:

2875 (A) owned by the same person or persons as the limited-service restaurant licensee; and

2876 (B) located immediately adjacent to the premises of the limited-service restaurant  
2877 licensee;

2878 (b) the limited-service restaurant licensee uses an alcoholic product that is stored in an  
2879 area described in Subsection (13)(a) or in accordance with Section 32B-5-303; and

2880 (c) any instrument or equipment used to dispense alcoholic product is located in an  
2881 area described in Subsection (13)(a).

2882 (14) (a) A limited-service restaurant licensee may have more than one dispensing area  
2883 in the licensed premises.

2884 (b) Each dispensing area in a licensed premises may satisfy the requirements for a  
2885 dispensing area under Subsection 32B-6-202(2)(a)(i), (ii), or (iii), regardless of how any other  
2886 dispensing area in the licensed premises satisfies the requirements for a dispensing area.

2887 (15) A limited-service restaurant licensee may not:

2888 (a) transfer, dispense, or serve an alcoholic product on or from a movable cart; or

2889 (b) display an alcoholic product or a product intended to appear like an alcoholic  
2890 product by moving a cart or similar device around the licensed premises.

2891 (16) A limited-service restaurant licensee may state in a food or alcoholic product  
2892 menu a charge or fee made in connection with the sale, service, or consumption of wine or  
2893 heavy beer, including:

2894 (a) a set-up charge;

2895 (b) a service charge; or

2896 (c) a chilling fee.

2897 (17) (a) In addition to the requirements described in Section 32B-5-302, a  
2898 limited-service restaurant licensee shall maintain each of the following records for at least three  
2899 years:

2900 (i) a record required by Section 32B-5-302; and

2901 (ii) a record that the commission requires a limited-service restaurant licensee to use or  
2902 maintain under a rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
2903 Rulemaking Act.

2904 (b) The department shall audit the records of a limited-service restaurant licensee at  
2905 least once each calendar year.

2906 (18) (a) In accordance with Section 32B-6-305.3, a limited-service restaurant licensee:

2907 (i) may comply with the provisions of this section beginning on or after July 1, 2017;

2908 and

2909 (ii) shall comply with the provisions of this section:

2910 (A) for a limited-service restaurant licensee that does not have a grandfathered bar

2911 structure, on and after July 1, 2018; or

2912 (B) for a limited-service restaurant licensee that has a grandfathered bar structure, on  
2913 and after July 1, 2022.

2914 (b) A limited-service restaurant licensee that elects to comply with the provisions of  
2915 this section before the latest applicable date described in Subsection (18)(a)(ii):

2916 (i) shall comply with each provision of this section; and

2917 (ii) is not required to comply with the provisions of Section 32B-6-305.

2918 Section 39. Section 32B-6-902 is amended to read:

2919 **32B-6-902. Definitions.**

2920 (1) As used in this part:

2921 (a) (i) "Dining area" means an area in the licensed premises of a beer-only restaurant  
2922 licensee that is primarily used for the service and consumption of food by one or more patrons.

2923 (ii) "Dining area" does not include a dispensing area.

2924 (b) (i) "Dispensing area" means an area in the licensed premises of a beer-only  
2925 restaurant licensee where a dispensing structure is located and that:

2926 (A) is physically separated from the dining area and any waiting area by a structure or  
2927 other barrier that prevents a patron seated in the dining area or a waiting area from viewing the  
2928 dispensing of beer;

2929 (B) except as provided in Subsection (1)(b)(ii), measures at least 10 feet from any area  
2930 where beer is dispensed to the dining area and any waiting area, measured from the point of the  
2931 area where beer is dispensed that is closest to the dining area or waiting area; or

2932 (C) is physically separated from the dining area and any waiting area by a permanent  
2933 physical structure that complies with the provisions of Title 15A, State Construction and Fire  
2934 Codes Act, and, to the extent allowed under Title 15A, State Construction and Fire Codes Act,  
2935 measures at least 42 inches high, and at least 60 inches from the inside edge of the barrier to  
2936 the nearest edge of the dispensing structure.

2937 (ii) "Dispensing area" does not include any area described in Subsection (1)(b)(i)(B)  
2938 that is less than 10 feet from an area where [~~alcoholic product~~] beer is dispensed, but from  
2939 which a patron seated at a table or counter cannot view the dispensing of [~~alcoholic product~~]  
2940 beer.

2941 (c) "Grandfathered bar structure" means a bar structure in a licensed premises of a

2942 beer-only restaurant licensee that:

2943 (i) was licensed as an on-premise beer retailer as of August 1, 2011, and as of August  
2944 1, 2011:

2945 (A) is operational;

2946 (B) has facilities for the dispensing or storage of an alcoholic product that do not meet  
2947 the requirements of Subsection 32B-6-905(12)(a)(ii); and

2948 (C) in accordance with Subsection 32B-6-703(2)(e), notifies the department that  
2949 effective March 1, 2012, the on-premise beer retailer licensee will seek to be licensed as a  
2950 beer-only restaurant; or

2951 (ii) is a bar structure grandfathered under Section 32B-6-409.

2952 (d) "Grandfathered bar structure" does not include a grandfathered bar structure  
2953 described in Subsection (1)(a) on or after the day on which a restaurant remodels the  
2954 grandfathered bar structure, as defined by rule made by the commission.

2955 (e) "Waiting area" includes a lobby.

2956 (2) Subject to Subsection (1)(d), a grandfathered bar structure remains a grandfathered  
2957 bar structure notwithstanding whether a restaurant undergoes a change of ownership.

2958 Section 40. Section 32B-6-905.1 is amended to read:

2959 **32B-6-905.1. Specific operational requirements for a beer-only restaurant license**  
2960 **-- On and after July 1, 2018, or July 1, 2022.**

2961 (1) (a) In addition to complying with Chapter 5, Part 3, Retail Licensee Operational  
2962 Requirements, a beer-only restaurant licensee and staff of the beer-only restaurant licensee  
2963 shall comply with this section.

2964 (b) Failure to comply with Subsection (1)(a) may result in disciplinary action in  
2965 accordance with Chapter 3, Disciplinary Actions and Enforcement Act, against:

2966 (i) a beer-only restaurant licensee;

2967 (ii) individual staff of a beer-only restaurant licensee; or

2968 (iii) both a beer-only restaurant licensee and staff of the beer-only restaurant licensee.

2969 (2) (a) A beer-only restaurant licensee on the licensed premises may not sell, offer for  
2970 sale, furnish, or allow consumption of liquor.

2971 (b) Liquor may not be on the premises of a beer-only restaurant licensee except for use:

2972 (i) as a flavoring on a dessert; [~~and~~] or



2973 (ii) in the preparation of a flaming food dish, drink, or dessert.

2974 (3) In addition to complying with Section 32B-5-303, a beer-only restaurant licensee  
2975 shall store beer in a storage area described in Subsection (13)(a).

2976 (4) (a) An individual who serves beer in a beer-only restaurant licensee's premises shall  
2977 make a beverage tab for each table or group that orders or consumes [~~an alcoholic product~~]  
2978 beer on the premises.

2979 (b) A beverage tab described in this Subsection (4) shall state the type and amount of  
2980 each [~~alcoholic product~~] beer ordered or consumed.

2981 (5) A beer-only restaurant licensee may not make an individual's willingness to serve  
2982 beer a condition of employment as a server with a beer-only restaurant licensee.

2983 (6) A beer-only restaurant licensee may sell, offer for sale, or furnish beer at the  
2984 licensed premises during the following time periods only:

2985 (a) on a weekday, during the period that begins at 11:30 a.m. and ends at 12:59 a.m.; or

2986 (b) on a weekend or a state or federal legal holiday or for a private event, during the  
2987 period that begins at 10:30 a.m. and ends at 12:59 a.m.

2988 (7) A beer-only restaurant licensee shall maintain at least 70% of the beer-only  
2989 restaurant licensee's total restaurant business from the sale of food, which does not include a  
2990 service charge.

2991 (8) (a) A beer-only restaurant licensee may not sell, offer for sale, or furnish beer  
2992 except after:

2993 (i) the patron to whom the beer-only restaurant licensee sells, offers for sale, or  
2994 furnishes the beer is seated at:

2995 (A) a table that is located in a dining area or a dispensing area;

2996 (B) a counter that is located in a dining area or a dispensing area; or

2997 (C) a dispensing structure that is located in a dispensing area; and

2998 (ii) the beer-only restaurant licensee confirms that the patron intends to:

2999 (A) order food prepared, sold, and furnished at the licensed premises; and

3000 (B) except as provided in Subsection (8)(b), consume the food at the same location  
3001 where the patron is seated and sold, offered for sale, or furnished the beer.

3002 (b) (i) While a patron waits for a seat at a table or counter in the dining area of a  
3003 beer-only restaurant licensee, the beer-only restaurant licensee may sell, offer for sale, or

3004 furnish to the patron one portion of beer as described in Section [32B-5-304](#) if:

3005 (A) the patron is in a dispensing area and seated at a table, counter, or dispensing  
3006 structure; and

3007 (B) the beer-only restaurant licensee first confirms that after the patron is seated in the  
3008 dining area, the patron intends to order food prepared, sold, and furnished at the licensed  
3009 premises.

3010 (ii) If the patron does not finish the patron's beer before moving to a seat in the dining  
3011 area, an employee of the beer-only restaurant licensee who is qualified to sell and serve an  
3012 alcoholic product under Section [32B-5-306](#) shall transport any unfinished portion of the  
3013 patron's beer to the patron's seat in the dining area.

3014 (c) A beer-only restaurant licensee shall maintain on the licensed premises adequate  
3015 culinary facilities for food preparation and dining accommodations.

3016 (9) A patron may consume a beer only at:

3017 (a) a table that is located in a dining area or a dispensing area;

3018 (b) a counter that is located in a dining area or a dispensing area; or

3019 (c) a dispensing structure located in a dispensing area.

3020 (10) A patron may not have more than two beers at a time before the patron.

3021 (11) In accordance with the provisions of this section, an individual who is at least 21  
3022 years of age may consume food and beverages in a dispensing area.

3023 (12) (a) Except as provided in Subsection (12)(b), a minor may not sit, remain, or  
3024 consume food or beverages in a dispensing area.

3025 (b) (i) A minor may be in a dispensing area if the minor is employed by the beer-only  
3026 restaurant licensee:

3027 (A) in accordance with Subsection [32B-5-308\(2\)](#); or

3028 (B) to perform maintenance and cleaning services when the beer-only restaurant  
3029 licensee is not open for business.

3030 (ii) If there is no alternative route available, a minor may momentarily pass through a  
3031 dispensing area without remaining or sitting in the dispensing area en route to an area of the  
3032 beer-only restaurant licensee's premises in which the minor is permitted to be.

3033 (13) A beer-only restaurant licensee may dispense a beer only if:

3034 (a) the beer is dispensed from:

- 3035 (i) a dispensing structure that is located in a dispensing area;
- 3036 (ii) an area that is:
- 3037 (A) separated from an area for the consumption of food by a patron by a solid,
- 3038 translucent, permanent structural barrier such that the facilities for the storage or dispensing of
- 3039 an alcoholic product are not readily visible to a patron[;] and not accessible by a patron; and
- 3040 (B) apart from an area used for dining, for staging, or as a [~~lobby or~~] waiting area; or
- 3041 (iii) the premises of a bar licensee that is:
- 3042 (A) owned by the same person or persons as the beer-only restaurant licensee; and
- 3043 (B) located immediately adjacent to the premises of the beer-only restaurant licensee;
- 3044 (b) the beer-only restaurant licensee uses a beer that is stored in an area described in
- 3045 Subsection (13)(a) or in accordance with Section [32B-5-303](#); and
- 3046 (c) any instrument or equipment used to dispense the beer is located in an area
- 3047 described in Subsection (13)(a).
- 3048 (14) (a) A beer-only restaurant licensee may have more than one dispensing area in the
- 3049 licensed premises.
- 3050 (b) Each dispensing area in a licensed premises may satisfy the requirements for a
- 3051 dispensing area under Subsection [~~32B-6-202(1)(b)(i)(A), (B), or (C)]~~ [32B-6-202\(2\)\(a\)\(i\), \(ii\),](#)
- 3052 or (iii), regardless of how any other dispensing area in the licensed premises satisfies the
- 3053 requirements for a dispensing area.
- 3054 (15) A beer-only restaurant licensee may not transfer, dispense, or serve beer on or
- 3055 from a movable cart.
- 3056 (16) (a) In addition to the requirements described in Section [32B-5-302](#), a beer-only
- 3057 restaurant licensee shall maintain each of the following records for at least three years:
- 3058 (i) a record required by Section [32B-5-302](#); and
- 3059 (ii) a record that the commission requires a beer-only restaurant licensee to use or
- 3060 maintain under a rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 3061 Rulemaking Act.
- 3062 (b) The department shall audit the records of a beer-only restaurant licensee at least
- 3063 once each calendar year.
- 3064 (17) A beer-only restaurant licensee shall display in a conspicuous place at the entrance
- 3065 to the licensed premises a sign approved by the commission that:

3066 (a) measures at least 8-1/2 inches long and 11 inches wide; and  
3067 (b) clearly states that the beer-only restaurant licensee is a restaurant and not a bar.  
3068 (18) (a) In accordance with Section [32B-6-905.2](#), a beer-only restaurant licensee:  
3069 (i) may comply with the provisions of this section beginning on or after July 1, 2017;  
3070 and  
3071 (ii) shall comply with the provisions of this section:  
3072 (A) for a beer-only restaurant licensee that does not have a grandfathered bar structure,  
3073 on and after July 1, 2018; or  
3074 (B) for a beer-only restaurant licensee that has a grandfathered bar structure, on and  
3075 after July 1, 2022.  
3076 (b) A beer-only restaurant licensee that elects to comply with the provisions of this  
3077 section before the latest applicable date described in Subsection (18)(a)(ii):  
3078 (i) shall comply with each provision of this section; and  
3079 (ii) is not required to comply with the provisions of Section [32B-6-905](#).  
3080 Section 41. Section [32B-6-905.2](#) is amended to read:  
3081 **[32B-6-905.2. Transition process for beer-only restaurant licensees.](#)**  
3082 (1) For a beer-only restaurant license issued on or after July 1, 2017, the beer-only  
3083 restaurant licensee shall comply with the provisions of Section [32B-6-905.1](#).  
3084 (2) For a beer-only restaurant license issued before July 1, 2017, before the beer-only  
3085 restaurant licensee changes the beer-only restaurant licensee's approved location for storage,  
3086 dispensing, or consumption to comply with the provisions of Section [~~32B-6-901.1~~]  
3087 [32B-6-905.1](#), the beer-only restaurant licensee shall submit an application for approval to the  
3088 department in accordance with Subsection [32B-5-303](#)(3).  
3089 (3) (a) Except as provided in Subsection (4), a person who holds a beer-only restaurant  
3090 license issued before July 1, 2017, shall comply with the provisions of Section [~~32B-6-901.1~~]  
3091 [32B-6-905.1](#) on or before July 1, 2018.  
3092 (b) A beer-only restaurant licensee described in Subsection (3)(a) that cannot comply  
3093 with the provisions of Section [~~32B-6-901.1~~] [32B-6-905.1](#) without a change to the beer-only  
3094 restaurant licensee's approved location for storage, dispensing, or consumption:  
3095 (i) may submit an application for approval described in Subsection (2) on or after May  
3096 9, 2017; and

3097 (ii) shall submit an application for approval described in Subsection (2) on or before  
3098 May 1, 2018.

3099 (c) If a beer-only restaurant licensee described in Subsection (3)(a) submits an  
3100 application for approval described in Subsection (2) on May 9, 2017, the department shall take  
3101 action on the application on or before July 1, 2017.

3102 (4) (a) A person who holds a beer-only restaurant license issued before July 1, 2017,  
3103 and has a grandfathered bar structure shall comply with the provisions of Section  
3104 ~~[32B-6-901.1]~~ [32B-6-905.1](#) on or before the earlier of:

3105 (i) July 1, 2022;

3106 (ii) the date on which the beer-only restaurant licensee remodels, as defined by  
3107 commission rule made in accordance with Title 63G, Chapter 3, Utah Administrative  
3108 Rulemaking Act, the beer-only restaurant licensee's grandfathered bar structure or dining area;  
3109 or

3110 (iii) the date on which the beer-only restaurant licensee experiences a change of  
3111 ownership described in Subsection [32B-8a-202\(1\)](#).

3112 (b) A beer-only restaurant licensee described in Subsection (4)(a) that cannot comply  
3113 with the provisions of Section ~~[32B-6-901.1]~~ [32B-6-905.1](#) without a change to the beer-only  
3114 restaurant licensee's approved location for storage, dispensing, or consumption:

3115 (i) may submit an application for approval described in Subsection (2) on or after May  
3116 9, 2017; and

3117 (ii) shall submit an application for approval described in Subsection (2) on or before  
3118 May 1, 2022.

3119 Section 42. Section **36-23-106** is amended to read:

3120 **36-23-106. Duties -- Reporting.**

3121 (1) The committee shall:

3122 (a) for each application submitted in accordance with Section [36-23-105](#), conduct a  
3123 sunrise review in accordance with Section [36-23-107](#) before November 1:

3124 (i) of the year in which the application is submitted, if the application is submitted on  
3125 or before July 1; or

3126 (ii) of the year following the year in which the application is submitted, if the  
3127 application is submitted after July 1; and

3128 (b) (i) conduct a sunset review for each statute regarding a regulated lawful occupation  
3129 that is scheduled for termination under Title 63I, Chapter 1, Part 2, Repeal Dates Requiring  
3130 Committee Review by Title;

3131 (ii) conduct a sunset review under this Subsection (1)(b) before November 1 of the year  
3132 prior to the last general session of the Legislature that is scheduled to meet before the  
3133 scheduled termination date; and

3134 (iii) conduct a review or study regarding any other occupational or professional  
3135 licensure or other regulation matter referred to the committee by the Legislature, the Legislative  
3136 Management Committee, or other legislative committee.

3137 (2) (a) The committee may conduct a review or study regarding any occupational or  
3138 professional regulation matter.

3139 (b) In conducting a review or study under this Subsection (2), the committee shall  
3140 consider if the committee's recommendations would negatively affect the interest of members  
3141 of the regulated lawful occupation, including the effect on matters of reciprocity with other  
3142 states.

3143 (3) The committee shall submit, in accordance with Section 68-3-14, an annual written  
3144 report before November 1 to:

3145 (a) the Legislative Management Committee; and

3146 (b) the Business and Labor Interim Committee.

3147 (4) The written report required by Subsection (3) shall include:

3148 (a) all findings and recommendations made by the committee in the calendar year; and

3149 (b) a summary report of each review or study conducted by the committee stating:

3150 (i) whether the review or study included a review of specific proposed or existing  
3151 statutory language;

3152 (ii) action taken by the committee as a result of the review or study; and

3153 (iii) a record of the vote for each action taken by the committee.

3154 Section 43. Section 49-11-609 is amended to read:

3155 **49-11-609. Beneficiary designations -- Revocation of beneficiary designation --**  
3156 **Procedure -- Beneficiary not designated -- Payment to survivors in order established**  
3157 **under the Uniform Probate Code -- Restrictions on payment -- Payment of deceased's**  
3158 **expenses.**

3159 (1) As used in this section, "member" includes a member, retiree, participant, covered  
3160 individual, a spouse of a retiree participating in the insurance benefits created by Sections  
3161 49-12-404, 49-13-404, 49-22-307, and 49-23-306, or an alternate payee under a domestic  
3162 relations order dividing a defined contribution account.

3163 (2) (a) Except as provided under Subsection (2)(b) or (c), the most recent beneficiary  
3164 designations signed by the member and filed with the office, including electronic records, at the  
3165 time of the member's death are binding in the payment of any benefits due under this title.

3166 (b) (i) The divorce or annulment of a member's marriage shall revoke the member's  
3167 former spouse as a beneficiary from any of the member's beneficiary designations.

3168 (ii) A revocation of a former spouse as a beneficiary in accordance with Subsection  
3169 (2)(b)(i) does not revoke any other beneficiaries named on the member's beneficiary  
3170 designations.

3171 (c) A former spouse whose beneficiary designation is revoked solely under Subsection  
3172 (2)(b) shall be revived on the member's beneficiary designations by:

3173 (i) the member's remarriage to the former spouse; or

3174 (ii) a nullification of the divorce or annulment.

3175 (d) A revocation under Subsection (2)(b) does not apply to a former spouse named as a  
3176 beneficiary in a beneficiary designation signed by the member and filed with the office after the  
3177 date of the divorce or annulment.

3178 (e) The office is not liable for having made a payment of any benefits to a beneficiary  
3179 designated in a beneficiary designation affected by a divorce, annulment, or remarriage before  
3180 the office received written notice of the divorce, annulment, or remarriage.

3181 (3) (a) Except where an optional continuing benefit is chosen, or the law makes a  
3182 specific benefit designation to a dependent spouse, a member may revoke a beneficiary  
3183 designation at any time and may execute and file a different beneficiary designation with the  
3184 office.

3185 (b) A beneficiary designation or change of beneficiary designation shall be completed  
3186 on forms provided by the office.

3187 (4) (a) All benefits payable by the office may be paid or applied to the benefit of the  
3188 [~~descendent's~~] decedent's heirs in the order of precedence established under Title 75, Chapter 2,  
3189 Intestate Succession and Wills, if:

3190 (i) no beneficiary is designated or if all designated beneficiaries have predeceased the  
3191 member;

3192 (ii) the location of the beneficiary or secondary beneficiaries cannot be ascertained by  
3193 the office within 12 months of the date a reasonable attempt is made by the office to locate the  
3194 beneficiaries; or

3195 (iii) the beneficiary has not completed the forms necessary to pay the benefits within  
3196 six months of the date that beneficiary forms are sent to the beneficiary's last-known address.

3197 (b) (i) A payment may not be made to a person included in any of the groups referred  
3198 to in Subsection (4)(a) if at the date of payment there is a living person in any of the groups  
3199 preceding it.

3200 (ii) Payment to a person in any group based upon receipt from the person of an  
3201 affidavit in a form satisfactory to the office that:

3202 (A) there are no living individuals in the group preceding it;

3203 (B) the probate of the estate of the deceased has not been commenced; and

3204 (C) more than 30 days have elapsed since the date of death of the decedent.

3205 (5) Benefits paid under this section shall be:

3206 (a) a full satisfaction and discharge of all claims for benefits under this title; and

3207 (b) payable by reason of the death of the decedent.

3208 Section 44. Section **49-20-401** is amended to read:

3209 **49-20-401. Program -- Powers and duties.**

3210 (1) The program shall:

3211 (a) act as a self-insurer of employee benefit plans and administer those plans;

3212 (b) enter into contracts with private insurers or carriers to underwrite employee benefit  
3213 plans as considered appropriate by the program;

3214 (c) indemnify employee benefit plans or purchase commercial reinsurance as  
3215 considered appropriate by the program;

3216 (d) provide descriptions of all employee benefit plans under this chapter in cooperation  
3217 with covered employers;

3218 (e) process claims for all employee benefit plans under this chapter or enter into  
3219 contracts, after competitive bids are taken, with other benefit administrators to provide for the  
3220 administration of the claims process;



- 3221 (f) obtain an annual actuarial review of all health and dental benefit plans and a  
3222 periodic review of all other employee benefit plans;
- 3223 (g) consult with the covered employers to evaluate employee benefit plans and develop  
3224 recommendations for benefit changes;
- 3225 (h) annually submit a budget and audited financial statements to the governor and  
3226 Legislature which includes total projected benefit costs and administrative costs;
- 3227 (i) maintain reserves sufficient to liquidate the unrevealed claims liability and other  
3228 liabilities of the employee benefit plans as certified by the program's consulting actuary;
- 3229 (j) submit, in advance, its recommended benefit adjustments for state employees to:  
3230 (i) the Legislature; and  
3231 (ii) the executive director of the state Department of Human Resource Management;
- 3232 (k) determine benefits and rates, upon approval of the board, for multiemployer risk  
3233 pools, retiree coverage, and conversion coverage;
- 3234 (l) determine benefits and rates based on the total estimated costs and the employee  
3235 premium share established by the Legislature, upon approval of the board, for state employees;
- 3236 (m) administer benefits and rates, upon ratification of the board, for single employer  
3237 risk pools;
- 3238 (n) request proposals for provider networks or health and dental benefit plans  
3239 administered by third party carriers at least once every three years for the purposes of:  
3240 (i) stimulating competition for the benefit of covered individuals;  
3241 (ii) establishing better geographical distribution of medical care services; and  
3242 (iii) providing coverage for both active and retired covered individuals;
- 3243 (o) offer proposals which meet the criteria specified in a request for proposals and  
3244 accepted by the program to active and retired state covered individuals and which may be  
3245 offered to active and retired covered individuals of other covered employers at the option of the  
3246 covered employer;
- 3247 (p) perform the same functions established in Subsections (1)(a), (b), (e), and (h) for  
3248 the Department of Health if the program provides program benefits to children enrolled in the  
3249 Utah Children's Health Insurance Program created in Title 26, Chapter 40, Utah Children's  
3250 Health Insurance Act;
- 3251 (q) establish rules and procedures governing the admission of political subdivisions or

3252 educational institutions and their employees to the program;

3253 (r) contract directly with medical providers to provide services for covered individuals;

3254 (s) take additional actions necessary or appropriate to carry out the purposes of this

3255 chapter;

3256 (t) (i) require state employees and their dependents to participate in the electronic  
3257 exchange of clinical health records in accordance with Section 26-1-37 unless the enrollee opts  
3258 out of participation; and

3259 (ii) prior to enrolling the state employee, each time the state employee logs onto the  
3260 program's website, and each time the enrollee receives written enrollment information from the  
3261 program, provide notice to the enrollee of the enrollee's participation in the electronic exchange  
3262 of clinical health records and the option to opt out of participation at any time; and

3263 (u) provide services for drugs or medical devices at the request of a procurement unit,  
3264 as that term is defined in Section [~~63G-6a-104~~] 63G-6a-103, that administers benefits to  
3265 program recipients who are not covered by Title 26, Utah Health Code.

3266 (2) (a) Funds budgeted and expended shall accrue from rates paid by the covered  
3267 employers and covered individuals.

3268 (b) Administrative costs shall be approved by the board and reported to the governor  
3269 and the Legislature.

3270 (3) The Department of Human Resource Management shall include the benefit  
3271 adjustments described in Subsection (1)(j) in the total compensation plan recommended to the  
3272 governor required under Subsection 67-19-12(5)(a).

3273 Section 45. Section **53B-8-101** is amended to read:

3274 **53B-8-101. Waiver of tuition.**

3275 (1) (a) The president of an institution of higher education described in Section  
3276 53B-2-101 may waive all or part of the tuition in behalf of meritorious or impecunious resident  
3277 students to an amount not exceeding 10% of the total amount of tuition which, in the absence  
3278 of the waivers, would have been collected from all Utah resident students at the institution of  
3279 higher education.

3280 (b) Two and a half percent of the waivers designated in Subsection (1)(a) shall be set  
3281 aside for members of the Utah National Guard. Waivers shall be preserved by the student at  
3282 least 60 days before the beginning of an academic term.

3283 (2) (a) A president of an institution of higher education listed in Subsections  
3284 [53B-2-101](#)(1)(a) through (h) may waive all or part of the nonresident portion of tuition for a  
3285 meritorious nonresident undergraduate student.

3286 (b) In determining which students are meritorious for purposes of granting a tuition  
3287 waiver under Subsection (2)(a), a president shall consider students who are performing above  
3288 the average at the institution of higher education, including having an admissions index higher  
3289 than the average for the institution, if an admissions index is used.

3290 (c) A president may continue to waive the nonresident portion of tuition for a student  
3291 described in Subsection (2)(a) for as long as the student is enrolled at the institution of higher  
3292 education.

3293 (d) In addition to waiving the nonresident portion of tuition for a meritorious  
3294 nonresident student under Subsection (2)(a), a president may waive the resident portion of  
3295 tuition after the meritorious nonresident student completes a year of full-time study at the  
3296 institution of higher education.

3297 (3) To encourage students to enroll for instruction in occupations critical to the state for  
3298 which trained personnel are in short supply, a president of an institution of higher education  
3299 shall grant additional full or partial tuition waivers upon recommendation of:

3300 (a) the board, for an institution of higher education described in Subsection  
3301 [53B-1-102](#)(1)(a); or

3302 (b) the Utah System of Technical Colleges Board of Trustees, for a technical college.

3303 (4) A president may waive all or part of the difference between resident and  
3304 nonresident tuition in the case of:

3305 (a) meritorious graduate students; or

3306 (b) nonresident summer school students.

3307 (5) (a) The board shall submit an annual budget appropriation request for each  
3308 institution of higher education described in Subsections [53B-2-101](#)(1)(a) through (h).

3309 (b) The Utah System of Technical Colleges Board of Trustees shall submit an annual  
3310 budget appropriation request for each technical college.

3311 (c) A request described in Subsection (5)(a) or (b) shall include requests for funds  
3312 sufficient in amount to equal the estimated loss of dedicated credits that would be realized if all  
3313 of the tuition waivers authorized by Subsection (2) were granted.

3314 Section 46. Section **53B-8-202** is amended to read:

3315 **53B-8-202. Regents' Scholarship Program -- General provisions -- Board policies.**

3316 (1) This section only applies to a student who graduates from high school on or before  
3317 July 1, 2018.

3318 (2) The Regents' Scholarship Program is created to award merit scholarships to  
3319 students who complete a rigorous core course of study in high school.

3320 (3) (a) A student who is awarded the Base Regents' scholarship established in Section  
3321 **53B-8-203** may also be awarded each of the supplemental awards established in Sections  
3322 **53B-8-204** and **53B-8-205**.

3323 (b) A student may not receive both a Regents' scholarship and a New Century  
3324 scholarship established in Section **53B-8-105**.

3325 (4) A Regents' scholarship may only be used at a:

3326 (a) credit-granting higher education institution within the state system of higher  
3327 education; or

3328 (b) private, nonprofit college or university in the state that is accredited by the  
3329 Northwest Commission on Colleges and Universities.

3330 (5) (a) A scholarship holder shall enroll full-time at a higher education institution  
3331 described in Subsection (4) by no later than the fall term immediately following the student's  
3332 high school graduation date or receive an approved deferral from the board.

3333 (b) The board may grant a deferral or leave of absence to a scholarship holder, but the  
3334 student may only receive scholarship money within five years of the student's high school  
3335 graduation date.

3336 (6) (a) The board shall annually report on the Regents' Scholarship Program at the  
3337 beginning of each school year to the Higher Education Appropriations Subcommittee.

3338 (b) The board shall ensure that the report includes the number of students in each  
3339 school district and public high school who meet the academic criteria for the Base Regents'  
3340 scholarship and for the Exemplary Academic Achievement Scholarship.

3341 (c) The State Board of Education, school districts, and public high schools shall  
3342 cooperate with the board to facilitate the collection and distribution of Regents' Scholarship  
3343 Program data.

3344 (7) The State Board of Education shall annually provide the board a complete list of

3345 directory information, including student name and address, for all grade 8 students in the state.

3346 (8) The board shall adopt policies establishing:

3347 (a) the high school and college course requirements described in Subsection

3348 [~~53B-2-203~~] [53B-8-203](#)(2)(d)(i);

3349 (b) the additional weights assigned to grades earned in certain courses described in  
3350 Subsections [53B-8-203](#)(5) and [53B-8-205](#)(8);

3351 (c) the regional accrediting bodies that may accredit a private high school described in  
3352 Subsection [53B-8-203](#)(2)(a)(ii);

3353 (d) (i) the application process and an appeal process for a Regents' scholarship,  
3354 including procedures to allow a student to apply for the scholarship on-line; and

3355 (ii) a disclosure on all applications and related materials that the amount of the awards  
3356 is subject to funding and may be reduced, in accordance with Subsection (9)(b); and

3357 (e) how college credits correlate to high school units for purposes of Subsection  
3358 [53B-8-203](#)(2)(d)(i).

3359 (9) (a) Subject to future budget constraints, the Legislature shall make an annual  
3360 appropriation from the Education Fund to the board for the costs associated with the Regents'  
3361 Scholarship Program authorized under this section and Sections [53B-8-203](#), [53B-8-204](#), and  
3362 [53B-8-205](#).

3363 (b) Notwithstanding the provisions of this section and Sections [53B-8-203](#), [53B-8-204](#),  
3364 and [53B-8-205](#), if the appropriation under Subsection (9)(a) is insufficient to cover the costs  
3365 associated with the Regents' Scholarship Program, the board may reduce the amount of the  
3366 Base Regents' scholarships and supplemental awards.

3367 (10) The board may set deadlines for receiving Regents' scholarship applications and  
3368 supporting documentation.

3369 Section 47. Section **53F-8-303** is amended to read:

3370 **53F-8-303. Capital local levy -- First class county required levy -- Allowable uses**  
3371 **of collected revenue.**

3372 (1) (a) Subject to the other requirements of this section, a local school board may levy a  
3373 tax to fund the school district's capital projects.

3374 (b) A tax rate imposed by a school district pursuant to this section may not exceed  
3375 .0030 per dollar of taxable value in any calendar year.

3376 (2) A school district that imposes a capital local levy in the calendar year beginning on  
 3377 January 1, 2012, is exempt from the public notice and hearing requirements of Section  
 3378 59-2-919 if the school district budgets an amount of ad valorem property tax revenue equal to  
 3379 or less than the sum of the following amounts:

3380 (a) the amount of revenue generated during the calendar year beginning on January 1,  
 3381 2011, from the sum of the following levies of a school district:

3382 (i) a capital outlay levy imposed under Section 53F-8-401; and

3383 (ii) the portion of the 10% of basic levy described in Section 53F-8-405 that is  
 3384 budgeted for debt service or capital outlay; and

3385 (b) revenue from eligible new growth as defined in Section 59-2-924.

3386 ~~[(3) (a) Subject to Subsections (3)(b), (c), and (d), for fiscal year 2013-14, a local  
 3387 school board may utilize the proceeds of a maximum of .0024 per dollar of taxable value of the  
 3388 local school board's annual capital local levy for general fund purposes if the proceeds are not  
 3389 committed or dedicated to pay debt service or bond payments.]~~

3390 ~~[(b) If a local school board uses the proceeds described in Subsection (3)(a) for general  
 3391 fund purposes, the local school board shall notify the public of the local school board's use of  
 3392 the capital local levy proceeds for general fund purposes:]~~

3393 ~~[(i) before the local school board's budget hearing in accordance with the notification  
 3394 requirements described in Section 53G-7-303; and]~~

3395 ~~[(ii) at a budget hearing required in Section 53G-7-303.]~~

3396 ~~[(c) A local school board may not use the proceeds described in Subsection (3)(a) to  
 3397 fund the following accounting function classifications as provided in the Financial Accounting  
 3398 for Local and State School Systems guidelines developed by the National Center for Education  
 3399 Statistics:]~~

3400 ~~[(i) 2300 Support Services - General District Administration; or]~~

3401 ~~[(ii) 2500 Support Services - Central Services.]~~

3402 Section 48. Section 53G-3-304 is amended to read:

3403 **53G-3-304. Property tax levies in new district and remaining district --**

3404 **Distribution of property tax revenue.**

3405 (1) Notwithstanding terms defined in Section 53G-3-102, as used in this section:

3406 (a) "Divided school district" or "existing district" means a school district from which a

3407 new district is created.

3408 (b) "New district" means a school district created under Section 53G-3-302 after May  
3409 10, 2011.

3410 (c) "Property tax levy" means a property tax levy that a school district is authorized to  
3411 impose, except:

3412 (i) the minimum basic rate imposed under Section 53F-2-301;

3413 (ii) a debt service levy imposed under Section 11-14-310; or

3414 (iii) a judgment levy imposed under Section 59-2-1330.

3415 (d) "Qualifying taxable year" means the calendar year in which a new district begins to  
3416 provide educational services.

3417 (e) "Remaining district" means an existing district after the creation of a new district.

3418 (2) A new district and remaining district shall continue to impose property tax levies  
3419 that were imposed by the divided school district in the taxable year prior to the qualifying  
3420 taxable year.

3421 (3) Except as provided in Subsection (6), a property tax levy that a new district and  
3422 remaining district are required to impose under Subsection (2) shall be set at a rate that:

3423 (a) is uniform in the new district and remaining district; and

3424 (b) generates the same amount of revenue that was generated by the property tax levy  
3425 within the divided school district in the taxable year prior to the qualifying taxable year.

3426 (4) ~~[(a) Except as provided in Subsection (4)(b), the]~~ The county treasurer of the  
3427 county in which a property tax levy is imposed under Subsection (2) shall distribute revenues  
3428 generated by the property tax levy to the new district and remaining district in proportion to the  
3429 percentage of the divided school district's enrollment on the October 1 prior to the new district  
3430 commencing educational services that were enrolled in schools currently located in the new  
3431 district or remaining district.

3432 ~~[(b) The county treasurer of a county of the first class shall distribute revenues~~  
3433 ~~generated by a capital local levy of .0006 that a school district in a county of the first class is~~  
3434 ~~required to impose under Section 53F-8-303 in accordance with the distribution method~~  
3435 ~~specified in Section 53A-16-114.]~~

3436 (5) On or before March 31, a county treasurer shall distribute revenues generated by a  
3437 property tax levy imposed under Subsection (2) in the prior calendar year to a new district and

3438 remaining district as provided in Subsection (4).

3439 (b) (a) Subject to the notice and public hearing requirements of Section 59-2-919, a  
3440 new district or remaining district may set a property tax rate higher than the rate required by  
3441 Subsection (3), up to:

3442 (i) the maximum rate, if any, allowed by law; or

3443 (ii) the maximum rate authorized by voters for a voted local levy under Section  
3444 53F-8-301.

