

## HB0298S03 compared with HB0298S02

~~{deleted text}~~ shows text that was in HB0298S02 but was deleted in HB0298S03.

Inserted text shows text that was not in HB0298S02 but was inserted into HB0298S03.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

~~{Representative James A}~~Senator Lyle W. ~~{Dunnigan}~~Hillyard proposes the following substitute bill:

### OFFENDER REGISTRY AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: James A. Dunnigan**

Senate Sponsor: ~~{~~Lyle W. Hillyard

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#### LONG TITLE

##### General Description:

This bill modifies provisions relating to certain sexual offenses and the Sex and Kidnap Offender Registry.

##### Highlighted Provisions:

This bill:

- ▶ modifies the definition of "sexual offense against a minor" as the term relates to a criminal investigation of an electronic communications record;
- ▶ deletes provisions requiring a sex offender to annually apply for a driver license or identification card;
- ▶ requires a sex offender to apply in person for an updated driver license or identification card within 30 days after the day on which the offender changes

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addresses;

- ▶ requires the Driver License Division to disclose to the Department of Corrections certain records relating to sex offenders upon request;
- ▶ modifies the offenses for which a petition for removal from the registry may be filed;
- ▶ modifies certain procedural requirements relating to a sex or kidnap offender's removal from the registry;
- ▶ provides that a sex or kidnap offender may change the offender's name if certain requirements are met;
- ▶ modifies the penalty for the offense of dealing in material harmful to minors;
- ▶ modifies the penalty for the offense of sexual exploitation of a minor; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

~~{ None }~~ This bill provides a coordination clause.

### Utah Code Sections Affected:

AMENDS:

**53-3-105**, as last amended by Laws of Utah 2018, Chapters 301 and 417

**53-3-205**, as last amended by Laws of Utah 2018, Chapters 39, 128, and 417

**53-3-216**, as last amended by Laws of Utah 2015, Chapter 210

**53-3-413**, as last amended by Laws of Utah 2012, Chapter 145

**53-3-804**, as last amended by Laws of Utah 2018, Chapter 39

**53-3-807**, as last amended by Laws of Utah 2015, Chapter 210

**76-5b-201**, as last amended by Laws of Utah 2018, Chapter 285

**76-10-1206**, as last amended by Laws of Utah 2009, Chapter 345

**77-22-2.5**, as last amended by Laws of Utah 2017, Chapter 447

**77-41-104**, as enacted by Laws of Utah 2012, Chapter 145

**77-41-105**, as last amended by Laws of Utah 2017, Chapter 290

**77-41-112**, as last amended by Laws of Utah 2016, Chapter 185

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

Section 1. Section **53-3-105** is amended to read:

**53-3-105. Fees for licenses, renewals, extensions, reinstatements, rescheduling, and identification cards.**

The following fees apply under this chapter:

- (1) An original class D license application under Section 53-3-205 is \$32.
- (2) An original provisional license application for a class D license under Section 53-3-205 is \$39.
- (3) An original application for a motorcycle endorsement under Section 53-3-205 is \$11.
- (4) An original application for a taxicab endorsement under Section 53-3-205 is \$9.
- (5) A learner permit application under Section 53-3-210.5 is \$19.
- (6) A renewal of a class D license under Section 53-3-214 is \$32 unless Subsection (10) applies.
- (7) A renewal of a provisional license application for a class D license under Section 53-3-214 is \$32.
- (8) A renewal of a motorcycle endorsement under Section 53-3-214 is \$11.
- (9) A renewal of a taxicab endorsement under Section 53-3-214 is \$9.
- (10) A renewal of a class D license for [~~a person~~] an individual 65 and older under Section 53-3-214 is \$17.
- (11) An extension of a class D license under Section 53-3-214 is \$26 unless Subsection (15) applies.
- (12) An extension of a provisional license application for a class D license under Section 53-3-214 is \$26.
- (13) An extension of a motorcycle endorsement under Section 53-3-214 is \$11.
- (14) An extension of a taxicab endorsement under Section 53-3-214 is \$9.
- (15) An extension of a class D license for [~~a person~~] an individual 65 and older under Section 53-3-214 is \$14.
- (16) An original or renewal application for a commercial class A, B, or C license or an original or renewal of a provisional commercial class A or B license under Part 4, Uniform Commercial Driver License Act, is \$52.

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(17) A commercial class A, B, or C license skills test is \$78.

(18) Each original CDL endorsement for passengers, hazardous material, double or triple trailers, or tankers is \$9.

(19) An original CDL endorsement for a school bus under Part 4, Uniform Commercial Driver License Act, is \$9.

(20) A renewal of a CDL endorsement under Part 4, Uniform Commercial Driver License Act, is \$9.

(21) (a) A retake of a CDL knowledge test provided for in Section 53-3-205 is \$26.

(b) A retake of a CDL skills test provided for in Section 53-3-205 is \$52.

(22) A retake of a CDL endorsement test provided for in Section 53-3-205 is \$9.

(23) A duplicate class A, B, C, or D license certificate under Section 53-3-215 is \$23.

(24) (a) A license reinstatement application under Section 53-3-205 is \$40.

(b) A license reinstatement application under Section 53-3-205 for an alcohol, drug, or combination of alcohol and any drug-related offense is \$45 in addition to the fee under Subsection (24)(a).

(25) (a) An administrative fee for license reinstatement after an alcohol, drug, or combination of alcohol and any drug-related offense under Section 41-6a-520, 53-3-223, or 53-3-231 or an alcohol, drug, or combination of alcohol and any drug-related offense under Part 4, Uniform Commercial Driver License Act, is \$255.

(b) This administrative fee is in addition to the fees under Subsection (24).

(26) (a) An administrative fee for providing the driving record of a driver under Section 53-3-104 or 53-3-420 is \$8.

(b) The division may not charge for a report furnished under Section 53-3-104 to a municipal, county, state, or federal agency.

(27) A rescheduling fee under Section 53-3-205 or 53-3-407 is \$25.

(28) (a) Except as provided under Subsections (28)(b) and (c), an identification card application under Section 53-3-808 is \$23.

(b) An identification card application under Section 53-3-808 for a person with a disability, as defined in 42 U.S.C. Sec. 12102, is \$17.

(c) A fee may not be charged for an identification card application if the individual applying:

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(i) (A) has not been issued a Utah driver license;

(B) is indigent; and

(C) is at least 18 years of age; or

(ii) submits written verification that the individual is homeless, as defined in Section 26-18-411, or a person who is homeless, as defined in Section 35A-5-302, from:

(A) a homeless shelter, as defined in Section 10-9a-526;

(B) a permanent housing, permanent, supportive, or transitional facility, as defined in Section 35A-5-302; or

(C) the Department of Workforce Services.

(29) (a) An extension of a regular identification card under Subsection 53-3-807[(5)](4) for a person with a disability, as defined in 42 U.S.C. Sec. 12102, is \$17.

(b) The fee described in Subsection (29)(a) [~~shall be~~] is waived if the applicant submits written verification that the individual is homeless, as defined in Section 26-18-411, or a person who is homeless, as defined in Section 35A-5-302, from:

(i) a homeless shelter, as defined in Section 10-9a-526;

(ii) a permanent housing, permanent, supportive, or transitional facility, as defined in Section 35A-5-302; or

(iii) the Department of Workforce Services.

(30) (a) An extension of a regular identification card under Subsection 53-3-807[(6)](5) is \$23.

(b) The fee described in Subsection (30)(a) [~~shall be~~] is waived if the applicant submits written verification that the individual is homeless, as defined in Section 26-18-411, or a person who is homeless, as defined in Section 35A-5-302, from:

(i) a homeless shelter, as defined in Section 10-9a-526;

(ii) a permanent housing, permanent, supportive, or transitional facility, as defined in Section 35A-5-302; or

(iii) the Department of Workforce Services.

(31) In addition to any license application fees collected under this chapter, the division shall impose on individuals submitting fingerprints in accordance with Section 53-3-205.5 the fees that the Bureau of Criminal Identification is authorized to collect for the services the Bureau of Criminal Identification provides under Section 53-3-205.5.

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(32) An original mobility vehicle permit application under Section 41-6a-1118 is \$30.

(33) A renewal of a mobility vehicle permit under Section 41-6a-1118 is \$30.

(34) A duplicate mobility vehicle permit under Section 41-6a-1118 is \$12.

Section 2. Section **53-3-205** is amended to read:

**53-3-205. Application for license or endorsement -- Fee required -- Tests -- Expiration dates of licenses and endorsements -- Information required -- Previous licenses surrendered -- Driving record transferred from other states -- Reinstatement -- Fee required -- License agreement.**

(1) An application for [~~any~~] an original license, provisional license, or endorsement shall be:

(a) made upon a form furnished by the division; and

(b) accompanied by a nonrefundable fee set under Section 53-3-105.

(2) An application and fee for an original provisional class D license or an original class D license entitle the applicant to:

(a) not more than three attempts to pass both the knowledge and the skills tests for a class D license within six months [~~of~~] after the date of the application;

(b) a learner permit if needed pending completion of the application and testing process; and

(c) an original class D license and license certificate after all tests are passed and requirements are completed.

