

HB0067S01 compared with HB0067

~~{deleted text}~~ shows text that was in HB0067 but was deleted in HB0067S01.

inserted text shows text that was not in HB0067 but was inserted into HB0067S01.

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Representative Jefferson S. Burton proposes the following substitute bill:

TITLE 71A ~~{}~~ VETERANS AND MILITARY AFFAIRS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jefferson S. Burton

Senate Sponsor: ~~{~~ Todd D. Weiler

LONG TITLE

~~{Committee Note:~~

~~—————The Government Operations Interim Committee recommended this bill.~~

~~—————Legislative Vote: 11 voting for 0 voting against 3 absent~~

~~{General Description:~~

This bill restructures, reorganizes, and rewrites provisions of Title 71, Veterans, creates Title 71A, Veterans and Military Affairs, and makes conforming changes.

Highlighted Provisions:

This bill:

- ▶ restructures, reorganizes, and rewrites some of the provisions of Title 71, Veterans, and creates Title 71A, Veterans and Military Affairs;
- ▶ outlines the new title as follows:
 - Chapter 1, Veterans and Military Affairs;

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- Chapter 2, Veterans Preference;
 - Chapter 3, Veterans Service Organizations Assistance Contracts;
 - Chapter 4, Veterans Benefits Application Assistance Act;
 - Chapter 5, Veterans Assistance Registry;
 - Chapter 6, State Veterans Nursing Home;
 - Chapter 7, Veterans Memorials and Cemeteries; and
 - Chapter 8, Employees in Military Service;
- ▶ provides definitions;
 - ▶ removes outdated language;
 - ▶ standardizes the term "service member";
 - ▶ removes requirement that the Veterans Advisory Council be consulted on the awarding of grants;
 - ▶ removes the requirement that deputy directors be veterans;
 - ▶ clarifies eligibility for veterans preference;
 - ▶ clarifies job retention for public officers called to serve in the armed forces; and
 - ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30-3-10, as last amended by Laws of Utah 2019, First Special Session, Chapter 5

30-3-10.1, as last amended by Laws of Utah 2017, Chapter 224

30-3-10.4, as last amended by Laws of Utah 2019, Chapter 188

30-3-10.8, as last amended by Laws of Utah 2017, Chapter 224

34-50-102, as last amended by Laws of Utah 2016, Chapter 230

34-50-103, as last amended by Laws of Utah 2020, Chapter 333

39A-3-202, as renumbered and amended by Laws of Utah 2022, Chapter 373

53B-8-102, as last amended by Laws of Utah 2020, Chapter 37

53G-6-306, as last amended by Laws of Utah 2022, Chapter 464

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53G-6-402, as last amended by Laws of Utah 2022, Chapters 378 and 464

53G-6-502, as last amended by Laws of Utah 2022, Chapter 352

59-2-1903, as enacted by **Laws of Utah 2019, Chapter 453**

59-10-103, as last amended by Laws of Utah 2021, Chapter 367

76-5-102.4, as last amended by Laws of Utah 2022, Chapters 181 and 373

78A-5-302, as last amended by Laws of Utah 2021, Chapter 93

78B-20-102, as last amended by Laws of Utah 2017, Chapter 224

78B-20-107, as enacted by Laws of Utah 2016, Chapter 292

ENACTS:

71A-1-201, Utah Code Annotated 1953

71A-1-202, Utah Code Annotated 1953

71A-1-302, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

71A-1-101, (Renumbered from 71-8-1, as last amended by Laws of Utah 2018, Chapter 39)

71A-1-301, (Renumbered from 71-8-4, as last amended by Laws of Utah 2018, Chapter 39)

71A-2-101, (Renumbered from 71-10-1, as last amended by Laws of Utah 2016, Chapter 230)

71A-2-102, (Renumbered from 71-10-2, as last amended by Laws of Utah 2018, Chapter 39)

71A-2-103, (Renumbered from 71-10-3, as last amended by Laws of Utah 2018, Chapter 148)

71A-3-101, (Renumbered from 71-9-1, as last amended by Laws of Utah 2018, Chapter 39)

71A-3-102, (Renumbered from 71-9-2, as last amended by Laws of Utah 2018, Chapter 39)

71A-3-103, (Renumbered from 71-9-5, as enacted by Laws of Utah 1981, Chapter 282)

71A-4-101, (Renumbered from 71-13-102, as last amended by Laws of Utah 2018, Chapter 39)

71A-4-102, (Renumbered from 71-13-103, as enacted by Laws of Utah 2015, Chapter

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71A-4-103, (Renumbered from 71-13-104, as enacted by Laws of Utah 2015, Chapter 123)

71A-4-104, (Renumbered from 71-13-105, as last amended by Laws of Utah 2018, Chapter 39)

71A-4-105, (Renumbered from 71-13-106, as enacted by Laws of Utah 2015, Chapter 123)

71A-5-101, (Renumbered from 71-12-102, as last amended by Laws of Utah 2018, Chapter 39)

71A-5-102, (Renumbered from 71-12-103, as last amended by Laws of Utah 2018, Chapter 39)

71A-5-103, (Renumbered from 71-12-104, as enacted by Laws of Utah 2014, Chapter 91)

71A-6-101, (Renumbered from 71-11-2, as last amended by Laws of Utah 2018, Chapter 39)

71A-6-102, (Renumbered from 71-11-3, as last amended by Laws of Utah 2018, Chapter 39)

71A-6-103, (Renumbered from 71-11-5, as last amended by Laws of Utah 2018, Chapter 39)

71A-6-104, (Renumbered from 71-11-6, as last amended by Laws of Utah 2016, Chapter 230)

71A-6-105, (Renumbered from 71-11-7, as last amended by Laws of Utah 2018, Chapter 39)

71A-6-106, (Renumbered from 71-11-8, as last amended by Laws of Utah 2018, Chapter 39)

71A-6-107, (Renumbered from 71-11-9, as last amended by Laws of Utah 2005, First Special Session, Chapter 7)

71A-6-108, (Renumbered from 71-11-10, as last amended by Laws of Utah 2007, Chapter 173)

71A-7-101, (Renumbered from 71-2-1, Utah Code Annotated 1953)

71A-7-102, (Renumbered from 71-2-2, as last amended by Laws of Utah 2001, Chapter

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71A-7-103, (Renumbered from 71-2-3, as last amended by Laws of Utah 1993, Chapter 227)

71A-7-201, (Renumbered from 71-7-1, as enacted by Laws of Utah 1961, Chapter 21)

71A-7-202, (Renumbered from 71-7-2, as last amended by Laws of Utah 2018, Chapter 39)

71A-7-203, (Renumbered from 71-7-5, as last amended by Laws of Utah 2018, Chapter 39)

71A-7-301, (Renumbered from 71-7-3, as last amended by Laws of Utah 2020, Chapter 154)

71A-8-101, (Renumbered from 39-3-1, as repealed and reenacted by Laws of Utah 1991, Chapter 65)

71A-8-102, (Renumbered from 39-3-2, as last amended by Laws of Utah 2003, Chapter 217)

71A-8-103, (Renumbered from 39-1-64, as enacted by Laws of Utah 2004, Chapter 82)

71A-8-104, (Renumbered from 39-7-118, as enacted by Laws of Utah 1997, Chapter 306)

REPEALS:

39-1-36, as last amended by Laws of Utah 1989, Chapter 15

71-3-1, as last amended by Laws of Utah 2018, Chapter 39

71-8-2, as last amended by Laws of Utah 2020, Chapter 409

71-8-3, as last amended by Laws of Utah 2018, Chapter 39

71-8-5, as last amended by Laws of Utah 2018, Chapter 39

71-8-6, as last amended by Laws of Utah 2018, Chapter 39

71-8-7, as last amended by Laws of Utah 2018, Chapter 39

71-8-8, as enacted by Laws of Utah 2013, Chapter 308

71-11-1, as last amended by Laws of Utah 2018, Chapter 39

71-11-4, as last amended by Laws of Utah 2018, Chapter 39

71-12-101, as last amended by Laws of Utah 2018, Chapter 39

71-13-101, as enacted by Laws of Utah 2015, Chapter 123

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

Section 1. Section **30-3-10** is amended to read:

30-3-10. Custody of a child -- Custody factors.

(1) If a married couple having one or more minor children are separated, or the married couple's marriage is declared void or dissolved, the court shall enter, and has continuing jurisdiction to modify, an order of custody and parent-time.

(2) In determining any form of custody and parent-time under Subsection (1), the court shall consider the best interest of the child and may consider among other factors the court finds relevant, the following for each parent:

(a) evidence of domestic violence, neglect, physical abuse, sexual abuse, or emotional abuse, involving the child, the parent, or a household member of the parent;

(b) the parent's demonstrated understanding of, responsiveness to, and ability to meet the developmental needs of the child, including the child's:

(i) physical needs;

(ii) emotional needs;

(iii) educational needs;

(iv) medical needs; and

(v) any special needs;

(c) the parent's capacity and willingness to function as a parent, including:

(i) parenting skills;

(ii) co-parenting skills, including:

(A) ability to appropriately communicate with the other parent;

(B) ability to encourage the sharing of love and affection; and

(C) willingness to allow frequent and continuous contact between the child and the other parent, except that, if the court determines that the parent is acting to protect the child from domestic violence, neglect, or abuse, the parent's protective actions may be taken into consideration; and

(iii) ability to provide personal care rather than surrogate care;

(d) in accordance with Subsection (10), the past conduct and demonstrated moral character of the parent;

(e) the emotional stability of the parent;

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- (f) the parent's inability to function as a parent because of drug abuse, excessive drinking, or other causes;
 - (g) whether the parent has intentionally exposed the child to pornography or material harmful to minors, as "material" and "harmful to minors" are defined in Section 76-10-1201;
 - (h) the parent's reasons for having relinquished custody or parent-time in the past;
 - (i) duration and depth of desire for custody or parent-time;
 - (j) the parent's religious compatibility with the child;
 - (k) the parent's financial responsibility;
 - (l) the child's interaction and relationship with step-parents, extended family members of other individuals who may significantly affect the child's best interests;
 - (m) who has been the primary caretaker of the child;
 - (n) previous parenting arrangements in which the child has been happy and well-adjusted in the home, school, and community;
 - (o) the relative benefit of keeping siblings together;
 - (p) the stated wishes and concerns of the child, taking into consideration the child's cognitive ability and emotional maturity;
 - (q) the relative strength of the child's bond with the parent, meaning the depth, quality, and nature of the relationship between the parent and the child; and
 - (r) any other factor the court finds relevant.
- (3) There is a rebuttable presumption that joint legal custody, as defined in Section 30-3-10.1, is in the best interest of the child, except in cases when there is:
- (a) evidence of domestic violence, neglect, physical abuse, sexual abuse, or emotional abuse involving the child, a parent, or a household member of the parent;
 - (b) special physical or mental needs of a parent or child, making joint legal custody unreasonable;
 - (c) physical distance between the residences of the parents, making joint decision making impractical in certain circumstances; or
 - (d) any other factor the court considers relevant including those listed in this section and Section 30-3-10.2.
- (4) (a) The person who desires joint legal custody shall file a proposed parenting plan in accordance with Sections 30-3-10.8 and 30-3-10.9.