3445 (b) The revenues generated by the portion of a property tax rate in excess of the rate  
3446 required by Subsection (3) shall be retained by the district that imposes the higher rate.

3447 Section 49. Section 55-12-116 is amended to read:

3448 **55-12-116. Financial arrangements.**

3449 The compact administrator, subject to the approval of the [~~Department~~] Division of  
3450 Finance, may make or arrange for any payments necessary to discharge any financial  
3451 obligations imposed upon this state by the compact or by any supplementary agreement entered  
3452 into.

3453 Section 50. Section 57-19-5 is amended to read:

3454 **57-19-5. Registration -- Filing application.**

3455 (1) A person may apply for registration of a development by filing with the division:

3456 (a) an application in the form prescribed by the director;

3457 (b) the written disclosure described in Section 57-19-11; and

3458 (c) financial statements and other information that the director may by rule made in  
3459 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, require as being  
3460 reasonably necessary to determine whether the requirements of this chapter have been met and  
3461 whether any of the events specified in Subsection 57-19-13~~(1)~~(2)(g) have occurred.

3462 (2) An interest in a development that is encumbered by a lien, mortgage, or other  
3463 encumbrance may not be accepted for registration or offered to the public unless:

3464 (a) adequate release or nondisturbance clauses are contained in the encumbering  
3465 instruments to reasonably assure that the purchaser's interest in the development will not be  
3466 defeated; or

3467 (b) the division accepts other equivalent assurances that, in the division's opinion, meet  
3468 the purposes of this Subsection (2).



3469 (3) (a) A person who applies for a development registration shall include with the  
3470 application a filing fee of \$500 for up to 100 interests, plus an additional \$3 per interest for  
3471 each interest over 100, up to a maximum of \$2,500 for each application.

3472 (b) If the division determines that an on-site inspection of the development is  
3473 necessary, the development shall pay the division the actual amount of the costs and expenses  
3474 incurred by the division in performing the on-site inspection.

3475 (4) A person may add an additional site or interest to an approved development  
3476 registration by:

3477 (a) filing an application for consolidation accompanied by an additional fee of \$200  
3478 plus \$3 for each additional interest, up to a maximum of \$1,250 for each application; and

3479 (b) providing the information required under Subsection (1) for each additional site or  
3480 interest.

3481 Section 51. Section **58-37f-304** is amended to read:

3482 **58-37f-304. Database utilization.**

3483 (1) As used in this section:

3484 (a) "Dispenser" means a licensed pharmacist, as described in Section [58-17b-303](#), or  
3485 the pharmacist's licensed intern, as described in Section [58-17b-304](#), who is also licensed to  
3486 dispense a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act.

3487 (b) "Outpatient" means a setting in which an individual visits a licensed healthcare  
3488 facility or a healthcare provider's office for a diagnosis or treatment but is not admitted to a  
3489 licensed healthcare facility for an overnight stay.

3490 (c) "Prescriber" means an individual authorized to prescribe a controlled substance  
3491 under Title 58, Chapter 37, Utah Controlled Substances Act.

3492 (d) "Schedule II opioid" means those substances listed in Subsection [58-37-4\(2\)\(b\)\(i\)](#)  
3493 or [\(2\)\(b\)\(ii\)](#).

3494 (e) "Schedule III opioid" means those substances listed in Subsection [58-37-4\(2\)\(c\)](#)  
3495 that are opioids.

3496 (2) (a) A prescriber shall substantially comply with this Subsection (2).

3497 (b) Except as provided in Subsection (2)~~(b)~~(c), a prescriber shall check the database  
3498 for information about a patient before the first time the prescriber gives a prescription to a  
3499 patient for a Schedule II opioid or a Schedule III opioid.

3500 (c) A prescriber is not required to check the database under Subsection (2)(b) if:  
3501 (i) the prescription for a Schedule II opioid or a Schedule III opioid is for three days or  
3502 fewer on the daily dosage instructions on the prescription;  
3503 (ii) the prescriber has prior knowledge of the patient's prescription history based on the  
3504 prescriber's review of the patient's health record; or  
3505 (iii) the prescription for a Schedule II opioid or a Schedule III opioid is a post surgical  
3506 prescription and the total duration of opioid written after the surgery has been for 30 days or  
3507 fewer.

3508 (d) If a prescriber is repeatedly prescribing a Schedule II opioid or Schedule III opioid  
3509 to a patient, the prescriber shall periodically review information about the patient in:  
3510 (i) the database; or  
3511 (ii) other similar records of controlled substances the patient has filled.

3512 (e) A prescriber may assign the access and review required under Subsections (2)(b)  
3513 and (2)(c) to one or more employees in accordance with Subsections 58-37f-301(2)(i) and (j).

3514 (f) The division shall not take action against the license of a prescriber for failure to  
3515 follow this Subsection (2) if the prescriber demonstrates substantial compliance with the  
3516 requirements of this Subsection (2).

3517 (3) The division shall, in collaboration with the licensing boards for prescribers and  
3518 dispensers:  
3519 (a) develop a system that gathers and reports to prescribers and dispensers the progress  
3520 and results of the prescriber's and dispenser's individual access and review of the database, as  
3521 provided in this section; and  
3522 (b) reduce or waive the division's continuing education requirements regarding opioid  
3523 prescriptions, described in Section 58-37-6.5, including the online tutorial and test relating to  
3524 the database, for prescribers and dispensers whose individual utilization of the database, as  
3525 determined by the division, demonstrates substantial compliance with this section.

3526 (4) If the dispenser's access and review of the database suggest that the individual  
3527 seeking an opioid may be obtaining opioids in quantities or frequencies inconsistent with  
3528 generally recognized standards as provided in this section and Section 58-37f-201, the  
3529 dispenser shall reasonably attempt to contact the prescriber to obtain the prescriber's informed,  
3530 current, and professional decision regarding whether the prescribed opioid is medically

3531 justified, notwithstanding the results of the database search.

3532 Section 52. Section **58-55-102** is amended to read:

3533 **58-55-102. Definitions.**

3534 In addition to the definitions in Section **58-1-102**, as used in this chapter:

3535 (1) (a) "Alarm business or company" means a person engaged in the sale, installation,  
3536 maintenance, alteration, repair, replacement, servicing, or monitoring of an alarm system,  
3537 except as provided in Subsection (1)(b).

3538 (b) "Alarm business or company" does not include:

3539 (i) a person engaged in the manufacture or sale of alarm systems unless:

3540 (A) that person is also engaged in the installation, maintenance, alteration, repair,  
3541 replacement, servicing, or monitoring of alarm systems;

3542 (B) the manufacture or sale occurs at a location other than a place of business  
3543 established by the person engaged in the manufacture or sale; or

3544 (C) the manufacture or sale involves site visits at the place or intended place of  
3545 installation of an alarm system; or

3546 (ii) an owner of an alarm system, or an employee of the owner of an alarm system who  
3547 is engaged in installation, maintenance, alteration, repair, replacement, servicing, or monitoring  
3548 of the alarm system owned by that owner.

3549 (2) "Alarm company agent":

3550 (a) except as provided in Subsection (2)(b), means any individual employed within this  
3551 state by an alarm business; and

3552 (b) does not include an individual who:

3553 (i) is not engaged in the sale, installation, maintenance, alteration, repair, replacement,  
3554 servicing, or monitoring of an alarm system; and

3555 (ii) does not, during the normal course of the individual's employment with an alarm  
3556 business, use or have access to sensitive alarm system information.

3557 (3) "Alarm system" means equipment and devices assembled for the purpose of:

3558 (a) detecting and signaling unauthorized intrusion or entry into or onto certain  
3559 premises; or

3560 (b) signaling a robbery or attempted robbery on protected premises.

3561 (4) "Apprentice electrician" means a person licensed under this chapter as an

3562 apprentice electrician who is learning the electrical trade under the immediate supervision of a  
3563 master electrician, residential master electrician, a journeyman electrician, or a residential  
3564 journeyman electrician.

3565 (5) "Apprentice plumber" means a person licensed under this chapter as an apprentice  
3566 plumber who is learning the plumbing trade under the immediate supervision of a master  
3567 plumber, residential master plumber, journeyman plumber, or a residential journeyman  
3568 plumber.

3569 (6) "Approved continuing education" means instruction provided through courses  
3570 under a program established under Subsection 58-55-302.5(2).

3571 (7) (a) "Approved prelicensure course provider" means a provider that is approved by  
3572 the commission with the concurrence of the director, and that meets the requirements  
3573 established by rule by the commission with the concurrence of the director, to teach the  
3574 25-hour course described in Subsection 58-55-302(1)(e)(iii).

3575 (b) "Approved prelicensure course provider" may only include a provider that, in  
3576 addition to any other locations, offers the 25-hour course described in Subsection  
3577 58-55-302(1)(e)(iii) at least six times each year in one or more counties other than Salt Lake  
3578 County, Utah County, Davis County, or Weber County.

3579 (8) "Board" means the Electrician Licensing Board, Alarm System Security and  
3580 Licensing Board, or Plumbers Licensing Board created in Section 58-55-201.

3581 (9) "Combustion system" means an assembly consisting of:

3582 (a) piping and components with a means for conveying, either continuously or  
3583 intermittently, natural gas from the outlet of the natural gas provider's meter to the burner of the  
3584 appliance;

3585 (b) the electric control and combustion air supply and venting systems, including air  
3586 ducts; and

3587 (c) components intended to achieve control of quantity, flow, and pressure.

3588 (10) "Commission" means the Construction Services Commission created under  
3589 Section 58-55-103.

3590 (11) "Construction trade" means any trade or occupation involving:

3591 (a) (i) construction, alteration, remodeling, repairing, wrecking or demolition, addition  
3592 to, or improvement of any building, highway, road, railroad, dam, bridge, structure, excavation

3593 or other project, development, or improvement to other than personal property; and

3594 (ii) constructing, remodeling, or repairing a manufactured home or mobile home as  
3595 defined in Section 15A-1-302; or

3596 (b) installation or repair of a residential or commercial natural gas appliance or  
3597 combustion system.

3598 (12) "Construction trades instructor" means a person licensed under this chapter to  
3599 teach one or more construction trades in both a classroom and project environment, where a  
3600 project is intended for sale to or use by the public and is completed under the direction of the  
3601 instructor, who has no economic interest in the project.

3602 (13) (a) "Contractor" means any person who for compensation other than wages as an  
3603 employee undertakes any work in the construction, plumbing, or electrical trade for which  
3604 licensure is required under this chapter and includes:

3605 (i) a person who builds any structure on the person's own property for the purpose of  
3606 sale or who builds any structure intended for public use on the person's own property;

3607 (ii) any person who represents that the person is a contractor, or will perform a service  
3608 described in this Subsection (13), by advertising on a website or social media, or any other  
3609 means;

3610 (iii) any person engaged as a maintenance person, other than an employee, who  
3611 regularly engages in activities set forth under the definition of "construction trade";

3612 (iv) any person engaged in, or offering to engage in, any construction trade for which  
3613 licensure is required under this chapter; or

3614 (v) a construction manager, construction consultant, construction assistant, or any other  
3615 person who, for a fee:

3616 (A) performs or offers to perform construction consulting;

3617 (B) performs or offers to perform management of construction subcontractors;

3618 (C) provides or offers to provide a list of subcontractors or suppliers; or

3619 (D) provides or offers to provide management or counseling services on a construction  
3620 project.

3621 (b) "Contractor" does not include:

3622 (i) an alarm company or alarm company agent; or

3623 (ii) a material supplier who provides consulting to customers regarding the design and

3624 installation of the material supplier's products.

3625 (14) (a) "Electrical trade" means the performance of any electrical work involved in the  
3626 installation, construction, alteration, change, repair, removal, or maintenance of facilities,  
3627 buildings, or appendages or appurtenances.

3628 (b) "Electrical trade" does not include:

3629 (i) transporting or handling electrical materials;

3630 (ii) preparing clearance for raceways for wiring; or

3631 (iii) work commonly done by unskilled labor on any installations under the exclusive  
3632 control of electrical utilities.

3633 (c) For purposes of Subsection (14)(b):

3634 (i) no more than one unlicensed person may be so employed unless more than five  
3635 licensed electricians are employed by the shop; and

3636 (ii) a shop may not employ unlicensed persons in excess of the five-to-one ratio  
3637 permitted by this Subsection (14)(c).

3638 (15) "Elevator" means the same as that term is defined in Section [34A-7-202](#), except  
3639 that for purposes of this chapter it does not mean a stair chair, a vertical platform lift, or an  
3640 incline platform lift.

3641 (16) "Elevator contractor" means a sole proprietor, firm, or corporation licensed under  
3642 this chapter that is engaged in the business of erecting, constructing, installing, altering,  
3643 servicing, repairing, or maintaining an elevator.

3644 (17) "Elevator mechanic" means an individual who is licensed under this chapter as an  
3645 elevator mechanic and who is engaged in erecting, constructing, installing, altering, servicing,  
3646 repairing, or maintaining an elevator under the immediate supervision of an elevator contractor.

3647 (18) "Employee" means an individual as defined by the division by rule giving  
3648 consideration to the definition adopted by the Internal Revenue Service and the Department of  
3649 Workforce Services.

3650 (19) "Engage in a construction trade" means to:

3651 (a) engage in, represent oneself to be engaged in, or advertise oneself as being engaged  
3652 in a construction trade; or

3653 (b) use the name "contractor" or "builder" or in any other way lead a reasonable person  
3654 to believe one is or will act as a contractor.

3655 (20) (a) "Financial responsibility" means a demonstration of a current and expected  
3656 future condition of financial solvency evidencing a reasonable expectation to the division and  
3657 the board that an applicant or licensee can successfully engage in business as a contractor  
3658 without jeopardy to the public health, safety, and welfare.

3659 (b) Financial responsibility may be determined by an evaluation of the total history  
3660 concerning the licensee or applicant including past, present, and expected condition and record  
3661 of financial solvency and business conduct.

3662 (21) "Gas appliance" means any device that uses natural gas to produce light, heat,  
3663 power, steam, hot water, refrigeration, or air conditioning.

3664 (22) (a) "General building contractor" means a person licensed under this chapter as a  
3665 general building contractor qualified by education, training, experience, and knowledge to  
3666 perform or superintend construction of structures for the support, shelter, and enclosure of  
3667 persons, animals, chattels, or movable property of any kind or any of the components of that  
3668 construction except plumbing, electrical work, mechanical work, work related to the operating  
3669 integrity of an elevator, and manufactured housing installation, for which the general building  
3670 contractor shall employ the services of a contractor licensed in the particular specialty, except  
3671 that a general building contractor engaged in the construction of single-family and multifamily  
3672 residences up to four units may perform the mechanical work and hire a licensed plumber or  
3673 electrician as an employee.

3674 (b) The division may by rule exclude general building contractors from engaging in the  
3675 performance of other construction specialties in which there is represented a substantial risk to  
3676 the public health, safety, and welfare, and for which a license is required unless that general  
3677 building contractor holds a valid license in that specialty classification.

3678 (23) (a) "General electrical contractor" means a person licensed under this chapter as a  
3679 general electrical contractor qualified by education, training, experience, and knowledge to  
3680 perform the fabrication, construction, and installation of generators, transformers, conduits,  
3681 raceways, panels, switch gear, electrical wires, fixtures, appliances, or apparatus that uses  
3682 electrical energy.

3683 (b) The scope of work of a general electrical contractor may be further defined by rules  
3684 made by the commission, with the concurrence of the director, in accordance with Title 63G,  
3685 Chapter 3, Utah Administrative Rulemaking Act.

3686           (24) (a) "General engineering contractor" means a person licensed under this chapter as  
3687 a general engineering contractor qualified by education, training, experience, and knowledge to  
3688 perform construction of fixed works in any of the following: irrigation, drainage, water, power,  
3689 water supply, flood control, inland waterways, harbors, railroads, highways, tunnels, airports  
3690 and runways, sewers and bridges, refineries, pipelines, chemical and industrial plants requiring  
3691 specialized engineering knowledge and skill, piers, and foundations, or any of the components  
3692 of those works.

3693           (b) A general engineering contractor may not perform construction of structures built  
3694 primarily for the support, shelter, and enclosure of persons, animals, and chattels.

3695           (25) (a) "General plumbing contractor" means a person licensed under this chapter as a  
3696 general plumbing contractor qualified by education, training, experience, and knowledge to  
3697 perform the fabrication or installation of material and fixtures to create and maintain sanitary  
3698 conditions in a building by providing permanent means for a supply of safe and pure water, a  
3699 means for the timely and complete removal from the premises of all used or contaminated  
3700 water, fluid and semi-fluid organic wastes and other impurities incidental to life and the  
3701 occupation of such premises, and a safe and adequate supply of gases for lighting, heating, and  
3702 industrial purposes.

3703           (b) The scope of work of a general plumbing contractor may be further defined by rules  
3704 made by the commission, with the concurrence of the director, in accordance with Title 63G,  
3705 Chapter 3, Utah Administrative Rulemaking Act.

3706           (26) "Immediate supervision" means reasonable direction, oversight, inspection, and  
3707 evaluation of the work of a person:

- 3708           (a) as the division specifies in rule;
- 3709           (b) by, as applicable, a qualified electrician or plumber;
- 3710           (c) as part of a planned program of training; and
- 3711           (d) to ensure that the end result complies with applicable standards.

3712           (27) "Individual" means a natural person.

3713           (28) "Journeyman electrician" means a person licensed under this chapter as a  
3714 journeyman electrician having the qualifications, training, experience, and knowledge to wire,  
3715 install, and repair electrical apparatus and equipment for light, heat, power, and other purposes.

3716           (29) "Journeyman plumber" means a person licensed under this chapter as a



3717 journeyman plumber having the qualifications, training, experience, and technical knowledge  
3718 to engage in the plumbing trade.

3719 (30) "Master electrician" means a person licensed under this chapter as a master  
3720 electrician having the qualifications, training, experience, and knowledge to properly plan,  
3721 layout, and supervise the wiring, installation, and repair of electrical apparatus and equipment  
3722 for light, heat, power, and other purposes.

3723 (31) "Master plumber" means a person licensed under this chapter as a master plumber  
3724 having the qualifications, training, experience, and knowledge to properly plan and layout  
3725 projects and supervise persons in the plumbing trade.

3726 (32) "Person" means a natural person, sole proprietorship, joint venture, corporation,  
3727 limited liability company, association, or organization of any type.

3728 (33) (a) "Plumbing trade" means the performance of any mechanical work pertaining to  
3729 the installation, alteration, change, repair, removal, maintenance, or use in buildings, or within  
3730 three feet beyond the outside walls of buildings, of pipes, fixtures, and fittings for the:

- 3731 (i) delivery of the water supply;  
3732 (ii) discharge of liquid and water carried waste;  
3733 (iii) building drainage system within the walls of the building; and  
3734 (iv) delivery of gases for lighting, heating, and industrial purposes.

3735 (b) "Plumbing trade" includes work pertaining to the water supply, distribution pipes,  
3736 fixtures and fixture traps, soil, waste and vent pipes, the building drain and roof drains, and the  
3737 safe and adequate supply of gases, together with their devices, appurtenances, and connections  
3738 where installed within the outside walls of the building.

3739 (34) (a) "Ratio of apprentices" means, for the purpose of determining compliance with  
3740 the requirements for planned programs of training and electrician apprentice licensing  
3741 applications, the shop ratio of apprentice electricians to journeyman or master electricians shall  
3742 be one journeyman or master electrician to one apprentice on industrial and commercial work,  
3743 and one journeyman or master electrician to three apprentices on residential work.

3744 (b) On-the-job training shall be under circumstances in which the ratio of apprentices  
3745 to supervisors is in accordance with a ratio of one-to-one on nonresidential work and up to  
3746 three apprentices to one supervisor on residential projects.

3747 (35) "Residential and small commercial contractor" means a person licensed under this

3748 chapter as a residential and small commercial contractor qualified by education, training,  
3749 experience, and knowledge to perform or superintend the construction of single-family  
3750 residences, multifamily residences up to four units, and commercial construction of not more  
3751 than three stories above ground and not more than 20,000 square feet, or any of the components  
3752 of that construction except plumbing, electrical work, mechanical work, and manufactured  
3753 housing installation, for which the residential and small commercial contractor shall employ  
3754 the services of a contractor licensed in the particular specialty, except that a residential and  
3755 small commercial contractor engaged in the construction of single-family and multifamily  
3756 residences up to four units may perform the mechanical work and hire a licensed plumber or  
3757 electrician as an employee.

3758 (36) "Residential building," as it relates to the license classification of residential  
3759 journeyman plumber and residential master plumber, means a single or multiple family  
3760 dwelling of up to four units.

3761 (37) (a) "Residential electrical contractor" means a person licensed under this chapter  
3762 as a residential electrical contractor qualified by education, training, experience, and  
3763 knowledge to perform the fabrication, construction, and installation of services, disconnecting  
3764 means, grounding devices, panels, conductors, load centers, lighting and plug circuits,  
3765 appliances, and fixtures in a residential unit.

3766 (b) The scope of work of a residential electrical contractor may be further defined by  
3767 rules made by the commission, with the concurrence of the director, in accordance with Title  
3768 63G, Chapter 3, Utah Administrative Rulemaking Act.

3769 (38) "Residential journeyman electrician" means a person licensed under this chapter  
3770 as a residential journeyman electrician having the qualifications, training, experience, and  
3771 knowledge to wire, install, and repair electrical apparatus and equipment for light, heat, power,  
3772 and other purposes on buildings using primarily nonmetallic sheath cable.

3773 (39) "Residential journeyman plumber" means a person licensed under this chapter as a  
3774 residential journeyman plumber having the qualifications, training, experience, and knowledge  
3775 to engage in the plumbing trade as limited to the plumbing of residential buildings.

3776 (40) "Residential master electrician" means a person licensed under this chapter as a  
3777 residential master electrician having the qualifications, training, experience, and knowledge to  
3778 properly plan, layout, and supervise the wiring, installation, and repair of electrical apparatus

3779 and equipment for light, heat, power, and other purposes on residential projects.

3780 (41) "Residential master plumber" means a person licensed under this chapter as a  
3781 residential master plumber having the qualifications, training, experience, and knowledge to  
3782 properly plan and layout projects and supervise persons in the plumbing trade as limited to the  
3783 plumbing of residential buildings.

3784 (42) (a) "Residential plumbing contractor" means a person licensed under this chapter  
3785 as a [~~general~~] residential plumbing contractor qualified by education, training, experience, and  
3786 knowledge to perform the fabrication or installation of material and fixtures to create and  
3787 maintain sanitary conditions in residential buildings by providing permanent means for a  
3788 supply of safe and pure water, a means for the timely and complete removal from the premises  
3789 of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities  
3790 incidental to life and the occupation of such premises, and a safe and adequate supply of gases  
3791 for lighting, heating, and industrial purposes.

3792 (b) The scope of work of a residential plumbing contractor may be further defined by  
3793 rules made by the commission, with the concurrence of the director, in accordance with Title  
3794 63G, Chapter 3, Utah Administrative Rulemaking Act.

3795 (43) "Residential project," as it relates to an electrician or electrical contractor, means  
3796 buildings primarily wired with nonmetallic sheathed cable, in accordance with standard rules  
3797 and regulations governing this work, including the National Electrical Code, and in which the  
3798 voltage does not exceed 250 volts line to line and 125 volts to ground.

3799 (44) "Sensitive alarm system information" means:

3800 (a) a pass code or other code used in the operation of an alarm system;

3801 (b) information on the location of alarm system components at the premises of a  
3802 customer of the alarm business providing the alarm system;

3803 (c) information that would allow the circumvention, bypass, deactivation, or other  
3804 compromise of an alarm system of a customer of the alarm business providing the alarm  
3805 system; and

3806 (d) any other similar information that the division by rule determines to be information  
3807 that an individual employed by an alarm business should use or have access to only if the  
3808 individual is licensed as provided in this chapter.

3809 (45) (a) "Specialty contractor" means a person licensed under this chapter under a

3810 specialty contractor classification established by rule, who is qualified by education, training,  
3811 experience, and knowledge to perform those construction trades and crafts requiring  
3812 specialized skill, the regulation of which are determined by the division to be in the best  
3813 interest of the public health, safety, and welfare.

3814 (b) A specialty contractor may perform work in crafts or trades other than those in  
3815 which the specialty contractor is licensed if they are incidental to the performance of the  
3816 specialty contractor's licensed craft or trade.

3817 (46) "Unincorporated entity" means an entity that is not:

3818 (a) an individual;

3819 (b) a corporation; or

3820 (c) publicly traded.

3821 (47) "Unlawful conduct" means the same as that term is defined in Sections 58-1-501  
3822 and 58-55-501.

3823 (48) "Unprofessional conduct" means the same as that term is defined in Sections  
3824 58-1-501 and 58-55-502 and as may be further defined by rule.

3825 (49) "Wages" means amounts due to an employee for labor or services whether the  
3826 amount is fixed or ascertained on a time, task, piece, commission, or other basis for calculating  
3827 the amount.

3828 Section 53. Section 58-87-401 is amended to read:

3829 **58-87-401. Prohibited conduct.**

3830 (1) An athlete agent, with the intent to influence a student athlete or, if the athlete is a  
3831 minor, a parent or guardian of the athlete to enter into an agency contract, may not take any of  
3832 the following actions or encourage any other individual to take or assist any other individual in  
3833 taking any of the following actions on behalf of the agent:

3834 (a) give materially false or misleading information or make a materially false promise  
3835 or representation;

3836 (b) furnish anything of value to the athlete before the athlete enters into the contract; or

3837 (c) furnish anything of value to an individual other than the athlete or another  
3838 registered athlete agent.

3839 (2) An athlete agent may not intentionally do any of the following or encourage any  
3840 other individual to do any of the following on behalf of the agent:

3841 (a) initiate contact, directly or indirectly, with a student athlete or, if the athlete is a  
3842 minor, a parent or guardian of the athlete, to recruit or solicit the athlete, parent, or guardian to  
3843 enter into an agency contract unless registered under this chapter;

3844 (b) fail to create or retain or to permit inspection of the records required by Section  
3845 ~~[58-87-305]~~ [58-87-304](#);

3846 (c) fail to register when required by Section [58-87-201](#);

3847 (d) provide materially false or misleading information in an application for registration  
3848 or renewal of registration;

3849 (e) predate or postdate an agency contract; or

3850 (f) fail to notify a student athlete or, if the athlete is a minor, a parent or guardian of the  
3851 athlete, before the athlete, parent, or guardian signs an agency contract for a particular sport  
3852 that the signing may make the athlete ineligible to participate as a student athlete in that sport.

3853 Section 54. Section **59-2-1346** is amended to read:

3854 **59-2-1346. Redemption -- Time allowed.**

3855 (1) Property may be redeemed on behalf of the record owner by any person at any time  
3856 before the tax sale which shall be held in May or June as provided in Section [59-2-1351](#)  
3857 following the lapse of four years from the date the property tax became delinquent.

3858 (2) A person may redeem property by paying to the county treasurer all delinquent  
3859 taxes, interest, penalties, and administrative costs that have accrued on the property.

3860 (3) (a) Subject to Subsection (3)(d), a person may redeem a subdivided lot by paying  
3861 the county treasurer the subdivided lot's proportional share of the delinquent taxes, interest,  
3862 penalties, and administrative costs accrued on the base parcel, calculated in accordance with  
3863 Subsection (3)(b).

3864 (b) The county treasurer shall calculate the amount described in Subsection (3)(a) by  
3865 comparing:

3866 (i) the amount of the value of the base parcel as described in Subsection (3)(b)(ii) that  
3867 is attributable to the property that comprises the subdivided lot as the property existed on  
3868 January 1 of the year in which the delinquent property taxes on the base parcel were assessed;  
3869 and

3870 (ii) the value of the base parcel as it existed on January 1 of the year in which the  
3871 delinquent property taxes on the base parcel were assessed.

3872 (c) If the county treasurer does not have sufficient information to calculate the amount  
3873 described in Subsection (3)~~(a)~~(b)(i), upon request from the county treasurer, the county  
3874 assessor shall provide the county treasurer any information necessary to calculate the amount  
3875 described in Subsection (3)~~(a)~~(b)(i).

3876 (d) A person may redeem a subdivided lot under this Subsection (3) only if the record  
3877 owner of the subdivided lot is a bona fide purchaser.

3878 (4) At any time before the expiration of the period of redemption the county treasurer  
3879 shall accept and credit on account for the redemption of property, payments in amounts of not  
3880 less than \$10, except for the final payment, which may be in any amount. For the purpose of  
3881 computing the amount required for redemption and for the purpose of distributing the payments  
3882 received on account, all payments shall be applied in the following order:

3883 (a) against the interest and administrative costs accrued on the delinquent tax for the  
3884 last year included in the delinquent account at the time of payment;

3885 (b) against the penalty charged on the delinquent tax for the last year included in the  
3886 delinquent account at the time of payment;

3887 (c) against the delinquent tax for the last year included in the delinquent account at the  
3888 time of payment;

3889 (d) against the interest and administrative costs accrued on the delinquent tax for the  
3890 next to last year included in the delinquent account at the time of payment;

3891 (e) and so on until the full amount of the delinquent taxes, penalties, administrative  
3892 costs, and interest on the unpaid balances are paid within the period of redemption.

3893 Section 55. Section **59-12-102** is amended to read:

3894 **59-12-102. Definitions.**

3895 As used in this chapter:

3896 (1) "800 service" means a telecommunications service that:

3897 (a) allows a caller to dial a toll-free number without incurring a charge for the call; and

3898 (b) is typically marketed:

3899 (i) under the name 800 toll-free calling;

3900 (ii) under the name 855 toll-free calling;

3901 (iii) under the name 866 toll-free calling;

3902 (iv) under the name 877 toll-free calling;

- 3903 (v) under the name 888 toll-free calling; or
- 3904 (vi) under a name similar to Subsections (1)(b)(i) through (v) as designated by the  
3905 Federal Communications Commission.
- 3906 (2) (a) "900 service" means an inbound toll telecommunications service that:
- 3907 (i) a subscriber purchases;
- 3908 (ii) allows a customer of the subscriber described in Subsection (2)(a)(i) to call in to  
3909 the subscriber's:
- 3910 (A) prerecorded announcement; or
- 3911 (B) live service; and
- 3912 (iii) is typically marketed:
- 3913 (A) under the name 900 service; or
- 3914 (B) under a name similar to Subsection (2)(a)(iii)(A) as designated by the Federal  
3915 Communications Commission.
- 3916 (b) "900 service" does not include a charge for:
- 3917 (i) a collection service a seller of a telecommunications service provides to a  
3918 subscriber; or
- 3919 (ii) the following a subscriber sells to the subscriber's customer:
- 3920 (A) a product; or
- 3921 (B) a service.
- 3922 (3) (a) "Admission or user fees" includes season passes.
- 3923 (b) "Admission or user fees" does not include annual membership dues to private  
3924 organizations.
- 3925 (4) "Agreement" means the Streamlined Sales and Use Tax Agreement adopted on  
3926 November 12, 2002, including amendments made to the Streamlined Sales and Use Tax  
3927 Agreement after November 12, 2002.
- 3928 (5) "Agreement combined tax rate" means the sum of the tax rates:
- 3929 (a) listed under Subsection (6); and
- 3930 (b) that are imposed within a local taxing jurisdiction.
- 3931 (6) "Agreement sales and use tax" means a tax imposed under:
- 3932 (a) Subsection 59-12-103(2)(a)(i)(A);
- 3933 (b) Subsection 59-12-103(2)(b)(i);

- 3934 (c) Subsection 59-12-103(2)(c)(i);
- 3935 (d) Subsection 59-12-103(2)(d)(i)(A)(I);
- 3936 (e) Section 59-12-204;
- 3937 (f) Section 59-12-401;
- 3938 (g) Section 59-12-402;
- 3939 (h) Section 59-12-402.1;
- 3940 (i) Section 59-12-703;
- 3941 (j) Section 59-12-802;
- 3942 (k) Section 59-12-804;
- 3943 (l) Section 59-12-1102;
- 3944 (m) Section 59-12-1302;
- 3945 (n) Section 59-12-1402;
- 3946 (o) Section 59-12-1802;
- 3947 (p) Section 59-12-2003;
- 3948 (q) Section 59-12-2103;
- 3949 (r) Section 59-12-2213;
- 3950 (s) Section 59-12-2214;
- 3951 (t) Section 59-12-2215;
- 3952 (u) Section 59-12-2216;
- 3953 (v) Section 59-12-2217;
- 3954 (w) Section 59-12-2218; or
- 3955 (x) Section 59-12-2219.
- 3956 (7) "Aircraft" means the same as that term is defined in Section 72-10-102.
- 3957 (8) "Aircraft maintenance, repair, and overhaul provider" means a business entity:
- 3958 (a) except for:
- 3959 (i) an airline as defined in Section 59-2-102; or
- 3960 (ii) an affiliated group, as defined in Section 59-7-101, except that "affiliated group"
- 3961 includes a corporation that is qualified to do business but is not otherwise doing business in the
- 3962 state, of an airline; and
- 3963 (b) that has the workers, expertise, and facilities to perform the following, regardless of
- 3964 whether the business entity performs the following in this state:



- 3965 (i) check, diagnose, overhaul, and repair:
- 3966 (A) an onboard system of a fixed wing turbine powered aircraft; and
- 3967 (B) the parts that comprise an onboard system of a fixed wing turbine powered aircraft;
- 3968 (ii) assemble, change, dismantle, inspect, and test a fixed wing turbine powered aircraft
- 3969 engine;
- 3970 (iii) perform at least the following maintenance on a fixed wing turbine powered
- 3971 aircraft:
- 3972 (A) an inspection;
- 3973 (B) a repair, including a structural repair or modification;
- 3974 (C) changing landing gear; and
- 3975 (D) addressing issues related to an aging fixed wing turbine powered aircraft;
- 3976 (iv) completely remove the existing paint of a fixed wing turbine powered aircraft and
- 3977 completely apply new paint to the fixed wing turbine powered aircraft; and
- 3978 (v) refurbish the interior of a fixed wing turbine powered aircraft in a manner that
- 3979 results in a change in the fixed wing turbine powered aircraft's certification requirements by the
- 3980 authority that certifies the fixed wing turbine powered aircraft.
- 3981 (9) "Alcoholic beverage" means a beverage that:
- 3982 (a) is suitable for human consumption; and
- 3983 (b) contains .5% or more alcohol by volume.
- 3984 (10) "Alternative energy" means:
- 3985 (a) biomass energy;
- 3986 (b) geothermal energy;
- 3987 (c) hydroelectric energy;
- 3988 (d) solar energy;
- 3989 (e) wind energy; or
- 3990 (f) energy that is derived from:
- 3991 (i) coal-to-liquids;
- 3992 (ii) nuclear fuel;
- 3993 (iii) oil-impregnated diatomaceous earth;
- 3994 (iv) oil sands;
- 3995 (v) oil shale;

3996 (vi) petroleum coke; or  
3997 (vii) waste heat from:  
3998 (A) an industrial facility; or  
3999 (B) a power station in which an electric generator is driven through a process in which  
4000 water is heated, turns into steam, and spins a steam turbine.

4001 (11) (a) Subject to Subsection (11)(b), "alternative energy electricity production  
4002 facility" means a facility that:

4003 (i) uses alternative energy to produce electricity; and  
4004 (ii) has a production capacity of two megawatts or greater.

4005 (b) A facility is an alternative energy electricity production facility regardless of  
4006 whether the facility is:

4007 (i) connected to an electric grid; or  
4008 (ii) located on the premises of an electricity consumer.

4009 (12) (a) "Ancillary service" means a service associated with, or incidental to, the  
4010 provision of telecommunications service.

4011 (b) "Ancillary service" includes:

4012 (i) a conference bridging service;  
4013 (ii) a detailed communications billing service;  
4014 (iii) directory assistance;  
4015 (iv) a vertical service; or  
4016 (v) a voice mail service.

4017 (13) "Area agency on aging" means the same as that term is defined in Section  
4018 [62A-3-101](#).

4019 (14) "Assisted amusement device" means an amusement device, skill device, or ride  
4020 device that is started and stopped by an individual:

4021 (a) who is not the purchaser or renter of the right to use or operate the amusement  
4022 device, skill device, or ride device; and

4023 (b) at the direction of the seller of the right to use the amusement device, skill device,  
4024 or ride device.

4025 (15) "Assisted cleaning or washing of tangible personal property" means cleaning or  
4026 washing of tangible personal property if the cleaning or washing labor is primarily performed

4027 by an individual:

4028 (a) who is not the purchaser of the cleaning or washing of the tangible personal  
4029 property; and

4030 (b) at the direction of the seller of the cleaning or washing of the tangible personal  
4031 property.

4032 (16) "Authorized carrier" means:

4033 (a) in the case of vehicles operated over public highways, the holder of credentials  
4034 indicating that the vehicle is or will be operated pursuant to both the International Registration  
4035 Plan and the International Fuel Tax Agreement;

4036 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating  
4037 certificate or air carrier's operating certificate; or

4038 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling  
4039 stock, a person who uses locomotives, freight cars, railroad work equipment, or other rolling  
4040 stock in more than one state.

4041 (17) (a) Except as provided in Subsection (17)(b), "biomass energy" means any of the  
4042 following that is used as the primary source of energy to produce fuel or electricity:

4043 (i) material from a plant or tree; or

4044 (ii) other organic matter that is available on a renewable basis, including:

4045 (A) slash and brush from forests and woodlands;

4046 (B) animal waste;

4047 (C) waste vegetable oil;

4048 (D) methane or synthetic gas produced at a landfill, as a byproduct of the treatment of  
4049 wastewater residuals, or through the conversion of a waste material through a nonincineration,  
4050 thermal conversion process;

4051 (E) aquatic plants; and

4052 (F) agricultural products.