(3) An application and fee for a motorcycle or taxicab endorsement entitle the applicant to:

(a) not more than three attempts to pass both the knowledge and skills tests within six months [~~of~~] after the date of the application;

(b) a motorcycle learner permit after the motorcycle knowledge test is passed; and

(c) a motorcycle or taxicab endorsement when all tests are passed.

(4) An application for a commercial class A, B, or C license entitles the applicant to:

(a) not more than two attempts to pass a knowledge test when accompanied by the fee provided in Subsection 53-3-105(16);

(b) not more than two attempts to pass a skills test when accompanied by a fee in Subsection 53-3-105(17) within six months [~~of~~] after the date of application;

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(c) both a commercial driver instruction permit and a temporary license permit for the license class held before the applicant submits the application if needed after the knowledge test is passed; and

(d) an original commercial class A, B, or C license and license certificate when all applicable tests are passed.

(5) An application and fee for a CDL endorsement entitle the applicant to:

(a) not more than two attempts to pass a knowledge test and not more than two attempts to pass a skills test within six months ~~[of]~~ after the date of the application; and

(b) a CDL endorsement when all tests are passed.

(6) (a) If a CDL applicant does not pass a knowledge test, skills test, or an endorsement test within the number of attempts provided in Subsection (4) or (5), each test may be taken two additional times within the six months for the fee provided in Section 53-3-105.

(b) (i) Beginning July 1, 2015, an out-of-state resident who holds a valid CDIP issued by a state or jurisdiction that is compliant with 49 C.F.R. Part 383 may take a skills test administered by the division if the out-of-state resident pays the fee provided in Subsection 53-3-105(17).

(ii) The division shall:

(A) electronically transmit skills test results for an out-of-state resident to the licensing agency in the state or jurisdiction in which the ~~[person]~~ out-of-state resident has obtained a valid CDIP; and

(B) provide the out-of-state resident with documentary evidence upon successful completion of the skills test.

(7) (a) Except as provided under Subsections (7)(f)~~;~~ and (g), ~~[and (h);]~~ an original license expires on the birth date of the applicant in the fifth year ~~[following]~~ after the year the license certificate was issued.

(b) Except as provided under Subsections (7)(f)~~;~~ and (g), ~~[and (h);]~~ a renewal or an extension to a license expires on the birth date of the licensee in the fifth year ~~[following]~~ after the expiration date of the license certificate renewed or extended.

(c) Except as provided under Subsections (7)(f) and (g), a duplicate license expires on the same date as the last license certificate issued.

(d) An endorsement to a license expires on the same date as the license certificate

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regardless of the date the endorsement was granted.

(e) (i) A regular license certificate and ~~[any]~~ an endorsement to the regular license certificate held by ~~[a person]~~ an individual described in Subsection (7)(e)(ii), ~~[which]~~ that expires during the time period the ~~[person]~~ individual is stationed outside of the state, is valid until 90 days after the ~~[person's orders have been]~~ individual's orders are terminated, the ~~[person has been]~~ individual is discharged, or the ~~[person's assignment has been]~~ individual's assignment is changed or terminated, unless:

(A) the license is suspended, disqualified, denied, or has been cancelled or revoked by the division; or

(B) the licensee updates the information or photograph on the license certificate.

(ii) The provisions in Subsection (7)(e)(i) apply to ~~[a person]~~ an individual:

(A) ordered to active duty and stationed outside of Utah in any of the armed forces of the United States;

(B) who is an immediate family member or dependent of ~~[a person]~~ an individual described in Subsection (7)(e)(ii)(A) and is residing outside of Utah;

(C) who is a civilian employee of the United States State Department or United States Department of Defense and is stationed outside of the United States; or

(D) who is an immediate family member or dependent of ~~[a person]~~ an individual described in Subsection (7)(e)(ii)(C) and is residing outside of the United States.

(f) (i) Except as provided in Subsection (7)(f)(ii), a limited-term license certificate or a renewal to a limited-term license certificate expires:

(A) on the expiration date of the period of time of the individual's authorized stay in the United States or on the date provided under this Subsection (7), whichever is sooner; or

(B) on the date of issuance in the first year following the year that the limited-term license certificate was issued if there is no definite end to the individual's period of authorized stay.

(ii) A limited-term license certificate or a renewal to a limited-term license certificate issued to an approved asylee or a refugee expires on the birth date of the applicant in the fifth year following the year that the limited-term license certificate was issued.

(g) A driving privilege card issued or renewed under Section 53-3-207 expires on the birth date of the applicant in the first year following the year that the driving privilege card was



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issued or renewed.

~~[(h) An original license or a renewal to an original license expires on the birth date of the applicant in the first year following the year that the license was issued if the applicant is required to register as a sex offender in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry.]~~

(8) (a) In addition to the information required by Title 63G, Chapter 4, Administrative Procedures Act, for requests for agency action, ~~[each]~~ an applicant shall:

(i) provide:

(A) the applicant's full legal name;

(B) the applicant's birth date;

(C) the applicant's gender;

(D) (I) documentary evidence of the applicant's valid ~~[Social Security]~~ social security number;

(II) written proof that the applicant is ineligible to receive a ~~[Social Security]~~ social security number;

(III) the applicant's temporary identification number (ITIN) issued by the Internal Revenue Service for ~~[a person]~~ an individual who:

(Aa) does not qualify for a ~~[Social Security]~~ social security number; and

(Bb) is applying for a driving privilege card; or

(IV) other documentary evidence approved by the division;

(E) the applicant's Utah residence address as documented by a form or forms acceptable under rules made by the division under Section 53-3-104, unless the application is for a temporary CDL issued under Subsection 53-3-407(2)(b); and

(F) fingerprints and a photograph in accordance with Section 53-3-205.5 if the ~~[person]~~ applicant is applying for a driving privilege card;

(ii) provide evidence of the applicant's lawful presence in the United States by providing documentary evidence:

(A) that ~~[a person]~~ the applicant is:

(I) a United States citizen;

(II) a United States national; or

(III) a legal permanent resident alien; or

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(B) of the applicant's:

(I) unexpired immigrant or nonimmigrant visa status for admission into the United States;

(II) pending or approved application for asylum in the United States;

(III) admission into the United States as a refugee;

(IV) pending or approved application for temporary protected status in the United States;

(V) approved deferred action status;

(VI) pending application for adjustment of status to legal permanent resident or conditional resident; or

(VII) conditional permanent resident alien status;

(iii) provide a description of the applicant;

(iv) state whether the applicant has previously been licensed to drive a motor vehicle and, if so, when and by what state or country;

(v) state whether the applicant has ever had [~~any~~] a license suspended, cancelled, revoked, disqualified, or denied in the last 10 years, or whether the applicant has ever had [~~any~~] a license application refused, and if so, the date of and reason for the suspension, cancellation, revocation, disqualification, denial, or refusal;

(vi) state whether the applicant intends to make an anatomical gift under Title 26, Chapter 28, Revised Uniform Anatomical Gift Act, in compliance with Subsection (15);

(vii) state whether the applicant is required to register as a sex offender in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry;

(viii) state whether the applicant is a veteran of the United States military, provide verification that the applicant was granted an honorable or general discharge from the United States Armed Forces, and state whether the applicant does or does not authorize sharing the information with the Department of Veterans and Military Affairs;

(ix) provide all other information the division requires; and

(x) sign the application which signature may include an electronic signature as defined in Section 46-4-102.

(b) [~~Each~~] An applicant shall have a Utah residence address, unless the application is for a temporary CDL issued under Subsection 53-3-407(2)(b).

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(c) ~~[Each]~~ An applicant shall provide evidence of lawful presence in the United States in accordance with Subsection (8)(a)(ii), unless the application is for a driving privilege card.

(d) The division shall maintain on ~~[its]~~ the division's computerized records an applicant's:

(i) (A) ~~[Social Security]~~ social security number;

(B) temporary identification number (ITIN); or

(C) other number assigned by the division if Subsection (8)(a)(i)(D)(IV) applies; and

(ii) indication whether the applicant is required to register as a sex offender in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry.

(9) The division shall require proof of ~~[every]~~ an applicant's name, ~~[birthdate]~~ birth date, and birthplace by at least one of the following means:

(a) current license certificate;

(b) birth certificate;

(c) Selective Service registration; or

(d) other proof, including church records, family Bible notations, school records, or other evidence considered acceptable by the division.

(10) (a) Except as provided in Subsection (10)(c), if an applicant receives a license in a higher class than what the applicant originally was issued:

(i) the license application ~~[shall be]~~ is treated as an original application; and

(ii) license and endorsement fees ~~[shall be]~~ are assessed under Section 53-3-105.

(b) An applicant that receives a downgraded license in a lower license class during an existing license cycle that has not expired:

(i) may be issued a duplicate license with a lower license classification for the remainder of the existing license cycle; and

(ii) shall be assessed a duplicate license fee under Subsection 53-3-105(23) if a duplicate license is issued under Subsection (10)(b)(i).