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(b) A presumption for joint legal custody may be rebutted by a showing by a preponderance of the evidence that it is not in the best interest of the child.

(5) (a) A child may not be required by either party to testify unless the trier of fact determines that extenuating circumstances exist that would necessitate the testimony of the child be heard and there is no other reasonable method to present the child's testimony.

(b) (i) The court may inquire of the child's and take into consideration the child's desires regarding future custody or parent-time schedules, but the expressed desires are not controlling and the court may determine the child's custody or parent-time otherwise.

(ii) The desires of a child 14 years [~~of age~~] old or older shall be given added weight, but is not the single controlling factor.

(c) (i) If an interview with a child is conducted by the court pursuant to Subsection (5)(b), the interview shall be conducted by the judge in camera.

(ii) The prior consent of the parties may be obtained but is not necessary if the court finds that an interview with a child is the only method to ascertain the child's desires regarding custody.

(6) (a) Except as provided in Subsection (6)(b), a court may not discriminate against a parent due to a disability, as defined in Section 57-21-2, in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody.

(b) The court may not consider the disability of a parent as a factor in awarding custody or modifying an award of custody based on a determination of a substantial change in circumstances, unless the court makes specific findings that:

(i) the disability significantly or substantially inhibits the parent's ability to provide for the physical and emotional needs of the child at issue; and

(ii) the parent with a disability lacks sufficient human, monetary, or other resources available to supplement the parent's ability to provide for the physical and emotional needs of the child at issue.

(c) Nothing in this section may be construed to apply to adoption proceedings under Title 78B, Chapter 6, Part 1, Utah Adoption Act.

(7) This section does not establish a preference for either parent solely because of the gender of the parent.

(8) This section establishes neither a preference nor a presumption for or against joint

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physical custody or sole physical custody, but allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child.

(9) When an issue before the court involves custodial responsibility in the event of a deployment of one or both parents who are [~~servicemembers;~~] service members and the [~~servicemember~~] service member has not yet been notified of deployment, the court shall resolve the issue based on the standards in Sections 78B-20-306 through 78B-20-309.

(10) In considering the past conduct and demonstrated moral standards of each party under Subsection (2)(d) or any other factor a court finds relevant, the court may not:

(a) consider or treat a parent's lawful possession or use of cannabis in a medicinal dosage form, a cannabis product in a medicinal dosage form, or a medical cannabis device, in accordance with Title 4, Chapter 41a, Cannabis Production Establishments, Title 26, Chapter 61a, Utah Medical Cannabis Act, or Subsection 58-37-3.7(2) or (3) any differently than the court would consider or treat the lawful possession or use of any prescribed controlled substance; or

(b) discriminate against a parent because of the parent's status as a:

(i) cannabis production establishment agent, as that term is defined in Section 4-41a-102;

(ii) medical cannabis pharmacy agent, as that term is defined in Section 26-61a-102;

(iii) medical cannabis courier agent, as that term is defined in Section 26-61a-102; or

(iv) medical cannabis cardholder in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act.

Section 2. Section **30-3-10.1** is amended to read:

30-3-10.1. Definitions -- Joint legal custody -- Joint physical custody.

As used in this chapter:

(1) (a) "Custodial responsibility" includes all powers and duties relating to caretaking authority and decision-making authority for a child.

(b) "Custodial responsibility" includes physical custody, legal custody, parenting time, right to access, visitation, and authority to grant limited contact with a child.

(2) "Joint legal custody":

(a) means the sharing of the rights, privileges, duties, and powers of a parent by both parents, where specified;

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(b) may include an award of exclusive authority by the court to one parent to make specific decisions;

(c) does not affect the physical custody of the child except as specified in the order of joint legal custody;

(d) is not based on awarding equal or nearly equal periods of physical custody of and access to the child to each of the parents, as the best interest of the child often requires that a primary physical residence for the child be designated; and

(e) does not prohibit the court from specifying one parent as the primary caretaker and one home as the primary residence of the child.

(3) "Joint physical custody":

(a) means the child stays with each parent overnight for more than 30% of the year, and both parents contribute to the expenses of the child in addition to paying child support;

(b) can mean equal or nearly equal periods of physical custody of and access to the child by each of the parents, as required to meet the best interest of the child;

(c) may require that a primary physical residence for the child be designated; and

(d) does not prohibit the court from specifying one parent as the primary caretaker and one home as the primary residence of the child.

(4) "[~~Service member~~] Service member" means a member of a uniformed service.

(5) "Uniformed service" means:

(a) active and reserve components of the United States Armed Forces;

(b) the United States Merchant Marine;

(c) the commissioned corps of the United States Public Health Service;

(d) the commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or

(e) the [~~national guard~~] National Guard of a state.

Section 3. Section **30-3-10.4** is amended to read:

30-3-10.4. Modification or termination of order.

(1) On the petition of one or both of the parents, or the joint legal or physical custodians if they are not the parents, the court may, after a hearing, modify or terminate an order that established joint legal custody or joint physical custody if:

(a) the verified petition or accompanying affidavit initially alleges that admissible

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evidence will show that the circumstances of the child or one or both parents or joint legal or physical custodians have materially and substantially changed since the entry of the order to be modified;

(b) a modification of the terms and conditions of the order would be an improvement for and in the best interest of the child; and

(c) (i) both parents have complied in good faith with the dispute resolution procedure in accordance with Subsection 30-3-10.3(7); or

(ii) if no dispute resolution procedure is contained in the order that established joint legal custody or joint physical custody, the court orders the parents to participate in a dispute resolution procedure in accordance with Subsection 30-3-10.2(5) unless the parents certify that, in good faith, they have used a dispute resolution procedure to resolve their dispute.

(2) (a) In determining whether the best interest of a child will be served by either modifying or terminating the joint legal custody or joint physical custody order, the court shall, in addition to other factors the court considers relevant, consider the factors outlined in Section 30-3-10 and Subsection 30-3-10.2(2).

(b) A court order modifying or terminating an existing joint legal custody or joint physical custody order shall contain written findings that:

(i) a material and substantial change of circumstance has occurred; and

(ii) a modification of the terms and conditions of the order would be an improvement for and in the best interest of the child.

(c) The court shall give substantial weight to the existing joint legal custody or joint physical custody order when the child is thriving, happy, and well-adjusted.

(3) The court shall, in every case regarding a petition for termination of a joint legal custody or joint physical custody order, consider reasonable alternatives to preserve the existing order in accordance with Subsection 30-3-10(3). The court may modify the terms and conditions of the existing order in accordance with Subsection 30-3-10(8) and may order the parents to file a parenting plan in accordance with this chapter.

(4) A parent requesting a modification from sole custody to joint legal custody or joint physical custody or both, or any other type of shared parenting arrangement, shall file and serve a proposed parenting plan with the petition to modify in accordance with Section 30-3-10.8.

(5) If the court finds that an action under this section is filed or answered frivolously

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and in a manner designed to harass the other party, the court shall assess attorney fees as costs against the offending party.

(6) If an issue before the court involves custodial responsibility in the event of deployment of one or both parents who are [~~servicemembers~~] service members, and the [~~servicemember~~] service member has not yet been notified of deployment, the court shall resolve the issue based on the standards in Sections 78B-20-306 through 78B-20-309.

Section 4. Section **30-3-10.8** is amended to read:

30-3-10.8. Parenting plan -- Filing -- Modifications.

(1) In any proceeding under this chapter, including actions for paternity, a party requesting joint custody, joint legal or physical custody, or any other type of shared parenting arrangement, shall file and serve a proposed parenting plan at the time of the filing of their original petition or at the time of filing their answer or counterclaim.

(2) In proceedings for a modification of custody provisions or modification of a parenting plan, a proposed parenting plan shall be filed and served with the petition to modify, or the answer or counterclaim to the petition to modify.

(3) A party who files a proposed parenting plan in compliance with this section may move the court for an order of default to adopt the plan if the other party fails to file a proposed parenting plan as required by this section.

(4) Either party may file and serve an amended proposed parenting plan according to the rules for amending pleadings.

(5) The parent submitting a proposed parenting plan shall attach a verified statement that the plan is proposed by that parent in good faith.

(6) Both parents may submit a parenting plan which has been agreed upon. A verified statement, signed by both parents, shall be attached.

(7) If the parents file inconsistent parenting plans, the court may appoint a guardian ad litem to represent the best interests of the child, who may, if necessary, file a separate parenting plan reflecting the best interests of the child.

(8) When one or both parents are [~~a servicemember~~] service members, the parenting plan shall be consistent with Subsection 30-3-10.9(10). If after a parenting plan is adopted, one or both parents become [~~servicemembers~~] service members, as soon as practical, the parents shall amend the existing parenting plan to comply with Subsection 30-3-10.9(10).

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Section 5. Section **34-50-102** is amended to read:

34-50-102. Definitions.

As used in this chapter:

(1) "Department" means the ~~[same as that term is defined in Section 71-11-2]~~

Department of Veterans and Military Affairs, created in Section 71A-1-201.

(2) "Discharge document" means a document received by a ~~[servicemember]~~ service member upon separation from military service, including:

(a) a DD 214, United States Department of Defense Certificate of Release or Discharge from Active Duty;

(b) a DD 256, United States Department of Defense Honorable Discharge Certificate;

(c) a DD 257, United States General Discharge Certificate; or

(d) an NGB 22, Utah National Guard Certificate of Release or Discharge.

(3) "Preference eligible" means the same as that term is defined in Section ~~[71-10-1]~~ 71A-2-101.

(4) "Private employer" means the same as that term is defined in Section 63G-12-102.

(5) "Service member" means a currently serving member of the armed forces.

~~[(5)]~~ (6) "Veteran" means the same as that term is defined in Section 68-3-12.5.

Section 6. Section **34-50-103** is amended to read:

34-50-103. Voluntary veterans preference employment policy -- Private employment -- Antidiscrimination requirements.

(1) A private sector employer may create a veterans employment preference policy ~~[that may also apply to a veteran's spouse].~~

(2) ~~[The]~~ A veterans employment preference policy shall be:

(a) in writing; and

(b) applied uniformly to employment decisions regarding hiring, promotion, or retention including during a reduction in force.

(3) A private employer may require a ~~[veteran]~~ preference eligible individual to submit a discharge document form or proof of current service in the armed forces to be eligible for the preference. If the applicant is the spouse of a veteran or service member, the employer may require that the spouse submit the veteran's discharge document or proof of current service in the armed forces.

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(4) A private employer's veterans employment preference policy shall be publicly posted by the employer at the place of employment or on the Internet if the employer has a website or uses the Internet to advertise employment opportunities.

Section 7. Section **39A-3-202** is amended to read:

39A-3-202. Pay and care of soldiers and airmen disabled while on state active duty.