4053 (b) "Biomass energy" does not include:

4054 (i) black liquor; or

4055 (ii) treated woods.

4056 (18) (a) "Bundled transaction" means the sale of two or more items of tangible personal  
4057 property, products, or services if the tangible personal property, products, or services are:

- 4058 (i) distinct and identifiable; and
- 4059 (ii) sold for one nonitemized price.
- 4060 (b) "Bundled transaction" does not include:
- 4061 (i) the sale of tangible personal property if the sales price varies, or is negotiable, on
- 4062 the basis of the selection by the purchaser of the items of tangible personal property included in
- 4063 the transaction;
- 4064 (ii) the sale of real property;
- 4065 (iii) the sale of services to real property;
- 4066 (iv) the retail sale of tangible personal property and a service if:
- 4067 (A) the tangible personal property:
- 4068 (I) is essential to the use of the service; and
- 4069 (II) is provided exclusively in connection with the service; and
- 4070 (B) the service is the true object of the transaction;
- 4071 (v) the retail sale of two services if:
- 4072 (A) one service is provided that is essential to the use or receipt of a second service;
- 4073 (B) the first service is provided exclusively in connection with the second service; and
- 4074 (C) the second service is the true object of the transaction;
- 4075 (vi) a transaction that includes tangible personal property or a product subject to
- 4076 taxation under this chapter and tangible personal property or a product that is not subject to
- 4077 taxation under this chapter if the:
- 4078 (A) seller's purchase price of the tangible personal property or product subject to
- 4079 taxation under this chapter is de minimis; or
- 4080 (B) seller's sales price of the tangible personal property or product subject to taxation
- 4081 under this chapter is de minimis; and
- 4082 (vii) the retail sale of tangible personal property that is not subject to taxation under
- 4083 this chapter and tangible personal property that is subject to taxation under this chapter if:
- 4084 (A) that retail sale includes:
- 4085 (I) food and food ingredients;
- 4086 (II) a drug;
- 4087 (III) durable medical equipment;
- 4088 (IV) mobility enhancing equipment;

- 4089 (V) an over-the-counter drug;
- 4090 (VI) a prosthetic device; or
- 4091 (VII) a medical supply; and
- 4092 (B) subject to Subsection (18)(f):
- 4093 (I) the seller's purchase price of the tangible personal property subject to taxation under
- 4094 this chapter is 50% or less of the seller's total purchase price of that retail sale; or
- 4095 (II) the seller's sales price of the tangible personal property subject to taxation under
- 4096 this chapter is 50% or less of the seller's total sales price of that retail sale.
- 4097 (c) (i) For purposes of Subsection (18)(a)(i), tangible personal property, a product, or a
- 4098 service that is distinct and identifiable does not include:
- 4099 (A) packaging that:
- 4100 (I) accompanies the sale of the tangible personal property, product, or service; and
- 4101 (II) is incidental or immaterial to the sale of the tangible personal property, product, or
- 4102 service;
- 4103 (B) tangible personal property, a product, or a service provided free of charge with the
- 4104 purchase of another item of tangible personal property, a product, or a service; or
- 4105 (C) an item of tangible personal property, a product, or a service included in the
- 4106 definition of "purchase price."
- 4107 (ii) For purposes of Subsection (18)(c)(i)(B), an item of tangible personal property, a
- 4108 product, or a service is provided free of charge with the purchase of another item of tangible
- 4109 personal property, a product, or a service if the sales price of the purchased item of tangible
- 4110 personal property, product, or service does not vary depending on the inclusion of the tangible
- 4111 personal property, product, or service provided free of charge.
- 4112 (d) (i) For purposes of Subsection (18)(a)(ii), property sold for one nonitemized price
- 4113 does not include a price that is separately identified by tangible personal property, product, or
- 4114 service on the following, regardless of whether the following is in paper format or electronic
- 4115 format:
- 4116 (A) a binding sales document; or
- 4117 (B) another supporting sales-related document that is available to a purchaser.
- 4118 (ii) For purposes of Subsection (18)(d)(i), a binding sales document or another
- 4119 supporting sales-related document that is available to a purchaser includes:

- 4120 (A) a bill of sale;
- 4121 (B) a contract;
- 4122 (C) an invoice;
- 4123 (D) a lease agreement;
- 4124 (E) a periodic notice of rates and services;
- 4125 (F) a price list;
- 4126 (G) a rate card;
- 4127 (H) a receipt; or
- 4128 (I) a service agreement.
- 4129 (e) (i) For purposes of Subsection (18)(b)(vi), the sales price of tangible personal
- 4130 property or a product subject to taxation under this chapter is de minimis if:
- 4131 (A) the seller's purchase price of the tangible personal property or product is 10% or
- 4132 less of the seller's total purchase price of the bundled transaction; or
- 4133 (B) the seller's sales price of the tangible personal property or product is 10% or less of
- 4134 the seller's total sales price of the bundled transaction.
- 4135 (ii) For purposes of Subsection (18)(b)(vi), a seller:
- 4136 (A) shall use the seller's purchase price or the seller's sales price to determine if the
- 4137 purchase price or sales price of the tangible personal property or product subject to taxation
- 4138 under this chapter is de minimis; and
- 4139 (B) may not use a combination of the seller's purchase price and the seller's sales price
- 4140 to determine if the purchase price or sales price of the tangible personal property or product
- 4141 subject to taxation under this chapter is de minimis.
- 4142 (iii) For purposes of Subsection (18)(b)(vi), a seller shall use the full term of a service
- 4143 contract to determine if the sales price of tangible personal property or a product is de minimis.
- 4144 (f) For purposes of Subsection (18)(b)(vii)(B), a seller may not use a combination of
- 4145 the seller's purchase price and the seller's sales price to determine if tangible personal property
- 4146 subject to taxation under this chapter is 50% or less of the seller's total purchase price or sales
- 4147 price of that retail sale.
- 4148 (19) "Certified automated system" means software certified by the governing board of
- 4149 the agreement that:
- 4150 (a) calculates the agreement sales and use tax imposed within a local taxing

4151 jurisdiction:

4152 (i) on a transaction; and

4153 (ii) in the states that are members of the agreement;

4154 (b) determines the amount of agreement sales and use tax to remit to a state that is a  
4155 member of the agreement; and

4156 (c) maintains a record of the transaction described in Subsection (19)(a)(i).

4157 (20) "Certified service provider" means an agent certified:

4158 (a) by the governing board of the agreement; and

4159 (b) to perform all of a seller's sales and use tax functions for an agreement sales and  
4160 use tax other than the seller's obligation under Section 59-12-124 to remit a tax on the seller's  
4161 own purchases.

4162 (21) (a) Subject to Subsection (21)(b), "clothing" means all human wearing apparel  
4163 suitable for general use.

4164 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
4165 commission shall make rules:

4166 (i) listing the items that constitute "clothing"; and

4167 (ii) that are consistent with the list of items that constitute "clothing" under the  
4168 agreement.

4169 (22) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.

4170 (23) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other  
4171 fuels that does not constitute industrial use under Subsection (56) or residential use under  
4172 Subsection (106).

4173 (24) (a) "Common carrier" means a person engaged in or transacting the business of  
4174 transporting passengers, freight, merchandise, or other property for hire within this state.

4175 (b) (i) "Common carrier" does not include a person who, at the time the person is  
4176 traveling to or from that person's place of employment, transports a passenger to or from the  
4177 passenger's place of employment.

4178 (ii) For purposes of Subsection (24)(b)(i), in accordance with Title 63G, Chapter 3,  
4179 Utah Administrative Rulemaking Act, the commission may make rules defining what  
4180 constitutes a person's place of employment.

4181 (c) "Common carrier" does not include a person that provides transportation network

4182 services, as defined in Section 13-51-102.

4183 (25) "Component part" includes:

4184 (a) poultry, dairy, and other livestock feed, and their components;

4185 (b) baling ties and twine used in the baling of hay and straw;

4186 (c) fuel used for providing temperature control of orchards and commercial

4187 greenhouses doing a majority of their business in wholesale sales, and for providing power for

4188 off-highway type farm machinery; and

4189 (d) feed, seeds, and seedlings.

4190 (26) "Computer" means an electronic device that accepts information:

4191 (a) (i) in digital form; or

4192 (ii) in a form similar to digital form; and

4193 (b) manipulates that information for a result based on a sequence of instructions.

4194 (27) "Computer software" means a set of coded instructions designed to cause:

4195 (a) a computer to perform a task; or

4196 (b) automatic data processing equipment to perform a task.

4197 (28) "Computer software maintenance contract" means a contract that obligates a seller

4198 of computer software to provide a customer with:

4199 (a) future updates or upgrades to computer software;

4200 (b) support services with respect to computer software; or

4201 (c) a combination of Subsections (28)(a) and (b).

4202 (29) (a) "Conference bridging service" means an ancillary service that links two or

4203 more participants of an audio conference call or video conference call.

4204 (b) "Conference bridging service" may include providing a telephone number as part of

4205 the ancillary service described in Subsection (29)(a).

4206 (c) "Conference bridging service" does not include a telecommunications service used

4207 to reach the ancillary service described in Subsection (29)(a).

4208 (30) "Construction materials" means any tangible personal property that will be

4209 converted into real property.

4210 (31) "Delivered electronically" means delivered to a purchaser by means other than

4211 tangible storage media.

4212 (32) (a) "Delivery charge" means a charge:



- 4213 (i) by a seller of:
- 4214 (A) tangible personal property;
- 4215 (B) a product transferred electronically; or
- 4216 (C) services; and
- 4217 (ii) for preparation and delivery of the tangible personal property, product transferred
- 4218 electronically, or services described in Subsection (32)(a)(i) to a location designated by the
- 4219 purchaser.
- 4220 (b) "Delivery charge" includes a charge for the following:
- 4221 (i) transportation;
- 4222 (ii) shipping;
- 4223 (iii) postage;
- 4224 (iv) handling;
- 4225 (v) crating; or
- 4226 (vi) packing.
- 4227 (33) "Detailed telecommunications billing service" means an ancillary service of
- 4228 separately stating information pertaining to individual calls on a customer's billing statement.
- 4229 (34) "Dietary supplement" means a product, other than tobacco, that:
- 4230 (a) is intended to supplement the diet;
- 4231 (b) contains one or more of the following dietary ingredients:
- 4232 (i) a vitamin;
- 4233 (ii) a mineral;
- 4234 (iii) an herb or other botanical;
- 4235 (iv) an amino acid;
- 4236 (v) a dietary substance for use by humans to supplement the diet by increasing the total
- 4237 dietary intake; or
- 4238 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
- 4239 described in Subsections (34)(b)(i) through (v);
- 4240 (c) (i) except as provided in Subsection (34)(c)(ii), is intended for ingestion in:
- 4241 (A) tablet form;
- 4242 (B) capsule form;
- 4243 (C) powder form;

- 4244 (D) softgel form;
- 4245 (E) gelcap form; or
- 4246 (F) liquid form; or
- 4247 (ii) if the product is not intended for ingestion in a form described in Subsections
- 4248 (34)(c)(i)(A) through (F), is not represented:
- 4249 (A) as conventional food; and
- 4250 (B) for use as a sole item of:
- 4251 (I) a meal; or
- 4252 (II) the diet; and
- 4253 (d) is required to be labeled as a dietary supplement:
- 4254 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 4255 (ii) as required by 21 C.F.R. Sec. 101.36.
- 4256 (35) "Digital audio-visual work" means a series of related images which, when shown
- 4257 in succession, imparts an impression of motion, together with accompanying sounds, if any.
- 4258 (36) (a) "Digital audio work" means a work that results from the fixation of a series of
- 4259 musical, spoken, or other sounds.
- 4260 (b) "Digital audio work" includes a ringtone.
- 4261 (37) "Digital book" means a work that is generally recognized in the ordinary and usual
- 4262 sense as a book.
- 4263 (38) (a) "Direct mail" means printed material delivered or distributed by United States
- 4264 mail or other delivery service:
- 4265 (i) to:
- 4266 (A) a mass audience; or
- 4267 (B) addressees on a mailing list provided:
- 4268 (I) by a purchaser of the mailing list; or
- 4269 (II) at the discretion of the purchaser of the mailing list; and
- 4270 (ii) if the cost of the printed material is not billed directly to the recipients.
- 4271 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a
- 4272 purchaser to a seller of direct mail for inclusion in a package containing the printed material.
- 4273 (c) "Direct mail" does not include multiple items of printed material delivered to a
- 4274 single address.

- 4275 (39) "Directory assistance" means an ancillary service of providing:  
4276 (a) address information; or  
4277 (b) telephone number information.
- 4278 (40) (a) "Disposable home medical equipment or supplies" means medical equipment  
4279 or supplies that:  
4280 (i) cannot withstand repeated use; and  
4281 (ii) are purchased by, for, or on behalf of a person other than:  
4282 (A) a health care facility as defined in Section 26-21-2;  
4283 (B) a health care provider as defined in Section 78B-3-403;  
4284 (C) an office of a health care provider described in Subsection (40)(a)(ii)(B); or  
4285 (D) a person similar to a person described in Subsections (40)(a)(ii)(A) through (C).  
4286 (b) "Disposable home medical equipment or supplies" does not include:  
4287 (i) a drug;  
4288 (ii) durable medical equipment;  
4289 (iii) a hearing aid;  
4290 (iv) a hearing aid accessory;  
4291 (v) mobility enhancing equipment; or  
4292 (vi) tangible personal property used to correct impaired vision, including:  
4293 (A) eyeglasses; or  
4294 (B) contact lenses.  
4295 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
4296 commission may by rule define what constitutes medical equipment or supplies.
- 4297 (41) "Drilling equipment manufacturer" means a facility:  
4298 (a) located in the state;  
4299 (b) with respect to which 51% or more of the manufacturing activities of the facility  
4300 consist of manufacturing component parts of drilling equipment;  
4301 (c) that uses pressure of 800,000 or more pounds per square inch as part of the  
4302 manufacturing process; and  
4303 (d) that uses a temperature of 2,000 or more degrees Fahrenheit as part of the  
4304 manufacturing process.
- 4305 (42) (a) "Drug" means a compound, substance, or preparation, or a component of a

- 4306 compound, substance, or preparation that is:
- 4307       (i) recognized in:
- 4308           (A) the official United States Pharmacopoeia;
- 4309           (B) the official Homeopathic Pharmacopoeia of the United States;
- 4310           (C) the official National Formulary; or
- 4311           (D) a supplement to a publication listed in Subsections (42)(a)(i)(A) through (C);
- 4312       (ii) intended for use in the:
- 4313           (A) diagnosis of disease;
- 4314           (B) cure of disease;
- 4315           (C) mitigation of disease;
- 4316           (D) treatment of disease; or
- 4317           (E) prevention of disease; or
- 4318       (iii) intended to affect:
- 4319           (A) the structure of the body; or
- 4320           (B) any function of the body.
- 4321       (b) "Drug" does not include:
- 4322           (i) food and food ingredients;
- 4323           (ii) a dietary supplement;
- 4324           (iii) an alcoholic beverage; or
- 4325           (iv) a prosthetic device.
- 4326       (43) (a) Except as provided in Subsection (43)(c), "durable medical equipment" means
- 4327 equipment that:
- 4328       (i) can withstand repeated use;
- 4329       (ii) is primarily and customarily used to serve a medical purpose;
- 4330       (iii) generally is not useful to a person in the absence of illness or injury; and
- 4331       (iv) is not worn in or on the body.
- 4332       (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 4333 equipment described in Subsection (43)(a).
- 4334       (c) "Durable medical equipment" does not include mobility enhancing equipment.
- 4335       (44) "Electronic" means:
- 4336       (a) relating to technology; and

- 4337 (b) having:
- 4338 (i) electrical capabilities;
- 4339 (ii) digital capabilities;
- 4340 (iii) magnetic capabilities;
- 4341 (iv) wireless capabilities;
- 4342 (v) optical capabilities;
- 4343 (vi) electromagnetic capabilities; or
- 4344 (vii) capabilities similar to Subsections (44)(b)(i) through (vi).
- 4345 (45) "Electronic financial payment service" means an establishment:
- 4346 (a) within NAICS Code 522320, Financial Transactions Processing, Reserve, and
- 4347 Clearinghouse Activities, of the 2012 North American Industry Classification System of the
- 4348 federal Executive Office of the President, Office of Management and Budget; and
- 4349 (b) that performs electronic financial payment services.
- 4350 (46) "Employee" means the same as that term is defined in Section [59-10-401](#).
- 4351 (47) "Fixed guideway" means a public transit facility that uses and occupies:
- 4352 (a) rail for the use of public transit; or
- 4353 (b) a separate right-of-way for the use of public transit.
- 4354 (48) "Fixed wing turbine powered aircraft" means an aircraft that:
- 4355 (a) is powered by turbine engines;
- 4356 (b) operates on jet fuel; and
- 4357 (c) has wings that are permanently attached to the fuselage of the aircraft.
- 4358 (49) "Fixed wireless service" means a telecommunications service that provides radio
- 4359 communication between fixed points.
- 4360 (50) (a) "Food and food ingredients" means substances:
- 4361 (i) regardless of whether the substances are in:
- 4362 (A) liquid form;
- 4363 (B) concentrated form;
- 4364 (C) solid form;
- 4365 (D) frozen form;
- 4366 (E) dried form; or
- 4367 (F) dehydrated form; and

- 4368 (ii) that are:
- 4369 (A) sold for:
- 4370 (I) ingestion by humans; or
- 4371 (II) chewing by humans; and
- 4372 (B) consumed for the substance's:
- 4373 (I) taste; or
- 4374 (II) nutritional value.
- 4375 (b) "Food and food ingredients" includes an item described in Subsection (91)(b)(iii).
- 4376 (c) "Food and food ingredients" does not include:
- 4377 (i) an alcoholic beverage;
- 4378 (ii) tobacco; or
- 4379 (iii) prepared food.
- 4380 (51) (a) "Fundraising sales" means sales:
- 4381 (i) (A) made by a school; or
- 4382 (B) made by a school student;
- 4383 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 4384 materials, or provide transportation; and
- 4385 (iii) that are part of an officially sanctioned school activity.
- 4386 (b) For purposes of Subsection (51)(a)(iii), "officially sanctioned school activity"
- 4387 means a school activity:
- 4388 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 4389 district governing the authorization and supervision of fundraising activities;
- 4390 (ii) that does not directly or indirectly compensate an individual teacher or other
- 4391 educational personnel by direct payment, commissions, or payment in kind; and
- 4392 (iii) the net or gross revenues from which are deposited in a dedicated account
- 4393 controlled by the school or school district.
- 4394 (52) "Geothermal energy" means energy contained in heat that continuously flows
- 4395 outward from the earth that is used as the sole source of energy to produce electricity.
- 4396 (53) "Governing board of the agreement" means the governing board of the agreement
- 4397 that is:
- 4398 (a) authorized to administer the agreement; and

- 4399 (b) established in accordance with the agreement.
- 4400 (54) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:
- 4401 (i) the executive branch of the state, including all departments, institutions, boards,
- 4402 divisions, bureaus, offices, commissions, and committees;
- 4403 (ii) the judicial branch of the state, including the courts, the Judicial Council, the
- 4404 Office of the Court Administrator, and similar administrative units in the judicial branch;
- 4405 (iii) the legislative branch of the state, including the House of Representatives, the
- 4406 Senate, the Legislative Printing Office, the Office of Legislative Research and General
- 4407 Counsel, the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal
- 4408 Analyst;
- 4409 (iv) the National Guard;
- 4410 (v) an independent entity as defined in Section 63E-1-102; or
- 4411 (vi) a political subdivision as defined in Section 17B-1-102.
- 4412 (b) "Governmental entity" does not include the state systems of public and higher
- 4413 education, including:
- 4414 (i) a school;
- 4415 (ii) the State Board of Education;
- 4416 (iii) the State Board of Regents; or
- 4417 (iv) an institution of higher education described in Section 53B-1-102.
- 4418 (55) "Hydroelectric energy" means water used as the sole source of energy to produce
- 4419 electricity.
- 4420 (56) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
- 4421 other fuels:
- 4422 (a) in mining or extraction of minerals;
- 4423 (b) in agricultural operations to produce an agricultural product up to the time of
- 4424 harvest or placing the agricultural product into a storage facility, including:
- 4425 (i) commercial greenhouses;
- 4426 (ii) irrigation pumps;
- 4427 (iii) farm machinery;
- 4428 (iv) implements of husbandry as defined in Section 41-1a-102 that are not registered
- 4429 under Title 41, Chapter 1a, Part 2, Registration; and

- 4430 (v) other farming activities;
- 4431 (c) in manufacturing tangible personal property at an establishment described in SIC
- 4432 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
- 4433 Executive Office of the President, Office of Management and Budget;
- 4434 (d) by a scrap recycler if:
- 4435 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 4436 one or more of the following items into prepared grades of processed materials for use in new
- 4437 products:
- 4438 (A) iron;
- 4439 (B) steel;
- 4440 (C) nonferrous metal;
- 4441 (D) paper;
- 4442 (E) glass;
- 4443 (F) plastic;
- 4444 (G) textile; or
- 4445 (H) rubber; and
- 4446 (ii) the new products under Subsection (56)(d)(i) would otherwise be made with
- 4447 nonrecycled materials; or
- 4448 (e) in producing a form of energy or steam described in Subsection 54-2-1(3)(a) by a
- 4449 cogeneration facility as defined in Section 54-2-1.
- 4450 (57) (a) Except as provided in Subsection (57)(b), "installation charge" means a charge
- 4451 for installing:
- 4452 (i) tangible personal property; or
- 4453 (ii) a product transferred electronically.
- 4454 (b) "Installation charge" does not include a charge for:
- 4455 (i) repairs or renovations of:
- 4456 (A) tangible personal property; or
- 4457 (B) a product transferred electronically; or
- 4458 (ii) attaching tangible personal property or a product transferred electronically:
- 4459 (A) to other tangible personal property; and
- 4460 (B) as part of a manufacturing or fabrication process.



4461 (58) "Institution of higher education" means an institution of higher education listed in  
4462 Section 53B-2-101.

4463 (59) (a) "Lease" or "rental" means a transfer of possession or control of tangible  
4464 personal property or a product transferred electronically for:

4465 (i) (A) a fixed term; or

4466 (B) an indeterminate term; and

4467 (ii) consideration.

4468 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the  
4469 amount of consideration may be increased or decreased by reference to the amount realized  
4470 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue  
4471 Code.

4472 (c) "Lease" or "rental" does not include:

4473 (i) a transfer of possession or control of property under a security agreement or  
4474 deferred payment plan that requires the transfer of title upon completion of the required  
4475 payments;

4476 (ii) a transfer of possession or control of property under an agreement that requires the  
4477 transfer of title:

4478 (A) upon completion of required payments; and

4479 (B) if the payment of an option price does not exceed the greater of:

4480 (I) \$100; or

4481 (II) 1% of the total required payments; or

4482 (iii) providing tangible personal property along with an operator for a fixed period of  
4483 time or an indeterminate period of time if the operator is necessary for equipment to perform as  
4484 designed.

4485 (d) For purposes of Subsection (59)(c)(iii), an operator is necessary for equipment to  
4486 perform as designed if the operator's duties exceed the:

4487 (i) set-up of tangible personal property;

4488 (ii) maintenance of tangible personal property; or

4489 (iii) inspection of tangible personal property.

4490 (60) "Life science establishment" means an establishment in this state that is classified  
4491 under the following NAICS codes of the 2007 North American Industry Classification System

4492 of the federal Executive Office of the President, Office of Management and Budget:

4493 (a) NAICS Code 33911, Medical Equipment and Supplies Manufacturing;

4494 (b) NAICS Code 334510, Electromedical and Electrotherapeutic Apparatus

4495 Manufacturing; or

4496 (c) NAICS Code 334517, Irradiation Apparatus Manufacturing.

4497 (61) "Life science research and development facility" means a facility owned, leased,  
4498 or rented by a life science establishment if research and development is performed in 51% or  
4499 more of the total area of the facility.

4500 (62) "Load and leave" means delivery to a purchaser by use of a tangible storage media  
4501 if the tangible storage media is not physically transferred to the purchaser.

4502 (63) "Local taxing jurisdiction" means a:

4503 (a) county that is authorized to impose an agreement sales and use tax;

4504 (b) city that is authorized to impose an agreement sales and use tax; or

4505 (c) town that is authorized to impose an agreement sales and use tax.

4506 (64) "Manufactured home" means the same as that term is defined in Section

4507 [15A-1-302](#).

4508 (65) "Manufacturing facility" means:

4509 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard

4510 Industrial Classification Manual of the federal Executive Office of the President, Office of  
4511 Management and Budget;

4512 (b) a scrap recycler if:

4513 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process  
4514 one or more of the following items into prepared grades of processed materials for use in new  
4515 products:

4516 (A) iron;

4517 (B) steel;

4518 (C) nonferrous metal;

4519 (D) paper;

4520 (E) glass;

4521 (F) plastic;

4522 (G) textile; or

- 4523 (H) rubber; and
- 4524 (ii) the new products under Subsection (65)(b)(i) would otherwise be made with
- 4525 nonrecycled materials; or
- 4526 (c) a cogeneration facility as defined in Section 54-2-1 if the cogeneration facility is
- 4527 placed in service on or after May 1, 2006.
- 4528 (66) "Member of the immediate family of the producer" means a person who is related
- 4529 to a producer described in Subsection 59-12-104(20)(a) as a:
- 4530 (a) child or stepchild, regardless of whether the child or stepchild is:
- 4531 (i) an adopted child or adopted stepchild; or
- 4532 (ii) a foster child or foster stepchild;
- 4533 (b) grandchild or stepgrandchild;
- 4534 (c) grandparent or stepgrandparent;
- 4535 (d) nephew or stepnephew;
- 4536 (e) niece or stepniece;
- 4537 (f) parent or stepparent;
- 4538 (g) sibling or stepsibling;
- 4539 (h) spouse;
- 4540 (i) person who is the spouse of a person described in Subsections (66)(a) through (g);
- 4541 or
- 4542 (j) person similar to a person described in Subsections (66)(a) through (i) as
- 4543 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah
- 4544 Administrative Rulemaking Act.
- 4545 (67) "Mobile home" means the same as that term is defined in Section 15A-1-302.
- 4546 (68) "Mobile telecommunications service" [~~is as~~] means the same as that term is
- 4547 defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
- 4548 (69) (a) "Mobile wireless service" means a telecommunications service, regardless of
- 4549 the technology used, if:
- 4550 (i) the origination point of the conveyance, routing, or transmission is not fixed;
- 4551 (ii) the termination point of the conveyance, routing, or transmission is not fixed; or
- 4552 (iii) the origination point described in Subsection (69)(a)(i) and the termination point
- 4553 described in Subsection (69)(a)(ii) are not fixed.

4554 (b) "Mobile wireless service" includes a telecommunications service that is provided  
4555 by a commercial mobile radio service provider.

4556 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
4557 commission may by rule define "commercial mobile radio service provider."

4558 (70) (a) Except as provided in Subsection (70)(c), "mobility enhancing equipment"  
4559 means equipment that is:

4560 (i) primarily and customarily used to provide or increase the ability to move from one  
4561 place to another;

4562 (ii) appropriate for use in a:

4563 (A) home; or

4564 (B) motor vehicle; and

4565 (iii) not generally used by persons with normal mobility.

4566 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of  
4567 the equipment described in Subsection (70)(a).

4568 (c) "Mobility enhancing equipment" does not include:

4569 (i) a motor vehicle;

4570 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor  
4571 vehicle manufacturer;

4572 (iii) durable medical equipment; or

4573 (iv) a prosthetic device.

4574 (71) "Model 1 seller" means a seller registered under the agreement that has selected a  
4575 certified service provider as the seller's agent to perform all of the seller's sales and use tax  
4576 functions for agreement sales and use taxes other than the seller's obligation under Section  
4577 [59-12-124](#) to remit a tax on the seller's own purchases.

4578 (72) "Model 2 seller" means a seller registered under the agreement that:

4579 (a) except as provided in Subsection (72)(b), has selected a certified automated system  
4580 to perform the seller's sales tax functions for agreement sales and use taxes; and

4581 (b) retains responsibility for remitting all of the sales tax:

4582 (i) collected by the seller; and

4583 (ii) to the appropriate local taxing jurisdiction.

4584 (73) (a) Subject to Subsection (73)(b), "model 3 seller" means a seller registered under

4585 the agreement that has:

4586 (i) sales in at least five states that are members of the agreement;

4587 (ii) total annual sales revenues of at least \$500,000,000;

4588 (iii) a proprietary system that calculates the amount of tax:

4589 (A) for an agreement sales and use tax; and

4590 (B) due to each local taxing jurisdiction; and

4591 (iv) entered into a performance agreement with the governing board of the agreement.

4592 (b) For purposes of Subsection (73)(a), "model 3 seller" includes an affiliated group of  
4593 sellers using the same proprietary system.

4594 (74) "Model 4 seller" means a seller that is registered under the agreement and is not a  
4595 model 1 seller, model 2 seller, or model 3 seller.

4596 (75) "Modular home" means a modular unit as defined in Section [15A-1-302](#).

4597 (76) "Motor vehicle" means the same as that term is defined in Section [41-1a-102](#).

4598 (77) "Oil sands" means impregnated bituminous sands that:

4599 (a) contain a heavy, thick form of petroleum that is released when heated, mixed with  
4600 other hydrocarbons, or otherwise treated;

4601 (b) yield mixtures of liquid hydrocarbon; and

4602 (c) require further processing other than mechanical blending before becoming finished  
4603 petroleum products.

4604 (78) "Oil shale" means a group of fine black to dark brown shales containing kerogen  
4605 material that yields petroleum upon heating and distillation.

4606 (79) "Optional computer software maintenance contract" means a computer software  
4607 maintenance contract that a customer is not obligated to purchase as a condition to the retail  
4608 sale of computer software.

4609 (80) (a) "Other fuels" means products that burn independently to produce heat or  
4610 energy.

4611 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible  
4612 personal property.

4613 (81) (a) "Paging service" means a telecommunications service that provides  
4614 transmission of a coded radio signal for the purpose of activating a specific pager.

4615 (b) For purposes of Subsection (81)(a), the transmission of a coded radio signal

4616 includes a transmission by message or sound.

4617 (82) "Pawnbroker" means the same as that term is defined in Section [13-32a-102](#).

4618 (83) "Pawn transaction" means the same as that term is defined in Section [13-32a-102](#).

4619 (84) (a) "Permanently attached to real property" means that for tangible personal  
4620 property attached to real property:

4621 (i) the attachment of the tangible personal property to the real property:

4622 (A) is essential to the use of the tangible personal property; and

4623 (B) suggests that the tangible personal property will remain attached to the real  
4624 property in the same place over the useful life of the tangible personal property; or

4625 (ii) if the tangible personal property is detached from the real property, the detachment  
4626 would:

4627 (A) cause substantial damage to the tangible personal property; or

4628 (B) require substantial alteration or repair of the real property to which the tangible  
4629 personal property is attached.

4630 (b) "Permanently attached to real property" includes:

4631 (i) the attachment of an accessory to the tangible personal property if the accessory is:

4632 (A) essential to the operation of the tangible personal property; and

4633 (B) attached only to facilitate the operation of the tangible personal property;

4634 (ii) a temporary detachment of tangible personal property from real property for a  
4635 repair or renovation if the repair or renovation is performed where the tangible personal  
4636 property and real property are located; or

4637 (iii) property attached to oil, gas, or water pipelines, except for the property listed in  
4638 Subsection (84)(c)(iii) or (iv).

4639 (c) "Permanently attached to real property" does not include:

4640 (i) the attachment of portable or movable tangible personal property to real property if  
4641 that portable or movable tangible personal property is attached to real property only for:

4642 (A) convenience;

4643 (B) stability; or

4644 (C) for an obvious temporary purpose;

4645 (ii) the detachment of tangible personal property from real property except for the  
4646 detachment described in Subsection (84)(b)(ii);

4647 (iii) an attachment of the following tangible personal property to real property if the  
4648 attachment to real property is only through a line that supplies water, electricity, gas,  
4649 telecommunications, cable, or supplies a similar item as determined by the commission by rule  
4650 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

4651 (A) a computer;

4652 (B) a telephone;

4653 (C) a television; or

4654 (D) tangible personal property similar to Subsections (84)(c)(iii)(A) through (C) as  
4655 determined by the commission by rule made in accordance with Title 63G, Chapter 3, Utah  
4656 Administrative Rulemaking Act; or

4657 (iv) an item listed in Subsection (125)(c).

4658 (85) "Person" includes any individual, firm, partnership, joint venture, association,  
4659 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,  
4660 municipality, district, or other local governmental entity of the state, or any group or  
4661 combination acting as a unit.

4662 (86) "Place of primary use":

4663 (a) for telecommunications service other than mobile telecommunications service,  
4664 means the street address representative of where the customer's use of the telecommunications  
4665 service primarily occurs, which shall be:

4666 (i) the residential street address of the customer; or

4667 (ii) the primary business street address of the customer; or

4668 (b) for mobile telecommunications service, [~~is as~~] means the same as that term is  
4669 defined in the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

4670 (87) (a) "Postpaid calling service" means a telecommunications service a person  
4671 obtains by making a payment on a call-by-call basis:

4672 (i) through the use of a:

4673 (A) bank card;

4674 (B) credit card;

4675 (C) debit card; or

4676 (D) travel card; or

4677 (ii) by a charge made to a telephone number that is not associated with the origination

4678 or termination of the telecommunications service.

4679 (b) "Postpaid calling service" includes a service, except for a prepaid wireless calling  
4680 service, that would be a prepaid wireless calling service if the service were exclusively a  
4681 telecommunications service.

4682 (88) "Postproduction" means an activity related to the finishing or duplication of a  
4683 medium described in Subsection 59-12-104(54)(a).

4684 (89) "Prepaid calling service" means a telecommunications service:

4685 (a) that allows a purchaser access to telecommunications service that is exclusively  
4686 telecommunications service;

4687 (b) that:

4688 (i) is paid for in advance; and

4689 (ii) enables the origination of a call using an:

4690 (A) access number; or

4691 (B) authorization code;

4692 (c) that is dialed:

4693 (i) manually; or

4694 (ii) electronically; and

4695 (d) sold in predetermined units or dollars that decline:

4696 (i) by a known amount; and

4697 (ii) with use.

4698 (90) "Prepaid wireless calling service" means a telecommunications service:

4699 (a) that provides the right to utilize:

4700 (i) mobile wireless service; and

4701 (ii) other service that is not a telecommunications service, including:

4702 (A) the download of a product transferred electronically;

4703 (B) a content service; or

4704 (C) an ancillary service;

4705 (b) that:

4706 (i) is paid for in advance; and

4707 (ii) enables the origination of a call using an:

4708 (A) access number; or



- 4709 (B) authorization code;
- 4710 (c) that is dialed:
- 4711 (i) manually; or
- 4712 (ii) electronically; and
- 4713 (d) sold in predetermined units or dollars that decline:
- 4714 (i) by a known amount; and
- 4715 (ii) with use.
- 4716 (91) (a) "Prepared food" means:
- 4717 (i) food:
- 4718 (A) sold in a heated state; or
- 4719 (B) heated by a seller;
- 4720 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 4721 item; or
- 4722 (iii) except as provided in Subsection (91)(c), food sold with an eating utensil provided
- 4723 by the seller, including a:
- 4724 (A) plate;
- 4725 (B) knife;
- 4726 (C) fork;
- 4727 (D) spoon;
- 4728 (E) glass;
- 4729 (F) cup;
- 4730 (G) napkin; or
- 4731 (H) straw.
- 4732 (b) "Prepared food" does not include:
- 4733 (i) food that a seller only:
- 4734 (A) cuts;
- 4735 (B) repackages; or
- 4736 (C) pasteurizes; or
- 4737 (ii) (A) the following:
- 4738 (I) raw egg;
- 4739 (II) raw fish;

- 4740 (III) raw meat;
- 4741 (IV) raw poultry; or
- 4742 (V) a food containing an item described in Subsections (91)(b)(ii)(A)(I) through (IV);
- 4743 and
- 4744 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the
- 4745 Food and Drug Administration's Food Code that a consumer cook the items described in
- 4746 Subsection (91)(b)(ii)(A) to prevent food borne illness; or
- 4747 (iii) the following if sold without eating utensils provided by the seller:
- 4748 (A) food and food ingredients sold by a seller if the seller's proper primary
- 4749 classification under the 2002 North American Industry Classification System of the federal
- 4750 Executive Office of the President, Office of Management and Budget, is manufacturing in
- 4751 Sector 311, Food Manufacturing, except for Subsector 3118, Bakeries and Tortilla
- 4752 Manufacturing;
- 4753 (B) food and food ingredients sold in an unheated state:
- 4754 (I) by weight or volume; and
- 4755 (II) as a single item; or
- 4756 (C) a bakery item, including:
- 4757 (I) a bagel;
- 4758 (II) a bar;
- 4759 (III) a biscuit;
- 4760 (IV) bread;
- 4761 (V) a bun;
- 4762 (VI) a cake;
- 4763 (VII) a cookie;
- 4764 (VIII) a croissant;
- 4765 (IX) a danish;
- 4766 (X) a donut;
- 4767 (XI) a muffin;
- 4768 (XII) a pastry;
- 4769 (XIII) a pie;
- 4770 (XIV) a roll;

- 4771 (XV) a tart;
- 4772 (XVI) a torte; or
- 4773 (XVII) a tortilla.
- 4774 (c) An eating utensil provided by the seller does not include the following used to
- 4775 transport the food:
  - 4776 (i) a container; or
  - 4777 (ii) packaging.
- 4778 (92) "Prescription" means an order, formula, or recipe that is issued:
  - 4779 (a) (i) orally;
  - 4780 (ii) in writing;
  - 4781 (iii) electronically; or
  - 4782 (iv) by any other manner of transmission; and
  - 4783 (b) by a licensed practitioner authorized by the laws of a state.
- 4784 (93) (a) Except as provided in Subsection (93)(b)(ii) or (iii), "prewritten computer
- 4785 software" means computer software that is not designed and developed:
  - 4786 (i) by the author or other creator of the computer software; and
  - 4787 (ii) to the specifications of a specific purchaser.
- 4788 (b) "Prewritten computer software" includes:
  - 4789 (i) a prewritten upgrade to computer software if the prewritten upgrade to the computer
  - 4790 software is not designed and developed:
    - 4791 (A) by the author or other creator of the computer software; and
    - 4792 (B) to the specifications of a specific purchaser;
  - 4793 (ii) computer software designed and developed by the author or other creator of the
  - 4794 computer software to the specifications of a specific purchaser if the computer software is sold
  - 4795 to a person other than the purchaser; or
  - 4796 (iii) except as provided in Subsection (93)(c), prewritten computer software or a
  - 4797 prewritten portion of prewritten computer software:
    - 4798 (A) that is modified or enhanced to any degree; and
    - 4799 (B) if the modification or enhancement described in Subsection (93)(b)(iii)(A) is
    - 4800 designed and developed to the specifications of a specific purchaser.
  - 4801 (c) "Prewritten computer software" does not include a modification or enhancement

4802 described in Subsection (93)(b)(iii) if the charges for the modification or enhancement are:

4803 (i) reasonable; and

4804 (ii) subject to Subsections [59-12-103\(2\)\(e\)\(ii\)](#) and [\(2\)\(f\)\(i\)](#), separately stated on the  
4805 invoice or other statement of price provided to the purchaser at the time of sale or later, as  
4806 demonstrated by:

4807 (A) the books and records the seller keeps at the time of the transaction in the regular  
4808 course of business, including books and records the seller keeps at the time of the transaction in  
4809 the regular course of business for nontax purposes;

4810 (B) a preponderance of the facts and circumstances at the time of the transaction; and

4811 (C) the understanding of all of the parties to the transaction.