(c) An applicant who has received a downgraded license in a lower license class under Subsection (10)(b):

(i) may, when eligible, receive a duplicate license in the highest class previously issued during a license cycle that has not expired for the remainder of the existing license cycle; and

(ii) shall be assessed a duplicate license fee under Subsection 53-3-105(23) if a

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duplicate license is issued under Subsection (10)(c)(i).

(11) (a) When an application is received from [~~a person~~] an applicant previously licensed in another state to drive a motor vehicle, the division shall request a copy of the driver's record from the other state.

(b) When received, the driver's record becomes part of the driver's record in this state with the same effect as though entered originally on the driver's record in this state.

(12) An application for reinstatement of a license after the suspension, cancellation, disqualification, denial, or revocation of a previous license [~~shall be~~] is accompanied by the additional fee or fees specified in Section 53-3-105.

(13) [~~A person~~] An individual who has an appointment with the division for testing and fails to keep the appointment or to cancel at least 48 hours in advance of the appointment shall pay the fee under Section 53-3-105.

(14) [~~A person~~] An applicant who applies for an original license or renewal of a license agrees that the [~~person's~~] individual's license is subject to [~~any~~] a suspension or revocation authorized under this title or Title 41, Motor Vehicles.

(15) (a) [~~The indication of intent~~] A licensee shall authenticate the indication of intent under Subsection (8)(a)(vi) [~~shall be authenticated by the licensee~~] in accordance with division rule.

(b) (i) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the division may, upon request, release to an organ procurement organization, as defined in Section 26-28-102, the names and addresses of all [~~persons~~] applicants who, under Subsection (8)(a)(vi), indicate that they intend to make an anatomical gift.

(ii) An organ procurement organization may use released information only to:

(A) obtain additional information for an anatomical gift registry; and

(B) inform licensees of anatomical gift options, procedures, and benefits.

(16) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the division may release to the Department of Veterans and Military Affairs the names and addresses of all [~~persons~~] applicants who indicate their status as a veteran under Subsection (8)(a)(viii).

(17) Notwithstanding Title 63G, Chapter 2, Government Records Access and

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Management Act, the division shall, upon request, release to the Sex and Kidnap Offender Registry office in the Department of Corrections, the names and addresses of all applicants who, under Subsection (8)(a)(vii), indicate they are required to register as a sex offender in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry.

~~[(17)]~~ (18) The division and ~~[its]~~ the division's employees are not liable, as a result of false or inaccurate information provided under Subsection (8)(a)(vi) or (viii), for direct or indirect:

- (a) loss;
- (b) detriment; or
- (c) injury.

~~[(18)]~~ (19) ~~[A person]~~ An applicant who knowingly fails to provide the information required under Subsection (8)(a)(vii) is guilty of a class A misdemeanor.

~~[(19)]~~ (20) (a) Until December 1, 2014, ~~[a person]~~ an individual born on or after December 1, 1964, may hold both an unexpired Utah license certificate and an unexpired Utah identification card.

(b) On or after December 1, 2014, ~~[a person]~~ an individual born on or after December 1, 1964:

- (i) may not hold both an unexpired Utah license certificate and an unexpired identification card; and
- (ii) if the ~~[person]~~ individual has both an unexpired Utah license certificate and an unexpired Utah identification card in the ~~[person's possession, shall be]~~ individual's possession, the individual is required to surrender either the unexpired Utah license certificate or the unexpired Utah identification card.

(c) If ~~[a person]~~ an individual has not surrendered either the Utah license certificate or the Utah identification card as required under this Subsection ~~[(19)]~~ (20), the division shall cancel the Utah identification card on December 1, 2014.

~~[(20)]~~ (21) (a) Until December 1, 2017, ~~[a person born prior to]~~ an individual born before December 1, 1964, may hold both an unexpired Utah license certificate and an unexpired Utah identification card.

(b) On or after December 1, 2017, ~~[a person born prior to]~~ an individual born before December 1, 1964:

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(i) may not hold both an unexpired Utah license certificate and an unexpired identification card; and

(ii) if the ~~[person]~~ individual has both an unexpired Utah license certificate and an unexpired Utah identification card in the ~~[person's possession, shall be required to]~~ individual's possession, the individual shall surrender either the unexpired Utah license certificate or the unexpired Utah identification card.

(c) If ~~[a person]~~ an individual has not surrendered either the Utah license certificate or the Utah identification card as required under this Subsection ~~[(20)]~~ (21), the division shall cancel the Utah identification card on December 1, 2017.

~~[(21)]~~ (22) (a) ~~[A person]~~ An applicant who applies for an original motorcycle endorsement to a regular license certificate is exempt from the requirement to pass the knowledge and skills test to be eligible for the motorcycle endorsement if the ~~[person]~~ applicant:

(i) is a resident of the state of Utah;

(ii) (A) is ordered to active duty and stationed outside of Utah in any of the armed forces of the United States; or

(B) is an immediate family member or dependent of ~~[a person]~~ an individual described in Subsection ~~[(21)]~~ (22)(a)(ii)(A) and is residing outside of Utah;

(iii) has a digitized driver license photo on file with the division;

(iv) provides proof to the division of the successful completion of a certified Motorcycle Safety Foundation rider training course; and

(v) provides the necessary information and documentary evidence required under Subsection (8).

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules:

(i) establishing the procedures for ~~[a person]~~ an individual to obtain a motorcycle endorsement under this Subsection ~~[(21)]~~ (22); and

(ii) identifying the applicable restrictions for a motorcycle endorsement issued under this Subsection ~~[(21)]~~ (22).

Section 3. Section **53-3-216** is amended to read:

**53-3-216. Change of address -- Duty of licensee to notify division within 10 days**

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### -- Change of name -- Proof necessary -- Method of giving notice by division.

(1) (a) ~~[If a person]~~ Except as provided in Subsection (1)(b), if an individual, after applying for or receiving a license, moves from the address named in the application or in the license certificate issued to ~~[him, the person]~~ the individual, the individual shall, within 10 days ~~[of moving]~~ after the day on which the individual moves, notify the division in a manner specified by the division of ~~[his]~~ the individual's new address and the number of any license certificate held by ~~[him]~~ the individual.

(b) If an individual who is required to register as a sex offender under Title 77, Chapter 41, Sex and Kidnap Offender Registry, after applying for or receiving a license, moves from the address named in the application or in the license certificate issued to the individual, the individual shall, within 30 days after the day on which the individual moves, apply for an updated license in-person at a division office.

(2) If ~~[a person]~~ an applicant requests to change the surname on the applicant's license, the division shall issue a substitute license with the new name upon receiving an application and fee for a duplicate license and any of the following proofs of the applicant's full legal name:

- (a) an original or certified copy of the applicant's marriage certificate;
- (b) a certified copy of a court order under Title 42, Chapter 1, Change of Name, showing the name change;
- (c) an original or certified copy of a birth certificate issued by a government agency;
- (d) a certified copy of a divorce decree or annulment granted the applicant that specifies the name change requested; or
- (e) a certified copy of a divorce decree that does not specify the name change requested together with:
  - (i) an original or certified copy of the applicant's birth certificate;
  - (ii) the applicant's marriage license;
  - (iii) a driver license record showing use of a maiden name; or
  - (iv) other documentation the division finds acceptable.

~~[(3)(a) Except as provided in Subsection (3)(c), if a person has applied for and received a license certificate and is currently required to register as a sex offender in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry:]~~

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~~[(i) the person's original license or renewal to an original license expires on the next birth date of the licensee beginning on July 1, 2006;]~~

~~[(ii) the person shall surrender the person's license to the division on or before the licensee's next birth date beginning on July 1, 2006; and]~~

~~[(iii) the person may apply for a license certificate with an expiration date identified in Subsection 53-3-205(7)(h) by:]~~

~~[(A) furnishing proper documentation to the division as provided in Section 53-3-205; and]~~

~~[(B) paying the fee for a license required under Section 53-3-105.]~~

~~[(b) Except as provided in Subsection (3)(c), if a person has applied for and received a license certificate and is subsequently convicted of any offense listed in Subsection 77-41-102(17), the person shall surrender the license certificate to the division on the person's next birth date following the conviction and may apply for a license certificate with an expiration date identified in Subsection 53-3-205(7)(h) by:]~~

~~[(i) furnishing proper documentation to the division as provided in Section 53-3-205; and]~~

~~[(ii) paying the fee for a license required under Section 53-3-105.]~~

~~[(c) A person who is unable to comply with the provisions of Subsection (3)(a) or (3)(b) because the person is in the custody of the Department of Corrections or the Division of Juvenile Justice Services, confined in a correctional facility not operated by or under contract with the Department of Corrections, or committed to a state mental facility, shall comply with the provisions of Subsection (3)(a) or (b) within 10 days of being released from confinement.]~~

~~[(4)]~~ (3) (a) If the division is authorized or required to give ~~[any]~~ a notice under this chapter or other law regulating the operation of vehicles, the notice shall, unless otherwise prescribed, be given by:

(i) personal delivery to the ~~[person]~~ individual to be notified; or

(ii) deposit in the United States mail with postage prepaid, addressed to the ~~[person at his]~~ individual at the individual's address as shown by the records of the division.

(b) The giving of notice by mail is complete upon the expiration of four days after the deposit of the notice.