(1) (a) Before a [~~servicemember~~] service member may be considered disabled in accordance with this section, the Adjutant General shall determine whether the [~~servicemember's~~] service member's illness, injury, or disease was contracted or occurred through the fault or negligence of the [~~servicemember~~] service member. If the [~~servicemember~~] service member is determined to be at fault for an injury or developed a disability through his or her own negligent actions, the [~~servicemember~~] service member is not entitled to any care, pension, or benefit in accordance with this section.

(b) Notwithstanding Subsection (1)(a) the [~~servicemember~~] service member may be eligible for benefits in accordance with Title 34A, Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act.

(2) A member of the Utah National Guard or Utah State Defense Force who is disabled through illness, injury, or disease contracted or incurred while on state active duty or while reasonably proceeding to or returning from duty is eligible to receive workers' compensation benefits in accordance with Title 34A, Chapter 2, Workers' Compensation Act.

(3) (a) If the disability temporarily incapacitates the [~~servicemember~~] service member from pursuing the [~~servicemember's~~] service member's usual business or occupation, the [~~servicemember~~] service member is eligible to receive workers' compensation benefits in accordance with Title 34A, Chapter 2, Workers' Compensation Act, and Chapter 3, Utah Occupational Disease Act.

(b) For the duration of the [~~servicemember's~~] service member's inability to pursue a business or occupation, the adjutant general shall provide compensation so that the total compensation, including the disability compensation received under Subsection (3)(a) is commensurate with the injured service member's lost pay. The adjutant general shall consider lost civilian and military pay in the compensation.

(4) A [~~servicemember~~] service member who is permanently disabled, shall receive

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pensions and benefits from the state that individuals under like circumstances in the Armed Forces of the United States receive from the United States.

(5) If a [~~servicemember~~] service member dies as a result of an injury, illness, or disease contracted or incurred while on state active duty or while reasonably proceeding to or returning from active duty, the surviving spouse, minor children, or dependent parents of the [~~servicemember~~] service member shall receive compensation as directed in Section 39A-3-203.

(6) Costs incurred by reason of this section shall be paid out of the funds available to the Utah National Guard.

(7) The adjutant general, with the approval of the governor, shall make and publish regulations to implement this section.

(8) Nothing in this section shall in any way limit or condition any other payment to a [~~servicemember~~] service member that the law allows.

Section 8. Section **53B-8-102** is amended to read:

53B-8-102. Definitions -- Resident student status -- Exceptions.

(1) As used in this section:

(a) "Eligible person" means an individual who is entitled to post-secondary educational benefits under Title 38 U.S.C., Veterans' Benefits.

(b) "Immediate family member" means an individual's spouse or dependent child.

(c) "Military [~~servicemember~~] service member" means an individual who:

(i) is serving on active duty in the United States Armed Forces within the state of Utah;

(ii) is a member of a reserve component of the United States Armed Forces assigned in Utah;

(iii) is a member of the Utah National Guard; or

(iv) maintains domicile in Utah, as described in Subsection (9)(a), but is assigned outside of Utah pursuant to federal permanent change of station orders.

(d) "Military veteran" has the same meaning as veteran in Section 68-3-12.5.

(e) "Parent" means a student's biological or adoptive parent.

(2) The meaning of "resident student" is determined by reference to the general law on the subject of domicile, except as provided in this section.

(3) (a) Institutions within the state system of higher education may grant resident student status to any student who has come to Utah and established residency for the purpose of

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attending an institution of higher education, and who, prior to registration as a resident student:

(i) has maintained continuous Utah residency status for one full year;

(ii) has signed a written declaration that the student has relinquished residency in any other state; and

(iii) has submitted objective evidence that the student has taken overt steps to establish permanent residency in Utah and that the student does not maintain a residence elsewhere.

(b) Evidence to satisfy the requirements under Subsection (3)(a)(iii) includes:

(i) a Utah high school transcript issued in the past year confirming attendance at a Utah high school in the past 12 months;

(ii) a Utah voter registration dated a reasonable period prior to application;

(iii) a Utah driver license or identification card with an original date of issue or a renewal date several months prior to application;

(iv) a Utah vehicle registration dated a reasonable period prior to application;

(v) evidence of employment in Utah for a reasonable period prior to application;

(vi) proof of payment of Utah resident income taxes for the previous year;

(vii) a rental agreement showing the student's name and Utah address for at least 12 months prior to application; and

(viii) utility bills showing the student's name and Utah address for at least 12 months prior to application.

(c) A student who is claimed as a dependent on the tax returns of a person who is not a resident of Utah is not eligible to apply for resident student status.

(4) Except as provided in Subsection (8), an institution within the state system of higher education may establish stricter criteria for determining resident student status.

(5) If an institution does not have a minimum credit-hour requirement, that institution shall honor the decision of another institution within the state system of higher education to grant a student resident student status, unless:

(a) the student obtained resident student status under false pretenses; or

(b) the facts existing at the time of the granting of resident student status have changed.

(6) Within the limits established in Title 53B, Chapter 8, Tuition Waiver and Scholarships, each institution within the state system of higher education may, regardless of its policy on obtaining resident student status, waive nonresident tuition either in whole or in part,

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but not other fees.

(7) In addition to the waivers of nonresident tuition under Subsection (6), each institution may, as athletic scholarships, grant full waiver of fees and nonresident tuition, up to the maximum number allowed by the appropriate athletic conference as recommended by the president of each institution.

(8) Notwithstanding Subsection (3), an institution within the state system of higher education shall grant resident student status for tuition purposes to:

(a) a military [~~servicemember~~] service member, if the military [~~servicemember~~] service member provides:

(i) the military [~~servicemember's~~] service member's current United States military identification card; and

(ii) (A) a statement from the military [~~servicemember's~~] service member's current commander, or equivalent, stating that the military [~~servicemember~~] service member is assigned in Utah; or

(B) evidence that the military [~~servicemember~~] service member is domiciled in Utah, as described in Subsection (9)(a);

(b) a military [~~servicemember's~~] service member's immediate family member, if the military [~~servicemember's~~] service member's immediate family member provides:

(i) (A) the military [~~servicemember's~~] service member's current United States military identification card; or

(B) the immediate family member's current United States military identification card; and

(ii) (A) a statement from the military [~~servicemember's~~] service member's current commander, or equivalent, stating that the military [~~servicemember~~] service member is assigned in Utah; or

(B) evidence that the military [~~servicemember~~] service member is domiciled in Utah, as described in Subsection (9)(a);

(c) a military veteran, regardless of whether the military veteran served in Utah, if the military veteran provides:

(i) evidence of an honorable or general discharge;

(ii) a signed written declaration that the military veteran has relinquished residency in

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any other state and does not maintain a residence elsewhere;

(iii) objective evidence that the military veteran has demonstrated an intent to establish residency in Utah, which may include any one of the following:

- (A) a Utah voter registration card;
- (B) a Utah driver license or identification card;
- (C) a Utah vehicle registration;
- (D) evidence of employment in Utah;
- (E) a rental agreement showing the military veteran's name and Utah address; or
- (F) utility bills showing the military veteran's name and Utah address;

(d) a military veteran's immediate family member, regardless of whether the military veteran served in Utah, if the military veteran's immediate family member provides:

- (i) evidence of the military veteran's honorable or general discharge;
- (ii) a signed written declaration that the military veteran's immediate family member

has relinquished residency in any other state and does not maintain a residence elsewhere; and

(iii) objective evidence that the military veteran's immediate family member has demonstrated an intent to establish residency in Utah, which may include any one of the items described in Subsection (8)(c)(iii); or

(e) an eligible person who provides:

- (i) evidence of eligibility under Title 38 U.S.C., Veterans' Benefits;
- (ii) a signed written declaration that the eligible person will use the G.I. Bill benefits;

and

(iii) objective evidence that the eligible person has demonstrated an intent to establish residency in Utah, which may include any one of the items described in Subsection (8)(c)(iii).

(9) (a) The evidence described in Subsection (8)(a)(ii)(B) or (8)(b)(ii)(B) includes:

- (i) a current Utah voter registration card;
- (ii) a valid Utah driver license or identification card;
- (iii) a current Utah vehicle registration;

(iv) a copy of a Utah income tax return, in the military [~~servicemember's~~] service member's or military [~~servicemember's~~] service member's spouse's name, filed as a resident in accordance with Section 59-10-502; or

(v) proof that the military [~~servicemember~~] service member or military

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[~~servicemember's~~] service member's spouse owns a home in Utah, including a property tax notice for property owned in Utah.

(b) Aliens who are present in the United States on visitor, student, or other visas which authorize only temporary presence in this country, do not have the capacity to intend to reside in Utah for an indefinite period and therefore are classified as nonresidents.

(c) Aliens who have been granted immigrant or permanent resident status in the United States are classified for purposes of resident student status according to the same criteria applicable to citizens.

(10) Any American Indian who is enrolled on the tribal rolls of a tribe whose reservation or trust lands lie partly or wholly within Utah or whose border is at any point contiguous with the border of Utah, and any American Indian who is a member of a federally recognized or known Utah tribe and who has graduated from a high school in Utah, is entitled to resident student status.

(11) A Job Corps student is entitled to resident student status if the student:

(a) is admitted as a full-time, part-time, or summer school student in a program of study leading to a degree or certificate; and

(b) submits verification that the student is a current Job Corps student.

(12) A person is entitled to resident student status and may immediately apply for resident student status if the person:

(a) marries a Utah resident eligible to be a resident student under this section; and

(b) establishes his or her domicile in Utah as demonstrated by objective evidence as provided in Subsection (3).

(13) Notwithstanding Subsection (3)(c), a dependent student who has at least one parent who has been domiciled in Utah for at least 12 months prior to the student's application is entitled to resident student status.

(14) (a) A person who has established domicile in Utah for full-time permanent employment may rebut the presumption of a nonresident classification by providing substantial evidence that the reason for the individual's move to Utah was, in good faith, based on an employer requested transfer to Utah, recruitment by a Utah employer, or a comparable work-related move for full-time permanent employment in Utah.

(b) All relevant evidence concerning the motivation for the move shall be considered,

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including:

- (i) the person's employment and educational history;
- (ii) the dates when Utah employment was first considered, offered, and accepted;
- (iii) when the person moved to Utah;
- (iv) the dates when the person applied for admission, was admitted, and was enrolled

as a postsecondary student;

(v) whether the person applied for admission to an institution of higher education sooner than four months from the date of moving to Utah;

(vi) evidence that the person is an independent person who is:

(A) at least 24 years [~~of age~~ old]; or

(B) not claimed as a dependent on someone else's tax returns; and

(vii) any other factors related to abandonment of a former domicile and establishment of a new domicile in Utah for purposes other than to attend an institution of higher education.

(15) (a) A person who is in residence in Utah to participate in a United States Olympic athlete training program, at a facility in Utah, approved by the governing body for the athlete's Olympic sport, shall be entitled to resident status for tuition purposes.