4812 (94) (a) "Private communications service" means a telecommunications service:

4813 (i) that entitles a customer to exclusive or priority use of one or more communications  
4814 channels between or among termination points; and

4815 (ii) regardless of the manner in which the one or more communications channels are  
4816 connected.

4817 (b) "Private communications service" includes the following provided in connection  
4818 with the use of one or more communications channels:

4819 (i) an extension line;

4820 (ii) a station;

4821 (iii) switching capacity; or

4822 (iv) another associated service that is provided in connection with the use of one or  
4823 more communications channels as defined in Section [59-12-215](#).

4824 (95) (a) Except as provided in Subsection (95)(b), "product transferred electronically"  
4825 means a product transferred electronically that would be subject to a tax under this chapter if  
4826 that product was transferred in a manner other than electronically.

4827 (b) "Product transferred electronically" does not include:

4828 (i) an ancillary service;

4829 (ii) computer software; or

4830 (iii) a telecommunications service.

4831 (96) (a) "Prosthetic device" means a device that is worn on or in the body to:

4832 (i) artificially replace a missing portion of the body;

- 4833 (ii) prevent or correct a physical deformity or physical malfunction; or
- 4834 (iii) support a weak or deformed portion of the body.
- 4835 (b) "Prosthetic device" includes:
- 4836 (i) parts used in the repairs or renovation of a prosthetic device;
- 4837 (ii) replacement parts for a prosthetic device;
- 4838 (iii) a dental prosthesis; or
- 4839 (iv) a hearing aid.
- 4840 (c) "Prosthetic device" does not include:
- 4841 (i) corrective eyeglasses; or
- 4842 (ii) contact lenses.
- 4843 (97) (a) "Protective equipment" means an item:
- 4844 (i) for human wear; and
- 4845 (ii) that is:
- 4846 (A) designed as protection:
- 4847 (I) to the wearer against injury or disease; or
- 4848 (II) against damage or injury of other persons or property; and
- 4849 (B) not suitable for general use.
- 4850 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 4851 commission shall make rules:
- 4852 (i) listing the items that constitute "protective equipment"; and
- 4853 (ii) that are consistent with the list of items that constitute "protective equipment"
- 4854 under the agreement.
- 4855 (98) (a) For purposes of Subsection [59-12-104](#)(41), "publication" means any written or
- 4856 printed matter, other than a photocopy:
- 4857 (i) regardless of:
- 4858 (A) characteristics;
- 4859 (B) copyright;
- 4860 (C) form;
- 4861 (D) format;
- 4862 (E) method of reproduction; or
- 4863 (F) source; and

4864 (ii) made available in printed or electronic format.  
4865 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
4866 commission may by rule define the term "photocopy."  
4867 (99) (a) "Purchase price" and "sales price" mean the total amount of consideration:  
4868 (i) valued in money; and  
4869 (ii) for which tangible personal property, a product transferred electronically, or  
4870 services are:  
4871 (A) sold;  
4872 (B) leased; or  
4873 (C) rented.  
4874 (b) "Purchase price" and "sales price" include:  
4875 (i) the seller's cost of the tangible personal property, a product transferred  
4876 electronically, or services sold;  
4877 (ii) expenses of the seller, including:  
4878 (A) the cost of materials used;  
4879 (B) a labor cost;  
4880 (C) a service cost;  
4881 (D) interest;  
4882 (E) a loss;  
4883 (F) the cost of transportation to the seller; or  
4884 (G) a tax imposed on the seller;  
4885 (iii) a charge by the seller for any service necessary to complete the sale; or  
4886 (iv) consideration a seller receives from a person other than the purchaser if:  
4887 (A) (I) the seller actually receives consideration from a person other than the purchaser;  
4888 and  
4889 (II) the consideration described in Subsection (99)(b)(iv)(A)(I) is directly related to a  
4890 price reduction or discount on the sale;  
4891 (B) the seller has an obligation to pass the price reduction or discount through to the  
4892 purchaser;  
4893 (C) the amount of the consideration attributable to the sale is fixed and determinable by  
4894 the seller at the time of the sale to the purchaser; and

4895 (D) (I) (Aa) the purchaser presents a certificate, coupon, or other documentation to the  
4896 seller to claim a price reduction or discount; and

4897 (Bb) a person other than the seller authorizes, distributes, or grants the certificate,  
4898 coupon, or other documentation with the understanding that the person other than the seller  
4899 will reimburse any seller to whom the certificate, coupon, or other documentation is presented;

4900 (II) the purchaser identifies that purchaser to the seller as a member of a group or  
4901 organization allowed a price reduction or discount, except that a preferred customer card that is  
4902 available to any patron of a seller does not constitute membership in a group or organization  
4903 allowed a price reduction or discount; or

4904 (III) the price reduction or discount is identified as a third party price reduction or  
4905 discount on the:

4906 (Aa) invoice the purchaser receives; or

4907 (Bb) certificate, coupon, or other documentation the purchaser presents.

4908 (c) "Purchase price" and "sales price" do not include:

4909 (i) a discount:

4910 (A) in a form including:

4911 (I) cash;

4912 (II) term; or

4913 (III) coupon;

4914 (B) that is allowed by a seller;

4915 (C) taken by a purchaser on a sale; and

4916 (D) that is not reimbursed by a third party; or

4917 (ii) subject to Subsections 59-12-103(2)(e)(ii) and (2)(f)(i), the following if separately  
4918 stated on an invoice, bill of sale, or similar document provided to the purchaser at the time of  
4919 sale or later, as demonstrated by the books and records the seller keeps at the time of the  
4920 transaction in the regular course of business, including books and records the seller keeps at the  
4921 time of the transaction in the regular course of business for nontax purposes, by a  
4922 preponderance of the facts and circumstances at the time of the transaction, and by the  
4923 understanding of all of the parties to the transaction:

4924 (A) the following from credit extended on the sale of tangible personal property or  
4925 services:

- 4926 (I) a carrying charge;
- 4927 (II) a financing charge; or
- 4928 (III) an interest charge;
- 4929 (B) a delivery charge;
- 4930 (C) an installation charge;
- 4931 (D) a manufacturer rebate on a motor vehicle; or
- 4932 (E) a tax or fee legally imposed directly on the consumer.
- 4933 (100) "Purchaser" means a person to whom:
- 4934 (a) a sale of tangible personal property is made;
- 4935 (b) a product is transferred electronically; or
- 4936 (c) a service is furnished.
- 4937 (101) "Qualifying enterprise data center" means an establishment that will:
- 4938 (a) own and operate a data center facility that will house a group of networked server
- 4939 computers in one physical location in order to centralize the dissemination, management, and
- 4940 storage of data and information;
- 4941 (b) be located in the state;
- 4942 (c) be a new operation constructed on or after July 1, 2016;
- 4943 (d) consist of one or more buildings that total 150,000 or more square feet;
- 4944 (e) be owned or leased by:
- 4945 (i) the establishment; or
- 4946 (ii) a person under common ownership, as defined in Section 59-7-101, of the
- 4947 establishment; and
- 4948 (f) be located on one or more parcels of land that are owned or leased by:
- 4949 (i) the establishment; or
- 4950 (ii) a person under common ownership, as defined in Section 59-7-101, of the
- 4951 establishment.
- 4952 (102) "Regularly rented" means:
- 4953 (a) rented to a guest for value three or more times during a calendar year; or
- 4954 (b) advertised or held out to the public as a place that is regularly rented to guests for
- 4955 value.
- 4956 (103) "Rental" means the same as that term is defined in Subsection (59).



4957 (104) (a) Except as provided in Subsection (104)(b), "repairs or renovations of tangible  
4958 personal property" means:

4959 (i) a repair or renovation of tangible personal property that is not permanently attached  
4960 to real property; or

4961 (ii) attaching tangible personal property or a product transferred electronically to other  
4962 tangible personal property or detaching tangible personal property or a product transferred  
4963 electronically from other tangible personal property if:

4964 (A) the other tangible personal property to which the tangible personal property or  
4965 product transferred electronically is attached or from which the tangible personal property or  
4966 product transferred electronically is detached is not permanently attached to real property; and

4967 (B) the attachment of tangible personal property or a product transferred electronically  
4968 to other tangible personal property or detachment of tangible personal property or a product  
4969 transferred electronically from other tangible personal property is made in conjunction with a  
4970 repair or replacement of tangible personal property or a product transferred electronically.

4971 (b) "Repairs or renovations of tangible personal property" does not include:

4972 (i) attaching prewritten computer software to other tangible personal property if the  
4973 other tangible personal property to which the prewritten computer software is attached is not  
4974 permanently attached to real property; or

4975 (ii) detaching prewritten computer software from other tangible personal property if the  
4976 other tangible personal property from which the prewritten computer software is detached is  
4977 not permanently attached to real property.

4978 (105) "Research and development" means the process of inquiry or experimentation  
4979 aimed at the discovery of facts, devices, technologies, or applications and the process of  
4980 preparing those devices, technologies, or applications for marketing.

4981 (106) (a) "Residential telecommunications services" means a telecommunications  
4982 service or an ancillary service that is provided to an individual for personal use:

4983 (i) at a residential address; or

4984 (ii) at an institution, including a nursing home or a school, if the telecommunications  
4985 service or ancillary service is provided to and paid for by the individual residing at the  
4986 institution rather than the institution.

4987 (b) For purposes of Subsection (106)(a)(i), a residential address includes an:

4988 (i) apartment; or  
4989 (ii) other individual dwelling unit.  
4990 (107) "Residential use" means the use in or around a home, apartment building,  
4991 sleeping quarters, and similar facilities or accommodations.  
4992 (108) (a) "Retailer" means any person engaged in a regularly organized business in  
4993 tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and  
4994 who is selling to the user or consumer and not for resale.  
4995 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly  
4996 engaged in the business of selling to users or consumers within the state.  
4997 (109) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other  
4998 than:  
4999 (a) resale;  
5000 (b) sublease; or  
5001 (c) subrent.  
5002 (110) (a) "Sale" means any transfer of title, exchange, or barter, conditional or  
5003 otherwise, in any manner, of tangible personal property or any other taxable transaction under  
5004 Subsection 59-12-103(1), for consideration.  
5005 (b) "Sale" includes:  
5006 (i) installment and credit sales;  
5007 (ii) any closed transaction constituting a sale;  
5008 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this  
5009 chapter;  
5010 (iv) any transaction if the possession of property is transferred but the seller retains the  
5011 title as security for the payment of the price; and  
5012 (v) any transaction under which right to possession, operation, or use of any article of  
5013 tangible personal property is granted under a lease or contract and the transfer of possession  
5014 would be taxable if an outright sale were made.  
5015 (111) "Sale at retail" means the same as that term is defined in Subsection (109).  
5016 (112) "Sale-leaseback transaction" means a transaction by which title to tangible  
5017 personal property or a product transferred electronically that is subject to a tax under this  
5018 chapter is transferred:

- 5019 (a) by a purchaser-lessee;
- 5020 (b) to a lessor;
- 5021 (c) for consideration; and
- 5022 (d) if:
  - 5023 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
  - 5024 of the tangible personal property or product transferred electronically;
  - 5025 (ii) the sale of the tangible personal property or product transferred electronically to the
  - 5026 lessor is intended as a form of financing:
    - 5027 (A) for the tangible personal property or product transferred electronically; and
    - 5028 (B) to the purchaser-lessee; and
  - 5029 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee
  - 5030 is required to:
    - 5031 (A) capitalize the tangible personal property or product transferred electronically for
    - 5032 financial reporting purposes; and
    - 5033 (B) account for the lease payments as payments made under a financing arrangement.
- 5034 (113) "Sales price" means the same as that term is defined in Subsection (99).
- 5035 (114) (a) "Sales relating to schools" means the following sales by, amounts paid to, or
- 5036 amounts charged by a school:
  - 5037 (i) sales that are directly related to the school's educational functions or activities
  - 5038 including:
    - 5039 (A) the sale of:
      - 5040 (I) textbooks;
      - 5041 (II) textbook fees;
      - 5042 (III) laboratory fees;
      - 5043 (IV) laboratory supplies; or
      - 5044 (V) safety equipment;
    - 5045 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
  - 5046 that:
    - 5047 (I) a student is specifically required to wear as a condition of participation in a
    - 5048 school-related event or school-related activity; and
    - 5049 (II) is not readily adaptable to general or continued usage to the extent that it takes the

5050 place of ordinary clothing;

5051 (C) sales of the following if the net or gross revenues generated by the sales are

5052 deposited into a school district fund or school fund dedicated to school meals:

5053 (I) food and food ingredients; or

5054 (II) prepared food; or

5055 (D) transportation charges for official school activities; or

5056 (ii) amounts paid to or amounts charged by a school for admission to a school-related

5057 event or school-related activity.

5058 (b) "Sales relating to schools" does not include:

5059 (i) bookstore sales of items that are not educational materials or supplies;

5060 (ii) except as provided in Subsection (114)(a)(i)(B):

5061 (A) clothing;

5062 (B) clothing accessories or equipment;

5063 (C) protective equipment; or

5064 (D) sports or recreational equipment; or

5065 (iii) amounts paid to or amounts charged by a school for admission to a school-related

5066 event or school-related activity if the amounts paid or charged are passed through to a person:

5067 (A) other than a:

5068 (I) school;

5069 (II) nonprofit organization authorized by a school board or a governing body of a

5070 private school to organize and direct a competitive secondary school activity; or

5071 (III) nonprofit association authorized by a school board or a governing body of a

5072 private school to organize and direct a competitive secondary school activity; and

5073 (B) that is required to collect sales and use taxes under this chapter.

5074 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

5075 commission may make rules defining the term "passed through."

5076 (115) For purposes of this section and Section [59-12-104](#), "school":

5077 (a) means:

5078 (i) an elementary school or a secondary school that:

5079 (A) is a:

5080 (I) public school; or

- 5081 (II) private school; and
- 5082 (B) provides instruction for one or more grades kindergarten through 12; or
- 5083 (ii) a public school district; and
- 5084 (b) includes the Electronic High School as defined in Section [53A-15-1002](#).
- 5085 (116) "Seller" means a person that makes a sale, lease, or rental of:
- 5086 (a) tangible personal property;
- 5087 (b) a product transferred electronically; or
- 5088 (c) a service.
- 5089 (117) (a) "Semiconductor fabricating, processing, research, or development materials"
- 5090 means tangible personal property or a product transferred electronically if the tangible personal
- 5091 property or product transferred electronically is:
- 5092 (i) used primarily in the process of:
- 5093 (A) (I) manufacturing a semiconductor;
- 5094 (II) fabricating a semiconductor; or
- 5095 (III) research or development of a:
- 5096 (Aa) semiconductor; or
- 5097 (Bb) semiconductor manufacturing process; or
- 5098 (B) maintaining an environment suitable for a semiconductor; or
- 5099 (ii) consumed primarily in the process of:
- 5100 (A) (I) manufacturing a semiconductor;
- 5101 (II) fabricating a semiconductor; or
- 5102 (III) research or development of a:
- 5103 (Aa) semiconductor; or
- 5104 (Bb) semiconductor manufacturing process; or
- 5105 (B) maintaining an environment suitable for a semiconductor.
- 5106 (b) "Semiconductor fabricating, processing, research, or development materials"
- 5107 includes:
- 5108 (i) parts used in the repairs or renovations of tangible personal property or a product
- 5109 transferred electronically described in Subsection (117)(a); or
- 5110 (ii) a chemical, catalyst, or other material used to:
- 5111 (A) produce or induce in a semiconductor a:

- 5112 (I) chemical change; or
- 5113 (II) physical change;
- 5114 (B) remove impurities from a semiconductor; or
- 5115 (C) improve the marketable condition of a semiconductor.
- 5116 (118) "Senior citizen center" means a facility having the primary purpose of providing
- 5117 services to the aged as defined in Section [62A-3-101](#).
- 5118 (119) (a) Subject to Subsections (119)(b) and (c), "short-term lodging consumable"
- 5119 means tangible personal property that:
- 5120 (i) a business that provides accommodations and services described in Subsection
- 5121 [59-12-103](#)(1)(i) purchases as part of a transaction to provide the accommodations and services
- 5122 to a purchaser;
- 5123 (ii) is intended to be consumed by the purchaser; and
- 5124 (iii) is:
- 5125 (A) included in the purchase price of the accommodations and services; and
- 5126 (B) not separately stated on an invoice, bill of sale, or other similar document provided
- 5127 to the purchaser.
- 5128 (b) "Short-term lodging consumable" includes:
- 5129 (i) a beverage;
- 5130 (ii) a brush or comb;
- 5131 (iii) a cosmetic;
- 5132 (iv) a hair care product;
- 5133 (v) lotion;
- 5134 (vi) a magazine;
- 5135 (vii) makeup;
- 5136 (viii) a meal;
- 5137 (ix) mouthwash;
- 5138 (x) nail polish remover;
- 5139 (xi) a newspaper;
- 5140 (xii) a notepad;
- 5141 (xiii) a pen;
- 5142 (xiv) a pencil;

- 5143 (xv) a razor;
- 5144 (xvi) saline solution;
- 5145 (xvii) a sewing kit;
- 5146 (xviii) shaving cream;
- 5147 (xix) a shoe shine kit;
- 5148 (xx) a shower cap;
- 5149 (xxi) a snack item;
- 5150 (xxii) soap;
- 5151 (xxiii) toilet paper;
- 5152 (xxiv) a toothbrush;
- 5153 (xxv) toothpaste; or
- 5154 (xxvi) an item similar to Subsections (119)(b)(i) through (xxv) as the commission may
- 5155 provide by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 5156 Rulemaking Act.
- 5157 (c) "Short-term lodging consumable" does not include:
- 5158 (i) tangible personal property that is cleaned or washed to allow the tangible personal
- 5159 property to be reused; or
- 5160 (ii) a product transferred electronically.
- 5161 (120) "Simplified electronic return" means the electronic return:
- 5162 (a) described in Section 318(C) of the agreement; and
- 5163 (b) approved by the governing board of the agreement.
- 5164 (121) "Solar energy" means the sun used as the sole source of energy for producing
- 5165 electricity.
- 5166 (122) (a) "Sports or recreational equipment" means an item:
- 5167 (i) designed for human use; and
- 5168 (ii) that is:
- 5169 (A) worn in conjunction with:
- 5170 (I) an athletic activity; or
- 5171 (II) a recreational activity; and
- 5172 (B) not suitable for general use.
- 5173 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

5174 commission shall make rules:

- 5175 (i) listing the items that constitute "sports or recreational equipment"; and
- 5176 (ii) that are consistent with the list of items that constitute "sports or recreational
- 5177 equipment" under the agreement.

5178 (123) "State" means the state of Utah, its departments, and agencies.

5179 (124) "Storage" means any keeping or retention of tangible personal property or any  
5180 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except  
5181 sale in the regular course of business.

5182 (125) (a) Except as provided in Subsection (125)(d) or (e), "tangible personal property"  
5183 means personal property that:

5184 (i) may be:

5185 (A) seen;

5186 (B) weighed;

5187 (C) measured;

5188 (D) felt; or

5189 (E) touched; or

5190 (ii) is in any manner perceptible to the senses.

5191 (b) "Tangible personal property" includes:

5192 (i) electricity;

5193 (ii) water;

5194 (iii) gas;

5195 (iv) steam; or

5196 (v) prewritten computer software, regardless of the manner in which the prewritten  
5197 computer software is transferred.

5198 (c) "Tangible personal property" includes the following regardless of whether the item  
5199 is attached to real property:

5200 (i) a dishwasher;

5201 (ii) a dryer;

5202 (iii) a freezer;

5203 (iv) a microwave;

5204 (v) a refrigerator;



- 5205 (vi) a stove;
- 5206 (vii) a washer; or
- 5207 (viii) an item similar to Subsections (125)(c)(i) through (vii) as determined by the
- 5208 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 5209 Rulemaking Act.
- 5210 (d) "Tangible personal property" does not include a product that is transferred
- 5211 electronically.
- 5212 (e) "Tangible personal property" does not include the following if attached to real
- 5213 property, regardless of whether the attachment to real property is only through a line that
- 5214 supplies water, electricity, gas, telephone, cable, or supplies a similar item as determined by the
- 5215 commission by rule made in accordance with Title 63G, Chapter 3, Utah Administrative
- 5216 Rulemaking Act:
- 5217 (i) a hot water heater;
- 5218 (ii) a water filtration system; or
- 5219 (iii) a water softener system.
- 5220 (126) (a) "Telecommunications enabling or facilitating equipment, machinery, or
- 5221 software" means an item listed in Subsection (126)(b) if that item is purchased or leased
- 5222 primarily to enable or facilitate one or more of the following to function:
- 5223 (i) telecommunications switching or routing equipment, machinery, or software; or
- 5224 (ii) telecommunications transmission equipment, machinery, or software.
- 5225 (b) The following apply to Subsection (126)(a):
- 5226 (i) a pole;
- 5227 (ii) software;
- 5228 (iii) a supplementary power supply;
- 5229 (iv) temperature or environmental equipment or machinery;
- 5230 (v) test equipment;
- 5231 (vi) a tower; or
- 5232 (vii) equipment, machinery, or software that functions similarly to an item listed in
- 5233 Subsections (126)(b)(i) through (vi) as determined by the commission by rule made in
- 5234 accordance with Subsection (126)(c).
- 5235 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

5236 commission may by rule define what constitutes equipment, machinery, or software that  
5237 functions similarly to an item listed in Subsections (126)(b)(i) through (vi).

5238 (127) "Telecommunications equipment, machinery, or software required for 911  
5239 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.  
5240 Sec. 20.18.

5241 (128) "Telecommunications maintenance or repair equipment, machinery, or software"  
5242 means equipment, machinery, or software purchased or leased primarily to maintain or repair  
5243 one or more of the following, regardless of whether the equipment, machinery, or software is  
5244 purchased or leased as a spare part or as an upgrade or modification to one or more of the  
5245 following:

- 5246 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 5247 (b) telecommunications switching or routing equipment, machinery, or software; or
- 5248 (c) telecommunications transmission equipment, machinery, or software.

5249 (129) (a) "Telecommunications service" means the electronic conveyance, routing, or  
5250 transmission of audio, data, video, voice, or any other information or signal to a point, or  
5251 among or between points.

5252 (b) "Telecommunications service" includes:

5253 (i) an electronic conveyance, routing, or transmission with respect to which a computer  
5254 processing application is used to act:

5255 (A) on the code, form, or protocol of the content;

5256 (B) for the purpose of electronic conveyance, routing, or transmission; and

5257 (C) regardless of whether the service:

5258 (I) is referred to as voice over Internet protocol service; or

5259 (II) is classified by the Federal Communications Commission as enhanced or value

5260 added;

5261 (ii) an 800 service;

5262 (iii) a 900 service;

5263 (iv) a fixed wireless service;

5264 (v) a mobile wireless service;

5265 (vi) a postpaid calling service;

5266 (vii) a prepaid calling service;

- 5267 (viii) a prepaid wireless calling service; or  
5268 (ix) a private communications service.
- 5269 (c) "Telecommunications service" does not include:
- 5270 (i) advertising, including directory advertising;  
5271 (ii) an ancillary service;  
5272 (iii) a billing and collection service provided to a third party;  
5273 (iv) a data processing and information service if:  
5274 (A) the data processing and information service allows data to be:  
5275 (I) (Aa) acquired;  
5276 (Bb) generated;  
5277 (Cc) processed;  
5278 (Dd) retrieved; or  
5279 (Ee) stored; and  
5280 (II) delivered by an electronic transmission to a purchaser; and  
5281 (B) the purchaser's primary purpose for the underlying transaction is the processed data  
5282 or information;
- 5283 (v) installation or maintenance of the following on a customer's premises:  
5284 (A) equipment; or  
5285 (B) wiring;
- 5286 (vi) Internet access service;
- 5287 (vii) a paging service;
- 5288 (viii) a product transferred electronically, including:  
5289 (A) music;  
5290 (B) reading material;  
5291 (C) a ring tone;  
5292 (D) software; or  
5293 (E) video;
- 5294 (ix) a radio and television audio and video programming service:  
5295 (A) regardless of the medium; and  
5296 (B) including:  
5297 (I) furnishing conveyance, routing, or transmission of a television audio and video

5298 programming service by a programming service provider;

5299       (II) cable service as defined in 47 U.S.C. Sec. 522(6); or

5300       (III) audio and video programming services delivered by a commercial mobile radio

5301 service provider as defined in 47 C.F.R. Sec. 20.3;

5302       (x) a value-added nonvoice data service; or

5303       (xi) tangible personal property.

5304       (130) (a) "Telecommunications service provider" means a person that:

5305       (i) owns, controls, operates, or manages a telecommunications service; and

5306       (ii) engages in an activity described in Subsection (130)(a)(i) for the shared use with or

5307 resale to any person of the telecommunications service.

5308       (b) A person described in Subsection (130)(a) is a telecommunications service provider

5309 whether or not the Public Service Commission of Utah regulates:

5310       (i) that person; or

5311       (ii) the telecommunications service that the person owns, controls, operates, or

5312 manages.

5313       (131) (a) "Telecommunications switching or routing equipment, machinery, or

5314 software" means an item listed in Subsection (131)(b) if that item is purchased or leased

5315 primarily for switching or routing:

5316       (i) an ancillary service;

5317       (ii) data communications;

5318       (iii) voice communications; or

5319       (iv) telecommunications service.

5320       (b) The following apply to Subsection (131)(a):

5321       (i) a bridge;

5322       (ii) a computer;

5323       (iii) a cross connect;

5324       (iv) a modem;

5325       (v) a multiplexer;

5326       (vi) plug in circuitry;

5327       (vii) a router;

5328       (viii) software;

- 5329 (ix) a switch; or
- 5330 (x) equipment, machinery, or software that functions similarly to an item listed in
- 5331 Subsections (131)(b)(i) through (ix) as determined by the commission by rule made in
- 5332 accordance with Subsection (131)(c).
- 5333 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 5334 commission may by rule define what constitutes equipment, machinery, or software that
- 5335 functions similarly to an item listed in Subsections (131)(b)(i) through (ix).
- 5336 (132) (a) "Telecommunications transmission equipment, machinery, or software"
- 5337 means an item listed in Subsection (132)(b) if that item is purchased or leased primarily for
- 5338 sending, receiving, or transporting:
  - 5339 (i) an ancillary service;
  - 5340 (ii) data communications;
  - 5341 (iii) voice communications; or
  - 5342 (iv) telecommunications service.
- 5343 (b) The following apply to Subsection (132)(a):
  - 5344 (i) an amplifier;
  - 5345 (ii) a cable;
  - 5346 (iii) a closure;
  - 5347 (iv) a conduit;
  - 5348 (v) a controller;
  - 5349 (vi) a duplexer;
  - 5350 (vii) a filter;
  - 5351 (viii) an input device;
  - 5352 (ix) an input/output device;
  - 5353 (x) an insulator;
  - 5354 (xi) microwave machinery or equipment;
  - 5355 (xii) an oscillator;
  - 5356 (xiii) an output device;
  - 5357 (xiv) a pedestal;
  - 5358 (xv) a power converter;
  - 5359 (xvi) a power supply;

5360 (xvii) a radio channel;  
5361 (xviii) a radio receiver;  
5362 (xix) a radio transmitter;  
5363 (xx) a repeater;  
5364 (xxi) software;  
5365 (xxii) a terminal;  
5366 (xxiii) a timing unit;  
5367 (xxiv) a transformer;  
5368 (xxv) a wire; or  
5369 (xxvi) equipment, machinery, or software that functions similarly to an item listed in  
5370 Subsections (132)(b)(i) through (xxv) as determined by the commission by rule made in  
5371 accordance with Subsection (132)(c).

5372 (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
5373 commission may by rule define what constitutes equipment, machinery, or software that  
5374 functions similarly to an item listed in Subsections (132)(b)(i) through (xxv).

5375 (133) (a) "Textbook for a higher education course" means a textbook or other printed  
5376 material that is required for a course:

- 5377 (i) offered by an institution of higher education; and
- 5378 (ii) that the purchaser of the textbook or other printed material attends or will attend.
- 5379 (b) "Textbook for a higher education course" includes a textbook in electronic format.

5380 (134) "Tobacco" means:

- 5381 (a) a cigarette;
- 5382 (b) a cigar;
- 5383 (c) chewing tobacco;
- 5384 (d) pipe tobacco; or
- 5385 (e) any other item that contains tobacco.

5386 (135) "Unassisted amusement device" means an amusement device, skill device, or  
5387 ride device that is started and stopped by the purchaser or renter of the right to use or operate  
5388 the amusement device, skill device, or ride device.

5389 (136) (a) "Use" means the exercise of any right or power over tangible personal  
5390 property, a product transferred electronically, or a service under Subsection [59-12-103\(1\)](#),

5391 incident to the ownership or the leasing of that tangible personal property, product transferred  
5392 electronically, or service.

5393 (b) "Use" does not include the sale, display, demonstration, or trial of tangible personal  
5394 property, a product transferred electronically, or a service in the regular course of business and  
5395 held for resale.

5396 (137) "Value-added nonvoice data service" means a service:

5397 (a) that otherwise meets the definition of a telecommunications service except that a  
5398 computer processing application is used to act primarily for a purpose other than conveyance,  
5399 routing, or transmission; and

5400 (b) with respect to which a computer processing application is used to act on data or  
5401 information:

5402 (i) code;

5403 (ii) content;

5404 (iii) form; or

5405 (iv) protocol.

5406 (138) (a) Subject to Subsection (138)(b), "vehicle" means the following that are  
5407 required to be titled, registered, or titled and registered:

5408 (i) an aircraft as defined in Section [72-10-102](#);

5409 (ii) a vehicle as defined in Section [41-1a-102](#);

5410 (iii) an off-highway vehicle as defined in Section [41-22-2](#); or

5411 (iv) a vessel as defined in Section [41-1a-102](#).

5412 (b) For purposes of Subsection [59-12-104\(33\)](#) only, "vehicle" includes:

5413 (i) a vehicle described in Subsection (138)(a); or

5414 (ii) (A) a locomotive;

5415 (B) a freight car;

5416 (C) railroad work equipment; or

5417 (D) other railroad rolling stock.

5418 (139) "Vehicle dealer" means a person engaged in the business of buying, selling, or  
5419 exchanging a vehicle as defined in Subsection (138).

5420 (140) (a) "Vertical service" means an ancillary service that:

5421 (i) is offered in connection with one or more telecommunications services; and

5422 (ii) offers an advanced calling feature that allows a customer to:

5423 (A) identify a caller; and

5424 (B) manage multiple calls and call connections.

5425 (b) "Vertical service" includes an ancillary service that allows a customer to manage a  
5426 conference bridging service.

5427 (141) (a) "Voice mail service" means an ancillary service that enables a customer to  
5428 receive, send, or store a recorded message.

5429 (b) "Voice mail service" does not include a vertical service that a customer is required  
5430 to have in order to utilize a voice mail service.

5431 (142) (a) Except as provided in Subsection (142)(b), "waste energy facility" means a  
5432 facility that generates electricity:

5433 (i) using as the primary source of energy waste materials that would be placed in a  
5434 landfill or refuse pit if it were not used to generate electricity, including:

5435 (A) tires;

5436 (B) waste coal;

5437 (C) oil shale; or

5438 (D) municipal solid waste; and

5439 (ii) in amounts greater than actually required for the operation of the facility.

5440 (b) "Waste energy facility" does not include a facility that incinerates:

5441 (i) hospital waste as defined in 40 C.F.R. 60.51c; or

5442 (ii) medical/infectious waste as defined in 40 C.F.R. 60.51c.

5443 (143) "Watercraft" means a vessel as defined in Section [73-18-2](#).

5444 (144) "Wind energy" means wind used as the sole source of energy to produce  
5445 electricity.

5446 (145) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic  
5447 location by the United States Postal Service.