(c) Proof of the giving of notice in either manner may be made by the certificate of



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[~~any~~] an officer or employee of the division or affidavit of [~~any person older than~~] an individual 18 years of age or older, naming the [~~person~~] individual to whom the notice was given and specifying the time, place, and manner of giving the notice.

[~~(5)~~] (4) The division may use state mailing or United States Postal Service information to:

- (a) verify an address on an application or on records of the division; and
- (b) correct mailing addresses in the division's records.

[~~(6)(a)~~] (5) A violation of the provisions of Subsection (1) is an infraction.

[~~(b) A person who knowingly fails to surrender a license certificate under Subsection (3) is guilty of a class A misdemeanor.~~]

Section 4. Section **53-3-413** is amended to read:

### **53-3-413. Issuance of CDL by division -- Driving record -- Expiration date -- Renewal -- Hazardous materials provision.**

(1) Before the division may grant a CDL, the division shall obtain the driving record information regarding the applicant through the CDLIS, the NDR, and from each state where the applicant has been licensed.

(2) The division shall notify the CDLIS and provide all information required to ensure identification of the CDL holder within 10 days after:

(a) issuing a CDL following application for an original, renewal, transfer, or upgrade of the CDL; or

(b) any change is made to the identifying information of a CDL holder.

(3) (a) The expiration date for a CDL is the birth date of the holder in the fifth year following the year of issuance of the CDL.

(b) A limited-term CDL expires on:

(i) the expiration date of the period of time of the individual's authorized stay in the United States or on the date provided in Subsection (3)(a), whichever is sooner; or

(ii) on the birth date of the applicant in the first year following the year that the limited-term CDL was issued if there is no definite end to the individual's period of authorized stay.

[~~(c) An original CDL or a renewal to an original CDL expires on the birth date of the applicant in the first year following the year that the license was issued if the applicant is~~

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~~required to register as a sex offender in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry.]~~

~~(d)~~ (c) A CDL held by ~~[a person]~~ an individual ordered to active duty and stationed outside Utah in any of the armed forces of the United States, which expires during the time period the ~~[person]~~ individual is stationed outside of the state, is valid until 90 days after the ~~[person]~~ individual has been discharged or has left the service, unless:

(i) the license is suspended, disqualified, denied, or has been cancelled or revoked by the division; or

(ii) the licensee updates the information or photograph on the license certificate.

(4) (a) The applicant for a renewal of a CDL shall complete the application form required by Section 53-3-410 and provide updated information and required certification.

(b) In addition to the requirements under Subsection (4)(a), the applicant for a renewal of a limited-term CDL shall present documentary evidence that the status by which the individual originally qualified for the limited-term CDL has been extended by the United States Citizenship and Immigration Services or other authorized agency of the United States Department of Homeland Security.

(5) The division shall distinguish a limited-term CDL by clearly indicating on the document:

(a) that it is temporary; and

(b) its expiration date.

(6) (a) The division may not issue a hazardous materials endorsement on a CDL unless the applicant meets the security threat assessment standards of the federal Transportation Security Administration.

(b) The division shall revoke the hazardous materials endorsement on a CDL upon receiving notice from the federal Transportation Security Administration that the ~~[person]~~ individual holding a hazardous materials endorsement does not meet Transportation Security Administration security threat assessment standards.

(c) To obtain an original hazardous materials endorsement or retain a hazardous materials endorsement upon CDL renewal or transfer, the applicant must take and pass the knowledge test for hazardous materials endorsement in addition to any other testing required by the division.

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(7) Unless otherwise provided, the provisions, requirements, classes, endorsements, fees, restrictions, and sanctions under this code apply to a limited-term CDL in the same way as a CDL issued under this chapter.

Section 5. Section **53-3-804** is amended to read:

### **53-3-804. Application for identification card -- Required information -- Release of anatomical gift information -- Cancellation of identification card.**

(1) To apply for a regular identification card or limited-term identification card, [~~the~~] an applicant shall:

- (a) be a Utah resident;
- (b) have a Utah residence address; and
- (c) appear in person at any license examining station.

(2) [~~The~~] An applicant shall provide the following information to the division:

(a) true and full legal name and Utah residence address;

(b) date of birth as set forth in a certified copy of the applicant's birth certificate, or other satisfactory evidence of birth, which shall be attached to the application;

(c) (i) [~~Social Security~~] social security number; or

(ii) written proof that the applicant is ineligible to receive a [~~Social Security~~] social security number;

(d) place of birth;

(e) height and weight;

(f) color of eyes and hair;

(g) signature;

(h) photograph;

(i) evidence of the applicant's lawful presence in the United States by providing documentary evidence:

(i) that [~~a person~~] the applicant is:

(A) a United States citizen;

(B) a United States national; or

(C) a legal permanent resident alien; or

(ii) of the applicant's:

(A) unexpired immigrant or nonimmigrant visa status for admission into the United

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States;

(B) pending or approved application for asylum in the United States;

(C) admission into the United States as a refugee;

(D) pending or approved application for temporary protected status in the United

States;

(E) approved deferred action status;

(F) pending application for adjustment of status to legal permanent resident or conditional resident; or

(G) conditional permanent resident alien status;

(j) an indication whether the applicant intends to make an anatomical gift under Title 26, Chapter 28, Revised Uniform Anatomical Gift Act;

(k) an indication whether the applicant is required to register as a sex offender in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry; and

(l) an indication whether the applicant is a veteran of the United States Armed Forces, verification that the applicant has received an honorable or general discharge from the United States Armed Forces, and an indication whether the applicant does or does not authorize sharing the information with the state Department of Veterans and Military Affairs.

(3) (a) The requirements of Section 53-3-234 apply to this section for each [~~person~~] individual, age 16 and older, applying for an identification card.

(b) Refusal to consent to the release of information under Section 53-3-234 shall result in the denial of the identification card.

(4) [~~A person~~] An individual who knowingly fails to provide the information required under Subsection (2)(k) is guilty of a class A misdemeanor.

(5) (a) Until December 1, 2014, [~~a person~~] an individual born on or after December 1, 1964, may hold both an unexpired Utah license certificate and an unexpired Utah identification card.

(b) On or after December 1, 2014, [~~a person~~] an individual born on or after December 1, 1964:

(i) may not hold both an unexpired Utah license certificate and an unexpired identification card; and

(ii) if the [~~person~~] individual has both an unexpired Utah license certificate and an

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unexpired Utah identification card in the ~~[person's]~~ individual's possession, the individual shall be required to surrender either the unexpired Utah license certificate or the unexpired Utah identification card.

(c) If ~~[a person]~~ an individual has not surrendered either the Utah license certificate or the Utah identification card as required under this Subsection (5), the division shall cancel the Utah identification card on December 1, 2014.

(6) (a) Until December 1, 2017, ~~[a person]~~ an individual born prior to December 1, 1964, may hold both an unexpired Utah license certificate and an unexpired Utah identification card.

(b) On or after December 1, 2017, ~~[a person]~~ an individual born prior to December 1, 1964:

(i) may not hold both an unexpired Utah license certificate and an unexpired identification card; and

(ii) if the ~~[person]~~ individual has both an unexpired Utah license certificate and an unexpired Utah identification card in the ~~[person's]~~ individual's possession, the individual shall ~~[be required to]~~ surrender either the unexpired Utah license certificate or the unexpired Utah identification card.

(c) If ~~[a person]~~ an individual has not surrendered either the Utah license certificate or the Utah identification card as required under this Subsection (6), the division shall cancel the Utah identification card on December 1, 2017.

(7) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, the division shall, upon request, release to the Sex and Kidnap Offender Registry office in the Department of Corrections, the names and addresses of all applicants who, under Subsection (2)(k), indicate they are required to register as a sex offender in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry.

Section 6. Section **53-3-807** is amended to read:

### **53-3-807. Expiration -- Address and name change -- Extension.**

(1) (a) A regular identification card issued on or after July 1, 2006, expires on the birth date of the applicant in the fifth year ~~[following]~~ after the issuance of the regular identification card.

(b) A limited-term identification card expires on:

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(i) the expiration date of the period of time of the individual's authorized stay in the United States or on the birth date of the applicant in the fifth year ~~[following]~~ after the issuance of the limited-term identification card, whichever is sooner; or

(ii) on the date of issuance in the first year ~~[following]~~ after the year that the limited-term identification card was issued if there is no definite end to the individual's period of authorized stay.

(2) (a) ~~[If a person]~~ Except as provided in Subsection (2)(b), if an individual has applied for and received an identification card and subsequently moves from the address shown on the application or on the card, the [person] individual shall, within 10 days after the day on which the individual moves, notify the division in a manner specified by the division of the [person's] individual's new address.

(b) If an individual who is required to register as a sex offender under Title 77, Chapter 41, Sex and Kidnap Offender Registry, has applied for and received an identification card and subsequently moves from the address shown on the application or on the card, the individual shall, within 30 days after the day on which the individual moves, apply for an updated identification card in-person at a division office.