(b) Upon the termination of the athlete's participation in the training program, the athlete shall be subject to the same residency standards applicable to other persons under this section.

(c) Time spent domiciled in Utah during the Olympic athlete training program in Utah counts for Utah residency for tuition purposes upon termination of the athlete's participation in a Utah Olympic athlete training program.

(16) (a) A person who has established domicile in Utah for reasons related to divorce, the death of a spouse, or long-term health care responsibilities for an immediate family member, including the person's spouse, parent, sibling, or child, may rebut the presumption of a nonresident classification by providing substantial evidence that the reason for the individual's move to Utah was, in good faith, based on the long-term health care responsibilities.

(b) All relevant evidence concerning the motivation for the move shall be considered, including:

- (i) the person's employment and educational history;
- (ii) the dates when the long-term health care responsibilities in Utah were first

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considered, offered, and accepted;

(iii) when the person moved to Utah;

(iv) the dates when the person applied for admission, was admitted, and was enrolled as a postsecondary student;

(v) whether the person applied for admission to an institution of higher education sooner than four months from the date of moving to Utah;

(vi) evidence that the person is an independent person who is:

(A) at least 24 years [~~of age~~] old; or

(B) not claimed as a dependent on someone else's tax returns; and

(vii) any other factors related to abandonment of a former domicile and establishment of a new domicile in Utah for purposes other than to attend an institution of higher education.

(17) The board, after consultation with the institutions, shall make rules not inconsistent with this section:

(a) concerning the definition of resident and nonresident students;

(b) establishing procedures for classifying and reclassifying students;

(c) establishing criteria for determining and judging claims of residency or domicile;

(d) establishing appeals procedures; and

(e) other matters related to this section.

(18) A student shall be exempt from paying the nonresident portion of total tuition if the student:

(a) is a foreign national legally admitted to the United States;

(b) attended high school in this state for three or more years; and

(c) graduated from a high school in this state or received the equivalent of a high school diploma in this state.

Section 9. Section **53G-6-306** is amended to read:

53G-6-306. Permitting attendance by nonresident of the state -- Tuition.

(1) As used in this section:

(a) "Armed forces" means the same as that term is defined in Section 68-3-12.5.

(b) "Eligible student" means a student who is a dependent child of a member of uniformed services who is:

(i) (A) relocating to the state and does not reside in the state during an LEA's

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enrollment period; or

- (B) relocating out of the state during the school year; and
- (ii) on permanent change of station orders.
- (c) "Nonresident child" means a child residing outside the state.
- (d) "Provisional enrollment" means enrollment in a public school by an eligible

student:

- (i) before the eligible student relocates to the state; or
- (ii) after the eligible student's parent relocates out of the state, but before the eligible

student relocates out of the state.

- (e) "Uniformed services" means:
 - (i) the same as that term is defined in Section 68-3-12.5;
 - (ii) the reserve components of the armed forces; and
 - (iii) the national guard of a state.

(2) (a) An LEA may permit a nonresident child to attend school within the district, giving priority to a child of a military [~~servicemember~~] service member, as that term is defined in Section 53B-8-102.

(b) With the exception of a child enrolled under Section 53G-6-707, a nonresident child is not included for the purpose of apportionment of state funds.

(3) (a) An LEA shall charge a nonresident child who enrolls in a school within the LEA tuition in an amount at least equal to the per capita cost of the school program in which the nonresident child enrolls unless the LEA, in open meeting, determines to waive the charge for that nonresident child in whole or in part.

(b) The official minutes of the meeting described in Subsection (3)(a) shall reflect the LEA's determination to waive the charge described in Subsection (3)(a).

(4) (a) Notwithstanding anything to the contrary in Subsection (3), an LEA shall allow an eligible student to:

- (i) provisionally enroll in a public school in the LEA at the same time and in the same manner as individuals who reside in the state; or
- (ii) provisionally enroll in virtual education options that the LEA provides in the same manner as an individual residing in the state.

(b) An LEA may not require proof of residency from an eligible student at the time the

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eligible student applies to enroll in a public school in the LEA.

(c) An LEA shall require proof of residence within 10 days after the eligible student's first day of residence in the state.

Section 10. Section **53G-6-402** is amended to read:

53G-6-402. Open enrollment options -- Procedures -- Processing fee -- Continuing enrollment.

(1) Each local school board is responsible for providing educational services consistent with Utah state law and rules of the state board for each student who resides in the district and, as provided in this section through Section 53G-6-407 and to the extent reasonably feasible, for any student who resides in another district in the state and desires to attend a school in the district, giving priority to a child of a military [~~servicemember~~] service member, as that term is defined in 53B-8-102.

(2) (a) A school is open for enrollment of nonresident students if the enrollment level is at or below the open enrollment threshold.

(b) If a school's enrollment falls below the open enrollment threshold, the local school board shall allow a nonresident student to enroll in the school.

(3) A local school board may allow enrollment of nonresident students in a school that is operating above the open enrollment threshold.

(4) (a) A local school board shall adopt policies describing procedures for nonresident students to follow in applying for entry into the district's schools.

(b) Those procedures shall provide, as a minimum, for:

(i) distribution to interested parties of information about the school or school district and how to apply for admission;

(ii) use of standard application forms prescribed by the state board;

(iii) (A) submission of applications from November 15 through the first Friday in February by those seeking admission during the early enrollment period for the following year; or

(B) submission of applications from August 1 through November 1 by those seeking admission during the early enrollment period for the following year in a school district described in Subsection 53G-6-401(1)(b);

(iv) submission of applications by those seeking admission during the late enrollment

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period;

(v) written notification to the student's parent of acceptance or rejection of an application:

(A) within six weeks after receipt of the application by the district or by March 31, whichever is later, for applications submitted during the early enrollment period;

(B) within two weeks after receipt of the application by the district or by the Friday before the new school year begins, whichever is later, for applications submitted during the late enrollment period for admission in the next school year; and

(C) within two weeks after receipt of the application by the district, for applications submitted during the late enrollment period for admission in the current year;

(vi) written notification to the resident school for intradistrict transfers or the resident district for interdistrict transfers upon acceptance of a nonresident student for enrollment; and

(vii) written notification to the parents of each student that resides within the school district and other interested parties of the revised early enrollment period described in Subsection 53G-6-401(1)(b) if:

(A) the school district is doing a district wide grade reconfiguration of its elementary, middle, junior, and senior high schools; and

(B) the grade reconfiguration described in Subsection (4)(b)(vii)(A) will be implemented in the next school year.

(c) (i) Notwithstanding the dates established in Subsection (4)(b) for submitting applications and notifying parents of acceptance or rejection of an application, a local school board may delay the dates if a local school board is not able to make a reasonably accurate projection of the early enrollment school capacity or late enrollment school capacity of a school due to:

(A) school construction or remodeling;

(B) drawing or revision of school boundaries; or

(C) other circumstances beyond the control of the local school board.

(ii) The delay may extend no later than four weeks beyond the date the local school board is able to make a reasonably accurate projection of the early enrollment school capacity or late enrollment school capacity of a school.

(5) A school district may charge a one-time \$5 processing fee, to be paid at the time of

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application.

(6) An enrolled nonresident student shall be permitted to remain enrolled in a school, subject to the same rules and standards as resident students, without renewed applications in subsequent years unless one of the following occurs:

- (a) the student graduates;
- (b) the student is no longer a Utah resident;
- (c) the student is suspended or expelled from school; or
- (d) except for a student described in Subsection (6)(e), the district determines that

enrollment within the school will exceed the school's open enrollment threshold; or

(e) for a child of a military [~~servicemember~~] service member, as that term is defined in Section 53B-8-102, who moves from temporary to permanent housing outside of the relevant school district boundaries following a permanent change of station:

- (i) in kindergarten through grade 10, the student completes the current school year; or
- (ii) in grades 11 and 12, the student graduates.

(7) (a) Determination of which nonresident students will be excluded from continued enrollment in a school during a subsequent year under Subsection (6)(d) is based upon time in the school, with those most recently enrolled being excluded first and the use of a lottery system when multiple nonresident students have the same number of school days in the school.

(b) Nonresident students who will not be permitted to continue their enrollment shall be notified no later than March 15 of the current school year.

(8) The parent of a student enrolled in a school that is not the student's school of residence may withdraw the student from that school for enrollment in another public school by submitting notice of intent to enroll the student in:

- (a) the district of residence; or
- (b) another nonresident district.

(9) Unless provisions have previously been made for enrollment in another school, a nonresident district releasing a student from enrollment shall immediately notify the district of residence, which shall enroll the student in the resident district and take such additional steps as may be necessary to ensure compliance with laws governing school attendance.

(10) (a) Except as provided in Subsection (10)(c), a student who transfers between schools, whether effective on the first day of the school year or after the school year has begun,

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by exercising an open enrollment option under this section may not transfer to a different school during the same school year by exercising an open enrollment option under this section.

(b) The restriction on transfers specified in Subsection (10)(a) does not apply to a student transfer made for health or safety reasons.

(c) A local school board may adopt a policy allowing a student to exercise an open enrollment option more than once in a school year.

(11) Notwithstanding Subsections (2) and (6)(d), a student who is enrolled in a school that is not the student's school of residence, because school bus service is not provided between the student's neighborhood and school of residence for safety reasons:

(a) shall be allowed to continue to attend the school until the student finishes the highest grade level offered; and

(b) shall be allowed to attend the middle school, junior high school, or high school into which the school's students feed until the student graduates from high school.

(12) Notwithstanding any other provision of this part or Part 3, School District Residency, a student shall be allowed to enroll in any charter school or other public school in any district, including a district where the student does not reside, if the enrollment is necessary, as determined by the Division of Child and Family Services, to comply with the provisions of 42 U.S.C. Section 675.

Section 11. Section **53G-6-502** is amended to read:

53G-6-502. Eligible students.

(1) As used in this section:

(a) "At capacity" means operating above the school's open enrollment threshold.

(b) "COVID-19 emergency" means the spread of COVID-19 that the World Health Organization declared a pandemic on March 11, 2020.

(c) "Open enrollment threshold" means the same as that term is defined in Section 53G-6-401.

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

(e) "School of residence" means the same as that term is defined in Section 53G-6-401.

(2) All resident students of the state qualify for admission to a charter school, subject to the limitations set forth in this section and Section 53G-6-503.

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(3) (a) A charter school shall enroll:

(i) a foster child residing in the same residence as an individual who is enrolled in the charter school; and

(ii) an eligible student other than a child described in Subsection (3)(a)(i) who submits a timely application, unless the number of applications exceeds the capacity of a program, class, grade level, or the charter school.

(b) If the number of applications described in Subsection (3)(a)(ii) exceeds the capacity of a program, class, grade level, or the charter school, the charter school shall select students on a random basis, except as provided in Subsections (4) through (8).