5448 Section 56. Section **59-12-104** is amended to read:

5449 **59-12-104. Exemptions.**

5450 Exemptions from the taxes imposed by this chapter are as follows:

5451 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax  
5452 under Chapter 13, Motor and Special Fuel Tax Act;



5453 (2) subject to Section 59-12-104.6, sales to the state, its institutions, and its political  
5454 subdivisions; however, this exemption does not apply to sales of:

5455 (a) construction materials except:

5456 (i) construction materials purchased by or on behalf of institutions of the public  
5457 education system as defined in Utah Constitution, Article X, Section 2, provided the  
5458 construction materials are clearly identified and segregated and installed or converted to real  
5459 property which is owned by institutions of the public education system; and

5460 (ii) construction materials purchased by the state, its institutions, or its political  
5461 subdivisions which are installed or converted to real property by employees of the state, its  
5462 institutions, or its political subdivisions; or

5463 (b) tangible personal property in connection with the construction, operation,  
5464 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities  
5465 providing additional project capacity, as defined in Section 11-13-103;

5466 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:

5467 (i) the proceeds of each sale do not exceed \$1; and

5468 (ii) the seller or operator of the vending machine reports an amount equal to 150% of  
5469 the cost of the item described in Subsection (3)(b) as goods consumed; and

5470 (b) Subsection (3)(a) applies to:

5471 (i) food and food ingredients; or

5472 (ii) prepared food;

5473 (4) (a) sales of the following to a commercial airline carrier for in-flight consumption:

5474 (i) alcoholic beverages;

5475 (ii) food and food ingredients; or

5476 (iii) prepared food;

5477 (b) sales of tangible personal property or a product transferred electronically:

5478 (i) to a passenger;

5479 (ii) by a commercial airline carrier; and

5480 (iii) during a flight for in-flight consumption or in-flight use by the passenger; or

5481 (c) services related to Subsection (4)(a) or (b);

5482 (5) (a) (i) beginning on July 1, 2008, and ending on September 30, 2008, sales of parts  
5483 and equipment:

5484 (A) (I) by an establishment described in NAICS Code 336411 or 336412 of the 2002  
5485 North American Industry Classification System of the federal Executive Office of the  
5486 President, Office of Management and Budget; and

5487 (II) for:

5488 (Aa) installation in an aircraft, including services relating to the installation of parts or  
5489 equipment in the aircraft;

5490 (Bb) renovation of an aircraft; or

5491 (Cc) repair of an aircraft; or

5492 (B) for installation in an aircraft operated by a common carrier in interstate or foreign  
5493 commerce; or

5494 (ii) beginning on October 1, 2008, sales of parts and equipment for installation in an  
5495 aircraft operated by a common carrier in interstate or foreign commerce; and

5496 (b) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,  
5497 a person may claim the exemption allowed by Subsection (5)(a)(i)(B) for a sale by filing for a  
5498 refund:

5499 (i) if the sale is made on or after July 1, 2008, but on or before September 30, 2008;

5500 (ii) as if Subsection (5)(a)(i)(B) were in effect on the day on which the sale is made;

5501 (iii) if the person did not claim the exemption allowed by Subsection (5)(a)(i)(B) for  
5502 the sale prior to filing for the refund;

5503 (iv) for sales and use taxes paid under this chapter on the sale;

5504 (v) in accordance with Section 59-1-1410; and

5505 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if  
5506 the person files for the refund on or before September 30, 2011;

5507 (6) sales of commercials, motion picture films, prerecorded audio program tapes or  
5508 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture  
5509 exhibitor, distributor, or commercial television or radio broadcaster;

5510 (7) (a) except as provided in Subsection (88) and subject to Subsection (7)(b), sales of  
5511 cleaning or washing of tangible personal property if the cleaning or washing of the tangible  
5512 personal property is not assisted cleaning or washing of tangible personal property;

5513 (b) if a seller that sells at the same business location assisted cleaning or washing of  
5514 tangible personal property and cleaning or washing of tangible personal property that is not

5515 assisted cleaning or washing of tangible personal property, the exemption described in  
5516 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning  
5517 or washing of the tangible personal property; and

5518 (c) for purposes of Subsection (7)(b) and in accordance with Title 63G, Chapter 3,  
5519 Utah Administrative Rulemaking Act, the commission may make rules:

5520 (i) governing the circumstances under which sales are at the same business location;  
5521 and

5522 (ii) establishing the procedures and requirements for a seller to separately account for  
5523 sales of assisted cleaning or washing of tangible personal property;

5524 (8) sales made to or by religious or charitable institutions in the conduct of their regular  
5525 religious or charitable functions and activities, if the requirements of Section [59-12-104.1](#) are  
5526 fulfilled;

5527 (9) sales of a vehicle of a type required to be registered under the motor vehicle laws of  
5528 this state if the vehicle is:

5529 (a) not registered in this state; and

5530 (b) (i) not used in this state; or

5531 (ii) used in this state:

5532 (A) if the vehicle is not used to conduct business, for a time period that does not  
5533 exceed the longer of:

5534 (I) 30 days in any calendar year; or

5535 (II) the time period necessary to transport the vehicle to the borders of this state; or

5536 (B) if the vehicle is used to conduct business, for the time period necessary to transport  
5537 the vehicle to the borders of this state;

5538 (10) (a) amounts paid for an item described in Subsection (10)(b) if:

5539 (i) the item is intended for human use; and

5540 (ii) (A) a prescription was issued for the item; or

5541 (B) the item was purchased by a hospital or other medical facility; and

5542 (b) (i) Subsection (10)(a) applies to:

5543 (A) a drug;

5544 (B) a syringe; or

5545 (C) a stoma supply; and

5546 (ii) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
5547 commission may by rule define the terms:

5548 (A) "syringe"; or

5549 (B) "stoma supply";

5550 (11) purchases or leases exempt under Section 19-12-201;

5551 (12) (a) sales of an item described in Subsection (12)(c) served by:

5552 (i) the following if the item described in Subsection (12)(c) is not available to the  
5553 general public:

5554 (A) a church; or

5555 (B) a charitable institution;

5556 (ii) an institution of higher education if:

5557 (A) the item described in Subsection (12)(c) is not available to the general public; or

5558 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan  
5559 offered by the institution of higher education; or

5560 (b) sales of an item described in Subsection (12)(c) provided for a patient by:

5561 (i) a medical facility; or

5562 (ii) a nursing facility; and

5563 (c) Subsections (12)(a) and (b) apply to:

5564 (i) food and food ingredients;

5565 (ii) prepared food; or

5566 (iii) alcoholic beverages;

5567 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property  
5568 or a product transferred electronically by a person:

5569 (i) regardless of the number of transactions involving the sale of that tangible personal  
5570 property or product transferred electronically by that person; and

5571 (ii) not regularly engaged in the business of selling that type of tangible personal  
5572 property or product transferred electronically;

5573 (b) this Subsection (13) does not apply if:

5574 (i) the sale is one of a series of sales of a character to indicate that the person is  
5575 regularly engaged in the business of selling that type of tangible personal property or product  
5576 transferred electronically;

5577 (ii) the person holds that person out as regularly engaged in the business of selling that  
5578 type of tangible personal property or product transferred electronically;

5579 (iii) the person sells an item of tangible personal property or product transferred  
5580 electronically that the person purchased as a sale that is exempt under Subsection (25); or

5581 (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of  
5582 this state in which case the tax is based upon:

5583 (A) the bill of sale or other written evidence of value of the vehicle or vessel being  
5584 sold; or

5585 (B) in the absence of a bill of sale or other written evidence of value, the fair market  
5586 value of the vehicle or vessel being sold at the time of the sale as determined by the  
5587 commission; and

5588 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
5589 commission shall make rules establishing the circumstances under which:

5590 (i) a person is regularly engaged in the business of selling a type of tangible personal  
5591 property or product transferred electronically;

5592 (ii) a sale of tangible personal property or a product transferred electronically is one of  
5593 a series of sales of a character to indicate that a person is regularly engaged in the business of  
5594 selling that type of tangible personal property or product transferred electronically; or

5595 (iii) a person holds that person out as regularly engaged in the business of selling a type  
5596 of tangible personal property or product transferred electronically;

5597 (14) amounts paid or charged for a purchase or lease of machinery, equipment, or  
5598 normal operating repair or replacement parts with an economic life of three or more years by:

5599 (a) a manufacturing facility, except as provided in Subsection (86), that:

5600 (i) is located in the state; and

5601 (ii) uses the machinery, equipment, or normal operating repair or replacement parts:

5602 (A) in the manufacturing process to manufacture an item sold as tangible personal  
5603 property, as the commission may define that phrase in accordance with Title 63G, Chapter 3,  
5604 Utah Administrative Rulemaking Act; or

5605 (B) for a scrap recycler, to process an item sold as tangible personal property, as the  
5606 commission may define that phrase in accordance with Title 63G, Chapter 3, Utah  
5607 Administrative Rulemaking Act;

5608 (b) an establishment, as the commission defines that term in accordance with Title 63G,  
5609 Chapter 3, Utah Administrative Rulemaking Act, that:

5610 (i) is described in NAICS Subsector 212, Mining (except Oil and Gas), or NAICS  
5611 Code 213113, Support Activities for Coal Mining, 213114, Support Activities for Metal  
5612 Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining, of the  
5613 2002 North American Industry Classification System of the federal Executive Office of the  
5614 President, Office of Management and Budget;

5615 (ii) is located in the state; and

5616 (iii) uses the machinery, equipment, or normal operating repair or replacement parts in:

5617 (A) the production process to produce an item sold as tangible personal property, as the  
5618 commission may define that phrase in accordance with Title 63G, Chapter 3, Utah  
5619 Administrative Rulemaking Act;

5620 (B) research and development, as the commission may define that phrase in accordance  
5621 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

5622 (C) transporting, storing, or managing tailings, overburden, or similar waste materials  
5623 produced from mining;

5624 (D) developing or maintaining a road, tunnel, excavation, or similar feature used in  
5625 mining; or

5626 (E) preventing, controlling, or reducing dust or other pollutants from mining; or

5627 (c) an establishment, as the commission defines that term in accordance with Title 63G,  
5628 Chapter 3, Utah Administrative Rulemaking Act, that:

5629 (i) is described in NAICS Code 518112, Web Search Portals, of the 2002 North  
5630 American Industry Classification System of the federal Executive Office of the President,  
5631 Office of Management and Budget;

5632 (ii) is located in the state; and

5633 (iii) uses the machinery, equipment, or normal operating repair or replacement parts in  
5634 the operation of the web search portal;

5635 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:

5636 (i) tooling;

5637 (ii) special tooling;

5638 (iii) support equipment;

5639 (iv) special test equipment; or  
5640 (v) parts used in the repairs or renovations of tooling or equipment described in  
5641 Subsections (15)(a)(i) through (iv); and  
5642 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:  
5643 (i) the tooling, equipment, or parts are used or consumed exclusively in the  
5644 performance of any aerospace or electronics industry contract with the United States  
5645 government or any subcontract under that contract; and  
5646 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),  
5647 title to the tooling, equipment, or parts is vested in the United States government as evidenced  
5648 by:  
5649 (A) a government identification tag placed on the tooling, equipment, or parts; or  
5650 (B) listing on a government-approved property record if placing a government  
5651 identification tag on the tooling, equipment, or parts is impractical;  
5652 (16) sales of newspapers or newspaper subscriptions;  
5653 (17) (a) except as provided in Subsection (17)(b), tangible personal property or a  
5654 product transferred electronically traded in as full or part payment of the purchase price, except  
5655 that for purposes of calculating sales or use tax upon vehicles not sold by a vehicle dealer,  
5656 trade-ins are limited to other vehicles only, and the tax is based upon:  
5657 (i) the bill of sale or other written evidence of value of the vehicle being sold and the  
5658 vehicle being traded in; or  
5659 (ii) in the absence of a bill of sale or other written evidence of value, the then existing  
5660 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the  
5661 commission; and  
5662 (b) Subsection (17)(a) does not apply to the following items of tangible personal  
5663 property or products transferred electronically traded in as full or part payment of the purchase  
5664 price:  
5665 (i) money;  
5666 (ii) electricity;  
5667 (iii) water;  
5668 (iv) gas; or  
5669 (v) steam;

5670 (18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property  
5671 or a product transferred electronically used or consumed primarily and directly in farming  
5672 operations, regardless of whether the tangible personal property or product transferred  
5673 electronically:

5674 (A) becomes part of real estate; or

5675 (B) is installed by a:

5676 (I) farmer;

5677 (II) contractor; or

5678 (III) subcontractor; or

5679 (ii) sales of parts used in the repairs or renovations of tangible personal property or a  
5680 product transferred electronically if the tangible personal property or product transferred  
5681 electronically is exempt under Subsection (18)(a)(i); and

5682 (b) amounts paid or charged for the following are subject to the taxes imposed by this  
5683 chapter:

5684 (i) (A) subject to Subsection (18)(b)(i)(B), the following if used in a manner that is  
5685 incidental to farming:

5686 (I) machinery;

5687 (II) equipment;

5688 (III) materials; or

5689 (IV) supplies; and

5690 (B) tangible personal property that is considered to be used in a manner that is  
5691 incidental to farming includes:

5692 (I) hand tools; or

5693 (II) maintenance and janitorial equipment and supplies;

5694 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property or a product  
5695 transferred electronically if the tangible personal property or product transferred electronically  
5696 is used in an activity other than farming; and

5697 (B) tangible personal property or a product transferred electronically that is considered  
5698 to be used in an activity other than farming includes:

5699 (I) office equipment and supplies; or

5700 (II) equipment and supplies used in:



- 5701 (Aa) the sale or distribution of farm products;
- 5702 (Bb) research; or
- 5703 (Cc) transportation; or
- 5704 (iii) a vehicle required to be registered by the laws of this state during the period
- 5705 ending two years after the date of the vehicle's purchase;
- 5706 (19) sales of hay;
- 5707 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or
- 5708 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or
- 5709 garden, farm, or other agricultural produce is sold by:
- 5710 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other
- 5711 agricultural produce;
- 5712 (b) an employee of the producer described in Subsection (20)(a); or
- 5713 (c) a member of the immediate family of the producer described in Subsection (20)(a);
- 5714 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
- 5715 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;
- 5716 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
- 5717 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
- 5718 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
- 5719 manufacturer, processor, wholesaler, or retailer;
- 5720 (23) a product stored in the state for resale;
- 5721 (24) (a) purchases of a product if:
- 5722 (i) the product is:
- 5723 (A) purchased outside of this state;
- 5724 (B) brought into this state:
- 5725 (I) at any time after the purchase described in Subsection (24)(a)(i)(A); and
- 5726 (II) by a nonresident person who is not living or working in this state at the time of the
- 5727 purchase;
- 5728 (C) used for the personal use or enjoyment of the nonresident person described in
- 5729 Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and
- 5730 (D) not used in conducting business in this state; and
- 5731 (ii) for:

5732 (A) a product other than a boat described in Subsection (24)(a)(ii)(B), the first use of  
5733 the product for a purpose for which the product is designed occurs outside of this state;  
5734 (B) a boat, the boat is registered outside of this state; or  
5735 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered  
5736 outside of this state;

5737 (b) the exemption provided for in Subsection (24)(a) does not apply to:  
5738 (i) a lease or rental of a product; or  
5739 (ii) a sale of a vehicle exempt under Subsection (33); and  
5740 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for  
5741 purposes of Subsection (24)(a), the commission may by rule define what constitutes the  
5742 following:

5743 (i) conducting business in this state if that phrase has the same meaning in this  
5744 Subsection (24) as in Subsection (63);  
5745 (ii) the first use of a product if that phrase has the same meaning in this Subsection (24)  
5746 as in Subsection (63); or  
5747 (iii) a purpose for which a product is designed if that phrase has the same meaning in  
5748 this Subsection (24) as in Subsection (63);

5749 (25) a product purchased for resale in this state, in the regular course of business, either  
5750 in its original form or as an ingredient or component part of a manufactured or compounded  
5751 product;

5752 (26) a product upon which a sales or use tax was paid to some other state, or one of its  
5753 subdivisions, except that the state shall be paid any difference between the tax paid and the tax  
5754 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if  
5755 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax  
5756 Act;

5757 (27) any sale of a service described in Subsections [59-12-103](#)(1)(b), (c), and (d) to a  
5758 person for use in compounding a service taxable under the subsections;

5759 (28) purchases made in accordance with the special supplemental nutrition program for  
5760 women, infants, and children established in 42 U.S.C. Sec. 1786;

5761 (29) sales or leases of rolls, rollers, refractory brick, electric motors, or other  
5762 replacement parts used in the furnaces, mills, or ovens of a steel mill described in SIC Code

5763 3312 of the 1987 Standard Industrial Classification Manual of the federal Executive Office of  
5764 the President, Office of Management and Budget;

5765 (30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State  
5766 Boating Act, a boat trailer, or an outboard motor if the boat, boat trailer, or outboard motor is:  
5767 (a) not registered in this state; and  
5768 (b) (i) not used in this state; or  
5769 (ii) used in this state:  
5770 (A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a  
5771 time period that does not exceed the longer of:  
5772 (I) 30 days in any calendar year; or  
5773 (II) the time period necessary to transport the boat, boat trailer, or outboard motor to  
5774 the borders of this state; or  
5775 (B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time  
5776 period necessary to transport the boat, boat trailer, or outboard motor to the borders of this  
5777 state;

5778 (31) sales of aircraft manufactured in Utah;

5779 (32) amounts paid for the purchase of telecommunications service for purposes of  
5780 providing telecommunications service;

5781 (33) sales, leases, or uses of the following:  
5782 (a) a vehicle by an authorized carrier; or  
5783 (b) tangible personal property that is installed on a vehicle:  
5784 (i) sold or leased to or used by an authorized carrier; and  
5785 (ii) before the vehicle is placed in service for the first time;

5786 (34) (a) 45% of the sales price of any new manufactured home; and  
5787 (b) 100% of the sales price of any used manufactured home;

5788 (35) sales relating to schools and fundraising sales;

5789 (36) sales or rentals of durable medical equipment if:  
5790 (a) a person presents a prescription for the durable medical equipment; and  
5791 (b) the durable medical equipment is used for home use only;

5792 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in  
5793 Section [72-11-102](#); and

5794 (b) the commission shall by rule determine the method for calculating sales exempt  
5795 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;  
5796 (38) sales to a ski resort of:  
5797 (a) snowmaking equipment;  
5798 (b) ski slope grooming equipment;  
5799 (c) passenger ropeways as defined in Section 72-11-102; or  
5800 (d) parts used in the repairs or renovations of equipment or passenger ropeways  
5801 described in Subsections (38)(a) through (c);  
5802 (39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;  
5803 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for  
5804 amusement, entertainment, or recreation an unassisted amusement device as defined in Section  
5805 59-12-102;  
5806 (b) if a seller that sells or rents at the same business location the right to use or operate  
5807 for amusement, entertainment, or recreation one or more unassisted amusement devices and  
5808 one or more assisted amusement devices, the exemption described in Subsection (40)(a)  
5809 applies if the seller separately accounts for the sales or rentals of the right to use or operate for  
5810 amusement, entertainment, or recreation for the assisted amusement devices; and  
5811 (c) for purposes of Subsection (40)(b) and in accordance with Title 63G, Chapter 3,  
5812 Utah Administrative Rulemaking Act, the commission may make rules:  
5813 (i) governing the circumstances under which sales are at the same business location;  
5814 and  
5815 (ii) establishing the procedures and requirements for a seller to separately account for  
5816 the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for  
5817 assisted amusement devices;  
5818 (41) (a) sales of photocopies by:  
5819 (i) a governmental entity; or  
5820 (ii) an entity within the state system of public education, including:  
5821 (A) a school; or  
5822 (B) the State Board of Education; or  
5823 (b) sales of publications by a governmental entity;  
5824 (42) amounts paid for admission to an athletic event at an institution of higher

5825 education that is subject to the provisions of Title IX of the Education Amendments of 1972,  
5826 20 U.S.C. Sec. 1681 et seq.;

5827 (43) (a) sales made to or by:

5828 (i) an area agency on aging; or

5829 (ii) a senior citizen center owned by a county, city, or town; or

5830 (b) sales made by a senior citizen center that contracts with an area agency on aging;

5831 (44) sales or leases of semiconductor fabricating, processing, research, or development  
5832 materials regardless of whether the semiconductor fabricating, processing, research, or  
5833 development materials:

5834 (a) actually come into contact with a semiconductor; or

5835 (b) ultimately become incorporated into real property;

5836 (45) an amount paid by or charged to a purchaser for accommodations and services  
5837 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section  
5838 59-12-104.2;

5839 (46) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary  
5840 sports event registration certificate in accordance with Section 41-3-306 for the event period  
5841 specified on the temporary sports event registration certificate;

5842 (47) (a) sales or uses of electricity, if the sales or uses are made under a retail tariff  
5843 adopted by the Public Service Commission only for purchase of electricity produced from a  
5844 new alternative energy source built after January 1, 2016, as designated in the tariff by the  
5845 Public Service Commission;

5846 (b) for a residential use customer only, the exemption under Subsection (47)(a) applies  
5847 only to the portion of the tariff rate a customer pays under the tariff described in Subsection  
5848 (47)(a) that exceeds the tariff rate under the tariff described in Subsection (47)(a) that the  
5849 customer would have paid absent the tariff;

5850 (48) sales or rentals of mobility enhancing equipment if a person presents a  
5851 prescription for the mobility enhancing equipment;

5852 (49) sales of water in a:

5853 (a) pipe;

5854 (b) conduit;

5855 (c) ditch; or

5856 (d) reservoir;

5857 (50) sales of currency or coins that constitute legal tender of a state, the United States,

5858 or a foreign nation;

5859 (51) (a) sales of an item described in Subsection (51)(b) if the item:

5860 (i) does not constitute legal tender of a state, the United States, or a foreign nation; and

5861 (ii) has a gold, silver, or platinum content of 50% or more; and

5862 (b) Subsection (51)(a) applies to a gold, silver, or platinum:

5863 (i) ingot;

5864 (ii) bar;

5865 (iii) medallion; or

5866 (iv) decorative coin;

5867 (52) amounts paid on a sale-leaseback transaction;

5868 (53) sales of a prosthetic device:

5869 (a) for use on or in a human; and

5870 (b) (i) for which a prescription is required; or

5871 (ii) if the prosthetic device is purchased by a hospital or other medical facility;

5872 (54) (a) except as provided in Subsection (54)(b), purchases, leases, or rentals of

5873 machinery or equipment by an establishment described in Subsection (54)(c) if the machinery

5874 or equipment is primarily used in the production or postproduction of the following media for

5875 commercial distribution:

5876 (i) a motion picture;

5877 (ii) a television program;

5878 (iii) a movie made for television;

5879 (iv) a music video;

5880 (v) a commercial;

5881 (vi) a documentary; or

5882 (vii) a medium similar to Subsections (54)(a)(i) through (vi) as determined by the

5883 commission by administrative rule made in accordance with Subsection (54)(d); or

5884 (b) purchases, leases, or rentals of machinery or equipment by an establishment

5885 described in Subsection (54)(c) that is used for the production or postproduction of the

5886 following are subject to the taxes imposed by this chapter:

- 5887 (i) a live musical performance;
- 5888 (ii) a live news program; or
- 5889 (iii) a live sporting event;
- 5890 (c) the following establishments listed in the 1997 North American Industry
- 5891 Classification System of the federal Executive Office of the President, Office of Management
- 5892 and Budget, apply to Subsections (54)(a) and (b):
- 5893 (i) NAICS Code 512110; or
- 5894 (ii) NAICS Code 51219; and
- 5895 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 5896 commission may by rule:
- 5897 (i) prescribe what constitutes a medium similar to Subsections (54)(a)(i) through (vi);
- 5898 or
- 5899 (ii) define:
- 5900 (A) "commercial distribution";
- 5901 (B) "live musical performance";
- 5902 (C) "live news program"; or
- 5903 (D) "live sporting event";
- 5904 (55) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
- 5905 on or before June 30, 2027, of tangible personal property that:
- 5906 (i) is leased or purchased for or by a facility that:
- 5907 (A) is an alternative energy electricity production facility;
- 5908 (B) is located in the state; and
- 5909 (C) (I) becomes operational on or after July 1, 2004; or
- 5910 (II) has its generation capacity increased by one or more megawatts on or after July 1,
- 5911 2004, as a result of the use of the tangible personal property;
- 5912 (ii) has an economic life of five or more years; and
- 5913 (iii) is used to make the facility or the increase in capacity of the facility described in
- 5914 Subsection (55)(a)(i) operational up to the point of interconnection with an existing
- 5915 transmission grid including:
- 5916 (A) a wind turbine;
- 5917 (B) generating equipment;

- 5918 (C) a control and monitoring system;
- 5919 (D) a power line;
- 5920 (E) substation equipment;
- 5921 (F) lighting;
- 5922 (G) fencing;
- 5923 (H) pipes; or
- 5924 (I) other equipment used for locating a power line or pole; and
- 5925 (b) this Subsection (55) does not apply to:
  - 5926 (i) tangible personal property used in construction of:
    - 5927 (A) a new alternative energy electricity production facility; or
    - 5928 (B) the increase in the capacity of an alternative energy electricity production facility;
  - 5929 (ii) contracted services required for construction and routine maintenance activities;
- 5930 and
  - 5931 (iii) unless the tangible personal property is used or acquired for an increase in capacity
  - 5932 of the facility described in Subsection (55)(a)(i)(C)(II), tangible personal property used or
  - 5933 acquired after:
    - 5934 (A) the alternative energy electricity production facility described in Subsection
    - 5935 (55)(a)(i) is operational as described in Subsection (55)(a)(iii); or
    - 5936 (B) the increased capacity described in Subsection (55)(a)(i) is operational as described
    - 5937 in Subsection (55)(a)(iii);
  - 5938 (56) (a) leases of seven or more years or purchases made on or after July 1, 2004, but
  - 5939 on or before June 30, 2027, of tangible personal property that:
    - 5940 (i) is leased or purchased for or by a facility that:
      - 5941 (A) is a waste energy production facility;
      - 5942 (B) is located in the state; and
      - 5943 (C) (I) becomes operational on or after July 1, 2004; or
      - 5944 (II) has its generation capacity increased by one or more megawatts on or after July 1,
      - 5945 2004, as a result of the use of the tangible personal property;
    - 5946 (ii) has an economic life of five or more years; and
    - 5947 (iii) is used to make the facility or the increase in capacity of the facility described in
    - 5948 Subsection (56)(a)(i) operational up to the point of interconnection with an existing



5949 transmission grid including:

5950 (A) generating equipment;

5951 (B) a control and monitoring system;

5952 (C) a power line;

5953 (D) substation equipment;

5954 (E) lighting;

5955 (F) fencing;

5956 (G) pipes; or

5957 (H) other equipment used for locating a power line or pole; and

5958 (b) this Subsection (56) does not apply to:

5959 (i) tangible personal property used in construction of:

5960 (A) a new waste energy facility; or

5961 (B) the increase in the capacity of a waste energy facility;

5962 (ii) contracted services required for construction and routine maintenance activities;

5963 and

5964 (iii) unless the tangible personal property is used or acquired for an increase in capacity

5965 described in Subsection (56)(a)(i)(C)(II), tangible personal property used or acquired after:

5966 (A) the waste energy facility described in Subsection (56)(a)(i) is operational as

5967 described in Subsection (56)(a)(iii); or

5968 (B) the increased capacity described in Subsection (56)(a)(i) is operational as described

5969 in Subsection (56)(a)(iii);

5970 (57) (a) leases of five or more years or purchases made on or after July 1, 2004, but on

5971 or before June 30, 2027, of tangible personal property that:

5972 (i) is leased or purchased for or by a facility that:

5973 (A) is located in the state;

5974 (B) produces fuel from alternative energy, including:

5975 (I) methanol; or

5976 (II) ethanol; and

5977 (C) (I) becomes operational on or after July 1, 2004; or

5978 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004, as

5979 a result of the installation of the tangible personal property;

5980 (ii) has an economic life of five or more years; and  
5981 (iii) is installed on the facility described in Subsection (57)(a)(i);  
5982 (b) this Subsection (57) does not apply to:  
5983 (i) tangible personal property used in construction of:  
5984 (A) a new facility described in Subsection (57)(a)(i); or  
5985 (B) the increase in capacity of the facility described in Subsection (57)(a)(i); or  
5986 (ii) contracted services required for construction and routine maintenance activities;  
5987 and  
5988 (iii) unless the tangible personal property is used or acquired for an increase in capacity  
5989 described in Subsection (57)(a)(i)(C)(II), tangible personal property used or acquired after:  
5990 (A) the facility described in Subsection (57)(a)(i) is operational; or  
5991 (B) the increased capacity described in Subsection (57)(a)(i) is operational;  
5992 (58) (a) subject to Subsection (58)(b) or (c), sales of tangible personal property or a  
5993 product transferred electronically to a person within this state if that tangible personal property  
5994 or product transferred electronically is subsequently shipped outside the state and incorporated  
5995 pursuant to contract into and becomes a part of real property located outside of this state;  
5996 (b) the exemption under Subsection (58)(a) is not allowed to the extent that the other  
5997 state or political entity to which the tangible personal property is shipped imposes a sales, use,  
5998 gross receipts, or other similar transaction excise tax on the transaction against which the other  
5999 state or political entity allows a credit for sales and use taxes imposed by this chapter; and  
6000 (c) notwithstanding the time period of Subsection 59-1-1410(8) for filing for a refund,  
6001 a person may claim the exemption allowed by this Subsection (58) for a sale by filing for a  
6002 refund:  
6003 (i) if the sale is made on or after July 1, 2004, but on or before June 30, 2008;  
6004 (ii) as if this Subsection (58) as in effect on July 1, 2008, were in effect on the day on  
6005 which the sale is made;  
6006 (iii) if the person did not claim the exemption allowed by this Subsection (58) for the  
6007 sale prior to filing for the refund;  
6008 (iv) for sales and use taxes paid under this chapter on the sale;  
6009 (v) in accordance with Section 59-1-1410; and  
6010 (vi) subject to any extension allowed for filing for a refund under Section 59-1-1410, if

6011 the person files for the refund on or before June 30, 2011;

6012 (59) purchases:

6013 (a) of one or more of the following items in printed or electronic format:

6014 (i) a list containing information that includes one or more:

6015 (A) names; or

6016 (B) addresses; or

6017 (ii) a database containing information that includes one or more:

6018 (A) names; or

6019 (B) addresses; and

6020 (b) used to send direct mail;

6021 (60) redemptions or repurchases of a product by a person if that product was:

6022 (a) delivered to a pawnbroker as part of a pawn transaction; and

6023 (b) redeemed or repurchased within the time period established in a written agreement

6024 between the person and the pawnbroker for redeeming or repurchasing the product;

6025 (61) (a) purchases or leases of an item described in Subsection (61)(b) if the item:

6026 (i) is purchased or leased by, or on behalf of, a telecommunications service provider;

6027 and

6028 (ii) has a useful economic life of one or more years; and

6029 (b) the following apply to Subsection (61)(a):

6030 (i) telecommunications enabling or facilitating equipment, machinery, or software;

6031 (ii) telecommunications equipment, machinery, or software required for 911 service;

6032 (iii) telecommunications maintenance or repair equipment, machinery, or software;

6033 (iv) telecommunications switching or routing equipment, machinery, or software; or

6034 (v) telecommunications transmission equipment, machinery, or software;

6035 (62) (a) beginning on July 1, 2006, and ending on June 30, 2027, purchases of tangible

6036 personal property or a product transferred electronically that are used in the research and

6037 development of alternative energy technology; and

6038 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

6039 commission may, for purposes of Subsection (62)(a), make rules defining what constitutes

6040 purchases of tangible personal property or a product transferred electronically that are used in

6041 the research and development of alternative energy technology;

6042 (63) (a) purchases of tangible personal property or a product transferred electronically  
6043 if:

6044 (i) the tangible personal property or product transferred electronically is:

6045 (A) purchased outside of this state;

6046 (B) brought into this state at any time after the purchase described in Subsection

6047 (63)(a)(i)(A); and

6048 (C) used in conducting business in this state; and

6049 (ii) for:

6050 (A) tangible personal property or a product transferred electronically other than the  
6051 tangible personal property described in Subsection (63)(a)(ii)(B), the first use of the property  
6052 for a purpose for which the property is designed occurs outside of this state; or

6053 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered  
6054 outside of this state;

6055 (b) the exemption provided for in Subsection (63)(a) does not apply to:

6056 (i) a lease or rental of tangible personal property or a product transferred electronically;

6057 or

6058 (ii) a sale of a vehicle exempt under Subsection (33); and

6059 (c) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for  
6060 purposes of Subsection (63)(a), the commission may by rule define what constitutes the  
6061 following:

6062 (i) conducting business in this state if that phrase has the same meaning in this  
6063 Subsection (63) as in Subsection (24);

6064 (ii) the first use of tangible personal property or a product transferred electronically if  
6065 that phrase has the same meaning in this Subsection (63) as in Subsection (24); or

6066 (iii) a purpose for which tangible personal property or a product transferred  
6067 electronically is designed if that phrase has the same meaning in this Subsection (63) as in  
6068 Subsection (24);

6069 (64) sales of disposable home medical equipment or supplies if:

6070 (a) a person presents a prescription for the disposable home medical equipment or  
6071 supplies;

6072 (b) the disposable home medical equipment or supplies are used exclusively by the

6073 person to whom the prescription described in Subsection (64)(a) is issued; and  
6074 (c) the disposable home medical equipment and supplies are listed as eligible for  
6075 payment under:

- 6076 (i) Title XVIII, federal Social Security Act; or
- 6077 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;

6078 (65) sales:

- 6079 (a) to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit  
6080 District Act; or
- 6081 (b) of tangible personal property to a subcontractor of a public transit district, if the  
6082 tangible personal property is:
  - 6083 (i) clearly identified; and
  - 6084 (ii) installed or converted to real property owned by the public transit district;

6085 (66) sales of construction materials:

- 6086 (a) purchased on or after July 1, 2010;
- 6087 (b) purchased by, on behalf of, or for the benefit of an international airport:
  - 6088 (i) located within a county of the first class; and
  - 6089 (ii) that has a United States customs office on its premises; and
- 6090 (c) if the construction materials are:
  - 6091 (i) clearly identified;
  - 6092 (ii) segregated; and
  - 6093 (iii) installed or converted to real property:
    - 6094 (A) owned or operated by the international airport described in Subsection (66)(b); and
    - 6095 (B) located at the international airport described in Subsection (66)(b);

6096 (67) sales of construction materials:

- 6097 (a) purchased on or after July 1, 2008;
- 6098 (b) purchased by, on behalf of, or for the benefit of a new airport:
  - 6099 (i) located within a county of the second class; and
  - 6100 (ii) that is owned or operated by a city in which an airline as defined in Section  
6101 [59-2-102](#) is headquartered; and
- 6102 (c) if the construction materials are:
  - 6103 (i) clearly identified;

- 6104 (ii) segregated; and
- 6105 (iii) installed or converted to real property:
- 6106 (A) owned or operated by the new airport described in Subsection (67)(b);
- 6107 (B) located at the new airport described in Subsection (67)(b); and
- 6108 (C) as part of the construction of the new airport described in Subsection (67)(b);
- 6109 (68) sales of fuel to a common carrier that is a railroad for use in a locomotive engine;
- 6110 (69) purchases and sales described in Section [63H-4-111](#);
- 6111 (70) (a) sales of tangible personal property to an aircraft maintenance, repair, and
- 6112 overhaul provider for use in the maintenance, repair, overhaul, or refurbishment in this state of
- 6113 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
- 6114 lists a state or country other than this state as the location of registry of the fixed wing turbine
- 6115 powered aircraft; or
- 6116 (b) sales of tangible personal property by an aircraft maintenance, repair, and overhaul
- 6117 provider in connection with the maintenance, repair, overhaul, or refurbishment in this state of
- 6118 a fixed wing turbine powered aircraft if that fixed wing turbine powered aircraft's registration
- 6119 lists a state or country other than this state as the location of registry of the fixed wing turbine
- 6120 powered aircraft;
- 6121 (71) subject to Section [59-12-104.4](#), sales of a textbook for a higher education course:
- 6122 (a) to a person admitted to an institution of higher education; and
- 6123 (b) by a seller, other than a bookstore owned by an institution of higher education, if
- 6124 51% or more of that seller's sales revenue for the previous calendar quarter are sales of a
- 6125 textbook for a higher education course;
- 6126 (72) a license fee or tax a municipality imposes in accordance with Subsection
- 6127 [10-1-203\(5\)](#) on a purchaser from a business for which the municipality provides an enhanced
- 6128 level of municipal services;
- 6129 (73) amounts paid or charged for construction materials used in the construction of a
- 6130 new or expanding life science research and development facility in the state, if the construction
- 6131 materials are:
- 6132 (a) clearly identified;
- 6133 (b) segregated; and
- 6134 (c) installed or converted to real property;

- 6135 (74) amounts paid or charged for:
- 6136 (a) a purchase or lease of machinery and equipment that:
- 6137 (i) are used in performing qualified research:
- 6138 (A) as defined in Section 41(d), Internal Revenue Code; and
- 6139 (B) in the state; and
- 6140 (ii) have an economic life of three or more years; and
- 6141 (b) normal operating repair or replacement parts:
- 6142 (i) for the machinery and equipment described in Subsection (74)(a); and
- 6143 (ii) that have an economic life of three or more years;
- 6144 (75) a sale or lease of tangible personal property used in the preparation of prepared
- 6145 food if:
- 6146 (a) for a sale:
- 6147 (i) the ownership of the seller and the ownership of the purchaser are identical; and
- 6148 (ii) the seller or the purchaser paid a tax under this chapter on the purchase of that
- 6149 tangible personal property prior to making the sale; or
- 6150 (b) for a lease:
- 6151 (i) the ownership of the lessor and the ownership of the lessee are identical; and
- 6152 (ii) the lessor or the lessee paid a tax under this chapter on the purchase of that tangible
- 6153 personal property prior to making the lease;
- 6154 (76) (a) purchases of machinery or equipment if:
- 6155 (i) the purchaser is an establishment described in NAICS Subsector 713, Amusement,
- 6156 Gambling, and Recreation Industries, of the 2012 North American Industry Classification
- 6157 System of the federal Executive Office of the President, Office of Management and Budget;
- 6158 (ii) the machinery or equipment:
- 6159 (A) has an economic life of three or more years; and
- 6160 (B) is used by one or more persons who pay admission or user fees described in
- 6161 Subsection 59-12-103(1)(f) to the purchaser of the machinery and equipment; and
- 6162 (iii) 51% or more of the purchaser's sales revenue for the previous calendar quarter is:
- 6163 (A) amounts paid or charged as admission or user fees described in Subsection
- 6164 59-12-103(1)(f); and
- 6165 (B) subject to taxation under this chapter; and

6166 (b) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
6167 commission may make rules for verifying that 51% of a purchaser's sales revenue for the  
6168 previous calendar quarter is:

6169 (i) amounts paid or charged as admission or user fees described in Subsection  
6170 [59-12-103\(1\)\(f\)](#); and

6171 (ii) subject to taxation under this chapter;

6172 (77) purchases of a short-term lodging consumable by a business that provides  
6173 accommodations and services described in Subsection [59-12-103\(1\)\(i\)](#);

6174 (78) amounts paid or charged to access a database:

6175 (a) if the primary purpose for accessing the database is to view or retrieve information  
6176 from the database; and

6177 (b) not including amounts paid or charged for a:

6178 (i) digital audiowork;

6179 (ii) digital audio-visual work; or

6180 (iii) digital book;

6181 (79) amounts paid or charged for a purchase or lease made by an electronic financial  
6182 payment service, of:

6183 (a) machinery and equipment that:

6184 (i) are used in the operation of the electronic financial payment service; and

6185 (ii) have an economic life of three or more years; and

6186 (b) normal operating repair or replacement parts that:

6187 (i) are used in the operation of the electronic financial payment service; and

6188 (ii) have an economic life of three or more years;

6189 (80) beginning on April 1, 2013, sales of a fuel cell as defined in Section [54-15-102](#);

6190 (81) amounts paid or charged for a purchase or lease of tangible personal property or a  
6191 product transferred electronically if the tangible personal property or product transferred  
6192 electronically:

6193 (a) is stored, used, or consumed in the state; and

6194 (b) is temporarily brought into the state from another state:

6195 (i) during a disaster period as defined in Section [53-2a-1202](#);

6196 (ii) by an out-of-state business as defined in Section [53-2a-1202](#);



- 6197 (iii) for a declared state disaster or emergency as defined in Section 53-2a-1202; and  
6198 (iv) for disaster- or emergency-related work as defined in Section 53-2a-1202;
- 6199 (82) sales of goods and services at a morale, welfare, and recreation facility, as defined  
6200 in Section 39-9-102, made pursuant to Title 39, Chapter 9, State Morale, Welfare, and  
6201 Recreation Program;
- 6202 (83) amounts paid or charged for a purchase or lease of molten magnesium;
- 6203 (84) (a) except as provided in Subsection (84)(b), amounts paid or charged for a  
6204 purchase or lease made by a drilling equipment manufacturer of machinery, equipment,  
6205 materials, or normal operating repair or replacement parts:
- 6206 (i) that are used or consumed exclusively in the drilling equipment manufacturer's  
6207 manufacturing process; and
- 6208 (ii) except for office:
- 6209 (A) equipment; or  
6210 (B) supplies; and
- 6211 (b) beginning on July 1, 2015, and ending on June 30, 2017, a person may claim an  
6212 exemption described in Subsection (84)(a) only by filing for a refund:
- 6213 (i) of 50% of the tax paid on the amounts paid or charged; and  
6214 (ii) in accordance with Section 59-1-1410;
- 6215 (85) amounts paid or charged for a purchase or lease made by a qualifying enterprise  
6216 data center of machinery, equipment, or normal operating repair or replacement parts, if the  
6217 machinery, equipment, or normal operating repair or replacement parts:
- 6218 (a) are used in the operation of the establishment; and  
6219 (b) have an economic life of one or more years; ~~and~~
- 6220 (86) amounts paid or charged for a purchase or lease of machinery, equipment, or  
6221 normal operating repair or replacement parts by a manufacturing facility that:
- 6222 (a) is an establishment, as the commission defines that term in accordance with Title  
6223 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 6224 (b) is described in NAICS Code 336111, Automobile Manufacturing, of the 2002  
6225 North American Industry Classification System of the federal Executive Office of the  
6226 President, Office of Management and Budget;
- 6227 (c) is located in the state; and

6228 (d) uses the machinery, equipment, or normal operating repair or replacement parts in  
6229 the manufacturing process to manufacture an item sold as tangible personal property, as the  
6230 commission may define that phrase in accordance with Title 63G, Chapter 3, Utah  
6231 Administrative Rulemaking Act;

6232 (87) amounts paid or charged for a purchase or lease of equipment or normal operating  
6233 repair or replacement parts with an economic life of less than three years by a manufacturing  
6234 facility that:

6235 (a) is an establishment, as the commission defines that term in accordance with Title  
6236 63G, Chapter 3, Utah Administrative Rulemaking Act;

6237 (b) is described in NAICS Code 325120, Industrial Gas Manufacturing, of the 2002  
6238 North American Industry Classification System of the federal Executive Office of the  
6239 President, Office of Management and Budget;

6240 (c) is located in the state; and

6241 (d) uses the equipment or normal operating repair or replacement parts to manufacture  
6242 hydrogen;

6243 (88) sales of cleaning or washing of a vehicle, except for cleaning or washing of a  
6244 vehicle that includes cleaning or washing of the interior of the vehicle; and

6245 (89) amounts paid or charged for a purchase or lease of machinery, equipment, normal  
6246 operating repair or replacement parts, catalysts, chemicals, reagents, solutions, or supplies used  
6247 or consumed:

6248 (a) by a refiner who owns, leases, operates, controls, or supervises a refinery as defined  
6249 in Section [63M-4-701](#) located in the state;

6250 (b) if the machinery, equipment, normal operating repair or replacement parts,  
6251 catalysts, chemicals, reagents, solutions, or supplies are used or consumed in:

6252 (i) the production process to produce gasoline or diesel fuel, or at which blendstock is  
6253 added to gasoline or diesel fuel;

6254 (ii) research and development;

6255 (iii) transporting, storing, or managing raw materials, work in process, finished  
6256 products, and waste materials produced from refining gasoline or diesel fuel, or adding  
6257 blendstock to gasoline or diesel fuel;

6258 (iv) developing or maintaining a road, tunnel, excavation, or similar feature used in

6259 refining; or

6260 (v) preventing, controlling, or reducing pollutants from refining; and

6261 (c) beginning on July 1, 2021, if the person has obtained a form certified by the Office  
6262 of Energy Development under Subsection 63M-4-702(2).