(3) If ~~[a person]~~ an individual has applied for and received an identification card and subsequently changes the ~~[person's]~~ individual's name under Title 42, Chapter 1, Change of Name, the ~~[person]~~ individual:

(a) shall surrender the card to the division; and

(b) may apply for a new card in the ~~[person's]~~ individual's new name by:

(i) furnishing proper documentation to the division as provided in Section 53-3-804;

and

(ii) paying the fee required under Section 53-3-105.

~~[(4)(a) Except as provided in Subsection (4)(c), if a person has applied for and received an identification card and is currently required to register as a sex offender in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry:]~~

~~[(i) the person's identification card expires annually on the next birth date of the cardholder, on and after July 1, 2006;]~~

~~[(ii) the person shall surrender the person's identification card to the division on or before the cardholder's next birth date beginning on July 1, 2006; and]~~

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~~[(iii) the person may apply for an identification card with an expiration date identified in Subsection (8) by:]~~

~~[(A) furnishing proper documentation to the division as provided in Section 53-3-804; and]~~

~~[(B) paying the fee for an identification card required under Section 53-3-105.]~~

~~[(b) Except as provided in Subsection (4)(c), if a person has applied for and received an identification card and is subsequently convicted of any offense listed in Subsection 77-41-102(17), the person shall surrender the card to the division on the person's next birth date following the conviction and may apply for a new card with an expiration date identified in Subsection (8) by:]~~

~~[(i) furnishing proper documentation to the division as provided in Section 53-3-804; and]~~

~~[(ii) paying the fee required under Section 53-3-105.]~~

~~[(c) A person who is unable to comply with the provisions of Subsection (4)(a) or (4)(b) because the person is in the custody of the Department of Corrections or Division of Juvenile Justice Services, confined in a correctional facility not operated by or under contract with the Department of Corrections, or committed to a state mental facility, shall comply with the provisions of Subsection (4)(a) or (b) within 10 days of being released from confinement.]~~

~~[(5)] (4) A person [~~older than~~] 21 years of age or older with a disability, as defined under the Americans with Disabilities Act of 1990, Pub. L. 101-336, may extend the expiration date on an identification card for five years if the person with a disability or an agent of the person with a disability:~~

~~(a) requests that the division send the application form to obtain the extension or requests an application form in person at the division's offices;~~

~~(b) completes the application;~~

~~(c) certifies that the extension is for a person 21 years of age or older with a disability;~~

~~and~~

~~(d) returns the application to the division together with the identification card fee required under Section 53-3-105.~~

~~[(6)] (5) (a) The division may extend a valid regular identification card issued after January 1, 2010, for five years[~~:(a)(i)] at any time within six months before the day on which~~~~

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the identification card expires~~[, and]~~.

~~[(ii) if the identification card was issued after January 1, 2010.]~~

(b) The application for an extension of a regular identification card ~~[shall be]~~ is accompanied by a fee under Section 53-3-105.

(c) The division shall allow extensions:

(i) by mail, electronic means, or other means as determined by the division at the appropriate extension fee rate under Section 53-3-105; and

(ii) only if the applicant qualifies under this section.

~~[(7) (6) (a) [(i) Except as prohibited under Subsection (7)(b), a]~~ A regular identification card may only be extended once under Subsections ~~[(5) and (6)]~~ (4) and (5).

~~[(ii) (b)]~~ (b) After an extension an application for an identification card must be applied for in person at the division's offices.

~~[(b) An identification card issued to a person required to register as a sex offender in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry, may not be extended.]~~

~~[(8) (7)]~~ (7) An identification card issued ~~[prior to]~~ before July 1, 2006, to ~~[a person]~~ an individual 65 years of age or older expires on December 1, 2017.

~~[(9) Notwithstanding the provisions of this section, an identification card expires on the birth date of the applicant in the first year following the year that the identification card was issued if the applicant is required to register as a sex offender in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry.]~~

~~[(10) A person who knowingly fails to surrender an identification card under Subsection (4) is guilty of a class A misdemeanor.]~~

Section 7. Section **76-5b-201** is amended to read:

### **76-5b-201. Sexual exploitation of a minor -- Offenses.**

(1) A person is guilty of sexual exploitation of a minor:

(a) when the person:

(i) knowingly produces, possesses, or possesses with intent to distribute child pornography; or

(ii) intentionally distributes or views child pornography; or

(b) if the person is a minor's parent or legal guardian and knowingly consents to or



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permits the minor to be sexually exploited as described in Subsection (1)(a).

(2) (a) [~~Sexual~~] Except as provided in Subsection (2)(b), sexual exploitation of a minor is a second degree felony.

(b) A violation of Subsection (1) for knowingly producing child pornography is a first degree felony if the person produces original child pornography depicting a first degree felony that involves:

(i) the person or another person engaging in conduct with the minor that is a violation of:

(A) Section 76-5-402.1, rape of a child;

(B) Section 76-5-402.3, object rape of a child;

(C) Section 76-5-403.1, sodomy on a child; or

(D) Section 76-5-404.1, aggravated sexual abuse of a child; or

(ii) the minor being physically abused, as defined in Section 78A-6-105.

(3) It is a separate offense under this section:

(a) for each minor depicted in the child pornography; and

(b) for each time the same minor is depicted in different child pornography.

(4) It is an affirmative defense to a charge of violating this section that no [~~person under 18 years of age~~] minor was actually depicted in the visual depiction or used in producing or advertising the visual depiction.

(5) In proving a violation of this section in relation to an identifiable minor, proof of the actual identity of the identifiable minor is not required.

(6) This section may not be construed to impose criminal or civil liability on:

(a) an entity or an employee, director, officer, or agent of an entity when acting within the scope of employment, for the good faith performance of:

(i) reporting or data preservation duties required under [~~any~~] federal or state law; or

(ii) implementing a policy of attempting to prevent the presence of child pornography on [~~any~~] tangible or intangible property, or of detecting and reporting the presence of child pornography on the property;

(b) a law enforcement officer acting within the scope of a criminal investigation;

(c) an employee of a court who may be required to view child pornography during the course of and within the scope of the employee's employment;

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(d) a juror who may be required to view child pornography during the course of the individual's service as a juror;

(e) an attorney or employee of an attorney who is required to view child pornography during the course of a judicial process and while acting within the scope of employment;

(f) an employee of the Department of Human Services who is required to view child pornography within the scope of the employee's employment; or

(g) an attorney who is required to view child pornography within the scope of the attorney's responsibility to represent the Department of Human Services, including the divisions and offices within the Department of Human Services.

Section 8. Section **76-10-1206** is amended to read:

### **76-10-1206. Dealing in material harmful to a minor -- Penalties -- Exemptions for Internet service providers and hosting companies.**

(1) A person is guilty of dealing in material harmful to minors when, knowing or believing that ~~[a person]~~ an individual is a minor, or having negligently failed to determine the proper age of a minor, the person intentionally:

(a) distributes or offers to distribute, or exhibits or offers to exhibit, to a minor or ~~[a person the actor]~~ an individual whom the person believes to be a minor, any material harmful to minors;

(b) produces, performs, or directs any performance, before a minor or ~~[a person the actor]~~ an individual whom the person believes to be a minor, that is harmful to minors; or

(c) participates in any performance, before a minor or ~~[a person the actor]~~ an individual whom the person believes to be a minor, that is harmful to minors.

(2) (a) ~~[Each]~~ Except as provided in Subsection (2)(b), each separate offense under this section committed by a person 18 years of age or older is a third degree felony punishable by:

(i) a minimum mandatory fine of not less than \$1,000, plus \$10 for each article exhibited up to the maximum allowed by law; and

(ii) incarceration, without suspension of sentence, for a term of not less than 14 days.

(b) Each separate offense under this section committed by a person 18 years of age or older against a minor 16 years of age or older, but younger than 18 years of age, is a class A misdemeanor if the person is less than seven years older than the minor at the time of the offense.

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~~[(b)]~~ (c) Each separate offense under this section committed by a person 16 or 17 years of age is a class A misdemeanor.

~~[(c)]~~ (d) Each separate offense under this section committed by a person younger than 16 years of age is a class B misdemeanor.

~~[(d)]~~ (e) Subsection (2)(a) supersedes Section 77-18-1.

(3) (a) [H] Except for a defendant described in Subsection (2)(b), if a defendant 18 years of age or older has been previously convicted or adjudicated to be under the jurisdiction of the juvenile court under this section, each separate subsequent offense is a second degree felony punishable by:

(i) a minimum mandatory fine of not less than \$5,000, plus \$10 for each article exhibited up to the maximum allowed by law; and

(ii) incarceration, without suspension of sentence, for a term of not less than one year.

(b) If a defendant described in Subsection (2)(b) or a defendant younger than 18 years of age has been previously convicted or adjudicated to be under the jurisdiction of the juvenile court under this section, each separate subsequent offense is a third degree felony.

(c) Subsection (3)(a) supersedes Section 77-18-1.

(d) (i) This section does not apply to an Internet service provider, as defined in Section 76-10-1230, a provider of an electronic communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service, information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined in 47 U.S.C. Sec. 522, if:

(A) the distribution of pornographic material by the Internet service provider occurs only incidentally through the provider's function of:

(I) transmitting or routing data from one person to another person; or

(II) providing a connection between one person and another person;

(B) the provider does not intentionally aid or abet in the distribution of the pornographic material; and

(C) the provider does not knowingly receive from or through a person who distributes the pornographic material a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute the pornographic material.