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

(a) a child or grandchild of an individual who has actively participated in the development of the charter school;

(b) a child or grandchild of a member of the charter school governing board;

(c) a sibling of an individual who was previously or is presently enrolled in the charter school;

(d) a child of an employee of the charter school;

(e) a student articulating between charter schools offering similar programs that are governed by the same charter school governing board;

(f) a student articulating from one charter school to another pursuant to an articulation agreement between the charter schools that is approved by the State Charter School Board;

(g) an individual seeking enrollment in a charter school if:

(i) the individual's sibling is a student enrolled in a charter school; and

(ii) the charter school where the individual is seeking enrollment has an articulation agreement with the charter school where the sibling is enrolled that the State Charter School Board approves;

(h) a student who resides within up to a two-mile radius of the charter school and whose school of residence is at capacity;

(i) a child of a military [~~servicemember~~] service member as defined in Section 53B-8-102; or

(j) for the 2022-2023 school year, a student who withdraws from the charter school to attend an online school or home school for the 2020-2021 or 2021-2022 school years due to the

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COVID-19 emergency.

(5) (a) Except as provided in Subsection (5)(b), and notwithstanding Subsection (4)(h), a charter school that is approved by the state board after May 13, 2014, and is located in a high growth area as defined in Section 53G-6-504 shall give an enrollment preference to a student who resides within a two-mile radius of the charter school.

(b) The requirement to give an enrollment preference under Subsection (5)(a) does not apply to a charter school that was approved without a high priority status pursuant to Subsection 53G-6-504(7)(b).

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

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

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

(8) A charter school may weight the charter school's lottery to give a slightly better chance of admission to educationally disadvantaged students, including:

- (a) low-income students;
- (b) students with disabilities;
- (c) English language learners;
- (d) migrant students;
- (e) neglected or delinquent students; and
- (f) homeless students.

(9) A charter school may not discriminate in the charter school's admission policies or practices on the same basis as other public schools may not discriminate in admission policies and practices.

Section 12. Section 59-2-1903 is amended to read:

59-2-1903. Veteran armed forces exemption -- Amount.

(1) As used in this section, "eligible property" means property owned by a veteran claimant that is:

- (a) the veteran claimant's primary residence; or

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(b) tangible personal property that:

- (i) is held exclusively for personal use; and
- (ii) is not used in a trade or business.

(2) In accordance with this part, the amount of taxable value of eligible property described in Subsection (3) or (4) is exempt from taxation if the eligible property is owned by a veteran claimant.

(3) (a) Except as provided in Subsection (4) and in accordance with this Subsection (3), the amount of taxable value of eligible property that is exempt under Subsection (2) is equal to the percentage of disability described in the statement of disability multiplied by the adjusted taxable value limit.

(b) The amount of an exemption calculated under Subsection (3)(a) may not exceed the taxable value of the eligible property.

(c) A county shall consider a veteran with a disability to have a 100% disability, regardless of the percentage of disability described on the statement of disability, if the United States Department of Veterans Affairs certifies the veteran in the classification of individual unemployability.

(d) A county may not allow an exemption claimed under this section if the percentage of disability listed on the statement of disability is less than 10%.

(4) The amount of taxable value of eligible property that is exempt under Subsection (2) is equal to the total taxable value of the veteran claimant's eligible property if the property is owned by:

(a) the unmarried surviving spouse of a veteran who was killed in action or died in the line of duty;

(b) a minor orphan of a veteran who was killed in action or died in the line of duty; or

(c) the unmarried surviving spouse or minor orphan of a deceased veteran with a disability:

(i) who served in the military service of the United States or the state prior to January 1, 1921; and

(ii) whose percentage of disability described in the statement of disability is 10% or more.

(5) For purposes of this section and Section 59-2-1904, an individual who received an

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honorable or general discharge from military service of an active component of the United States Armed Forces or a reserve component of the United States Armed Forces:

(a) is presumed to be a citizen of the United States; and

(b) may not be required to provide additional proof of citizenship to establish that the individual is a citizen of the United States.

(6) The Department of Veterans and Military Affairs created in Section ~~71-8-2~~ 71A-1-201 shall, through an informal hearing held in accordance with Title 63G, Chapter 4, Administrative Procedures Act, resolve each dispute arising under this section concerning an individual's status as a veteran with a disability.

Section ~~12~~ 13. Section **59-10-103** is amended to read:

59-10-103. Definitions.

(1) As used in this chapter:

(a) (i) "Adjusted gross income":

(A) for a resident or nonresident individual, means the same as that term is defined in Section 62, Internal Revenue Code; or

(B) for a resident or nonresident estate or trust, is as calculated in Section 67(e), Internal Revenue Code.

(ii) "Adjusted gross income" does not include:

(A) income received from a loan forgiven in accordance with 15 U.S.C. Sec. 636(a) (36), to the extent that a deduction for the expenditures paid with the loan is disallowed, or a similar paycheck protection loan that is authorized by the federal government, provided in response to COVID-19, forgiven if the borrower meets the expenditure requirements, and exempt from federal income tax, to the extent that a deduction for the expenditures paid with the loan is disallowed; or

(B) an amount that an individual receives in accordance with Section 6428, Internal Revenue Code, or an amount that an individual receives that is authorized by the federal government as a tax credit for the 2020 tax year, provided in response to COVID-19, paid in advance of the filing of the individual's 2020 federal income tax return, and exempt from federal income tax.

(b) "Corporation" includes:

(i) an association;

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(ii) a joint stock company; and

(iii) an insurance company.

(c) "COVID-19" means:

(i) the severe acute respiratory syndrome coronavirus 2; or

(ii) the disease caused by severe acute respiratory syndrome coronavirus 2.

(d) "Distributable net income" means the same as that term is defined in Section 643,

Internal Revenue Code.

(e) "Employee" means the same as that term is defined in Section 59-10-401.

(f) "Employer" means the same as that term is defined in Section 59-10-401.

(g) "Federal taxable income":

(i) for a resident or nonresident individual, means taxable income as defined by Section 63, Internal Revenue Code; or

(ii) for a resident or nonresident estate or trust, is as calculated in Section 641(a) and

(b), Internal Revenue Code.

(h) "Fiduciary" means:

(i) a guardian;

(ii) a trustee;

(iii) an executor;

(iv) an administrator;

(v) a receiver;

(vi) a conservator; or

(vii) any person acting in any fiduciary capacity for any individual.

(i) "Guaranteed annuity interest" means the same as that term is defined in 26 C.F.R. Sec. 1.170A-6(c)(2).

(j) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the homesteaded land that was held to have been diminished from the Uintah and Ouray Reservation in *Hagen v. Utah*, 510 U.S. 399 (1994).

(k) "Individual" means a natural person and includes aliens and minors.

(l) "Irrevocable trust" means a trust in which the settlor may not revoke or terminate all or part of the trust without the consent of a person who has a substantial beneficial interest in the trust and the interest would be adversely affected by the exercise of the settlor's power to

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revoke or terminate all or part of the trust.

(m) "Military service" means the same as that term is defined in Pub. L. No. 108-189, Sec. 101.

(n) "Nonresident individual" means an individual who is not a resident of this state.

(o) "Nonresident trust" or "nonresident estate" means a trust or estate which is not a resident estate or trust.

(p) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization:

(A) through or by means of which any business, financial operation, or venture is carried on; and

(B) that is not, within the meaning of this chapter, a trust, an estate, or a corporation.

(ii) "Partnership" does not include any organization not included under the definition of "partnership" in Section 761, Internal Revenue Code.

(iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or organization described in Subsection (1)(p)(i).

(q) "Pass-through entity" means the same as that term is defined in Section 59-10-1402.

(r) "Pass-through entity taxpayer" means the same as that term is defined in Section 59-10-1402.

(s) "Qualified nongrantor charitable lead trust" means a trust:

(i) that is irrevocable;

(ii) that has a trust term measured by:

(A) a fixed term of years; or

(B) the life of a person living on the day on which the trust is created;

(iii) under which:

(A) a portion of the value of the trust assets is distributed during the trust term:

(I) to an organization described in Section 170(c), Internal Revenue Code; and

(II) as a guaranteed annuity interest or a unitrust interest; and

(B) assets remaining in the trust at the termination of the trust term are distributed to a beneficiary:

(I) designated in the trust; and

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(II) that is not an organization described in Section 170(c), Internal Revenue Code;

(iv) for which the trust is allowed a deduction under Section 642(c), Internal Revenue Code; and

(v) under which the grantor of the trust is not treated as the owner of any portion of the trust for federal income tax purposes.

(t) "Resident individual" means an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state.

(u) "Resident estate" or "resident trust" means the same as that term is defined in Section 75-7-103.

(v) "[~~servicemember~~] Service member" means the same as that term is defined in Pub. L. No. 108-189, Sec. 101.

(w) "State income tax percentage for a nonresident estate or trust" means a percentage equal to a nonresident estate's or trust's state taxable income for the taxable year divided by the nonresident estate's or trust's total adjusted gross income for that taxable year after making the adjustments required by:

- (i) Section 59-10-202;
- (ii) Section 59-10-207;
- (iii) Section 59-10-209.1; or
- (iv) Section 59-10-210.

(x) "State income tax percentage for a nonresident individual" means a percentage equal to a nonresident individual's state taxable income for the taxable year divided by the difference between:

(i) subject to Section 59-10-1405, the nonresident individual's total adjusted gross income for that taxable year, after making the:

- (A) additions and subtractions required by Section 59-10-114; and
- (B) adjustments required by Section 59-10-115; and

(ii) if the nonresident individual described in Subsection (1)(x)(i) is a [~~servicemember~~] service member, the compensation the [~~servicemember~~] service member receives for military service if the [~~servicemember~~] service member is serving in compliance with military orders.

(y) "State income tax percentage for a part-year resident individual" means, for a

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taxable year, a fraction:

(i) the numerator of which is the sum of:

(A) subject to Section 59-10-1404.5, for the time period during the taxable year that the part-year resident individual is a resident, the part-year resident individual's total adjusted gross income for that time period, after making the:

(I) additions and subtractions required by Section 59-10-114; and

(II) adjustments required by Section 59-10-115; and

(B) for the time period during the taxable year that the part-year resident individual is a nonresident, an amount calculated by:

(I) determining the part-year resident individual's adjusted gross income for that time period, after making the:

(Aa) additions and subtractions required by Section 59-10-114; and

(Ab) adjustments required by Section 59-10-115; and

(II) calculating the portion of the amount determined under Subsection (1)(y)(i)(B)(I) that is derived from Utah sources in accordance with Section 59-10-117; and

(ii) the denominator of which is the difference between:

(A) the part-year resident individual's total adjusted gross income for that taxable year, after making the:

(I) additions and subtractions required by Section 59-10-114; and

(II) adjustments required by Section 59-10-115; and

(B) if the part-year resident individual is a [~~servicemember~~] service member, any compensation the [~~servicemember~~] service member receives for military service during the portion of the taxable year that the [~~servicemember~~] service member is a nonresident if the [~~servicemember~~] service member is serving in compliance with military orders.