6263 Section 57. Section 59-12-104.5 is amended to read:

6264 **59-12-104.5. Revenue and Taxation Interim Committee review of sales and use**  
6265 **taxes.**

6266 The Revenue and Taxation Interim Committee shall:

6267 (1) review Subsection 59-12-104(28) before October 1 of the year after the year in  
6268 which Congress permits a state to participate in the special supplemental nutrition program  
6269 under 42 U.S.C. Sec. 1786 even if state or local sales taxes are collected within the state on  
6270 purchases of food under that program;

6271 (2) review Subsection 59-12-104(21) before October 1 of the year after the year in  
6272 which Congress permits a state to participate in the SNAP as defined in Section 35A-1-102,  
6273 even if state or local sales taxes are collected within the state on purchases of food under that  
6274 program; and

6275 (3) on or before November 30:

6276 (a) require the Governor's Office of Economic Development to provide the report  
6277 described in Section 63N-1-302(2);

6278 (b) review for each exemption described in [~~Subsection~~] Subsections 59-12-104(86)  
6279 and (87):

6280 (i) the cost of the exemption;

6281 (ii) the purpose and effectiveness of the exemption; and

6282 (iii) the extent to which the state benefits from the exemption; and

6283 (c) make recommendations concerning whether the exemptions described in  
6284 Subsections 59-12-104(86) and (87) should be continued, modified, or repealed.

6285 Section 58. Section 59-13-301 is amended to read:

6286 **59-13-301. Tax basis -- Rate -- Exemptions -- Revenue deposited with treasurer**  
6287 **and credited to Transportation Fund -- Reduction of tax in limited circumstances.**

6288 (1) (a) Except as provided in Subsections (2), (3), (11), and (12) and Section  
6289 59-13-304, a tax is imposed at the same [~~rates~~] rate imposed under Subsection 59-13-201(1)(a)

6290 on the:

6291 (i) removal of undyed diesel fuel from any refinery;

6292 (ii) removal of undyed diesel fuel from any terminal;

6293 (iii) entry into the state of any undyed diesel fuel for consumption, use, sale, or  
6294 warehousing;

6295 (iv) sale of undyed diesel fuel to any person who is not registered as a supplier under  
6296 this part unless the tax has been collected under this section;

6297 (v) any untaxed special fuel blended with undyed diesel fuel; or

6298 (vi) use of untaxed special fuel other than propane or electricity.

6299 (b) The tax imposed under this section shall only be imposed once upon any special  
6300 fuel.

6301 (2) (a) No special fuel tax is imposed or collected upon dyed diesel fuel which:

6302 (i) is sold or used for any purpose other than to operate or propel a motor vehicle upon  
6303 the public highways of the state, but this exemption applies only in those cases where the  
6304 purchasers or the users of special fuel establish to the satisfaction of the commission that the  
6305 special fuel was used for purposes other than to operate a motor vehicle upon the public  
6306 highways of the state; or

6307 (ii) is sold to this state or any of its political subdivisions.

6308 (b) No special fuel tax is imposed on undyed diesel fuel or clean fuel that is:

6309 (i) sold to the United States government or any of its instrumentalities or to this state or  
6310 any of its political subdivisions;

6311 (ii) exported from this state if proof of actual exportation on forms prescribed by the  
6312 commission is made within 180 days after exportation;

6313 (iii) used in a vehicle off-highway;

6314 (iv) used to operate a power take-off unit of a vehicle;

6315 (v) used for off-highway agricultural uses;

6316 (vi) used in a separately fueled engine on a vehicle that does not propel the vehicle  
6317 upon the highways of the state; or

6318 (vii) used in machinery and equipment not registered and not required to be registered  
6319 for highway use.

6320 (3) No tax is imposed or collected on special fuel if it is:

- 6321 (a) (i) purchased for business use in machinery and equipment not registered and not  
6322 required to be registered for highway use; and
- 6323 (ii) used pursuant to the conditions of a state implementation plan approved under Title  
6324 19, Chapter 2, Air Conservation Act; or
- 6325 (b) propane or electricity.
- 6326 (4) Upon request of a buyer meeting the requirements under Subsection (3), the  
6327 Division of Air Quality shall issue an exemption certificate that may be shown to a seller.
- 6328 (5) The special fuel tax shall be paid by the supplier.
- 6329 (6) (a) The special fuel tax shall be paid by every user who is required by Sections  
6330 59-13-303 and 59-13-305 to obtain a special fuel user permit and file special fuel tax reports.
- 6331 (b) The user shall receive a refundable credit for special fuel taxes paid on purchases  
6332 which are delivered into vehicles and for which special fuel tax liability is reported.
- 6333 (7) (a) Except as provided under Subsections (7)(b) and (c), all revenue received by the  
6334 commission from taxes and license fees under this part shall be deposited daily with the state  
6335 treasurer and credited to the Transportation Fund.
- 6336 (b) An appropriation from the Transportation Fund shall be made to the commission to  
6337 cover expenses incurred in the administration and enforcement of this part and the collection of  
6338 the special fuel tax.
- 6339 (c) Five dollars of each special fuel user trip permit fee paid under Section 59-13-303  
6340 may be used by the commission as a dedicated credit to cover the costs of electronic  
6341 credentialing as provided in Section 41-1a-303.
- 6342 (8) The commission may either collect no tax on special fuel exported from the state  
6343 or, upon application, refund the tax paid.
- 6344 (9) (a) The United States government or any of its instrumentalities, this state, or a  
6345 political subdivision of this state that has purchased special fuel from a supplier or from a retail  
6346 dealer of special fuel and has paid the tax on the special fuel as provided in this section is  
6347 entitled to a refund of the tax and may file with the commission for a quarterly refund in a  
6348 manner prescribed by the commission.
- 6349 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
6350 commission shall make rules governing the application and refund provided for in Subsection  
6351 (9)(a).

6352 (10) (a) The purchaser shall pay the tax on diesel fuel or clean fuel purchased for uses  
6353 under Subsections (2)(b)(i), (iii), (iv), (v), (vi), and (vii) and apply for a refund for the tax paid  
6354 as provided in Subsection (9) and this Subsection (10).

6355 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
6356 commission shall make rules governing the application and refund for off-highway and  
6357 nonhighway uses provided under Subsections (2)(b)(iii), (iv), (vi), and (vii).

6358 (c) A refund of tax paid under this part on diesel fuel used for nonhighway agricultural  
6359 uses shall be made in accordance with the tax return procedures under Section [59-13-202](#).

6360 (11) (a) Beginning on April 1, 2001, a tax imposed under this section on special fuel is  
6361 reduced to the extent provided in Subsection (11)(b) if:

6362 (i) the Navajo Nation imposes a tax on the special fuel;

6363 (ii) the tax described in Subsection (11)(a)(i) is imposed without regard to whether the  
6364 person required to pay the tax is an enrolled member of the Navajo Nation; and

6365 (iii) the commission and the Navajo Nation execute and maintain an agreement as  
6366 provided in this Subsection (11) for the administration of the reduction of tax.

6367 (b) (i) If but for Subsection (11)(a) the special fuel is subject to a tax imposed by this  
6368 section:

6369 (A) the state shall be paid the difference described in Subsection (11)(b)(ii) if that  
6370 difference is greater than \$0; and

6371 (B) a person may not require the state to provide a refund, a credit, or similar tax relief  
6372 if the difference described in Subsection (11)(b)(ii) is less than or equal to \$0.

6373 (ii) The difference described in Subsection (11)(b)(i) is equal to the difference  
6374 between:

6375 (A) the amount of tax imposed on the special fuel by this section; less

6376 (B) the tax imposed and collected by the Navajo Nation on the special fuel.

6377 (c) For purposes of Subsections (11)(a) and (b), the tax paid to the Navajo Nation on  
6378 the special fuel does not include any interest or penalties a taxpayer may be required to pay to  
6379 the Navajo Nation.

6380 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
6381 commission shall make rules governing the procedures for administering the reduction of tax  
6382 provided under this Subsection (11).

- 6383 (e) The agreement required under Subsection (11)(a):  
6384 (i) may not:  
6385 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;  
6386 (B) provide a reduction of taxes greater than or different from the reduction described  
6387 in this Subsection (11); or  
6388 (C) affect the power of the state to establish rates of taxation;  
6389 (ii) shall:  
6390 (A) be in writing;  
6391 (B) be signed by:  
6392 (I) the chair of the commission or the chair's designee; and  
6393 (II) a person designated by the Navajo Nation that may bind the Navajo Nation;  
6394 (C) be conditioned on obtaining any approval required by federal law;  
6395 (D) state the effective date of the agreement; and  
6396 (E) state any accommodation the Navajo Nation makes related to the construction and  
6397 maintenance of state highways and other infrastructure within the Utah portion of the Navajo  
6398 Nation; and  
6399 (iii) may:  
6400 (A) notwithstanding Section 59-1-403, authorize the commission to disclose to the  
6401 Navajo Nation information that is:  
6402 (I) contained in a document filed with the commission; and  
6403 (II) related to the tax imposed under this section;  
6404 (B) provide for maintaining records by the commission or the Navajo Nation; or  
6405 (C) provide for inspections or audits of suppliers, distributors, carriers, or retailers  
6406 located or doing business within the Utah portion of the Navajo Nation.  
6407 (f) (i) If, on or after April 1, 2001, the Navajo Nation changes the tax rate of a tax  
6408 imposed on special fuel, any change in the amount of the reduction of taxes under this  
6409 Subsection (11) as a result of the change in the tax rate is not effective until the first day of the  
6410 calendar quarter after a 60-day period beginning on the date the commission receives notice:  
6411 (A) from the Navajo Nation; and  
6412 (B) meeting the requirements of Subsection (11)(f)(ii).  
6413 (ii) The notice described in Subsection (11)(f)(i) shall state:

6414 (A) that the Navajo Nation has changed or will change the tax rate of a tax imposed on  
6415 special fuel;

6416 (B) the effective date of the rate change of the tax described in Subsection  
6417 (11)(f)(ii)(A); and

6418 (C) the new rate of the tax described in Subsection (11)(f)(ii)(A).

6419 (g) If the agreement required by Subsection (11)(a) terminates, a reduction of tax is not  
6420 permitted under this Subsection (11) beginning on the first day of the calendar quarter after a  
6421 30-day period beginning on the day the agreement terminates.

6422 (h) If there is a conflict between this Subsection (11) and the agreement required by  
6423 Subsection (11)(a), this Subsection (11) governs.

6424 (12) (a) A tax imposed under this section on compressed natural gas is imposed at a  
6425 rate of:

6426 (i) until June 30, 2016, 10-1/2 cents per gasoline gallon equivalent;

6427 (ii) beginning on July 1, 2016, and until June 30, 2017, 12-1/2 cents per gasoline gallon  
6428 equivalent;

6429 (iii) beginning on July 1, 2017, and until June 30, 2018, 14-1/2 cents per gasoline  
6430 gallon equivalent; and

6431 (iv) beginning on or after July 1, 2018, 16-1/2 cents per gasoline gallon equivalent.

6432 (b) A tax imposed under this section on liquified natural gas is imposed at a rate of:

6433 (i) until June 30, 2016, 10-1/2 cents per diesel gallon equivalent;

6434 (ii) beginning on July 1, 2016, and until June 30, 2017, 12-1/2 cents per diesel gallon  
6435 equivalent;

6436 (iii) beginning on July 1, 2017, and until June 30, 2018, 14-1/2 cents per diesel gallon  
6437 equivalent; and

6438 (iv) beginning on or after July 1, 2018, 16-1/2 cents per diesel gallon equivalent.

6439 (c) A tax imposed under this section on hydrogen used to operate or propel a motor  
6440 vehicle upon the public highways of the state is imposed at a rate of:

6441 (i) until June 30, 2016, 10-1/2 cents per gasoline gallon equivalent;

6442 (ii) beginning on July 1, 2016, and until June 30, 2017, 12-1/2 cents per gasoline gallon  
6443 equivalent;

6444 (iii) beginning on July 1, 2017, and until June 30, 2018, 14-1/2 cents per gasoline



6445 gallon equivalent; and

6446 (iv) beginning on or after July 1, 2018, 16-1/2 cents per gasoline gallon equivalent.

6447 Section 59. Section **61-2g-103** is amended to read:

6448 **61-2g-103. Other law unaffected.**

6449 This chapter may not be considered to prohibit a person licensed, certified, or registered  
6450 under this chapter from engaging in the practice of real estate appraising as a professional  
6451 corporation or a limited liability company in accordance with:

6452 (1) Title 16, Chapter 11, Professional Corporation Act; or

6453 (2) [~~Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, or~~] Title 48,  
6454 Chapter 3a, Utah Revised Uniform Limited Liability Company Act[, as appropriate pursuant to  
6455 ~~Section 48-3a-1405~~].

6456 Section 60. Section **62A-4a-105** is amended to read:

6457 **62A-4a-105. Division responsibilities.**

6458 (1) The division shall:

6459 (a) administer services to minors and families, including:

6460 (i) child welfare services;

6461 (ii) domestic violence services; and

6462 (iii) all other responsibilities that the Legislature or the executive director may assign  
6463 to the division;

6464 (b) provide the following services:

6465 (i) financial and other assistance to an individual adopting a child with special needs  
6466 under Part 9, Adoption Assistance, not to exceed the amount the division would provide for the  
6467 child as a legal ward of the state;

6468 (ii) non-custodial and in-home services, including:

6469 (A) services designed to prevent family break-up; and

6470 (B) family preservation services;

6471 (iii) reunification services to families whose children are in substitute care in  
6472 accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act;

6473 (iv) protective supervision of a family, upon court order, in an effort to eliminate abuse  
6474 or neglect of a child in that family;

6475 (v) shelter care in accordance with the requirements of this chapter and Title 78A,

6476 Chapter 6, Juvenile Court Act;

6477       (vi) domestic violence services, in accordance with the requirements of federal law;

6478       (vii) protective services to victims of domestic violence, as defined in Section 77-36-1,

6479 and their children, in accordance with the provisions of this chapter and Title 78A, Chapter 6,

6480 Part 3, Abuse, Neglect, and Dependency Proceedings;

6481       (viii) substitute care for dependent, abused, neglected, and delinquent children;

6482       (ix) services for minors who are victims of human trafficking or human smuggling as

6483 described in Sections 76-5-308 through 76-5-310 or who have engaged in prostitution or sexual

6484 solicitation as defined in Section 76-10-1302; and

6485       (x) training for staff and providers involved in the administration and delivery of

6486 services offered by the division in accordance with this chapter;

6487       (c) establish standards for all:

6488       (i) contract providers of out-of-home care for minors and families;

6489       (ii) facilities that provide substitute care for dependent, abused, neglected, and

6490 delinquent children placed in the custody of the division; and

6491       (iii) direct or contract providers of domestic violence services described in Subsection

6492 (1)(b)(vi);

6493       (d) have authority to:

6494       (i) contract with a private, nonprofit organization to recruit and train foster care

6495 families and child welfare volunteers in accordance with Section 62A-4a-107.5; and

6496       (ii) approve facilities that meet the standards established under Subsection (1)(c) to

6497 provide substitute care for dependent, abused, neglected, and delinquent children placed in the

6498 custody of the division;

6499       (e) cooperate with the federal government in the administration of child welfare and

6500 domestic violence programs and other human service activities assigned by the department;

6501       (f) if there is a privacy agreement with an Indian tribe to protect the confidentiality of

6502 division records to the same extent that the division is required to protect division records,

6503 cooperate with and share all appropriate information in the division's possession regarding an

6504 Indian child, the Indian child's parent or guardian, or a proposed placement for the Indian child

6505 with the Indian tribe that is affiliated with the Indian child;

6506       (g) in accordance with Subsection (2)(a), promote and enforce state and federal laws

6507 enacted for the protection of abused, neglected, dependent, delinquent, ungovernable, and  
6508 runaway children, and status offenders, in accordance with the requirements of this chapter,  
6509 unless administration is expressly vested in another division or department of the state;

6510 (h) cooperate with the Workforce Development Division in the Department of  
6511 Workforce Services in meeting the social and economic needs of an individual who is eligible  
6512 for public assistance;

6513 (i) compile relevant information, statistics, and reports on child and family service  
6514 matters in the state;

6515 (j) prepare and submit to the department, the governor, and the Legislature reports of  
6516 the operation and administration of the division in accordance with the requirements of  
6517 Sections 62A-4a-117 and 62A-4a-118;

6518 (k) provide social studies and reports for the juvenile court in accordance with Section  
6519 78A-6-605;

6520 (l) within appropriations from the Legislature, provide or contract for a variety of  
6521 domestic violence services and treatment methods;

6522 (m) ensure regular, periodic publication, including electronic publication, regarding the  
6523 number of children in the custody of the division who:

6524 (i) have a permanency goal of adoption; or

6525 (ii) have a final plan of termination of parental rights, pursuant to Section 78A-6-314,  
6526 and promote adoption of those children;

6527 (n) subject to Subsection (2)(b), refer an individual receiving services from the division  
6528 to the local substance abuse authority or other private or public resource for a court-ordered  
6529 drug screening test; and

6530 (o) perform other duties and functions required by law.

6531 (2) (a) In carrying out the requirements of Subsection (1)~~(f)~~(g), the division shall:

6532 (i) cooperate with the juvenile courts, the Division of Juvenile Justice Services, and  
6533 with all public and private licensed child welfare agencies and institutions to develop and  
6534 administer a broad range of services and support;

6535 (ii) take the initiative in all matters involving the protection of abused or neglected  
6536 children, if adequate provisions have not been made or are not likely to be made; and

6537 (iii) make expenditures necessary for the care and protection of the children described

6538 in this Subsection (2)(a), within the division's budget.

6539 (b) When an individual is referred to a local substance abuse authority or other private  
6540 or public resource for court-ordered drug screening under Subsection (1)(n), the court shall  
6541 order the individual to pay all costs of the tests unless:

6542 (i) the cost of the drug screening is specifically funded or provided for by other federal  
6543 or state programs;

6544 (ii) the individual is a participant in a drug court; or

6545 (iii) the court finds that the individual is impecunious.

6546 (3) Except to the extent provided by rule, the division is not responsible for  
6547 investigating domestic violence in the presence of a child, as described in Section [76-5-109.1](#).

6548 (4) The division may not require a parent who has a child in the custody of the division  
6549 to pay for some or all of the cost of any drug testing the parent is required to undergo.

6550 Section 61. Section **62A-15-401** is amended to read:

6551 **62A-15-401. Alcohol training and education seminar.**

6552 (1) As used in this part:

6553 (a) "Instructor" means a person that directly provides the instruction during an alcohol  
6554 training and education seminar for a seminar provider.

6555 (b) "Licensee" means a person who is:

6556 (i) (A) a new or renewing licensee under Title 32B, Alcoholic Beverage Control Act;

6557 and

6558 (B) engaged in the retail sale of an alcoholic product for consumption on the premises  
6559 of the licensee; or

6560 (ii) a business that is:

6561 (A) a new or renewing licensee licensed by a city, town, or county; and

6562 (B) engaged in the retail sale of beer for consumption off the premises of the licensee.

6563 (c) "Off-premise beer retailer" is as defined in Section [32B-1-102](#).

6564 (d) "Seminar provider" means a person other than the division who provides an alcohol  
6565 training and education seminar meeting the requirements of this section.

6566 (2) (a) This section applies to:

6567 (i) a retail manager as defined in Section [32B-5-402](#);

6568 (ii) retail staff as defined in Section [32B-5-402](#); and

- 6569 (iii) an individual who, as defined by division rule:
- 6570 (A) directly supervises the sale of beer to a customer for consumption off the premises
- 6571 of an off-premise beer retailer; or
- 6572 (B) sells beer to a customer for consumption off the premises of an off-premise beer
- 6573 retailer.
- 6574 (b) If the individual does not have a valid record that the individual has completed an
- 6575 alcohol training and education seminar, an individual described in Subsection (2)(a) shall:
- 6576 (i) (A) complete an alcohol training and education seminar within 30 days of the
- 6577 following if the individual is described in Subsections (2)(a)(i) through (iii):
- 6578 (I) if the individual is an employee, the day the individual begins employment;
- 6579 (II) if the individual is an independent contractor, the day the individual is first hired;
- 6580 or
- 6581 (III) if the individual holds an ownership interest in the licensee, the day that the
- 6582 individual first engages in an activity that would result in that individual being required to
- 6583 complete an alcohol training and education seminar; or
- 6584 (B) complete an alcohol training and education seminar within the time periods
- 6585 specified in Subsection [32B-5-404\(1\)](#) if the individual is described in Subsections
- 6586 (2)(a)~~(iv)~~(iii)(A) and ~~(v)~~ (B); and
- 6587 (ii) pay a fee:
- 6588 (A) to the seminar provider; and
- 6589 (B) that is equal to or greater than the amount established under Subsection (4)(h).
- 6590 (c) An individual shall have a valid record that the individual completed an alcohol
- 6591 training and education seminar within the time period provided in this Subsection (2) to engage
- 6592 in an activity described in Subsection (2)(a).
- 6593 (d) A record that an individual has completed an alcohol training and education
- 6594 seminar is valid for:
- 6595 (i) three years from the day on which the record is issued for an individual described in
- 6596 Subsection (2)(a)(i), (ii), or (iii); and
- 6597 (ii) five years from the day on which the record is issued for an individual described in
- 6598 Subsection (2)(a)~~(iv)~~(iii)(A) or ~~(v)~~ (B).
- 6599 (e) On and after July 1, 2011, to be considered as having completed an alcohol training

6600 and education seminar, an individual shall:

6601           (i) attend the alcohol training and education seminar and take any test required to  
6602 demonstrate completion of the alcohol training and education seminar in the physical presence  
6603 of an instructor of the seminar provider; or

6604           (ii) complete the alcohol training and education seminar and take any test required to  
6605 demonstrate completion of the alcohol training and education seminar through an online course  
6606 or testing program that meets the requirements described in Subsection (2)(f).

6607           (f) The division shall by rule made in accordance with Title 63G, Chapter 3, Utah  
6608 Administrative Rulemaking Act, establish one or more requirements for an online course or  
6609 testing program described in Subsection (2)(e) that are designed to inhibit fraud in the use of  
6610 the online course or testing program. In developing the requirements by rule the division shall  
6611 consider whether to require:

6612           (i) authentication that the an individual accurately identifies the individual as taking the  
6613 online course or test;

6614           (ii) measures to ensure that an individual taking the online course or test is focused on  
6615 training material throughout the entire training period;

6616           (iii) measures to track the actual time an individual taking the online course or test is  
6617 actively engaged online;

6618           (iv) a seminar provider to provide technical support, such as requiring a telephone  
6619 number, email, or other method of communication that allows an individual taking the online  
6620 course or test to receive assistance if the individual is unable to participate online because of  
6621 technical difficulties;

6622           (v) a test to meet quality standards, including randomization of test questions and  
6623 maximum time limits to take a test;

6624           (vi) a seminar provider to have a system to reduce fraud as to who completes an online  
6625 course or test, such as requiring a distinct online certificate with information printed on the  
6626 certificate that identifies the person taking the online course or test, or requiring measures to  
6627 inhibit duplication of a certificate;

6628           (vii) measures for the division to audit online courses or tests;

6629           (viii) measures to allow an individual taking an online course or test to provide an  
6630 evaluation of the online course or test;

- 6631 (ix) a seminar provider to track the Internet protocol address or similar electronic
- 6632 location of an individual who takes an online course or test;
- 6633 (x) an individual who takes an online course or test to use an e-signature; or
- 6634 (xi) a seminar provider to invalidate a certificate if the seminar provider learns that the
- 6635 certificate does not accurately reflect the individual who took the online course or test.
- 6636 (3) (a) A licensee may not permit an individual who is not in compliance with
- 6637 Subsection (2) to:
  - 6638 (i) serve or supervise the serving of an alcoholic product to a customer for
  - 6639 consumption on the premises of the licensee;
  - 6640 (ii) engage in any activity that would constitute managing operations at the premises of
  - 6641 a licensee that engages in the retail sale of an alcoholic product for consumption on the
  - 6642 premises of the licensee;
  - 6643 (iii) directly supervise the sale of beer to a customer for consumption off the premises
  - 6644 of an off-premise beer retailer; or
  - 6645 (iv) sell beer to a customer for consumption off the premises of an off-premise beer
  - 6646 retailer.
  - 6647 (b) A licensee that violates Subsection (3)(a) is subject to Section [32B-5-403](#).
  - 6648 (4) The division shall:
    - 6649 (a) (i) provide alcohol training and education seminars; or
    - 6650 (ii) certify one or more seminar providers;
    - 6651 (b) establish the curriculum for an alcohol training and education seminar that includes
    - 6652 the following subjects:
      - 6653 (i) (A) alcohol as a drug; and
      - 6654 (B) alcohol's effect on the body and behavior;
      - 6655 (ii) recognizing the problem drinker or signs of intoxication;
      - 6656 (iii) an overview of state alcohol laws related to responsible beverage sale or service,
      - 6657 as determined in consultation with the Department of Alcoholic Beverage Control;
      - 6658 (iv) dealing with the problem customer, including ways to terminate sale or service;
      - 6659 and
      - 6660 (v) for those supervising or engaging in the retail sale of an alcoholic product for
      - 6661 consumption on the premises of a licensee, alternative means of transportation to get the

- 6662 customer safely home;
- 6663 (c) recertify each seminar provider every three years;
- 6664 (d) monitor compliance with the curriculum described in Subsection (4)(b);
- 6665 (e) maintain for at least five years a record of every person who has completed an
- 6666 alcohol training and education seminar;
- 6667 (f) provide the information described in Subsection (4)(e) on request to:
- 6668 (i) the Department of Alcoholic Beverage Control;
- 6669 (ii) law enforcement; or
- 6670 (iii) a person licensed by the state or a local government to sell an alcoholic product;
- 6671 (g) provide the Department of Alcoholic Beverage Control on request a list of any
- 6672 seminar provider certified by the division; and
- 6673 (h) establish a fee amount for each person attending an alcohol training and education
- 6674 seminar that is sufficient to offset the division's cost of administering this section.
- 6675 (5) The division shall by rule made in accordance with Title 63G, Chapter 3, Utah
- 6676 Administrative Rulemaking Act:
- 6677 (a) define what constitutes under this section an individual who:
- 6678 (i) manages operations at the premises of a licensee engaged in the retail sale of an
- 6679 alcoholic product for consumption on the premises of the licensee;
- 6680 (ii) supervises the serving of an alcoholic product to a customer for consumption on the
- 6681 premises of a licensee;
- 6682 (iii) serves an alcoholic product to a customer for consumption on the premises of a
- 6683 licensee;
- 6684 (iv) directly supervises the sale of beer to a customer for consumption off the premises
- 6685 of an off-premise beer retailer; or
- 6686 (v) sells beer to a customer for consumption off the premises of an off-premise beer
- 6687 retailer;
- 6688 (b) establish criteria for certifying and recertifying a seminar provider; and
- 6689 (c) establish guidelines for the manner in which an instructor provides an alcohol
- 6690 education and training seminar.
- 6691 (6) A seminar provider shall:
- 6692 (a) obtain recertification by the division every three years;



- 6693 (b) ensure that an instructor used by the seminar provider:  
6694 (i) follows the curriculum established under this section; and  
6695 (ii) conducts an alcohol training and education seminar in accordance with the  
6696 guidelines established by rule;
- 6697 (c) ensure that any information provided by the seminar provider or instructor of a  
6698 seminar provider is consistent with:  
6699 (i) the curriculum established under this section; and  
6700 (ii) this section;
- 6701 (d) provide the division with the names of all persons who complete an alcohol training  
6702 and education seminar provided by the seminar provider;
- 6703 (e) (i) collect a fee for each person attending an alcohol training and education seminar  
6704 in accordance with Subsection (2); and  
6705 (ii) forward to the division the portion of the fee that is equal to the amount described  
6706 in Subsection (4)(h); and
- 6707 (f) issue a record to an individual that completes an alcohol training and education  
6708 seminar provided by the seminar provider.
- 6709 (7) (a) If after a hearing conducted in accordance with Title 63G, Chapter 4,  
6710 Administrative Procedures Act, the division finds that a seminar provider violates this section  
6711 or that an instructor of the seminar provider violates this section, the division may:  
6712 (i) suspend the certification of the seminar provider for a period not to exceed 90 days;  
6713 (ii) revoke the certification of the seminar provider;  
6714 (iii) require the seminar provider to take corrective action regarding an instructor; or  
6715 (iv) prohibit the seminar provider from using an instructor until such time that the  
6716 seminar provider establishes to the satisfaction of the division that the instructor is in  
6717 compliance with Subsection (6)(b).
- 6718 (b) The division may certify a seminar provider whose certification is revoked:  
6719 (i) no sooner than 90 days from the date the certification is revoked; and  
6720 (ii) if the seminar provider establishes to the satisfaction of the division that the  
6721 seminar provider will comply with this section.
- 6722 Section 62. Section **63G-2-302** is amended to read:  
6723 **63G-2-302. Private records.**

- 6724 (1) The following records are private:
- 6725 (a) records concerning an individual's eligibility for unemployment insurance benefits,  
6726 social services, welfare benefits, or the determination of benefit levels;
- 6727 (b) records containing data on individuals describing medical history, diagnosis,  
6728 condition, treatment, evaluation, or similar medical data;
- 6729 (c) records of publicly funded libraries that when examined alone or with other records  
6730 identify a patron;
- 6731 (d) records received by or generated by or for:
- 6732 (i) the Independent Legislative Ethics Commission, except for:
- 6733 (A) the commission's summary data report that is required under legislative rule; and  
6734 (B) any other document that is classified as public under legislative rule; or
- 6735 (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints,  
6736 unless the record is classified as public under legislative rule;
- 6737 (e) records received by, or generated by or for, the Independent Executive Branch  
6738 Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review  
6739 of Executive Branch Ethics Complaints;
- 6740 (f) records received or generated for a Senate confirmation committee concerning  
6741 character, professional competence, or physical or mental health of an individual:
- 6742 (i) if, prior to the meeting, the chair of the committee determines release of the records:
- 6743 (A) reasonably could be expected to interfere with the investigation undertaken by the  
6744 committee; or
- 6745 (B) would create a danger of depriving a person of a right to a fair proceeding or  
6746 impartial hearing; and
- 6747 (ii) after the meeting, if the meeting was closed to the public;
- 6748 (g) employment records concerning a current or former employee of, or applicant for  
6749 employment with, a governmental entity that would disclose that individual's home address,  
6750 home telephone number, social security number, insurance coverage, marital status, or payroll  
6751 deductions;
- 6752 (h) records or parts of records under Section [63G-2-303](#) that a current or former  
6753 employee identifies as private according to the requirements of that section;
- 6754 (i) that part of a record indicating a person's social security number or federal employer

6755 identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202,  
6756 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;

6757 (j) that part of a voter registration record identifying a voter's:  
6758 (i) driver license or identification card number;  
6759 (ii) ~~[Social Security]~~ social security number, or last four digits of the ~~[Social Security]~~ social  
6760 security number;

6761 (iii) email address; or  
6762 (iv) date of birth;

6763 (k) a voter registration record that is classified as a private record by the lieutenant  
6764 governor or a county clerk under Subsection 20A-2-104(4)(f) or 20A-2-101.1(5)(a);

6765 (l) a record that:  
6766 (i) contains information about an individual;  
6767 (ii) is voluntarily provided by the individual; and  
6768 (iii) goes into an electronic database that:  
6769 (A) is designated by and administered under the authority of the Chief Information  
6770 Officer; and  
6771 (B) acts as a repository of information about the individual that can be electronically  
6772 retrieved and used to facilitate the individual's online interaction with a state agency;

6773 (m) information provided to the Commissioner of Insurance under:  
6774 (i) Subsection 31A-23a-115(3)(a);  
6775 (ii) Subsection 31A-23a-302(4); or  
6776 (iii) Subsection 31A-26-210(4);

6777 (n) information obtained through a criminal background check under Title 11, Chapter  
6778 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;

6779 (o) information provided by an offender that is:  
6780 (i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap  
6781 Offender Registry or Title 77, Chapter 43, Child Abuse Offender Registry; and  
6782 (ii) not required to be made available to the public under Subsection 77-41-110(4) or  
6783 77-43-108(4);

6784 (p) a statement and any supporting documentation filed with the attorney general in  
6785 accordance with Section 34-45-107, if the federal law or action supporting the filing involves

6786 homeland security;

6787 (q) electronic toll collection customer account information received or collected under  
6788 Section 72-6-118 and customer information described in Section 17B-2a-815 received or  
6789 collected by a public transit district, including contact and payment information and customer  
6790 travel data;

6791 (r) an email address provided by a military or overseas voter under Section  
6792 20A-16-501;

6793 (s) a completed military-overseas ballot that is electronically transmitted under Title  
6794 20A, Chapter 16, Uniform Military and Overseas Voters Act;

6795 (t) records received by or generated by or for the Political Subdivisions Ethics Review  
6796 Commission established in Section 11-49-201, except for:

6797 (i) the commission's summary data report that is required in Section 11-49-202; and

6798 (ii) any other document that is classified as public in accordance with Title 11, Chapter  
6799 49, Political Subdivisions Ethics Review Commission;

6800 (u) a record described in Subsection 53A-11a-203(3) that verifies that a parent was  
6801 notified of an incident or threat; ~~and~~

6802 (v) a criminal background check or credit history report conducted in accordance with  
6803 Section 63A-3-201[-]; and

6804 (w) a record described in Subsection 53-5a-104(7).