(ii) This section does not apply to a hosting company, as defined in Section

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76-10-1230, if:

(A) the distribution of pornographic material by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;

(B) the hosting company does not intentionally engage, aid, or abet in the distribution of the pornographic material; and

(C) the hosting company does not knowingly receive from or through a person who distributes the pornographic material a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute, store, or cache the pornographic material.

(4) A service provider, as defined in Section 76-10-1230, is not negligent under this section if [it] the service provider complies with Section 76-10-1231.

(5) A person 18 years of age or older who knowingly solicits, requests, commands, encourages, or intentionally aids another person younger than 18 years of age to engage in conduct in violation of Subsection (1) is guilty of a third degree felony and is subject to the penalties under Subsection (2)(a).

Section 9. Section **77-22-2.5** is amended to read:

**77-22-2.5. Court orders for criminal investigations for records concerning an electronic communications system or service or remote computing service -- Content -- Fee for providing information.**

(1) As used in this section:

(a) (i) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system.

(ii) "Electronic communication" does not include:

(A) [any] a wire or oral communication;

(B) [any] a communication made through a tone-only paging device;

(C) [any] a communication from a tracking device; or

(D) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

(b) "Electronic communications service" means [any] a service which provides for

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users the ability to send or receive wire or electronic communications.

(c) "Electronic communications system" means ~~[any]~~ a wire, radio, electromagnetic, photooptical, or photoelectronic facilities for the transmission of wire or electronic communications, and ~~[any]~~ a computer facilities or related electronic equipment for the electronic storage of the communication.

(d) "Internet service provider" ~~[has the same definition as in]~~ means the same as that term is defined in Section 76-10-1230.

(e) "Prosecutor" ~~[has the same definition as in]~~ means the same as that term is defined in Section 77-22-2.

(f) "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system.

(g) "Sexual offense against a minor" means:

(i) sexual exploitation of a minor ~~[as defined in Section 76-5b-201]~~ or attempted sexual exploitation of a minor in violation of Section 76-5b-201;

(ii) a sexual offense or attempted sexual offense committed against a minor in violation of Title 76, Chapter 5, Part 4, Sexual Offenses;

(iii) dealing in or attempting to deal in material harmful to a minor in violation of Section 76-10-1206;

(iv) enticement of a minor or attempted enticement of a minor in violation of Section 76-4-401; ~~[or]~~

(v) human trafficking of a child in violation of Section 76-5-308.5~~[-];~~ or

(vi) aggravated sexual extortion of a child in violation of Section 76-5b-204.

(2) When a law enforcement agency is investigating a sexual offense against a minor, an offense of stalking under Section 76-5-106.5, or an offense of child kidnapping under Section 76-5-301.1, and has reasonable suspicion that an electronic communications system or service or remote computing service has been used in the commission of a criminal offense, a law enforcement agent shall:

(a) articulate specific facts showing reasonable grounds to believe that the records or other information sought, as designated in Subsections (2)(c)(i) through (v), are relevant and material to an ongoing investigation;

(b) present the request to a prosecutor for review and authorization to proceed; and

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(c) submit the request to a magistrate for a court order, consistent with 18 U.S.C. Sec. 2703 and 18 U.S.C. Sec. 2702, to the electronic communications system or service or remote computing service provider that owns or controls the Internet protocol address, websites, email address, or service to a specific telephone number, requiring the production of the following information, if available, upon providing in the court order the Internet protocol address, email address, telephone number, or other identifier, and the dates and times the address, telephone number, or other identifier [~~was~~] is suspected of being used in the commission of the offense:

- (i) names of subscribers, service customers, and users;
- (ii) addresses of subscribers, service customers, and users;
- (iii) records of session times and durations;
- (iv) length of service, including the start date and types of service utilized; and
- (v) telephone or other instrument subscriber numbers or other subscriber identifiers, including [~~any~~] a temporarily assigned network address.

(3) A court order issued under this section shall state that the electronic communications system or service or remote computing service provider shall produce [~~any records~~] a record under Subsections (2)(c)(i) through (v) that [~~are~~] is reasonably relevant to the investigation of the suspected criminal activity or offense as described in the court order.

(4) (a) An electronic communications system or service or remote computing service provider that provides information in response to a court order issued under this section may charge a fee, not to exceed the actual cost, for providing the information.

(b) The law enforcement agency conducting the investigation shall pay the fee.

(5) The electronic communications system or service or remote computing service provider served with or responding to the court order may not disclose the court order to the account holder identified pursuant to the court order for a period of 90 days.

(6) If the electronic communications system or service or remote computing service provider served with the court order does not own or control the Internet protocol address, websites, or email address, or provide service for the telephone number that is the subject of the court order, the provider shall notify the investigating law enforcement agency that [~~it~~] the provider does not have the information.

(7) There is no cause of action against [~~any~~] a provider or wire or electronic communication service, or [~~its~~] the provider or service's officers, employees, agents, or other

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specified persons, for providing information, facilities, or assistance in accordance with the terms of the court order issued under this section or statutory authorization.

(8) (a) A court order issued under this section is subject to the provisions of Title 77, Chapter 23b, Access to Electronic Communications.

(b) Rights and remedies for providers and subscribers under Title 77, Chapter 23b, Access to Electronic Communications, apply to providers and subscribers subject to a court order issued under this section.

(9) ~~[Every]~~ A prosecutorial agency shall annually on or before February 15 report to the Commission on Criminal and Juvenile Justice:

(a) the number of requests for court orders authorized by the prosecutorial agency;

(b) the number of orders issued by the court and the criminal offense, pursuant to Subsection (2), each order was used to investigate; and

(c) if the court order led to criminal charges being filed, the type and number of offenses charged.

Section 10. Section ~~77-41-104~~ is amended to read:

### **77-41-104. Registration of offenders -- Department and agency requirements.**

(1) ~~[An]~~ The department or an agent of the department shall register an offender in the custody of the department ~~[shall be registered by agents of the department]~~ as required under this chapter upon:

(a) placement on probation;

(b) commitment to a secure correctional facility operated by or under contract to the department;

(c) release from confinement to parole status, termination or expiration of sentence, or escape;

(d) entrance to and release from any community-based residential program operated by or under contract to the department; or

(e) termination of probation or parole.

(2) ~~[An offender who]~~ The sheriff of the county in which an offender is confined shall register an offender with the department, as required under this chapter, if the offender is not in the custody of the department and [who] is confined in a correctional facility not operated by or under contract to the department [shall be registered with the department by the sheriff of the

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county in which the offender is confined,] upon:

- (a) commitment to the correctional facility; and
- (b) release from confinement.

(3) ~~[An] The division shall register an~~ offender in the custody of the division ~~[shall be registered with the department by the division prior to]~~ with the department, as required under this chapter, before the offender's release from custody of the division.

(4) ~~[An] A state mental hospital shall register an~~ offender committed to ~~[a] the state mental hospital [shall be registered with the department by the hospital]~~ with the department, as required under this chapter, upon the offender's admission and upon the offender's discharge.

(5) (a) (i) A municipal or county law enforcement agency shall register an offender who resides within the agency's jurisdiction and is not under the supervision of the Division of Adult Probation and Parole within the department.

(ii) In order to conduct offender registration under this chapter, the agency shall ensure the agency staff responsible for registration:

(A) has received initial training by the department and has been certified by the department as qualified and authorized to conduct registrations and enter offender registration information into the registry database; and

(B) certify annually with the department.

(b) (i) When the department receives offender registration information regarding a change of an offender's primary residence location, the department shall within five days after the day on which the department receives the information electronically notify the law enforcement agencies that have jurisdiction over the area where:

(A) the residence that the offender is leaving is located; and

(B) the residence to which the offender is moving is located.

(ii) The department shall provide notification under this Subsection (5)(b) if the offender's change of address is between law enforcement agency jurisdictions, or is within one jurisdiction.

(c) The department shall make available to offenders required to register under this chapter the name of the agency, whether ~~[it]~~ the agency is a local law enforcement agency or the department, that the offender should contact to register, the location for registering, and the requirements of registration.



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(6) An agency in the state that registers an offender on probation, an offender who has been released from confinement to parole status or termination, or an offender whose sentence has expired shall inform the offender of the duty to comply with~~[(a)]~~ the continuing registration requirements of this chapter during the period of registration required in Subsection 77-41-105(3), including:

~~[(i)]~~ (a) notification to the state agencies in the states where the registrant presently resides and plans to reside when moving across state lines;

~~[(ii)]~~ (b) verification of address at least every 60 days pursuant to a parole agreement for lifetime parolees; and

~~[(iii)]~~ (c) notification to the out-of-state agency where the offender is living, regardless of whether ~~[or not]~~ the offender is a resident of that state~~[-and]~~.

~~[(b) the driver license certificate or identification card surrender requirement under Subsection 53-3-216(3) or 53-3-807(4) and application provisions under Section 53-3-205 or 53-3-804.]~~

(7) The department may make administrative rules necessary to implement this chapter, including:

(a) the method for dissemination of the information; and

(b) instructions to the public regarding the use of the information.