(z) "Taxable income" or "state taxable income":

(i) subject to Section 59-10-1404.5, for a resident individual, means the resident individual's adjusted gross income after making the:

(A) additions and subtractions required by Section 59-10-114; and

(B) adjustments required by Section 59-10-115;

(ii) for a nonresident individual, is an amount calculated by:

(A) determining the nonresident individual's adjusted gross income for the taxable

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year, after making the:

(I) additions and subtractions required by Section 59-10-114; and

(II) adjustments required by Section 59-10-115; and

(B) calculating the portion of the amount determined under Subsection (1)(z)(ii)(A)

that is derived from Utah sources in accordance with Section 59-10-117;

(iii) for a resident estate or trust, is as calculated under Section 59-10-201.1; and

(iv) for a nonresident estate or trust, is as calculated under Section 59-10-204.

(aa) "Taxpayer" means any of the following that has income subject in whole or part to the tax imposed by this chapter:

(i) an individual;

(ii) an estate, a trust, or a beneficiary of an estate or a trust that is not a pass-through entity or a pass-through entity taxpayer;

(iii) a pass-through entity; or

(iv) a pass-through entity taxpayer.

(bb) "Trust term" means a time period:

(i) beginning on the day on which a qualified nongrantor charitable lead trust is created; and

(ii) ending on the day on which the qualified nongrantor charitable lead trust described in Subsection (1)(bb)(i) terminates.

(cc) "Uintah and Ouray Reservation" means the lands recognized as being included within the Uintah and Ouray Reservation in:

(i) Hagen v. Utah, 510 U.S. 399 (1994); and

(ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).

(dd) "Unadjusted income" means an amount equal to the difference between:

(i) the total income required to be reported by a resident or nonresident estate or trust on the resident or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable year; and

(ii) the sum of the following:

(A) fees paid or incurred to the fiduciary of a resident or nonresident estate or trust:

(I) for administering the resident or nonresident estate or trust; and

(II) that the resident or nonresident estate or trust deducts as allowed on the resident or

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nonresident estate's or trust's federal income tax return for estates and trusts for the taxable year;

(B) the income distribution deduction that a resident or nonresident estate or trust deducts under Section 651 or 661, Internal Revenue Code, as allowed on the resident or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable year;

(C) the amount that a resident or nonresident estate or trust deducts as a deduction for estate tax or generation skipping transfer tax under Section 691(c), Internal Revenue Code, as allowed on the resident or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable year; and

(D) the amount that a resident or nonresident estate or trust deducts as a personal exemption under Section 642(b), Internal Revenue Code, as allowed on the resident or nonresident estate's or trust's federal income tax return for estates and trusts for the taxable year.

(ee) "Unitrust interest" means the same as that term is defined in 26 C.F.R. Sec. 1.170A-6(c)(2).

(ff) "Ute tribal member" means an individual who is enrolled as a member of the Ute Indian Tribe of the Uintah and Ouray Reservation.

(gg) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

(hh) "Wages" means the same as that term is defined in Section 59-10-401.

(2) (a) Any term used in this chapter has the same meaning as when used in comparable context in the laws of the United States relating to federal income taxes unless a different meaning is clearly required.

(b) Any reference to the Internal Revenue Code or to the laws of the United States shall mean the Internal Revenue Code or other provisions of the laws of the United States relating to federal income taxes that are in effect for the taxable year.

(c) Any reference to a specific section of the Internal Revenue Code or other provision of the laws of the United States relating to federal income taxes shall include any corresponding or comparable provisions of the Internal Revenue Code as amended, redesignated, or reenacted.

Section ~~13~~14. Section **71A-1-101**, which is renumbered from Section 71-8-1 is

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renumbered and amended to read:

TITLE 71A. VETERANS AND MILITARY AFFAIRS CHAPTER 1. VETERANS AND MILITARY AFFAIRS

Part 1. General Provisions

~~[71-8-1].~~ 71A-1-101. Veterans and Military Affairs -- Definitions.

As used in this title:

(1) "Armed forces" means the same as that term is defined in Section 68-3-12.5

~~(2)~~ "Contractor" means a person who is or may be awarded a government entity contract.

~~[(2)]~~ (3) "Council" means the Veterans Advisory Council.

~~[(3)]~~ (4) "Department" means the Department of Veterans and Military Affairs.

~~[(4)]~~ (5) "Executive director" means the executive director of the Department of Veterans and Military Affairs.

~~[(5)]~~ (6) "Government entity" means the state and any county, municipality, local district, special service district, and any other political subdivision or administrative unit of the state, including state institutions of education.

(7) "Service member" means a currently serving member of the armed forces.

~~[(6) "Specialist" means a full-time employee of a government entity who is tasked with responding to, and assisting, veterans who are employed by the entity or come to the entity for assistance.]~~

~~[(7)]~~ (8) "Uniformed services" means the same as that term is defined in Section 68-3-12.5.

(9) "VA" means the United States Department of Veterans Affairs.

(10) "Veteran" [has] means the same [meaning] as that term is defined in Section 68-3-12.5.

(11) "Veterans service organization" means an organization or individual accredited by the VA Office of General Counsel or recognized by the department whose purpose is to serve service members and veterans, their spouses, surviving spouses, and children.

Section ~~{14}~~ 15. Section 71A-1-201 is enacted to read:

Part 2. Department of Veterans and Military Affairs

71A-1-201. Department of Veterans and Military Affairs -- Creation --

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Appointment of executive director -- Department responsibilities.

- (1) There is created the Department of Veterans and Military Affairs.
- (2) The governor shall appoint an executive director for the department who is subject to Senate confirmation.
- (3) The executive director shall be a veteran.
- (4) The department shall:
 - (a) conduct and supervise all veteran and military affairs activities as provided in this title;
 - (b) adopt rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to carry out the provisions of this title;
 - (c) in accordance with Section 41-1a-418:
 - (i) determine which campaign or combat theater awards are eligible for a special group license plate;
 - (ii) verify that an applicant for a campaign or combat theater award special group license plate is qualified to receive it; and
 - (iii) provide an applicant that qualifies a form indicating the campaign or combat theater award special group license plate for which the applicant qualifies;
 - (d) maintain liaison with local, state, and federal veterans agencies and with Utah veterans organizations;
 - (e) provide current information to veterans, service members, their surviving spouses and family members, and Utah veterans and military organizations on benefits they are entitled to;
 - (f) assist veterans, service members, and their families in applying for benefits and services;
 - (g) cooperate with other state entities in the receipt of information to create and maintain a record of veterans in Utah;
 - (h) create and administer a veterans assistance registry in accordance with Chapter 5, Veterans Assistance Registry, with recommendations from the council, that provides contact information to the qualified donors of materials and labor for certain qualified recipients;
 - (i) identify military-related issues, challenges, and opportunities, and develop plans for addressing them;

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(j) develop, coordinate, and maintain relationships with military leaders of Utah military installations, including the Utah National Guard; and

(k) develop and maintain relationships with military-related organizations in Utah.

(5) (a) The department may award grants for the purpose of supporting veteran and military outreach, employment, education, healthcare, homelessness prevention, and recognition events.

(b) The department may award a grant described in Subsection (4)(a) to:

(i) an institution of higher education listed in Section 53B-1-102;

(ii) a nonprofit organization involved in veterans or military-related activities; or

(iii) a political subdivision of the state.

(c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules for the administration of grants, including establishing:

(i) the form and process for submitting an application to the department;

(ii) the method and criteria for selecting a grant recipient;

(iii) the method and formula for determining a grant amount; and

(iv) the reporting requirements of a grant recipient.

(6) Nothing in this chapter shall be construed as altering or preempting any provisions of Title 39A, National Guard and Militia Act, as specifically related to the Utah National Guard.

Section ~~{15}~~16. Section **71A-1-202** is enacted to read:

71A-1-202. Department of Veterans and Military Affairs -- Executive director --

Responsibilities.

(1) The executive director is the chief administrative officer of the department.

(2) The executive director is responsible for:

(a) the administration and supervision of the department;

(b) the coordination of policies and program activities conducted through the department;

(c) the development and approval of the proposed budget of the department;

(d) preparing an annual report for presentation not later than November 30 of each year to the Government Operations Interim Committee which covers:

(i) services provided to veterans, service members, and their families;

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(ii) services provided by third parties through the Veterans Assistance Registry;

(iii) coordination of veterans services by government entities with the department; and

(iv) the status of military missions within the state;

(e) advising the governor on matters pertaining to veterans and military affairs throughout the state, including active duty service members, reserve duty service members, veterans, and their families;

(f) developing, coordinating, and maintaining relationships with Utah's congressional delegation and appropriate federal agencies; and

(g) entering into grants, contracts, agreements, and interagency transfers necessary to support the department's programs.

(3) The executive director may appoint deputy directors to assist the executive director in carrying out the department's responsibilities.

Section ~~16~~17. Section **71A-1-301**, which is renumbered from Section 71-8-4 is renumbered and amended to read:

Part 3. Veterans Advisory Council

~~71-8-4~~. **71A-1-301. Veterans Advisory Council -- Membership -- Duties and responsibilities -- Per diem and travel expenses.**

(1) There is created a Veterans Advisory Council whose purpose is to advise the executive director of the Department of Veterans and Military Affairs on issues relating to veterans.

(2) The council shall consist of the following 14 members:

(a) 11 voting members to serve four-year terms:

(i) seven veterans at large appointed by the governor;

(ii) the commander or the commander's designee, whose terms shall last for as long as

~~they hold~~ the commander holds that office, from each of the following organizations:

(A) Veterans of Foreign Wars;

(B) American Legion; and

(C) Disabled American Veterans; and

(iii) a representative from the Office of the Governor; and

(b) three nonvoting members:

(i) the executive director ~~[of the Department of Veterans and Military Affairs];~~

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(ii) the director of the VA Health Care System or ~~[his]~~ the director's designee; and
(iii) the director of the VA Benefits Administration Regional Office in Salt Lake City, or ~~[his]~~ the director's designee.

(3) (a) Except as required by Subsection (3)(b), as terms of current council members expire, the governor shall appoint each new or reappointed member to a four-year term commencing on July 1.

(b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of council members are staggered so that approximately half of the members appointed by the governor are appointed every two years.

(4) When a vacancy occurs in the membership for any reason, the governor shall appoint a replacement for the unexpired term within 60 days of receiving notice.

(5) Members appointed by the governor may not serve more than three consecutive terms.

(6) (a) Any veterans group or veteran may provide the executive director with a list of recommendations for members on the council.

(b) The executive director shall provide the governor with the list of recommendations for members to be appointed to the council.

(c) The governor shall make final appointments to the council by June 30 of any year in which appointments are to be made under this chapter.

(7) The council shall elect a chair and vice chair from among the council members every two years. The chair and vice chair shall each be ~~[an individual who:]~~ a veteran.

~~[(a) has served on active duty in the armed forces for more than 180 consecutive days;]~~

~~[(b) was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized; or]~~

~~[(c) incurred an actual service-related injury or disability in the line of duty, whether or not that person completed 180 consecutive days of active duty; and]~~

~~[(d) was separated or retired under honorable conditions.]~~

(8) (a) The council shall meet at least once every quarter.