6805 (2) The following records are private if properly classified by a governmental entity:

6806 (a) records concerning a current or former employee of, or applicant for employment  
6807 with a governmental entity, including performance evaluations and personal status information  
6808 such as race, religion, or disabilities, but not including records that are public under Subsection  
6809 63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b);

6810 (b) records describing an individual's finances, except that the following are public:

6811 (i) records described in Subsection 63G-2-301(2);

6812 (ii) information provided to the governmental entity for the purpose of complying with  
6813 a financial assurance requirement; or

6814 (iii) records that must be disclosed in accordance with another statute;

6815 (c) records of independent state agencies if the disclosure of those records would  
6816 conflict with the fiduciary obligations of the agency;

6817 (d) other records containing data on individuals the disclosure of which constitutes a  
6818 clearly unwarranted invasion of personal privacy;

6819 (e) records provided by the United States or by a government entity outside the state  
6820 that are given with the requirement that the records be managed as private records, if the  
6821 providing entity states in writing that the record would not be subject to public disclosure if  
6822 retained by it;

6823 (f) any portion of a record in the custody of the Division of Aging and Adult Services,  
6824 created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a  
6825 person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult; and

6826 (g) audio and video recordings created by a body-worn camera, as defined in Section  
6827 77-7a-103, that record sound or images inside a home or residence except for recordings that:

6828 (i) depict the commission of an alleged crime;

6829 (ii) record any encounter between a law enforcement officer and a person that results in  
6830 death or bodily injury, or includes an instance when an officer fires a weapon;

6831 (iii) record any encounter that is the subject of a complaint or a legal proceeding  
6832 against a law enforcement officer or law enforcement agency;

6833 (iv) contain an officer involved critical incident as defined in Section 76-2-408(1)(d);  
6834 or

6835 (v) have been requested for reclassification as a public record by a subject or  
6836 authorized agent of a subject featured in the recording.

6837 (3) (a) As used in this Subsection (3), "medical records" means medical reports,  
6838 records, statements, history, diagnosis, condition, treatment, and evaluation.

6839 (b) Medical records in the possession of the University of Utah Hospital, its clinics,  
6840 doctors, or affiliated entities are not private records or controlled records under Section  
6841 63G-2-304 when the records are sought:

6842 (i) in connection with any legal or administrative proceeding in which the patient's  
6843 physical, mental, or emotional condition is an element of any claim or defense; or

6844 (ii) after a patient's death, in any legal or administrative proceeding in which any party  
6845 relies upon the condition as an element of the claim or defense.

6846 (c) Medical records are subject to production in a legal or administrative proceeding  
6847 according to state or federal statutes or rules of procedure and evidence as if the medical

6848 records were in the possession of a nongovernmental medical care provider.

6849 Section 63. Section **63G-3-102** is amended to read:

6850 **63G-3-102. Definitions.**

6851 As used in this chapter:

6852 (1) "Administrative record" means information an agency relies upon when making a  
6853 rule under this chapter including:

6854 (a) the proposed rule, change in the proposed rule, and the rule analysis form;

6855 (b) the public comment received and recorded by the agency during the public  
6856 comment period;

6857 (c) the agency's response to the public comment;

6858 (d) the agency's analysis of the public comment; and

6859 (e) the agency's report of its decision-making process.

6860 (2) "Agency" means each state board, authority, commission, institution, department,  
6861 division, officer, or other state government entity other than the Legislature, its committees, the  
6862 political subdivisions of the state, or the courts, which is authorized or required by law to make  
6863 rules, adjudicate, grant or withhold licenses, grant or withhold relief from legal obligations, or  
6864 perform other similar actions or duties delegated by law.

6865 (3) "Bulletin" means the Utah State Bulletin.

6866 (4) "Catchline" means a short summary of each section, part, rule, or title of the code  
6867 that follows the section, part, rule, or title reference placed before the text of the rule and serves  
6868 the same function as boldface in legislation as described in Section [68-3-13](#).

6869 (5) "Code" means the body of all effective rules as compiled and organized by the  
6870 ~~[division]~~ office and entitled "Utah Administrative Code."

6871 (6) "Department" means the Department of Administrative Services created in Section  
6872 [63A-1-104](#).

6873 (7) "Effective" means operative and enforceable.

6874 (8) "Executive director" means the executive director of the department.

6875 (9) (a) "File" means to submit a document to the office as prescribed by the  
6876 department.

6877 (b) "Filing date" means the day and time the document is recorded as received by the  
6878 office.

6879 (10) "Interested person" means any person affected by or interested in a proposed rule,  
6880 amendment to an existing rule, or a nonsubstantive change made under Section 63G-3-402.

6881 (11) "Office" means the Office of Administrative Rules created in Section 63G-3-401.

6882 (12) "Order" means an agency action that determines the legal rights, duties, privileges,  
6883 immunities, or other interests of one or more specific persons, but not a class of persons.

6884 (13) "Person" means any individual, partnership, corporation, association,  
6885 governmental entity, or public or private organization of any character other than an agency.

6886 (14) "Publication" or "publish" means making a rule available to the public by  
6887 including the rule or a summary of the rule in the bulletin.

6888 (15) "Publication date" means the inscribed date of the bulletin.

6889 (16) "Register" may include an electronic database.

6890 (17) (a) "Rule" means an agency's written statement that:

6891 (i) is explicitly or implicitly required by state or federal statute or other applicable law;

6892 (ii) implements or interprets a state or federal legal mandate; and

6893 (iii) applies to a class of persons or another agency.

6894 (b) "Rule" includes the amendment or repeal of an existing rule.

6895 (c) "Rule" does not mean:

6896 (i) orders;

6897 (ii) an agency's written statement that applies only to internal management and that  
6898 does not restrict the legal rights of a public class of persons or another agency;

6899 (iii) the governor's executive orders or proclamations;

6900 (iv) opinions issued by the attorney general's office;

6901 (v) declaratory rulings issued by the agency according to Section 63G-4-503 except as  
6902 required by Section 63G-3-201;

6903 (vi) rulings by an agency in adjudicative proceedings, except as required by Subsection  
6904 63G-3-201(6); or

6905 (vii) an agency written statement that is in violation of any state or federal law.

6906 (18) "Rule analysis" means the format prescribed by the department to summarize and  
6907 analyze rules.

6908 (19) "Small business" means a business employing fewer than 50 persons.

6909 (20) "Substantive change" means a change in a rule that affects the application or

6910 results of agency actions.

6911 Section 64. Section **63G-21-102** is amended to read:

6912 **63G-21-102. Definitions.**

6913 As used in this chapter:

6914 (1) "Designated agency" means:

6915 (a) the Governor's Office of Economic Development;

6916 (b) the Division of Wildlife Resources;

6917 (c) the Department of Public Safety;

6918 (d) the Department of Technology Services; or

6919 (e) the Department of Workforce Services.

6920 (2) (a) "State service" means a service or benefit regularly provided to the public by a  
6921 designated agency.

6922 (b) "State service" includes:

6923 (i) for the Governor's Office of Economic Development or the Department of

6924 Technology Services, public high-speed Internet access;

6925 (ii) for the Division of Wildlife Resources, fishing, hunting, and trapping licenses;

6926 (iii) for the Department of Public Safety, fingerprinting, an online driver license  
6927 renewal, online appointment scheduling, an online motor vehicle record request, and an online  
6928 change of address with the Driver License Division; and

6929 (iv) for the Department of Workforce Services, online job searches, verification of  
6930 submission for benefits administered by the Department of Workforce Services, online  
6931 unemployment applications, online food stamp applications, and online appointment  
6932 scheduling.

6933 (3) "USPS" means the United States Postal Service.

6934 Section 65. Section **63I-1-226** is amended to read:

6935 **63I-1-226. Repeal dates, Title 26.**

6936 (1) Section **26-1-40** is repealed July 1, 2019.

6937 (2) Title 26, Chapter 9f, Utah Digital Health Service Commission Act, is repealed July  
6938 1, 2025.

6939 (3) Section **26-10-11** is repealed July 1, 2020.

6940 (4) Title 26, Chapter 33a, Utah Health Data Authority Act, is repealed July 1, 2024.



6941 (5) Title 26, Chapter 36a, Hospital Provider Assessment Act, is repealed July 1, 2019.

6942 (6) Title 26, Chapter 36b, Inpatient Hospital Assessment Act, is repealed July 1, 2021.

6943 [~~(7) Section 26-38-2.5 is repealed July 1, 2017.~~]

6944 [~~(8) Section 26-38-2.6 is repealed July 1, 2017.~~]

6945 [~~(9)~~ (7) Title 26, Chapter 56, Hemp Extract Registration Act, is repealed July 1, 2021.

6946 Section 66. Section **63I-1-257** is amended to read:

6947 **63I-1-257. Repeal dates, Title 57.**

6948 [(1)] Section 57-1-25.5 is repealed on July 1, 2018.

6949 [(2) Subsection 57-16-4(12), on July 1, 2017, is modified to read as follows:]

6950 ["(12) The mobile home park shall have a copy of this chapter posted at all times in a  
6951 conspicuous place in a common area of the mobile home park."]

6952 [(3) Title 57, Chapter 16a, Mobile Home Park Helpline, is repealed July 1, 2017.]

6953 Section 67. Section **63I-1-259** is amended to read:

6954 **63I-1-259. Repeal dates, Title 59.**

6955 (1) Section 59-1-213.1 is repealed on May 9, 2019.

6956 (2) Section 59-1-213.2 is repealed on May 9, 2019.

6957 (3) Subsection 59-1-405(1)(g) is repealed on May 9, 2019.

6958 (4) Subsection 59-1-405(2)(b) is repealed on May 9, 2019.

6959 [(5) Subsection 59-2-924.2(9) is repealed on December 31, 2017.]

6960 [(6) (5) Section 59-7-618 is repealed July 1, 2020.

6961 [(7) (6) Section 59-9-102.5 is repealed December 31, 2020.

6962 [(8) (7) Section 59-10-1033 is repealed July 1, 2020.

6963 [(9) (8) Subsection 59-12-2219(13) is repealed on June 30, 2020.

6964 [(10) (9) Title 59, Chapter 28, State Transient Room Tax Act, is repealed on January  
6965 1, 2023.

6966 Section 68. Section **63I-2-219** is amended to read:

6967 **63I-2-219. Repeal dates -- Title 19.**

6968 [(1) Subsection 19-1-403(2)(c)(i), the language that states "minus the amount of any  
6969 tax credit claimed under Section 59-7-605 or 59-10-1009" is repealed on January 1, 2017.]

6970 [(2) Subsection 19-1-403(2)(c)(ii), the language that states "minus the amount of any  
6971 tax credit claimed under Section 59-7-605 or 59-10-1009" is repealed on January 1, 2017.]

6972 Section 69. Section **63I-2-226** is amended to read:  
6973 **63I-2-226. Repeal dates -- Title 26.**  
6974 (1) Section **26-8a-107** is repealed July 1, 2019.  
6975 [~~(2) Subsections **26-10-12**(2) and (4) are repealed July 1, 2017.~~]  
6976 [~~(3)~~] (2) Title 26, Chapter 46, Utah Health Care Workforce Financial Assistance  
6977 Program, is repealed July 1, 2027.  
6978 [~~(4)~~] (3) Title 26, Chapter 59, Telehealth Pilot Program, is repealed January 1, 2020.  
6979 Section 70. Section **63I-2-234** is amended to read:  
6980 **63I-2-234. Repeal dates -- Title 34A.**  
6981 [~~Section **34A-2-107.1** is repealed November 30, 2017.~~]  
6982 Section 71. Section **63I-2-236** is amended to read:  
6983 **63I-2-236. Repeal dates -- Title 36.**  
6984 [~~Section **36-29-102** is repealed July 1, 2016.~~]  
6985 Section 72. Section **63I-2-248** is amended to read:  
6986 **63I-2-248. Repeal dates -- Title 48.**  
6987 [~~(1) Title 48, Chapter 1, General and Limited Liability Partnerships, is repealed~~  
6988 ~~January 1, 2016.~~]  
6989 [~~(2) Title 48, Chapter 2a, Utah Revised Uniform Limited Partnership Act, is repealed~~  
6990 ~~January 1, 2016.~~]  
6991 [~~(3) Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, is repealed~~  
6992 ~~January 1, 2016.~~]  
6993 Section 73. Section **63I-2-249** is amended to read:  
6994 **63I-2-249. Repeal dates -- Title 49.**  
6995 [~~Section **49-20-412** is repealed January 1, 2016.~~]  
6996 Section 74. Section **63I-2-253** is amended to read:  
6997 **63I-2-253. Repeal dates -- Titles 53, 53A, and 53B.**  
6998 [~~(1) Section **53A-1-403.5** is repealed July 1, 2017.~~]  
6999 [~~(2) Section **53A-1-411** is repealed July 1, 2017.~~]  
7000 [~~(3)~~] (1) Section **53A-1-415** is repealed July 1, 2019.  
7001 [~~(4)~~] (2) Section **53A-1-709** is repealed July 1, 2020.  
7002 [~~(5)~~] (3) Subsection **53A-1-1207**(3)(b)(ii)(B) is repealed July 1, 2020.

7003           ~~[(6)]~~ (4) Section [53A-1-1208](#) is repealed July 1, 2020.

7004           ~~[(7)]~~ Subsection [53A-1a-513](#)(4) is repealed July 1, 2017.]

7005           ~~[(8)]~~ Title 53A, Chapter 8a, Part 8, Peer Assistance and Review Pilot Program, is

7006           repealed July 1, 2017.]

7007           ~~[(9)]~~ (5) Section [53A-24-601](#) is repealed January 1, 2018.

7008           ~~[(10)]~~ (6) Section [53A-24-602](#) is repealed July 1, 2018.

7009           ~~[(11)]~~ (7) (a) Subsections [53B-2a-103](#)(2) and (4) are repealed July 1, 2019.

7010           (b) When repealing Subsections [53B-2a-103](#)(2) and (4), the Office of Legislative

7011           Research and General Counsel shall, in addition to its authority under Subsection [36-12-12](#)(3),

7012           make necessary changes to subsection numbering and cross references.

7013           ~~[(12)]~~ Subsections [53B-7-101](#)(2)(b)(iii)(A) and (3) are repealed January 1, 2018:]

7014           ~~[(13)]~~ (8) (a) Subsection [53B-7-705](#)(6)(b)(ii)(A), the language that states "Except as

7015           provided in Subsection (6)(b)(ii)(B)," is repealed July 1, 2021.

7016           (b) Subsection [53B-7-705](#)(6)(b)(ii)(B) is repealed July 1, 2021.

7017           ~~[(14)]~~ (9) (a) Subsection [53B-7-707](#)(4)(a)(ii), the language that states "Except as

7018           provided in Subsection (4)(b)," is repealed July 1, 2021.

7019           (b) Subsection [53B-7-707](#)(4)(b) is repealed July 1, 2021.

7020           ~~[(15)]~~ (10) (a) The following sections are repealed on July 1, 2023:

7021           (i) Section [53B-8-202](#);

7022           (ii) Section [53B-8-203](#);

7023           (iii) Section [53B-8-204](#); and

7024           (iv) Section [53B-8-205](#).

7025           (b) (i) Subsection [53B-8-201](#)(2) is repealed on July 1, 2023.

7026           (ii) When repealing Subsection [53B-8-201](#)(2), the Office of Legislative Research and

7027           General Counsel shall, in addition to its authority under Subsection [36-12-12](#)(3), make

7028           necessary changes to subsection numbering and cross references.

7029           ~~[(16)]~~ (11) Title 53B, Chapter 18, Part 14, Uintah Basin Air Quality Research Project,

7030           is repealed July 1, 2023.

7031           Section 75. Section [63I-2-278](#) is amended to read:

7032           **[63I-2-278](#). Repeal dates, Title 78A and Title 78B.**

7033           ~~[Title 78B, Chapter 3, Part 9, Expedited Jury Trial Act, is repealed January 1, 2017.]~~

7034 Section 76. Section **63N-2-104** is amended to read:

7035 **63N-2-104. Creation of economic development zones -- Tax credits -- Assignment**  
7036 **of tax credit.**

7037 (1) The office, with advice from the board, may create an economic development zone  
7038 in the state if the following requirements are satisfied:

7039 (a) the area is zoned commercial, industrial, manufacturing, business park, research  
7040 park, or other appropriate business related use in a community-approved master plan;

7041 (b) the request to create a development zone has first been approved by an appropriate  
7042 local government entity; and

7043 (c) local incentives have been or will be committed to be provided within the area.

7044 (2) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,  
7045 the office shall make rules establishing the requirements for a business entity or local  
7046 government entity to qualify for a tax credit for a new commercial project in a development  
7047 zone under this part.

7048 (b) The office shall ensure that the requirements described in Subsection (2)(a) include  
7049 the following:

7050 (i) the new commercial project is within the development zone;

7051 (ii) the new commercial project includes direct investment within the geographic  
7052 boundaries of the development zone;

7053 (iii) the new commercial project brings new incremental jobs to Utah;

7054 (iv) the new commercial project includes the creation of high paying jobs in the state,  
7055 significant capital investment in the state, or significant purchases from vendors, contractors, or  
7056 service providers in the state, or a combination of these three economic factors;

7057 (v) the new commercial project generates new state revenues; and

7058 (vi) a business entity, a local government entity, or a community reinvestment agency  
7059 to which a local government entity assigns a tax credit under this section meets the  
7060 requirements of Section [63N-2-105](#).

7061 (3) (a) The office, after consultation with the board, may enter into a written agreement  
7062 with a business entity or local government entity authorizing a tax credit to the business entity  
7063 or local government entity if the business entity or local government entity meets the  
7064 requirements described in this section.

7065 (b) (i) With respect to a new commercial project, the office may authorize a tax credit  
7066 to a business entity or a local government entity, but not both.

7067 (ii) In determining whether to authorize a tax credit with respect to a new commercial  
7068 project to a business entity or a local government entity, the office shall authorize the tax credit  
7069 in a manner that the office determines will result in providing the most effective incentive for  
7070 the new commercial project.

7071 (c) (i) Except as provided in Subsection (3)(c)(ii), the office may not authorize or  
7072 commit to authorize a tax credit that exceeds:

7073 (A) 50% of the new state revenues from the new commercial project in any given year;  
7074 or

7075 (B) 30% of the new state revenues from the new commercial project over the lesser of  
7076 the life of a new commercial project or 20 years.

7077 (ii) If the eligible business entity makes capital expenditures in the state of  
7078 \$1,500,000,000 or more associated with a new commercial project, the office may:

7079 (A) authorize or commit to authorize a tax credit not exceeding 60% of new state  
7080 revenues over the lesser of the life of the project or 20 years, if the other requirements of this  
7081 part are met;

7082 (B) establish the year that state revenues and incremental jobs baseline data are  
7083 measured for purposes of an incentive under this Subsection (3)(c)(ii); and

7084 (C) offer an incentive under this Subsection (3)(c)(ii) or modify an existing incentive  
7085 previously granted under Subsection (3)(c)(i) that is based on the baseline measurements  
7086 described in Subsection (3)(c)(ii)(B), except that the incentive may not authorize or commit to  
7087 authorize a tax credit of more than 60% of new state revenues in any one year.

7088 (d) (i) A local government entity may by resolution assign a tax credit authorized by  
7089 the office to a community reinvestment agency.

7090 (ii) The local government entity shall provide a copy of the resolution described in  
7091 Subsection (3)(d)(i) to the office.

7092 (iii) If a local government entity assigns a tax credit to a community reinvestment  
7093 agency, the written agreement described in Subsection (3)(a) shall:

7094 (A) be between the office, the local government entity, and the community  
7095 reinvestment agency;

7096 (B) establish the obligations of the local government entity and the community  
7097 reinvestment agency; and

7098 (C) establish the extent to which any of the local government entity's obligations are  
7099 transferred to the community reinvestment agency.

7100 (iv) If a local government entity assigns a tax credit to a community reinvestment  
7101 agency:

7102 (A) the community reinvestment agency shall retain records as described in Subsection  
7103 (4)(d); and

7104 (B) a tax credit certificate issued in accordance with Section [~~63N-2-106~~] 63N-2-105  
7105 shall list the community reinvestment agency as the named applicant.

7106 (4) The office shall ensure that the written agreement described in Subsection (3):

7107 (a) specifies the requirements that the business entity or local government entity shall  
7108 meet to qualify for a tax credit under this part;

7109 (b) specifies the maximum amount of tax credit that the business entity or local  
7110 government entity may be authorized for a taxable year and over the life of the new commercial  
7111 project;

7112 (c) establishes the length of time the business entity or local government entity may  
7113 claim a tax credit;

7114 (d) requires the business entity or local government entity to retain records supporting a  
7115 claim for a tax credit for at least four years after the business entity or local government entity  
7116 claims a tax credit under this part; and

7117 (e) requires the business entity or local government entity to submit to audits for  
7118 verification of the tax credit claimed.

7119 Section 77. Section **67-4a-501** is amended to read:

7120 **67-4a-501. Notice to apparent owner by holder.**

7121 (1) Subject to [~~Subsections~~] Subsection (2) [~~and (3)~~], the holder of property presumed  
7122 abandoned shall send to the apparent owner notice by first-class United States mail that  
7123 complies with Section 67-4a-502 in a format acceptable to the administrator not more than 180  
7124 days nor less than 60 days before filing the report under Section 67-4a-401 if:

7125 (a) the holder has in the holder's records an address for the apparent owner that the  
7126 holder's records do not disclose to be invalid and is sufficient to direct the delivery of first-class

7127 United States mail to the apparent owner; and

7128 (b) the value of the property is \$50 or more.

7129 (2) If an apparent owner has consented to receive electronic mail delivery from the  
7130 holder, the holder shall send the notice described in Subsection (1) both by first-class United  
7131 States mail to the apparent owner's last-known mailing address and by electronic mail, unless  
7132 the holder believes that the apparent owner's electronic mail address is invalid.

7133 Section 78. Section **70A-2-311** is amended to read:

7134 **70A-2-311. Options and cooperation respecting performance.**

7135 (1) An agreement for sale which is otherwise sufficiently definite [~~Subsection (3) of~~  
7136 ~~Section 70A-2-204~~] to be a contract under Subsection 70A-2-204(3) is not made invalid by the  
7137 fact that it leaves particulars of performance to be specified by one of the parties. Any such  
7138 specification must be made in good faith and within limits set by commercial reasonableness.

7139 (2) Unless otherwise agreed, specifications relating to assortment of the goods are at  
7140 the buyer's option, and except as otherwise provided in Subsections **70A-2-319**(1)(c) and (3),  
7141 specifications or arrangements relating to shipment are at the seller's option.

7142 (3) Where such specification would materially affect the other party's performance but  
7143 is not seasonably made or where one party's cooperation is necessary to the agreed performance  
7144 of the other but is not seasonably forthcoming, the other party in addition to all other remedies:

7145 (a) is excused for any resulting delay in his own performance; and

7146 (b) may also either proceed to perform in any reasonable manner or after the time for a  
7147 material part of his own performance treat the failure to specify or to cooperate as a breach by  
7148 failure to deliver or accept the goods.

7149 Section 79. Section **70A-2-402** is amended to read:

7150 **70A-2-402. Rights of seller's creditors against sold goods.**

7151 (1) Except as provided in Subsections (2) and (3), rights of unsecured creditors of the  
7152 seller with respect to goods which have been identified to a contract for sale are subject to the  
7153 buyer's rights to recover the goods under [~~this chapter (Sections 70A-2-502 and 70A-2-716)]~~  
7154 Section 70A-2-502 or 70A-2-716.

7155 (2) A creditor of the seller may treat a sale or an identification of goods to a contract  
7156 for sale as void if as against him a retention of possession by the seller is fraudulent under any  
7157 rule of law of the state where the goods are situated, except that retention of possession in good

7158 faith and current course of trade by a merchant-seller for a commercially reasonable time after  
7159 a sale or identification is not fraudulent.

7160 (3) Nothing in this chapter shall be deemed to impair the rights of creditors of the  
7161 seller:

7162 (a) under the provisions of [~~the chapter on Secured Transactions~~ (Chapter 9a, Uniform  
7163 Commercial Code - Secured Transactions)]; or

7164 (b) where identification to the contract or delivery is made not in current course of  
7165 trade but in satisfaction of or as security for a preexisting claim for money, security or the like  
7166 and is made under circumstances which under any rule of law of the state where the goods are  
7167 situated would apart from this chapter constitute the transaction a voidable transaction or  
7168 voidable preference.

7169 Section 80. Section **70A-2-601** is amended to read:

7170 **70A-2-601. Buyer's rights on improper delivery.**

7171 Subject to the provisions of [~~this chapter on breach in installment contracts (Section~~  
7172 [70A-2-612](#))] [Section 70A-2-612](#), and unless otherwise agreed under [~~the sections on~~  
7173 ~~contractual limitations of remedy (Sections [70A-2-718](#) and [70A-2-719](#))~~] [Sections 70A-2-718](#)  
7174 [and 70A-2-719](#), if the goods or the tender of delivery fail in any respect to conform to the  
7175 contract, the buyer may:

7176 (1) reject the whole;

7177 (2) accept the whole; or

7178 (3) accept any commercial unit or units and reject the rest.

7179 Section 81. Section **70A-2-610** is amended to read:

7180 **70A-2-610. Anticipatory repudiation.**

7181 When either party repudiates the contract with respect to a performance not yet due the  
7182 loss of which will substantially impair the value of the contract to the other, the aggrieved party  
7183 may:

7184 (1) for a commercially reasonable time await performance by the repudiating party;

7185 (2) resort to any remedy for breach [~~under~~ [Section 70A-2-703](#) or [Section](#)  
7186 [70A-2-711](#)], even though he has notified the repudiating party that he would await the latter's  
7187 performance and has urged retraction; and

7188 (3) in either case suspend his own performance or proceed in accordance with the



7189 provisions of this chapter on the seller's right to identify goods to the contract notwithstanding  
7190 breach or to salvage unfinished goods [~~under~~ Section 70A-2-704~~]~~].

7191 Section 82. Section 72-2-118 is amended to read:

7192 **72-2-118. Centennial Highway Fund.**

7193 (1) There is created a capital projects fund entitled the Centennial Highway Fund  
7194 within the Transportation Investment Fund of 2005 created by Section 72-2-124.

7195 (2) The account consists of money generated from the following revenue sources:

7196 (a) any voluntary contributions received for the construction, reconstruction, or  
7197 renovation of state or federal highways; and

7198 (b) appropriations made to the fund by the Legislature.

7199 (3) (a) The fund shall earn interest.

7200 (b) All interest earned on fund money shall be deposited into the fund.

7201 (4) The executive director may use fund money, as prioritized by the Transportation  
7202 Commission, only to pay the costs of construction, reconstruction, or renovation to state and  
7203 federal highways.

7204 (5) When the highway general obligation bonds have been paid off and the highway  
7205 projects completed that are intended to be paid from revenues deposited in the account as  
7206 determined by the Executive Appropriations Committee under Subsection (6)~~(f)~~(c), the  
7207 Division of Finance shall transfer any existing balance in the account into the Transportation  
7208 Investment Fund of 2005 created by Section 72-2-124.

7209 (6) (a) The Division of Finance shall monitor the highway general obligation bonds  
7210 that are being paid from revenues deposited in the fund.

7211 (b) The department shall monitor the highway construction, reconstruction, or  
7212 renovation projects that are being paid from revenues deposited in the fund.

7213 (c) The department shall notify the State Tax Commission and the Division of Finance  
7214 when:

7215 (i) all highway general obligation bonds that are intended to be paid from revenues  
7216 deposited in the fund have been paid off; and

7217 (ii) all highway projects that are intended to be paid from revenues deposited in the  
7218 account have been completed.

7219 Section 83. Section 75-7-1011 is amended to read:

7220 **75-7-1011. Interest as general partner.**

7221 (1) Except as otherwise provided in Subsection (3) or unless personal liability is  
7222 imposed in the contract, a trustee who holds an interest as a general partner in a general or  
7223 limited partnership is not personally liable on a contract entered into by the partnership after  
7224 the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in  
7225 a statement previously filed pursuant to [~~Title 48, Chapter 2a, Utah Revised Uniform Limited~~  
7226 ~~Partnership Act, or~~] Title 48, Chapter 2e, Utah Uniform Limited Partnership Act[, as  
7227 appropriate pursuant to ~~Section 48-2c-1205~~].

7228 (2) Except as otherwise provided in Subsection (3), a trustee who holds an interest as a  
7229 general partner is not personally liable for torts committed by the partnership or for obligations  
7230 arising from ownership or control of the interest unless the trustee is personally at fault.

7231 (3) The immunity provided by this section does not apply if an interest in the  
7232 partnership is held by the trustee in a capacity other than that of trustee or is held by the  
7233 trustee's spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse  
7234 of any of them.

7235 (4) If the trustee of a revocable trust holds an interest as a general partner, the settlor is  
7236 personally liable for contracts and other obligations of the partnership as if the settlor were a  
7237 general partner.

7238 Section 84. Section **77-7-15** is amended to read:

7239 **77-7-15. Authority of peace officer to stop and question suspect -- Grounds.**

7240 A peace officer may stop any person in a public place when [~~he~~] the officer has a  
7241 reasonable suspicion to believe [~~he~~] the person has committed or is in the act of committing or  
7242 is attempting to commit a public offense and may demand [~~his~~] the person's name, address, and  
7243 an explanation of [~~his~~] the person's actions.

7244 Section 85. Section **77-10a-13** is amended to read:

7245 **77-10a-13. Location -- Who may be present -- Witnesses -- Witnesses who are**  
7246 **subjects -- Evidence -- Contempt -- Notice -- Record of proceedings -- Disclosure.**

7247 (1) The managing judge shall designate the place where the grand jury meets. The  
7248 grand jury may, upon request and with the permission of the managing judge, meet and conduct  
7249 business any place within the state. Subject to the approval of the managing judge the grand  
7250 jury shall determine the times at which it meets.

7251 (2) (a) Attorneys representing the state, special prosecutors appointed under Section  
7252 77-10a-12, the witness under examination, interpreters when needed, counsel for a witness, and  
7253 a court reporter or operator of a recording device to record the proceedings may be present  
7254 while the grand jury is in session.

7255 (b) No person other than the jurors may be present while the grand jury is deliberating.

7256 (3) (a) The attorneys representing the state and the special prosecutors may subpoena  
7257 witnesses to appear before the grand jury and may subpoena evidence in the name of the grand  
7258 jury without the prior approval or consent of the grand jury or the court. The jury may request  
7259 that other witnesses or evidence be subpoenaed.

7260 (b) Subpoenas may be issued in the name of the grand jury to any person located within  
7261 the state and for any evidence located within the state or as otherwise provided by law.

7262 (c) Except as provided in Subsection (3)(d), a subpoena requiring a minor, who is a  
7263 victim of a crime, to testify before a grand jury may not be served less than 72 hours before the  
7264 victim is required to testify.

7265 (d) A subpoena may be served upon a minor less than 72 hours before the minor is  
7266 required to testify if the managing judge makes a factual finding that the minor was  
7267 intentionally concealed to prevent service or that a shorter period is reasonably necessary to  
7268 prevent:

7269 (i) a risk to the minor's safety;

7270 (ii) the concealment or removal of the minor from the jurisdiction;

7271 (iii) intimidation or coercion of the minor or a family member of the minor; or

7272 (iv) undue influence on the minor regarding the minor's testimony.

7273 (e) The service requirement in Subsection (3)(c) may be asserted only by or on behalf  
7274 of the minor and is not a basis for invalidation of the minor's testimony or any indictment  
7275 issued by the grand jury.

7276 (f) The service requirement of Subsection (3)(d) may be asserted by a parent or legal  
7277 guardian of the minor on the minor's behalf.

7278 (g) If the managing judge finds it necessary to prevent any of the actions enumerated in  
7279 Subsections (3)(d)(i) through (iv) or to otherwise protect the minor, the judge may appoint a  
7280 guardian ad litem to receive service on behalf of the minor, to represent the minor, and to  
7281 protect the interests of the minor.

7282 (h) If the minor served under Subsection (3)(d)[;] has no parent, legal guardian, or  
7283 guardian ad litem with whom to confer prior to the grand jury hearing, the managing judge  
7284 shall appoint legal counsel to represent the minor at the hearing.

7285 (i) For any minor served with a subpoena under this section, attorneys representing the  
7286 state, or special prosecutors appointed under Section 77-10a-12, shall interview and prepare the  
7287 minor in the presence of the minor's parent or legal guardian and their attorney, or a guardian  
7288 ad litem at least 24 hours prior to the time the minor is required to testify. The provisions of  
7289 this subsection requiring the presence of the minor's parent do not apply if:

7290 (i) the parent is the subject of the grand jury investigation; or

7291 (ii) the parent is engaged in frustrating, or conspires with[;] another to frustrate, the  
7292 protections and purposes of Subsection (3)(d).

7293 (j) The managing judge may enter any order necessary to secure compliance with any  
7294 subpoena issued in the name of the grand jury.

7295 (4) (a) Any witness who appears before the grand jury shall be advised, by the attorney  
7296 for the state or the special prosecutor, of his right to be represented by counsel.

7297 (b) A witness who is also a subject as defined in Section 77-10a-1 shall, at the time [~~he~~  
7298 appears] of appearance as a witness, be advised:

7299 (i) of his right to be represented by counsel;

7300 (ii) that he is a subject;

7301 (iii) that he may claim his privilege against self-incrimination; and

7302 (iv) of the general scope of the grand jury's investigation.

7303 (c) A witness who is also a target as defined in Section 77-10a-1 shall, at the time [~~he~~  
7304 appears] of appearance as a witness, be advised:

7305 (i) of his right to be represented by counsel;

7306 (ii) that he is a target;

7307 (iii) that he may claim his privilege against self-incrimination;

7308 (iv) that the attorney for the state, the special prosecutor, or the grand jury is in  
7309 possession of substantial evidence linking him to the commission of a crime for which he could  
7310 be charged; and

7311 (v) of the general nature of that charge and of the evidence that would support the  
7312 charge.

7313 (d) This Subsection (4) does not require the attorney for the state, the special  
7314 prosecutor, or the grand jury to disclose to any subject or target the names or identities of  
7315 witnesses, sources of information, or informants, or disclose information in detail or in a  
7316 fashion that would jeopardize or compromise any ongoing criminal investigation or endanger  
7317 any person or the community.

7318 (5) (a) The grand jury shall receive evidence without regard for the formal rules of  
7319 evidence, except the grand jury may receive hearsay evidence only under the same provisions  
7320 and limitations that apply to preliminary hearings.

7321 (b) Any person, including a witness who has previously testified or produced books,  
7322 records, documents, or other evidence, may present exculpatory evidence to the attorney  
7323 representing the state or the special prosecutor and request that it be presented to the grand  
7324 jury, or request to appear personally before the grand jury to testify or present evidence to that  
7325 body. The attorney for the state or the special prosecutor shall forward the request to the grand  
7326 jury.

7327 (c) When the attorney for the state or the special prosecutor is personally aware of  
7328 substantial and competent evidence negating the guilt of a subject or target that might  
7329 reasonably be expected to lead the grand jury not to indict, [~~he~~] the attorney or special  
7330 prosecutor shall present or otherwise disclose the evidence to the grand jury before the grand  
7331 jury is asked to indict that person.

7332 (6) (a) The managing judge has the contempt power and authority inherent in the court  
7333 over which [~~he~~] the managing judge presides and as provided by statute.

7334 (b) When a witness in any proceeding before or ancillary to any grand jury appearance  
7335 refuses to comply with an order from the managing judge to testify or provide other  
7336 information, including any book, paper, document, record, recording, or other material without  
7337 having a recognized privilege, the attorney for the state or special prosecutor may apply to the  
7338 managing judge for an order directing the witness to show cause why [~~he~~] the witness should  
7339 not be held in contempt.

7340 (c) After submission of the application and a hearing at which the witness is entitled to  
7341 be represented by counsel, the managing judge may hold the witness in contempt and order that  
7342 [~~he~~] the witness be confined, upon a finding that the refusal was not privileged.

7343 (d) A hearing may not be held under this part unless 72 [~~hours~~] hours' notice is given to

7344 the witness who has refused to comply with the order to testify or provide other information,  
7345 except a witness may be given a shorter notice if the managing judge upon a showing of special  
7346 need so orders.

7347 (e) Any confinement for refusal to comply with an order to testify or produce other  
7348 information shall continue until the witness is willing to give the testimony or provide the  
7349 information. A period of confinement may not exceed the term of the grand jury, including  
7350 extensions, before which the refusal to comply with the order occurred. In any event the  
7351 confinement may not exceed one year.

7352 (f) A person confined under this Subsection (6) for refusal to testify or provide other  
7353 information concerning any transaction, set of transactions, event, or events may not be again  
7354 confined under this Subsection (6) or for criminal contempt for a subsequent refusal to testify  
7355 or provide other information concerning the same transaction, set of transactions, event, or  
7356 events.

7357 (g) Any person confined under this section may be admitted to bail or released in  
7358 accordance with local procedures pending the determination of an appeal taken by ~~him~~ the  
7359 person from the order of ~~his~~ the person's confinement unless the appeal affirmatively appears  
7360 to be frivolous or taken for delay. Any appeal from an order of confinement under this section  
7361 shall be disposed of as soon as practicable, pursuant to an expedited schedule and in no event  
7362 more than 30 days from the filing of the appeal.

7363 (7) (a) All proceedings, except when the grand jury is deliberating or voting, shall be  
7364 recorded stenographically or by an electronic recording device. An unintentional failure of any  
7365 recording to reproduce all or any portion of a proceeding does not affect the validity of any  
7366 prosecution or indictment. The recording or reporter's notes or any transcript prepared from  
7367 them shall remain in the custody or control of the attorney for the state or the special prosecutor  
7368 unless otherwise ordered by the managing judge in a particular case.

7369 (b) A grand juror, an interpreter, a court reporter, an operator of a recording device, a  
7370 typist who transcribes recorded testimony, an attorney for the state or special prosecutor, or any  
7371 person to whom disclosure is made under the provisions of this section may not disclose  
7372 matters occurring before the grand jury except as otherwise provided in this section. A  
7373 knowing violation of this provision may be punished as a contempt of court.