(8) ~~[Any]~~ The department shall redact information regarding the identity or location of a victim ~~[shall be redacted by the department]~~ from information provided under Subsections 77-41-103(4) and 77-41-105~~[(8)]~~(7).

(9) This chapter does not create or impose any duty on any person to request or obtain information regarding any offender from the department.

Section 11. Section **77-41-105** is amended to read:

### **77-41-105. Registration of offenders -- Offender responsibilities.**

(1) (a) An offender ~~[convicted by any other]~~ who enters this state from another jurisdiction is required to register under Subsection (3) and Subsection 77-41-102(9) or (17).

(b) The offender shall register with the department within 10 days ~~[of entering]~~ after the day on which the offender enters the state, regardless of the offender's length of stay.

(2) (a) An offender required to register under Subsection 77-41-102(9) or (17) who is under supervision by the department shall register in person with Division of Adult Probation

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and Parole.

(b) An offender required to register under Subsection 77-41-102(9) or (17) who is no longer under supervision by the department shall register in person with the police department or sheriff's office that has jurisdiction over the area where the offender resides.

(3) (a) Except as provided in Subsections (3)(b), (c), and (4), and Section 77-41-106, an offender shall, for the duration of the sentence and for 10 years after termination of sentence or custody of the division, register [~~every~~] each year during the month of the offender's date of birth, during the month that is the sixth month after the offender's birth month, and [~~also~~] within three business days [~~of every~~] after the day on which there is a change of the offender's primary residence, any secondary residences, place of employment, vehicle information, or educational information required to be submitted under Subsection [~~(8)~~] (7).

(b) Except as provided in Subsections (3)(c)(iii), (4), and (5), and Section 77-41-106, an offender who is convicted in another jurisdiction of an offense listed in Subsection 77-41-102(9)(a) or (17)(a), a substantially similar offense, [~~or any other~~] another offense that requires registration in the jurisdiction of conviction, or an offender who is ordered by a court of another jurisdiction to register as an offender shall:

(i) register for the time period, and in the frequency, required by the jurisdiction where the offender was convicted or ordered to register if:

(A) that jurisdiction's registration period or registration frequency requirement for the offense that the offender was convicted of is greater than the [~~10 years from completion of the sentence~~] registration period [~~that is~~] required under Subsection (3)(a), or is more frequent than every six months; or

(B) that jurisdiction's court order requires registration for greater than the registration period required under Subsection (3)(a) or more frequently than every six months; or

(ii) register in accordance with the requirements of Subsection (3)(a), if the jurisdiction's registration period or frequency requirement for the offense that the offender was convicted of is less than the registration period required under Subsection (3)(a), or is less frequent than every six months.

(c) (i) An offender convicted as an adult of [~~any of the offenses~~] an offense listed in Section 77-41-106 shall, for the offender's lifetime, register [~~every~~] each year during the month of the offender's birth, during the month that is the sixth month after the offender's birth month,

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and also within three business days ~~[of every]~~ after the day on which there is a change of the offender's primary residence, any secondary residences, place of employment, vehicle information, or educational information required to be submitted under Subsection (3)(a) (7).

(ii) ~~[This]~~ Except as provided in Subsection (3)(c)(iii), the registration requirement described in Subsection (3)(c)(i) is not subject to exemptions and may not be terminated or altered during the offender's lifetime, unless a petition is granted under Section 77-41-112.

(iii) If the sentencing court determines that the offense does not involve force or coercion, lifetime registration under ~~[this Subsection (3)(c)]~~ Subsection (3)(c)(i) does not apply to an offender who commits the offense when the offender is under 21 years of age. For an offense listed in Section 77-41-106, an offender who commits the offense when the offender is under 21 years of age [is required to] shall register [in accordance with this chapter for 10 years after termination of sentence or custody of the division] for the registration period required under Subsection (3)(a), unless a petition is granted under Section 77-41-112.

(d) For the purpose of establishing venue for a violation of this Subsection (3), the violation is considered to be committed:

(i) at the most recent registered primary residence of the offender or at the location of the offender, if the actual location of the offender at the time of the violation is not known; or

(ii) at the location of the offender at the time the offender is apprehended.

(4) Notwithstanding Subsection (3) and Section 77-41-106, an offender who is confined in a secure facility or in a state mental hospital is not required to register during the period of confinement.

(5) (a) ~~[It]~~ Except as provided in Subsection (5)(b), in the case of an offender adjudicated in another jurisdiction as a juvenile and required to register under this chapter, the offender shall register in the time period and in the frequency consistent with the requirements of [this Subsection (5)]. However, if Subsection (3).

(b) If the jurisdiction of the offender's adjudication does not publish the offender's information on a public website, the department shall maintain, but not publish the offender's information on the [Sex Offender and Kidnap Offender Registration] registration website.

~~[(6) An offender who is required to register under Subsection (3) shall surrender the offender's license, certificate, or identification card as required under Subsection 53-3-216(3) or 53-3-807(4) and may apply for a license certificate or identification card as provided under~~

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~~Section 53-3-205 or 53-3-804.]~~

~~(7)~~ (6) A sex offender who violates Section 77-27-21.8 regarding being in the presence of a child while required to register under this chapter shall register for an additional five years subsequent to the registration period otherwise required under this chapter.

~~(8)~~ (7) An offender shall provide the department or the registering entity with the following information:

- (a) all names and aliases by which the offender is or has been known;
- (b) the addresses of the offender's primary and secondary residences;
- (c) a physical description, including the offender's date of birth, height, weight, eye and hair color;
- (d) the make, model, color, year, plate number, and vehicle identification number of ~~any~~ a vehicle or vehicles the offender owns or regularly drives;
- (e) a current photograph of the offender;
- (f) a set of fingerprints, if one has not already been provided;
- (g) a DNA specimen, taken in accordance with Section 53-10-404, if one has not already been provided;
- (h) telephone numbers and any other designations used by the offender for routing or self-identification in telephonic communications from fixed locations or cellular telephones;
- (i) Internet identifiers and the addresses the offender uses for routing or self-identification in Internet communications or postings;
- (j) the name and Internet address of all websites on which the offender is registered using an online identifier, including all online identifiers used to access those websites;
- (k) a copy of the offender's passport, if a passport has been issued to the offender;
- (l) if the offender is an alien, all documents establishing the offender's immigration status;
- (m) all professional licenses that authorize the offender to engage in an occupation or carry out a trade or business, including any identifiers, such as numbers;
- (n) each educational institution in Utah at which the offender is employed, carries on a vocation, or is a student, and ~~any~~ a change of enrollment or employment status of the offender at ~~any~~ an educational institution;
- (o) the name, the telephone number, and the address of ~~any~~ a place where the

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offender is employed or will be employed;

(p) the name, the telephone number, and the address of [any] a place where the offender works as a volunteer or will work as a volunteer; and

(q) the offender's social security number.

~~[(9) Notwithstanding Section 42-1-1, an offender:]~~

~~[(a) may not change the offender's name:]~~

~~[(i) while under the jurisdiction of the department; and]~~

~~[(ii) until the registration requirements of this statute have expired; and]~~

~~[(b) may not change the offender's name at any time, if registration is for life under Subsection (3)(c):]~~

(8) (a) An offender may change the offender's name in accordance with Title 42, Chapter 1, Change of Name, if the name change is not contrary to the interests of the public.

(b) Notwithstanding Section 42-1-2, an offender shall provide notice to the department at least 30 days before the day on which the hearing for the name change is held.

(c) The court shall provide a copy of the order granting the offender's name change to the department within 10 days after the day on which the court issues the order.

(d) If the court orders an offender's name changed, the department shall publish on the registration website the offender's former name, and the offender's changed name as an alias.

~~[(10)]~~ (9) Notwithstanding Subsections [(8)] (7)(i) and (j) and 77-41-103(1)(c), an offender is not required to provide the department with:

(a) the offender's online identifier and password used exclusively for the offender's employment on equipment provided by an employer and used to access the employer's private network; or

(b) online identifiers for the offender's financial accounts, including [any] a bank, retirement, or investment [accounts] account.