(b) The executive director ~~[of the Department of Veterans and Military Affairs]~~ may convene additional meetings, as necessary.

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(9) The department shall provide staff to the council.

(10) Six voting members are a quorum for the transaction of business.

~~[(11) The council shall:]~~

~~[(a) solicit input concerning veterans issues from veterans' groups throughout the state;]~~

~~[(b) report issues received to the executive director of the Department of Veterans and Military Affairs and make recommendations concerning them;]~~

~~[(c) keep abreast of federal developments that affect veterans locally and advise the executive director of them;]~~

~~[(d) approve, by a majority vote, the use of money generated from veterans license plates under Section 41-1a-422 for veterans programs; and]~~

~~[(e) assist the director in developing guidelines and qualifications for:]~~

~~[(f) participation by donors and recipients in the Veterans Assistance Registry created in Section 71-12-101; and]~~

~~[(g) developing a process for providing contact information between qualified donors and recipients;]~~

~~[(12)]~~ (11) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section ~~{17}~~18. Section **71A-1-302** is enacted to read:

71A-1-302. Veterans Advisory Council -- Duties and responsibilities.

The council shall:

(1) solicit input concerning veterans issues from veterans groups throughout the state;

(2) report issues received to the executive director and make recommendations concerning them;

(3) keep abreast of federal developments that affect veterans locally and advise the executive director of them;

(4) approve, by a majority vote, the use of money generated from veterans license

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plates under Section 41-1a-422 for veterans programs; and

(5) assist the director in developing guidelines and qualifications for:

(a) participation by donors and recipients in the Veterans Assistance Registry created in Section 71A-5-102; and

(b) the process for providing contact information between qualified donors and recipients.

Section ~~{18}~~19. Section **71A-2-101**, which is renumbered from Section 71-10-1 is renumbered and amended to read:

CHAPTER 2. VETERANS PREFERENCE

~~[71-10-1].~~ **71A-2-101. Veterans preference -- Definitions.**

(1) As used in this chapter:

~~[(1) "Active duty" means active military duty and does not include active duty for training, initial active duty for training, or inactive duty for training.]~~

~~[(2)]~~ (a) "Government entity" means the state, any county, municipality, local district, special service district, or any other political subdivision or administrative unit of the state, including state institutions of education.

(b) "Individual with a disability" means a veteran or service member who has established the existence of a service-connected disability or is receiving compensation, disability retirement benefits, or a pension because of a public statute administered by the VA or a military department.

~~[(3)]~~ (c) "Preference eligible" means:

~~[(a)]~~ (i) any individual who ~~[has served on active duty in the armed forces for more than 180 consecutive days, or was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized and who has been separated under honorable conditions]~~ is a veteran or service member;

~~[(b)]~~ (ii) ~~[a veteran]~~ an individual with a disability, regardless of the percentage of disability;

~~[(c)]~~ (iii) the spouse or ~~[unmarried widow or widower]~~ surviving spouse of a veteran;

~~[(d)]~~ (iv) a purple heart recipient; or

~~[(e)]~~ (v) a retired member of the armed forces.

~~[(4) "Veteran" means the same as that term is defined in Section 68-3-12.5.]~~

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~~[(5) "Veteran with a disability" means an individual who has:]~~

~~[(a) been separated or retired from the armed forces under honorable conditions, and]~~

~~[(b) established the existence of a service-connected disability or is receiving~~

~~compensation, disability retirement benefits, or pension because of a public statute administered by the federal Department of Veterans Affairs or a military department.]~~

(2) Terms defined in Section 71A-1-101 apply to this chapter.

Section ~~{19}~~20. Section **71A-2-102**, which is renumbered from Section 71-10-2 is renumbered and amended to read:

~~[71-10-2].~~ **71A-2-102. Veterans preference.**

(1) Each government entity shall grant a veterans preference upon initial [hiring] application to each preference eligible ~~[veteran or preference eligible spouse]~~ individual according to the procedures and requirements of this chapter.

(2) The personnel or human resource officer of any government entity shall add to the score of a preference eligible who receives a passing score on an examination, or any rating or ranking mechanism used in selecting an individual for any career service position with the government entity:

(a) 5% of the total possible score, if the preference eligible is a veteran or service member;

(b) 10% of the total possible score, if the preference eligible is a veteran or service member with a disability or a purple heart recipient; or

(c) in the case of a preference eligible spouse~~[, widow, or widower]~~ or surviving spouse, the same percentage the qualifying veteran or service member is, or would have been, entitled to.

(3) A preference eligible who applies for a position that does not require an examination, or where examination results are other than a numeric score, shall be given preference in interviewing ~~[and hiring]~~ for the position.

(4) Preference eligibility shall be added to a minimum of one step in the process.

(5) The granting of a veterans preference by a government entity in accordance with this chapter is not a violation of:

(a) Title 34A, Chapter 5, Utah Antidiscrimination Act; or

(b) any other state or local equal employment opportunity law.

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Section ~~{20}~~21. Section **71A-2-103**, which is renumbered from Section 71-10-3 is renumbered and amended to read:

~~[71-10-3].~~ **71A-2-103. Veterans preference -- Willful failure to give preference a misdemeanor.**

(1) ~~[Any officers, agents, or representatives]~~ An officer, agent, or representative of a government entity who is charged with employment of people ~~[and who]~~ may not willfully ~~[fails]~~ fail to give preference as provided in this chapter.

(2) Willful failure to extend veterans preference to an applicant is ~~[guilty of]~~ a class B misdemeanor.

Section ~~{21}~~22. Section **71A-3-101**, which is renumbered from Section 71-9-1 is renumbered and amended to read:

CHAPTER 3. VETERANS SERVICE ORGANIZATIONS ASSISTANCE CONTRACTS

~~[71-9-1].~~ **71A-3-101. Veterans service organizations assistance contracts -- Contract to provide assistance to service members, veterans and their spouses, surviving spouses, and children.**

The ~~[Department of Veterans and Military Affairs]~~ department is authorized to contract with ~~[the American Legion, the Disabled American Veterans, and the Veterans of Foreign Wars of the United States, as]~~ a veterans service organization organized in this state~~;~~ to provide, especially in the outlying areas of the state, assistance to service members, veterans, their ~~[widows]~~ spouses, surviving spouses, and children as follows:

(1) ~~[to]~~ disseminate information regarding all laws applicable ~~[to veterans, their widows, and children]~~ in the preparation, presentation, and prosecution of claims against the United States arising by reason of service in the ~~[military, naval, or air services]~~ uniformed services;

(2) ~~[to]~~ assist ~~[veterans, their widows, and children]~~ in the establishment of all rights and the procurement of all benefits which may accrue to ~~[them]~~ eligible individuals under the laws of this state or of the United States;

(3) ~~[to]~~ cooperate with any and all agencies and instrumentalities of this state or of the United States having to do with ~~[the]~~ employment or reemployment ~~[of veterans]~~;

(4) ~~[to]~~ cooperate with any and all agencies and instrumentalities of this state or of the

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United States and make a representative and information available on a rotating basis in the outlying areas of the state;

(5) ~~[to]~~ assist ~~[veterans]~~ eligible individuals in obtaining ~~[such]~~ any preference for employment ~~[as may be]~~ authorized by the laws of this state or of the United States; and

(6) ~~[to]~~ assist ~~[veterans, their widows, and children]~~ eligible individuals in obtaining emergency relief, and ~~[to that end]~~ cooperate with ~~[such]~~ any agencies and instrumentalities of this state or of the United States ~~[as have been or may be]~~ established for the purpose of extending emergency relief.

Section ~~{22}~~23. Section **71A-3-102**, which is renumbered from Section 71-9-2 is renumbered and amended to read:

~~[71-9-2]~~. **71A-3-102. Veterans service organizations assistance contracts -- Contracts subject to appropriation of funds.**

Any contract entered into under Section ~~[71-9-1]~~ 71A-3-101 shall expressly state that it is subject to the appropriation of sufficient funds by the Legislature to carry out its terms and that the decision of the executive director ~~[of the Department of Veterans and Military Affairs]~~ as to whether an appropriation is sufficient to carry out the terms of the contract is conclusive.

Section ~~{23}~~24. Section **71A-3-103**, which is renumbered from Section 71-9-5 is renumbered and amended to read:

~~[71-9-5]~~. **71A-3-103. Veterans service organizations assistance contracts -- Attorney general to represent state concerning contracts.**

The attorney general shall represent the state in all proceedings involving any contract entered into under ~~[section 71-9-1]~~ Section 71A-3-101, and shall ~~[render]~~ provide any legal assistance necessary in carrying out the provisions of that section.

Section ~~{24}~~25. Section **71A-4-101**, which is renumbered from Section 71-13-102 is renumbered and amended to read:

CHAPTER 4. VETERANS BENEFITS APPLICATION ASSISTANCE ACT

~~[71-13-102]~~. **71A-4-101. Veterans Benefits Application Assistance Act -- Definitions.**

(1) As used in this chapter:

~~{1}~~ (a) "Accredited" means a veterans service organization representative, agent, or attorney to whom authority has been granted by the VA to provide assistance to claimants in

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the preparation, presentation, and prosecution of claims for VA benefits.

~~[(2)]~~ (b) "Assistance" means an accredited individual providing claimant-specific recommendations or preparing or submitting an application for VA benefits on behalf of a claimant.

~~[(3)]~~ (c) "Certify" means to submit in writing to a veteran or the veteran's dependents certain disclosure forms provided by the department.

~~[(4)]~~ (d) "Claimant" means a person who has filed or has expressed to a service organization representative, agent, or attorney an intention to file a written application for determination of entitlement to benefits provided under United States Code, Title 38, and implementing directives.

~~[(5)] "Department" means the Department of Veterans and Military Affairs.]~~

~~[(6)] "Executive director" means the executive director of the Department of Veterans and Military Affairs.]~~

~~[(7)]~~ (e) "Non-compliant referral" means referring a veteran's or a veteran's dependent's original claim for veteran benefits for assistance to an individual who is in violation of the provisions of this chapter.

~~[(8)]~~ (f) "Referring entity" means an individual, business, or organization licensed in this state who refers or assists a veteran or a veteran's dependents for assistance with an original claim for veteran benefits.

~~[(9)] "VA" means the United States Department of Veterans Affairs.]~~

~~[(10)]~~ (g) "VA benefits" means any payment, service, commodity, function, or status entitlement which is determined under laws administered by the VA pertaining to veterans, dependents, and survivors as well as other potential beneficiaries under United States Code, Title 38.

~~[(11)]~~ (h) "Veteran" includes all eligible dependents.

(2) Terms defined in Section 71A-1-101 apply to this chapter.