7374 (c) Disclosure otherwise prohibited by this section of matters occurring before the

7375 grand jury, other than its deliberations and the vote of any grand juror, may be made to:

7376 (i) an attorney for the state or a special prosecutor for use in the performance of that  
7377 attorney's duty; and

7378 (ii) government personnel, including those of state, local, and federal entities and  
7379 agencies, as are considered necessary by the attorney for the state or special prosecutor to assist  
7380 ~~[him]~~ the attorney in the performance of ~~[his]~~ the attorney's duty to enforce the state's criminal  
7381 laws.

7382 (d) Any person to whom matters are disclosed under this section may not utilize that  
7383 grand jury material for any purpose other than assisting the attorney for the state or the special  
7384 prosecutor in performance of that attorney's duty to enforce the state's criminal laws. An  
7385 attorney for the state or the special prosecutor shall promptly provide the managing judge with  
7386 the names of the persons to whom the disclosure has been made and shall certify that the  
7387 attorney has advised the person of ~~[his]~~ the person's obligation of secrecy under this section.

7388 (e) Disclosure otherwise prohibited by this section of matters occurring before the  
7389 grand jury may also be made when:

7390 (i) directed by the managing judge or by any court before which the indictment that  
7391 involves matters occurring before the grand jury that are subject to disclosure is to be tried,  
7392 preliminary to or in connection with a judicial proceeding;

7393 (ii) permitted by the managing judge at the request of the defendant, upon a showing  
7394 that grounds may exist for a motion to dismiss the indictment because of matters occurring  
7395 before the grand jury;

7396 (iii) the disclosure is made by an attorney for the state or the special prosecutor to  
7397 another state or local grand jury or a federal grand jury;

7398 (iv) permitted by the managing judge at the request of an attorney for the state or the  
7399 special prosecutor, upon a showing that the matters may disclose a violation of federal criminal  
7400 law, to an appropriate official of the federal government for the purpose of enforcing federal  
7401 law; or

7402 (v) showing of special need is made and the managing judge is satisfied that disclosure  
7403 of the information or matters is essential for the preparation of a defense.

7404 (f) When the matters are transcripts of testimony given by witnesses[;] the state or  
7405 special prosecutor intends to call in the state's case in chief in any trial upon an indictment

7406 returned by the grand jury before which the witnesses testified, the attorney for the state or the  
7407 special prosecutor shall, no later than 30 days before trial, provide the defendant with access to  
7408 the transcripts. The attorney for the state or the special prosecutor shall at the same time  
7409 provide the defendant with access to all exculpatory evidence presented to the grand jury prior  
7410 to indictment.

7411 (g) When the managing judge orders disclosure of matters occurring before the grand  
7412 jury, disclosure shall be made in a manner, at a time, and under conditions the managing judge  
7413 directs.

7414 (h) A petition for disclosure made under Subsection (7)(e)(ii) shall be filed with the  
7415 managing judge. Unless the hearing is ex parte, the petitioner shall serve written notice upon  
7416 the attorney for the state or the special prosecutor, the parties to the judicial proceeding if  
7417 disclosure is sought in connection with the proceeding, and other persons as the managing  
7418 judge directs. The managing judge shall afford those persons a reasonable opportunity to  
7419 appear and be heard.

7420 (8) Records, orders, and subpoenas relating to grand jury proceedings shall be kept  
7421 under seal to the extent and so long as necessary to prevent disclosure of matters occurring  
7422 before the grand jury other than as provided in this section.

7423 (9) Subject to any right to an open hearing in contempt proceedings, the managing  
7424 judge shall order a hearing on matters affecting a grand jury proceeding to be closed to the  
7425 extent necessary to prevent disclosure of matters occurring before a grand jury.

7426 Section 86. Section **77-15a-104** is amended to read:

7427 **77-15a-104. Hearing -- Notice -- Stay of proceeding -- Examinations of defendant**  
7428 **-- Scope of examination -- Report -- Procedures.**

7429 (1) (a) If a defendant proposes to offer evidence concerning or argue that he qualifies  
7430 for an exemption from the death penalty under Subsection **77-15a-101**(1) or (2), the defendant  
7431 shall file and serve the prosecuting attorney with written notice of his intention as soon as  
7432 practicable, but not fewer than 60 days before trial.

7433 (b) If the defendant wishes to claim the exemption provided in Subsection  
7434 **77-15a-101**(2), the defendant shall file and serve the prosecuting attorney with written notice of  
7435 his intention as soon as practicable, but not fewer than 60 days before trial.

7436 (2) When notice is given under Subsection (1), the court raises the issue, or a motion is



7437 filed regarding Section 77-15a-101, the court may stay all proceedings in order to address the  
7438 issue.

7439 (3) (a) The court shall order the Department of Human Services to appoint at least two  
7440 mental health experts to examine the defendant and report to the court. The experts:

7441 (i) may not be involved in the current treatment of the defendant; and

7442 (ii) shall have expertise in [~~mental retardation~~] intellectual disability assessment.

7443 (b) Upon appointment of the experts, the defendant or other party as directed by the  
7444 court shall provide information and materials to the examiners relevant to a determination of  
7445 the defendant's [~~mental retardation~~] intellectual disability, including copies of the charging  
7446 document, arrest or incident reports pertaining to the charged offense, known criminal history  
7447 information, and known prior mental health evaluations and treatments.

7448 (c) The court may make the necessary orders to provide the information listed in  
7449 Subsection (3)(b) to the examiners.

7450 (d) The court may provide in its order appointing the examiners that custodians of  
7451 mental health records pertaining to the defendant shall provide those records to the examiners  
7452 without the need for consent of the defendant or further order of the court.

7453 (e) Prior to examining the defendant, examiners shall specifically advise the defendant  
7454 of the limits of confidentiality as provided under Section 77-15a-106.

7455 (4) During any examinations under Subsection (3), unless the court directs otherwise,  
7456 the defendant shall be retained in the same custody or status he was in at the time the  
7457 examination was ordered.

7458 (5) The experts shall in the conduct of their examinations and in their reports to the  
7459 court consider and address:

7460 (a) whether the defendant is [~~mentally retarded~~] intellectually disabled as defined in  
7461 Section 77-15a-102;

7462 (b) the degree of any [~~mental retardation~~] intellectual disability the expert finds to  
7463 exist;

7464 (c) whether the defendant [~~has the mental deficiencies~~] is intellectually disabled as  
7465 specified in Subsection 77-15a-101(2); and

7466 (d) the degree of any [~~mental deficiencies~~] intellectual disability the expert finds to  
7467 exist.

7468 (6) (a) The experts examining the defendant shall provide written reports to the court,  
7469 the prosecution, and the defense within 60 days of the receipt of the court's order, unless the  
7470 expert submits to the court a written request for additional time in accordance with Subsection  
7471 (6)(c).

7472 (b) The reports shall provide to the court and to prosecution and defense counsel the  
7473 examiners' written opinions concerning the [~~mental retardation~~] intellectual disability of the  
7474 defendant.

7475 (c) If an examiner requests of the court additional time, the examiner shall provide the  
7476 report to the court and counsel within 90 days from the receipt of the court's order unless, for  
7477 good cause shown, the court authorizes an additional period of time to complete the  
7478 examination and provide the report.

7479 (7) Any written report submitted by an expert shall:

7480 (a) identify the specific matters referred for evaluation;

7481 (b) describe the procedures, techniques, and tests used in the examination and the  
7482 purpose or purposes for each;

7483 (c) state the expert's clinical observations, findings, and opinions; and

7484 (d) identify the sources of information used by the expert and present the basis for the  
7485 expert's clinical findings and opinions.

7486 (8) Within 30 days after receipt of the report from the Department of Human Services,  
7487 but not later than five days before hearing, or at any other time the court directs, the  
7488 prosecuting attorney shall file and serve upon the defendant a notice of witnesses the  
7489 prosecuting attorney proposes to call in rebuttal.

7490 (9) (a) Except pursuant to Section ~~77-15a-105~~, this chapter does not prevent any party  
7491 from producing any other testimony as to the mental condition of the defendant.

7492 (b) Expert witnesses who are not appointed by the court are not entitled to  
7493 compensation under Subsection (10).

7494 (10) (a) Expenses of examinations of the defendant ordered by the court under this  
7495 section shall be paid by the Department of Human Services.

7496 (b) Travel expenses associated with any court-ordered examination that are incurred by  
7497 the defendant shall be charged by the Department of Human Services to the county where  
7498 prosecution is commenced.

7499 (11) (a) When the report is received, the court shall set a date for a hearing to  
7500 determine if the exemption under Section 77-15a-101 applies. The hearing shall be held and  
7501 the judge shall make the determination within a reasonable time prior to jury selection.

7502 (b) Prosecution and defense counsel may subpoena to testify at the hearing any person  
7503 or organization appointed by the Department of Human Services to conduct the examination  
7504 and any independent examiner.

7505 (c) The court may call any examiner to testify at the hearing who is not called by the  
7506 parties. If the court calls an examiner, counsel for the parties may cross-examine that  
7507 examiner.

7508 (12) (a) A defendant is presumed [~~to be not mentally retarded~~] not to be intellectually  
7509 disabled unless the court, by a preponderance of the evidence, finds the defendant to be  
7510 [~~mentally retarded~~] intellectually disabled. The burden of proof is upon the proponent of  
7511 [~~mental retardation~~] intellectual disability at the hearing.

7512 (b) A finding of [~~mental retardation~~] intellectual disability does not operate as an  
7513 adjudication of [~~mental retardation~~] intellectual disability for any purpose other than exempting  
7514 the person from a sentence of death in the case before the court.

7515 (13) (a) The defendant is presumed not to possess the mental deficiencies listed in  
7516 Subsection 77-15a-101(2) unless the court, by a preponderance of the evidence, finds that the  
7517 defendant has significant subaverage general intellectual functioning that exists concurrently  
7518 with significant deficiencies in adaptive functioning and that this functioning was manifested  
7519 prior to age 22. The burden of proof is upon the proponent of that proposition.

7520 (b) If the court finds by a preponderance of the evidence that the defendant has  
7521 significant subaverage general intellectual functioning that exists concurrently with significant  
7522 deficiencies in adaptive functioning and that this functioning was manifested prior to age 22,  
7523 then the burden is upon the state to establish that any confession by the defendant which the  
7524 state intends to introduce into evidence is supported by substantial evidence independent of the  
7525 confession.

7526 (14) (a) If the court finds the defendant [~~mentally retarded~~] intellectually disabled, it  
7527 shall issue an order:

7528 (i) containing findings of fact and conclusions of law, and addressing each of the  
7529 factors in Subsections (5)(a) and (b); and

7530 (ii) stating that the death penalty is not a sentencing option in the case before the court.

7531 (b) If the court finds by a preponderance of the evidence that the defendant possesses  
7532 the mental deficiencies listed in Subsection 77-15a-101(2) and that the state fails to establish  
7533 that any confession is supported by substantial evidence independent of the confession, the  
7534 state may proceed with its case and:

7535 (i) introduce the confession into evidence, and the death penalty will not be a  
7536 sentencing option in the case; or

7537 (ii) not introduce into evidence any confession or the fruits of a confession that the  
7538 court has found is not supported by substantial evidence independent of the confession, and the  
7539 death penalty will be a sentencing option in the case.

7540 (c) (i) A finding by the court regarding whether the defendant qualifies for an  
7541 exemption under Section 77-15a-101 is a final determination of that issue for purposes of this  
7542 chapter.

7543 (ii) The following questions may not be submitted to the jury by instruction, special  
7544 verdict, argument, or other means:

7545 (A) whether the defendant is [~~mentally retarded~~] intellectually disabled for purposes of  
7546 this chapter; and

7547 (B) whether the defendant possesses the mental deficiencies specified in Subsection  
7548 77-15a-101(2).

7549 (iii) This chapter does not prevent the defendant from submitting evidence of  
7550 [~~retardation~~] intellectual disability or other mental deficiency to establish a mental condition as  
7551 a mitigating circumstance under Section 76-3-207.

7552 (15) A ruling by the court that the defendant is exempt from the death penalty may be  
7553 appealed by the state pursuant to Section 77-18a-1.

7554 (16) Failure to comply with this section does not result in the dismissal of criminal  
7555 charges.

7556 Section 87. Section 77-20-3.5 is amended to read:

7557 **77-20-3.5. Conditions for release after arrest for domestic violence and other**  
7558 **offenses -- Jail release agreements -- Jail release court orders.**

7559 (1) As used in this section:

7560 (a) "Domestic violence" means the same as that term is defined in Section 77-36-1.

7561 (b) "Jail release agreement" means a written agreement described in Subsection  
7562 [77-20-3.5] (3) that:

7563 (i) limits the contact an individual arrested for a qualifying offense may have with an  
7564 alleged victim; and

7565 (ii) specifies other conditions of release from jail.

7566 (c) "Jail release court order" means a written court order issued in accordance with  
7567 Subsection [77-20-3.5] (3) that:

7568 (i) limits the contact an individual arrested for a qualifying offense may have with an  
7569 alleged victim; and

7570 (ii) specifies other conditions of release from jail.

7571 (d) "Minor" means an unemancipated individual who is younger than 18 years of age.

7572 (e) "Offense against a child or vulnerable adult" means the commission or attempted  
7573 commission of an offense described in Section 76-5-109, 76-5-109.1, 76-5-110, or 76-5-111.

7574 (f) "Qualifying offense" means:

7575 (i) domestic violence;

7576 (ii) an offense against a child or vulnerable adult; or

7577 (iii) the commission or attempted commission of an offense described in Title 76,  
7578 Chapter 5, Part 4, Sexual Offenses.

7579 (2) (a) Upon arrest for a qualifying offense and before the person is released on bail,  
7580 recognizance, or otherwise, the person may not personally contact the alleged victim.

7581 (b) A person who violates Subsection (2)(a) is guilty of a class B misdemeanor.

7582 (3) (a) After a person is arrested for a qualifying offense, the person may not be  
7583 released before:

7584 (i) the matter is submitted to a magistrate in accordance with Section 77-7-23; or

7585 (ii) the person signs a jail release agreement in accordance with Subsection (3)(d)(i).

7586 (b) The arresting officer shall ensure that the information presented to the magistrate  
7587 includes whether the alleged victim has made a waiver described in Subsection (6)(a).

7588 (c) If the magistrate determines there is probable cause to support the charge or charges  
7589 of one or more qualifying offenses, the magistrate shall determine:

7590 (i) whether grounds exist to hold the arrested person without bail, in accordance with  
7591 Section 77-20-1;

7592 (ii) if no grounds exist to hold the arrested person without bail, whether any release  
7593 conditions, including electronic monitoring, are necessary to protect the alleged victim; or

7594 (iii) any bail that is required to guarantee the arrested person's subsequent appearance  
7595 in court.

7596 (d) (i) The magistrate may not release a person arrested for a qualifying offense before  
7597 the person's initial court appearance before the court with jurisdiction over the offense for  
7598 which the person was arrested, unless the arrested person agrees in writing or the magistrate  
7599 orders, as a release condition, that, until the arrested person appears at the initial court  
7600 appearance, the arrested person will not:

7601 (A) have personal contact with the alleged victim;

7602 (B) threaten or harass the alleged victim; or

7603 (C) knowingly enter onto the premises of the alleged victim's residence or any premises  
7604 temporarily occupied by the alleged victim.

7605 (ii) The magistrate shall schedule the appearance described in Subsection (3)(d)(i) to  
7606 take place no more than 96 hours after the time of the arrest.

7607 (iii) The arrested person may make the appearance described in Subsection (3)(d)(i) by  
7608 video if the arrested person is not released.

7609 (4) (a) If a person charged with a qualifying offense fails to appear at the time  
7610 scheduled by the magistrate under Subsection (3)(d), the person shall comply with the release  
7611 conditions described in Subsection (3)(d)(i) until the person makes an initial appearance.

7612 (b) If the prosecutor has not filed charges against a person who was arrested for a  
7613 qualifying offense and who appears in court at the time scheduled by the magistrate under  
7614 Subsection (3)(d), or by the court under Subsection (4)(b)(ii), the court:

7615 (i) may, upon the motion of the prosecutor and after allowing the person an opportunity  
7616 to be heard on the motion, extend the release conditions described in Subsection (3)(d)(i) by no  
7617 more than three court days; and

7618 (ii) if the court grants the motion described in Subsection (4)(b)(i), shall order the  
7619 arrested person to appear at a time scheduled before the end of the granted extension.

7620 (5) Except as provided in Subsection (4) or otherwise ordered by a court, a jail release  
7621 agreement or jail release court order expires at midnight after the arrested person's initial  
7622 scheduled court appearance described in Subsection (3)(d)(i).

7623 (6) (a) After an arrest for a qualifying offense, an alleged victim who is not a minor  
7624 may waive in writing the release conditions described in Subsection (3)(d)(i)(A) or (C). Upon  
7625 waiver, those release conditions do not apply to the arrested person.

7626 (b) A court or magistrate may modify the release conditions described in Subsection  
7627 (3)(d)(i), in writing or on the record, and only for good cause shown.

7628 (7) (a) When an arrested person is released in accordance with Subsection (3), the  
7629 releasing agency shall:

7630 (i) notify the arresting law enforcement agency of the release, conditions of release, and  
7631 any available information concerning the location of the alleged victim;

7632 (ii) make a reasonable effort to notify the alleged victim of the release; and

7633 (iii) before releasing the arrested person, give the arrested person a copy of the jail  
7634 release agreement or the jail release court order.

7635 (b) (i) When a person arrested for domestic violence is released pursuant to Subsection  
7636 (3) based on a written jail release agreement, the releasing agency shall transmit that  
7637 information to the statewide domestic violence network described in Section [78B-7-113](#).

7638 (ii) When a person arrested for domestic violence is released pursuant to Subsections  
7639 (3) through (5) based upon a jail release court order or if a written jail release agreement is  
7640 modified pursuant to Subsection (6)(b), the court shall transmit that order to the statewide  
7641 domestic violence network described in Section [78B-7-113](#).

7642 (c) This Subsection (7) does not create or increase liability of a law enforcement officer  
7643 or agency, and the good faith immunity provided by Section [77-36-8](#) is applicable.

7644 (8) (a) If a law enforcement officer has probable cause to believe that a person has  
7645 violated a jail release agreement or jail release court order, the officer shall, without a warrant,  
7646 arrest the person.

7647 (b) Any person who knowingly violates a jail release court order or jail release  
7648 agreement executed pursuant to Subsection (3) is guilty as follows:

7649 (i) if the original arrest was for a felony, an offense under this section is a third degree  
7650 felony; or

7651 (ii) if the original arrest was for a misdemeanor, an offense under this section is a class  
7652 A misdemeanor.

7653 (c) City attorneys may prosecute class A misdemeanor violations under this section.

7654 (9) A person who is arrested for a qualifying offense that is a felony and released in  
7655 accordance with this section may subsequently be held without bail if there is substantial  
7656 evidence to support a new felony charge against the person.

7657 (10) At the time an arrest is made for a qualifying offense, the arresting officer shall  
7658 provide the alleged victim with written notice containing:

7659 (a) the release conditions described in Subsections (3) through (5), and notice that the  
7660 alleged perpetrator will not be released, before appearing before the court with jurisdiction over  
7661 the offense for which the alleged perpetrator was arrested, unless:

7662 (i) the alleged perpetrator enters into a written agreement to comply with the release  
7663 conditions; or

7664 (ii) the magistrate orders the release conditions;

7665 (b) notification of the penalties for violation of any jail release agreement or jail release  
7666 court order;

7667 (c) notification that the alleged perpetrator is to personally appear in court on the next  
7668 day the court is open for business after the day of the arrest;

7669 (d) the address of the appropriate court in the district or county in which the alleged  
7670 victim resides;

7671 (e) the availability and effect of any waiver of the release conditions; and

7672 (f) information regarding the availability of and procedures for obtaining civil and  
7673 criminal protective orders with or without the assistance of an attorney.

7674 (11) At the time an arrest is made for a qualifying offense, the arresting officer shall  
7675 provide the alleged perpetrator with written notice containing:

7676 (a) notification that the alleged perpetrator may not contact the alleged victim before  
7677 being released;

7678 (b) the release conditions described in Subsections (3) through (5) and notice that the  
7679 alleged perpetrator will not be released, before appearing before the court with jurisdiction over  
7680 the offense for which the alleged perpetrator was arrested, unless:

7681 (i) the alleged perpetrator enters into a written agreement to comply with the release  
7682 conditions; or

7683 (ii) the magistrate orders the release conditions;

7684 (c) notification of the penalties for violation of any jail release agreement or jail release



7685 court order; and

7686 (d) notification that the alleged perpetrator is to personally appear in court on the next  
7687 day the court is open for business after the day of the arrest.

7688 (12) (a) A pretrial or sentencing protective order supercedes a jail release agreement or  
7689 jail release court order.

7690 (b) If a court dismisses the charges for the qualifying offense that gave rise to a jail  
7691 release agreement or jail release court order, the court shall dismiss the jail release agreement  
7692 or jail release court order.

7693 (13) In addition to the provisions of Subsections (3) through (12), because of the  
7694 unique and highly emotional nature of domestic violence crimes, the high recidivism rate of  
7695 violent offenders, and the demonstrated increased risk of continued acts of violence subsequent  
7696 to the release of an offender who has been arrested for domestic violence, it is the finding of  
7697 the Legislature that domestic violence crimes, as defined in Section 77-36-1, are crimes for  
7698 which bail may be denied if there is substantial evidence to support the charge, and if the court  
7699 finds by clear and convincing evidence that the alleged perpetrator would constitute a  
7700 substantial danger to an alleged victim of domestic violence if released on bail.

7701 (14) The provisions of this section do not apply if the person arrested for the qualifying  
7702 offense is a minor, unless the qualifying offense is domestic violence.

7703 Section 88. Section 77-20-9 is amended to read:

7704 **77-20-9. Disposition of forfeitures.**

7705 If by reason of the neglect of the defendant to appear, money deposited instead of bail  
7706 or money paid by sureties on bail bond is forfeited and the forfeiture is not discharged or  
7707 remitted, the clerk with whom it is deposited or paid shall, immediately after final adjournment  
7708 of the court, pay over the money forfeited as follows:

7709 (1) the forfeited bail in cases in or appealed from district courts shall be distributed as  
7710 provided in Section 78A-5-110;

7711 (2) the forfeited bail in cases in precinct justice courts or in municipal justice courts  
7712 shall be distributed as provided in Sections 78A-7-120 and 78A-7-121;

7713 (3) the forfeited bail in cases in justice courts where the offense is not triable in that  
7714 court shall be paid into the General Fund; and

7715 (4) the forfeited bail in cases not provided for in this section shall be paid 50% to the

7716 state treasurer and the remaining 50% to the county treasurer in the county in which the  
7717 violation occurred or the forfeited bail is collected.

7718 Section 89. Section **77-23-210** is amended to read:

7719 **77-23-210. Force used in executing a search warrant -- When notice of authority**  
7720 **is required as a prerequisite.**

7721 (1) (a) No later than July 1, 2015, any law enforcement agency that seeks a warrant  
7722 under this section shall comply with guidelines and procedures which are, at a minimum, in  
7723 accordance with state law and model guidelines and procedures recommended by the Utah  
7724 Peace Officer Standards and Training Council created in Section [53-6-106](#).

7725 (b) Written policies adopted pursuant to this section[;] shall be subject to public  
7726 disclosure and inspection, in accordance with Title 63G, Chapter 2, Government Records  
7727 Access and Management Act.

7728 (2) When a search warrant has been issued authorizing entry into any building, room,  
7729 conveyance, compartment, or other enclosure, the officer executing the warrant may enter:

7730 (a) if, after giving notice of the officer's authority and purpose, there is no response or  
7731 the officer is not admitted with reasonable promptness; or

7732 (b) without notice of the officer's authority and purpose as provided in Subsection (3).

7733 (3) (a) The officer may enter without notice only if:

7734 (i) there is reasonable suspicion to believe that the notice will endanger the life or  
7735 safety of the officer or another person;

7736 (ii) there is probable cause to believe that evidence may be easily or quickly destroyed;

7737 or

7738 (iii) the magistrate, having found probable cause based upon proof provided under  
7739 oath[;] that the object of the search may be easily or quickly destroyed, or having found reason  
7740 to believe that physical harm may result to any person if notice were given, has directed that the  
7741 officer need not give notice of authority and purpose before entering the premises to be  
7742 searched under the Rules of Criminal Procedure; or

7743 (iv) the officer physically observes and documents a previously unknown event or  
7744 circumstance at the time the warrant is being executed which creates probable cause to believe  
7745 the object of the search is being destroyed, or creates reasonable suspicion to believe that  
7746 physical harm may result to any person if notice were given.

7747 (b) The officer shall identify himself or herself and state the purpose for entering the  
7748 premises as soon as practicable after entering.

7749 (4) An officer executing a warrant under this section may use only that force which is  
7750 reasonable and necessary to execute the warrant.

7751 (5) An officer executing a warrant under this section shall wear readily identifiable  
7752 markings, including a badge and vest or clothing with a distinguishing label or other writing  
7753 which indicates that he or she is a law enforcement officer.

7754 (6) (a) An officer executing a warrant under this section shall comply with the officer's  
7755 employing agency's body worn camera policy when the officer is equipped with a body-worn  
7756 camera.

7757 (b) The employing agency's policy regarding the use of body-worn cameras shall  
7758 include a provision that an officer executing a warrant under this section shall wear a  
7759 body-worn camera when a camera is available, except in exigent circumstances where it is not  
7760 practicable to do so.

7761 (7) (a) The officer shall take reasonable precautions in execution of any search warrant  
7762 to minimize the risks of unnecessarily confrontational or invasive methods which may result in  
7763 harm to any person.

7764 (b) The officer shall minimize the risk of searching the wrong premises by verifying  
7765 that the premises being searched is consistent with a particularized description in the search  
7766 warrant, including such factors as the type of structure, the color, the address, and orientation  
7767 of the target property in relation to nearby structures as is reasonably necessary.

7768 (8) Notwithstanding any provision in this chapter, a warrant authorizing forcible entry  
7769 without prior announcement may not be issued under this section, solely for:

7770 (a) the alleged possession or use of a controlled substance; or

7771 (b) the alleged possession of drug paraphernalia as provided in Section 58-37a-3.

7772 Section 90. Section 77-30-8 is amended to read:

7773 **77-30-8. Execution of warrant of arrest.**

7774 Such warrant shall authorize the peace officer or other person to whom directed to  
7775 arrest the accused at any time and any place where [~~he~~] the accused may be found within the  
7776 state and to command the aid of all peace officers or other persons in the execution of the  
7777 warrant, and to deliver the accused, subject to the provisions of this act, to the duly authorized

7778 agent of the demanding state.

7779 Section 91. Section **77-30-18** is amended to read:

7780 **77-30-18. Forfeiture of bail.**

7781 If the prisoner is admitted to bail and fails to appear and surrender [~~himself~~] according  
7782 to the conditions of [~~his~~] the prisoner's bond, the judge or magistrate by proper order shall  
7783 declare the bond forfeited and order [~~his~~] the prisoner's immediate arrest without warrant if [~~he~~  
7784 ~~be~~] the prisoner is within this state. Recovery may be had on such bond in the name of the state  
7785 as in the case of other bonds given by the accused in criminal proceedings within this state.

7786 Section 92. Section **77-30-25** is amended to read:

7787 **77-30-25. Person brought into state on extradition exempt from civil process --**  
7788 **Waiver of extradition proceedings -- Nonwaiver by this state.**

7789 (1) A person brought into this state by or after waiver of extradition based on a  
7790 criminal charge shall not be subject to service of personal process in civil actions arising out of  
7791 the same facts as the criminal proceedings to answer which he is being or has been returned  
7792 until he has been convicted in the criminal proceedings, or, if acquitted, until he has had  
7793 reasonable opportunity to return to the state from which he was extradited.

7794 (2) (a) Any person arrested in this state charged with having committed any crime in  
7795 another state or alleged to have escaped from confinement or broken the terms of his bail,  
7796 probation or parole may waive the issuance and service of the warrant provided for in Sections  
7797 [77-30-7](#) and [77-30-8](#), and all other procedure incidental to extradition proceedings, by  
7798 executing or subscribing in the presence of a judge of any court of record within this state a  
7799 writing which states that he consents to return to the demanding state; provided, before such  
7800 waiver shall be executed or subscribed by such person it shall be the duty of such judge to  
7801 inform such person of his rights to the issuance and service of a warrant of extradition and to  
7802 obtain a writ of habeas corpus as provided for in Section [77-30-10](#).

7803 (b) If and when such consent has been duly executed it shall forthwith be forwarded to  
7804 the office of the governor of this state and filed therein. The judge shall direct the officer  
7805 having such person in custody to deliver forthwith such person to the duly accredited agent or  
7806 agents of the demanding state and shall deliver or cause to be delivered to such agent or agents  
7807 a copy of such consent; provided, nothing in this section shall be deemed to limit the rights of  
7808 the accused person to return voluntarily and without formality to the demanding state, [~~or~~] nor

7809 shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers,  
7810 rights, or duties of the officers of the demanding state or of this state.

7811 (3) Nothing in this chapter shall be deemed to constitute a waiver by this state of its  
7812 right, power or privilege to try such demanded person for a crime committed within this state,  
7813 or of its right, power or privilege to regain custody of such person by extradition proceedings or  
7814 otherwise for the purpose of trial, sentence or punishment for any crime committed within this  
7815 state, [~~or~~] nor shall any proceedings had under this chapter which result in or fail to result in  
7816 extradition be deemed a waiver by this state of any of its rights, privileges or jurisdiction in any  
7817 way whatsoever.

7818 Section 93. Section **77-32-603** is amended to read:

7819 **77-32-603. County and state obligations.**

7820 (1) (a) Except as provided in Subsection (1)(b), each participating county shall pay into  
7821 the fund annually an amount calculated by multiplying the average of the percent of its  
7822 population to the total population of all participating counties and of the percent its taxable  
7823 value of the locally and centrally assessed property located [~~with~~] within that county to the total  
7824 taxable value of the locally and centrally assessed property to all participating counties by the  
7825 total fund assessment for that year to be paid by all participating counties as is determined by  
7826 the board to be sufficient such that it is unlikely that a deficit will occur in the fund in any  
7827 calendar year.

7828 (b) The fund minimum shall be equal to or greater than 50 cents per person of all  
7829 counties participating.

7830 (c) The amount paid by the participating county pursuant to Subsection (1) shall be the  
7831 total county obligation for payment of costs pursuant to Section [77-32-601](#).

7832 (2) (a) After the first year of operation of the fund, any county that elects to initiate  
7833 participation in the fund, or reestablish participation in the fund after participation was  
7834 terminated, shall be required to make an equity payment in addition to the assessment provided  
7835 in Subsection (1).

7836 (b) The equity payment shall be determined by the board and represent what the  
7837 county's equity in the fund would be if the county had made assessments into the fund for each  
7838 of the previous two years.

7839 (3) If the fund balance after contribution by the state and participating counties is

7840 insufficient to replenish the fund annually to at least \$250,000, the board by a majority vote  
7841 may terminate the fund.

7842 (4) If the fund is terminated, all remaining funds shall continue to be administered and  
7843 disbursed in accordance with the provision of this chapter until exhausted, at which time the  
7844 fund shall cease to exist.

7845 (5) (a) If the fund runs a deficit during any calendar year, the state is responsible for the  
7846 deficit.

7847 (b) In the calendar year following a deficit year, the board shall increase the assessment  
7848 required by Subsection (1) by an amount at least equal to the deficit of the previous year, which  
7849 combined amount becomes the base assessment until another deficit year occurs.

7850 (6) In any calendar year in which the fund runs a deficit, or is projected to run a deficit,  
7851 the board shall request a supplemental appropriation to pay for the deficit from the Legislature  
7852 in the following general session. The state shall pay any or all of the reasonable and necessary  
7853 money for the deficit into the Indigent Capital Defense Trust Fund.

7854 Section 94. Section **77-32a-102** is amended to read:

7855 **77-32a-102. Creation of criminal judgment account receivable.**

7856 (1) At the time of sentencing or acceptance of a plea in abeyance, the court shall  
7857 establish the criminal accounts receivable, as determined in this chapter including all amounts  
7858 then owing, including, as applicable, fines, fees, surcharges, costs, restitution, and interest.

7859 (2) After creating the account receivable, the court:

7860 (a) shall, in the case of felonies where a prison sentence is imposed and not suspended,  
7861 enter any unpaid criminal judgment account receivable as a civil judgment and transfer the  
7862 responsibility for collecting the judgment to the Office of State Debt Collection;

7863 (b) may, in other cases, permit a defendant to pay the criminal judgment account  
7864 receivable by a date certain or in installments; or

7865 (c) may, in other cases where the court finds that collection of the account by the court  
7866 would not be feasible, enter any unpaid criminal judgment account receivable as a civil  
7867 judgment and transfer the responsibility for collecting the judgement to the Office of State Debt  
7868 Collection.

7869 (3) A court allowing installment payments does not limit the ability of a judgment  
7870 creditor to pursue collection by any means allowable by law.

7871 (4) If the court makes restitution or another financial decision at a time after sentencing  
7872 that increases the total amount owed in a case, the criminal accounts receivable balance shall  
7873 be adjusted to include the new amounts determined by the court.

7874 (5) The court may modify the amount and number of any installment payments, as  
7875 justice requires, at any time before the time for default as outlined in Subsection  
7876 [77-32a-103\(2\)](#).

7877 (6) In the district court, delinquent accounts may incur [~~post judgment~~] postjudgment  
7878 interest.

7879 Section 95. Section **77-38a-401** is amended to read:

7880 **77-38a-401. Entry of judgment -- Interest -- Civil actions -- Lien.**

7881 (1) Upon the court determining that a defendant owes restitution, the clerk of the court  
7882 shall enter an order of complete restitution as defined in Section [77-38a-302](#) on the civil  
7883 judgment docket and provide notice of the order to the parties.

7884 (2) The order shall be considered a legal judgment, enforceable under the Utah Rules  
7885 of Civil Procedure. In addition, the department may, on behalf of the person in whose favor the  
7886 restitution order is entered, enforce the restitution order as judgment creditor under the Utah  
7887 Rules of Civil Procedure.

7888 (3) If the defendant fails to obey a court order for payment of restitution and the victim  
7889 or department elects to pursue collection of the order by civil process, the victim shall be  
7890 entitled to recover collection and reasonable attorney fees.

7891 (4) Notwithstanding Subsection [77-18-6\(1\)\(b\)](#)[~~(v)~~] and Sections [78B-2-311](#) and  
7892 [78B-5-202](#), a judgment ordering restitution when entered on the civil judgment docket shall  
7893 have the same [~~affect~~] effect and is subject to the same rules as a judgment in a civil action and  
7894 expires only upon payment in full, which includes applicable interest, collection fees, and  
7895 attorney fees. Interest shall accrue on the amount ordered from the time of sentencing,  
7896 including prejudgment interest. This Subsection (4) applies to all restitution judgments not  
7897 paid in full on or before May 12, 2009.

7898 (5) The department shall make rules permitting the restitution payments to be credited  
7899 to principal first and the remainder of payments credited to interest in accordance with Title  
7900 63G, Chapter 3, Utah Administrative Rulemaking Act.

7901 Section 96. Section **77-41-103** is amended to read:

7902 **77-41-103. Department duties.**

7903 (1) The department, to assist in investigating kidnapping and sex-related crimes, and in  
7904 apprehending offenders, shall:

7905 (a) develop and operate a system to collect, analyze, maintain, and disseminate  
7906 information on offenders and sex and kidnap offenses;

7907 (b) make information listed in Subsection 77-41-110(4) available to the public; and

7908 (c) share information provided by an offender under this chapter that may not be made  
7909 available to the public under Subsection 77-41-110(4), but only:

7910 (i) for the purposes under this chapter; or

7911 (ii) in accordance with Section 63G-2-206.

7912 (2) Any law enforcement agency shall, in the manner prescribed by the department,  
7913 inform the department of:

7914 (a) the receipt of a report or complaint of an offense listed in Subsection 77-41-102(9)  
7915 or (17), within three business days; and

7916 (b) the arrest of a person suspected of any of the offenses listed in Subsection  
7917 77-41-102(9) or (17), within five business days.

7918 (3) Upon convicting a person of any of the offenses listed in Subsection 77-41-102(9)  
7919 or (17), the convicting court shall within three business days forward a signed copy of the  
7920 judgment and sentence to the Sex and Kidnap Offender Registry office within the Department  
7921 of Corrections.

7922 (4) Upon modifying, withdrawing, setting aside, vacating, or otherwise altering a  
7923 conviction for any offense listed in Subsection 77-41-102(9) or (17), the court shall, within  
7924 three business days, forward a signed copy of the order to the Sex and Kidnap Offender  
7925 Registry office within the Department of Corrections.

7926 (5) The department may intervene in any matter, including a criminal action, where the  
7927 matter purports to affect a person's lawfully entered registration requirement.

7928 (6) The department shall:

7929 (a) provide the following additional information when available:

7930 (i) the crimes the offender has been convicted of or adjudicated delinquent for;

7931 (ii) a description of the offender's primary and secondary targets; and

7932 (iii) any other relevant identifying information as determined by the department;



7933 (b) maintain the Sex Offender and Kidnap Offender Notification and Registration  
7934 website; and

7935 (c) ensure that the registration information collected regarding an offender's enrollment  
7936 or employment at an educational institution is:

7937 (i) (A) promptly made available to any law enforcement agency that has jurisdiction  
7938 where the institution is located if the educational institution is an institution of higher  
7939 education; or

7940 (B) promptly made available to the district superintendent of the school district where  
7941 the offender is [~~enrolled~~] employed if the educational institution is an institution of primary  
7942 education; and

7943 (ii) entered into the appropriate state records or data system.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**