Section 12. Section ~~77-41-112~~ is amended to read:

### **77-41-112. Removal from registry -- Requirements -- Procedure.**

(1) An offender who is required to register with the Sex and Kidnap Offender Registry may petition the court [~~where the offender was convicted of the offense requiring registration~~] for an order removing the offender from the Sex [Offender] and Kidnap Offender Registry if:

(a) (i) the offender [~~was~~] is convicted of an offense [~~under~~] described in Subsection

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(2);

~~[(b)]~~ (ii) at least five years have passed [since the completion of] after the day on which the offender's sentence for the offense terminates;

~~[(c)]~~ (iii) the offense is the only [conviction] offense for which the offender is required to register; [and]

~~[(d) the offender has not been convicted, subsequently to the offense for which the offender was placed on the registry, of a violation listed in:]~~

~~[(i) Subsection 77-41-102(9), which defines a kidnap offender; or]~~

~~[(ii) Subsection 77-41-102(17), which defines a sex offender.]~~

(iv) the offender is not convicted of another offense, excluding a traffic offense, after the day on which the offender is convicted of the offense for which the offender is required to register, as evidenced by a certificate of eligibility issued by the bureau;

(v) the offender successfully completes all treatment ordered by the court or the Board of Pardons and Parole relating to the offense;

(vi) the offender pays all restitution ordered by the court or the Board of Pardons and Parole relating to the offense; and

(vii) the offender complies with all registration requirements required under this chapter at all times; or

(b) (i) if the offender is required to register in accordance with Subsection 77-41-105(3)(a);

(ii) at least 10 years have passed after the later of:

(A) the day on which the offender is placed on probation;

(B) the day on which the offender is released from incarceration to parole;

(C) the day on which the offender's sentence is terminated without parole;

(D) the day on which the offender enters a community-based residential program; or

(E) for a minor, as defined in Section 78A-6-105, the day on which the division's custody of the offender is terminated;

(iii) the offender is not convicted of another offense that is a class A misdemeanor, felony, or capital felony within the most recent 10-year period after the date described in Subsection (1)(b)(ii), as evidenced by a certificate of eligibility issued by the bureau;

(iv) the offender successfully completes all treatment ordered by the court or the Board

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of Pardons and Parole relating to the offense;

(v) the offender pays all restitution ordered by the court or the Board of Pardons and Parole relating to the offense; and

(vi) the offender complies with all registration requirements required under this chapter at all times.

(2) The offenses referred to in Subsection (1)(a)(i) are:

(a) Section 76-4-401, [~~Enticing~~] enticing a minor, if the offense is a class A misdemeanor;

(b) Section 76-5-301, [~~Kidnapping, and the conviction of violating Section 76-5-301~~] kidnapping;

(c) Section 76-5-304, [~~Unlawful~~] unlawful detention, [~~and~~] if the conviction of violating Section 76-5-304 is the only conviction for which the offender is required to register;

(d) Section 76-5-401, [~~Unlawful~~] unlawful sexual activity with a minor [~~and~~] if, at the time of the offense, [~~was~~] the offender is not more than 10 years older than the victim;

(e) Section 76-5-401.1, sexual abuse of a minor, if, at the time of the offense, the offender is not more than 10 years older than the victim;

~~[(e)]~~ (f) Section 76-5-401.2, [~~Unlawful~~] unlawful sexual conduct with a 16 or 17 year old, and at the time of the offense, [~~was~~] the offender is not more than 15 years older than the victim; or

~~[(f)]~~ (g) Section 76-9-702.7, [~~Voyeurism~~] voyeurism, if the offense is a class A misdemeanor.

~~[(3) An offender who meets the requirements under Subsection (1) shall also complete all of the following requirements:]~~

~~[(a) the offender has successfully completed all treatment ordered by the court or the Board of Pardons and Parole relating to the conviction;]~~

~~[(b) (i) the offender has not been convicted of any other crime, excluding traffic offenses, as evidenced by a certificate of eligibility issued by the bureau, and]~~

~~[(ii) as used in this section, "traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;]~~

~~[(c) the offender has paid all restitution ordered by the court;]~~

~~[(d) the offender has complied with all the registration requirements at all times as~~

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required in this chapter, as evidenced by a document obtained by the offender from the Utah Department of Corrections, which confirms compliance; and]

~~[(e) the office that prosecuted the offender, and the victim, or if the victim is still a minor, the victim's parent, are notified and provided with an opportunity to respond in accordance with Subsection (6)(a).]~~

~~[(4)]~~ (3) (a) (i) An offender seeking removal from the Sex ~~[Offender or]~~ and Kidnap Offender Registry under this section shall apply for a certificate of eligibility from the bureau.

(ii) An offender who intentionally or knowingly provides ~~[any]~~ false or misleading information to the bureau when applying for a certificate of eligibility is guilty of a class B misdemeanor and subject to prosecution under Section 76-8-504.6.

(iii) Regardless of whether the offender is prosecuted, the bureau may deny a certificate of eligibility to ~~[anyone providing]~~ an offender who provides false information on an application.

(b) (i) The bureau shall perform a check of records of governmental agencies, including national criminal databases, to determine whether an offender is eligible to receive a certificate of eligibility ~~[under this section]~~.

(ii) If the offender meets ~~[all of the criteria under Subsections (1), (2), and (3)]~~ the requirements described in Subsection (1)(a) or (b), the bureau shall issue a certificate of eligibility to the offender, which ~~[shall be]~~ is valid for a period of 90 days ~~[from the date the certificate is issued]~~ after the day on which the bureau issues the certificate.

(iii) The bureau shall request information from the department regarding whether the offender meets the requirements.

(iv) Upon request from the bureau under Subsection (3)(b)(iii), the department shall issue a document that states whether the offender meets the requirements described in Subsection (1)(a) or (b), which may be used by the bureau to determine if a certificate of eligibility is appropriate.

(v) The bureau shall provide a copy of the document provided to the bureau under Subsection (3)(b)(iv) to the offender upon issuance of a certificate of eligibility.

~~[(5)]~~ (4) (a) (i) The bureau shall charge application and issuance fees for a certificate of eligibility in accordance with the process in Section 63J-1-504.

(ii) The application fee shall be paid at the time the offender submits an application for



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a certificate of eligibility to the bureau.

(iii) If the bureau determines that the issuance of a certificate of eligibility is appropriate, the offender will be charged an additional fee for the issuance of a certificate of eligibility.

(b) Funds generated under this Subsection [~~(5)~~] (4) shall be deposited [~~in~~] into the General Fund as a dedicated credit by the department to cover the costs incurred in determining eligibility.

~~[(6)]~~ (5) (a) The offender shall file the petition, including original information, [~~and~~] the court docket, the certificate of eligibility from the bureau, and the document from the department described in Subsection (3)(b)(iv) with the court, and deliver a copy of the petition to the office of the prosecutor.

~~[(7)]~~ (b) Upon receipt of a petition for removal from the Sex [~~Offender~~] and Kidnap Offender Registry, the office of the prosecutor shall provide notice of the petition [~~:(A)~~] by first-class mail to the victim at the most recent address of record on file or, if the victim is still a minor under 18 years of age, to the parent or guardian of the victim [~~;(and)~~].

~~[(B) to the Sex and Kidnap Offender Registry office in the Department of Corrections.]~~

~~[(7)]~~ (c) The notice described in Subsection (5)(b) shall include a copy of the petition, state that the victim has a right to object to the removal of the offender from the registry, and provide instructions for registering an objection with the court.

~~[(7)]~~ (d) The office of the prosecutor shall provide the following, if available, to the court within 30 days after [~~receiving~~] the day on which the office receives the petition:

- (i) presentencing report;
- (ii) [~~any~~] an evaluation done as part of sentencing; and
- (iii) any other information the office of the prosecutor feels the court should consider.

~~[(7)]~~ (e) The victim, or the victim's parent or guardian if the victim is a minor under 18 years of age, may respond to the petition by filing a recommendation or objection with the court within 45 days after the [~~mailing of the petition~~] day on which the petition is mailed to the victim.

~~[(7)]~~ (6) (a) The court shall:

- (i) review the petition and all documents submitted with the petition; and
- (ii) hold a hearing if requested by the prosecutor or the victim.

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~~[(b) The court shall consider whether the offender has paid all restitution ordered by the court or the Board of Pardons.]~~

~~[(c) (b) [If the court] The court may grant the petition and order removal of the offender from the registry if the court determines that [it] the offender has met the requirements described in Subsection (1)(a) or (b) and removal is not contrary to the interests of the public [to do so, it may grant the petition and order removal of the offender from the registry].~~

~~[(d) (c) If the court grants the petition, [it] the court shall forward a copy of the order directing removal of the offender from the registry to the department and the office of the prosecutor.~~

~~[(e) (d) If the court denies the petition, the offender may not submit another petition for three years.~~

~~[(8) (7) The [office of the prosecutor] court shall notify the victim and the Sex and Kidnap Offender Registry office in the [Department of Corrections] department of the court's decision within three days after the day on which the court issues the court's decision in the same manner [as notification was provided] described in Subsection [(6)(a)] (5).~~

### Section 13. Fees.

Under the terms and conditions of Utah Code Title 63J Chapter 1 and other fee statutes as applicable, the following fees and rates are approved for the use and support of the government of the State of Utah for the Fiscal Year beginning July 1, 2019 and ending June 30, 2020.

#### DEPARTMENT OF PUBLIC SAFETY

#### BUREAU OF CRIMINAL IDENTIFICATION

#### Non-Government/Other Services

#### Sex Offender Kidnap Registry

Application for removal from registry 230.00

The Legislature intends that for every initial Application for removal from Registry fee collected, \$140 shall be remitted to the Department of Corrections.

### Section 14. Coordinating H.B. 298 with S.B. 8 -- Substantive amendments.

If this H.B. 298 and S.B. 8 State Agency Fees and Internal Service Fund Rate Authorization and Appropriations, both pass and become law, it is the intent of the Legislature that the Office of Legislative Fiscal Analyst, in enrolling S.B. 8, change the fee entitled

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"Application for removal from registry" to \$230.