Section ~~{25}~~26. Section **71A-4-102**, which is renumbered from Section 71-13-103 is renumbered and amended to read:

~~[71-13-103].~~ **71A-4-102. Veterans Benefits Application Assistance Act -- Disclosure requirement for assisting a claimant.**

(1) Each ~~[person]~~ individual offering to assist veterans in applying for benefits shall:

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(a) be accredited, in compliance with the provisions of C.F.R., Title 38, Pensions, Bonuses, and Veterans' Relief, or, if under the supervision of an accredited attorney meet the provisions of C.F.R., Title 38, pertaining to authorized claim representation under an attorney; and

(b) disclose in writing, in a format approved by the department that the claimant can retain, the federal laws, regulations, and rules governing assistance for VA benefits.

(2) The disclosure required by Subsection (1)(b) shall specifically include:

(a) the individual's:

(i) name;

~~(b)~~ (ii) ~~the individual's~~ business address;

~~(c)~~ (iii) ~~the individual's~~ business phone number; and

~~(d)~~ (iv) the ~~individual's~~ registration number from the VA;

~~(e)~~ (b) a statement of the claimant's rights regarding the assistance for VA benefits, including that there is no charge to the claimant or a member of the claimant's family for assistance with the initial benefits application; and

~~(f)~~ (c) a statement that if, as a result of the individual providing assistance for a claim, income is accrued to the assisting individual from the sale of a product or other services to the claimant, the income is both justified and reasonable as compared with income from similar products and services available in the state.

(3) No provisions of the form may be struck out or designated as nonapplicable.

(4) Disclosure forms, when completed, shall be:

(a) signed by both the individual providing assistance and the claimant; and

(b) retained for three years by the assisting individual.

(5) Copies of the disclosure form shall be provided to:

(a) the veteran on the day the form is completed and signed; and

(b) the department within five working days.

Section ~~26~~27. Section **71A-4-103**, which is renumbered from Section 71-13-104 is renumbered and amended to read:

~~[71-13-104].~~ **71A-4-103. Veterans Benefits Application Assistance Act -- Education requirements.**

(1) All individuals and attorneys providing assistance to a veteran shall complete three

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hours of qualifying education as specified in 38 C.F.R. 14.629(b) during the first 12 month period following the date of initial accreditation[~~;~~and].

(2) [~~an~~] An additional three hours of qualifying continuing education shall be completed every two years following the initial 12-month period.

Section ~~{27}~~28. Section **71A-4-104**, which is renumbered from Section 71-13-105 is renumbered and amended to read:

~~[71-13-105].~~ **71A-4-104. Veterans Benefits Application Assistance Act -- Department responsibilities -- Notification -- Assistance -- Complaints -- Claimant responsibilities.**

(1) The [~~Department of Veterans and Military Affairs~~] department shall notify in writing each veteran for whom the department has contact information that any individual or business offering to assist veterans in applying for benefits shall disclose in writing to the veteran the following:

(a) 38 C.F.R. 14.629 and 38 C.F.R. 14.630 require that any individual providing assistance be accredited by the VA;

(b) federal law restricts charging a veteran a fee for assisting in the initial application for VA benefits; and

(c) the department's website has a list with contact information of VA accredited claim representatives.

(2) Beginning July 1, 2015, and every three years after the department shall:

(a) notify the Insurance Department regarding the federal law governing assistance for VA benefits, and the Insurance Department shall notify all individual producers and consultants licensed by the Insurance Department at the time of initial licensing and upon license renewal of those same federal laws governing assistance for VA benefits;

(b) contact the Utah State Bar regarding federal law governing legal assistance for claimants applying for benefits and request that the association provide continuing legal education on federal laws governing assistance; and

(c) notify the Department of Health and Human Services regarding federal law governing the assistance for claimants applying for benefits, and require the Department of Health [~~shall~~] and Human Services to notify all assisted living and nursing care facilities of those federal laws.

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(3) The executive director may establish procedures for processing complaints related to assistance regarding a claim for VA benefits.

(4) For violations by accredited or non-accredited individuals who offer assistance with VA benefits, the executive director may audit selected assisting individuals and referring entities for compliance with this chapter and federal laws which govern the provision of assistance to claimants.

Section ~~{28}~~29. Section **71A-4-105**, which is renumbered from Section 71-13-106 is renumbered and amended to read:

~~[71-13-106].~~ **71A-4-105. Veterans Benefits Application Assistance Act -- Exempt organizations.**

Accredited representatives of the following organizations are exempt from the provisions of this chapter:

- (1) American Legion;
- (2) Veterans of Foreign Wars;
- (3) Disabled American Veterans;
- (4) Vietnam Veterans of America;
- (5) American Veterans (AMVET);
- (6) Military Order of the Purple Heart; and
- (7) other VA recognized service organizations or individuals as determined by the executive director.

Section ~~{29}~~30. Section **71A-5-101**, which is renumbered from Section 71-12-102 is renumbered and amended to read:

CHAPTER 5. VETERANS ASSISTANCE REGISTRY

~~[71-12-102].~~ **71A-5-101. Veterans Assistance Registry -- Definitions.**

(1) As used in this chapter:

~~[(1) "Council" means the Veterans Advisory Council as created in Section 71-8-4.]~~

~~[(2) "Department" means the Department of Veterans and Military Affairs as created in Section 71-8-2.]~~

~~[(3)]~~ (a) "Donor" means an individual or entity that provides material goods, services, or labor without charge to veterans in accordance with this chapter.

~~[(4)]~~ (b) "Recipient" means a veteran as defined in Section 68-3-12.5, or a veteran's

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dependent spouse and children.

(2) Terms defined in Section 71A-1-101 apply to this chapter.

Section ~~{30}~~31. Section **71A-5-102**, which is renumbered from Section 71-12-103 is renumbered and amended to read:

~~[71-12-103].~~ **71A-5-102. Veterans Assistance Registry.**

(1) There is created within the department a Veterans Assistance Registry.

(2) The intent of the registry is to provide contact information to qualified donors of material goods, services, and labor for qualified recipients in need of specific goods, services, or labor.

(3) The department shall, in consultation with the council:

(a) create a database of donors and recipients;

(b) develop an electronic link on the department's website to the database of donors and recipients;

(c) insure that information provided by donors and recipients is only used for the intended purpose as specified in Subsection (2) and not made public;

(d) provide instructions online for donors and recipients to use in registering for the registry;

(e) publicize through both local and nationwide veterans service organizations and the ~~[United States Department of Veterans Affairs]~~ VA the availability of the registry; and

(f) track usage of and report annually on the registry program in accordance with Section ~~[71-8-3]~~ 71A-1-202.

Section ~~{31}~~32. Section **71A-5-103**, which is renumbered from Section 71-12-104 is renumbered and amended to read:

~~[71-12-104].~~ **71A-5-103. Immunity for use of registry.**

A donor who provides material goods, services, or labor for registry recipients is considered to be acting on behalf of the department in accordance with the provisions of Title 63G, Chapter 8, Part 2, Immunity for Voluntary Services.

Section ~~{32}~~33. Section **71A-6-101**, which is renumbered from Section 71-11-2 is renumbered and amended to read:

CHAPTER 6. STATE VETERANS NURSING HOME

~~[71-11-2].~~ **71A-6-101. State Veterans Nursing Home -- Definitions.**

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(1) As used in this chapter:

~~[(1)]~~ (a) "Administrator" means a ~~[Veterans Nursing Home Administrator]~~ state veterans nursing home administrator selected in accordance with Section ~~[71-11-5]~~ 71A-6-103.

~~[(2)]~~ (b) "Board" means any ~~[Veterans Nursing Home Advisory Board]~~ state veterans nursing home advisory board.

(c) "Home" means any state veterans nursing home.

~~[(3) "Department" means the Department of Veterans and Military Affairs created in Section 71-8-2.]~~

~~[(4) "Executive director" means the executive director of the Department of Veterans and Military Affairs.]~~

~~[(5) "Home" means any Utah Veterans Nursing Home.]~~

~~[(6) "Veteran" means the same as that term is defined in Section 68-3-12.5.]~~

(2) Terms defined in Section 71A-1-101 apply to this chapter.

Section ~~{33}~~34. Section **71A-6-102**, which is renumbered from Section 71-11-3 is renumbered and amended to read:

~~[71-11-3].~~ **71A-6-102. State Veterans Nursing Home -- Establishment and construction -- Compliance with federal requirements.**

(1) The department shall ~~[administer]~~ be responsible for the administration and operation of state veterans nursing homes established by the Legislature, which may include contracting with a private health care provider to operate and manage each home.

(2) Each home shall:

(a) have at least an 80-bed capacity;

(b) be designed and constructed consistent with the requirements for federal funding under 38 U.S.C. Sec. 8131 et seq.; and

(c) be operated consistent with the requirements for per diem payments from the ~~[United States Department of Veterans Affairs]~~ VA under 38 U.S.C. Sec. 1741 et seq.

Section ~~{34}~~35. Section **71A-6-103**, which is renumbered from Section 71-11-5 is renumbered and amended to read:

~~[71-11-5].~~ **71A-6-103. State veterans nursing home -- Operation of homes -- Rulemaking authority -- Selection of administrator.**

(1) The department shall, subject to the approval of the executive director:

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(a) establish appropriate criteria for the admission and discharge of residents for each home, subject to the requirements in Section ~~[71-11-6]~~ 71A-6-104 and criteria set by the ~~[United States Department of Veterans Affairs]~~ VA;

(b) establish a schedule of charges for each home in cases where residents have available resources;

(c) establish standards for the operation of the homes not inconsistent with standards set by the ~~[United States Department of Veterans Affairs]~~ VA;

(d) make rules to implement this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

(e) ensure that the homes are licensed in accordance with Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and 38 U.S.C. Sec. 1742(a).

(2) The department shall ~~[, after reviewing recommendations of the board,];~~

(a) appoint an administrator for each home; or

(b) approve the individual selected by the contract health care provider as the administrator at each home.

Section ~~{35}~~36. Section **71A-6-104**, which is renumbered from Section 71-11-6 is renumbered and amended to read:

~~[71-11-6].~~ **71A-6-104. State veterans nursing home -- Eligibility -- Admission requirements.**

(1) Application for admission shall be made separately to each nursing home administrator.

(2) Veterans and their spouses or surviving spouses who are residents of Utah or who demonstrate intent to establish residency in Utah within six months of applying for admission, meet federal eligibility requirements, and are in need of nursing home care may be admitted to any home.

(3) Preference shall be given to veterans who are without adequate means of support and unable, due to wounds, disease, old age, or infirmity, to properly maintain themselves.

Section ~~{36}~~37. Section **71A-6-105**, which is renumbered from Section 71-11-7 is renumbered and amended to read:

~~[71-11-7].~~ **71A-6-105. Veterans nursing home -- Advisory boards.**

(1) Each home shall have a nursing home advisory board to act as a liaison between the

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residents, members of the public, and the administration of the home.

(2) Each board shall consist of at least seven, but no more than 11, members appointed as follows by the executive director:

(a) one appointee of the Resident Council of the specific veterans nursing home;
(b) three veterans from the geographic area in which the veterans nursing home is located;

(c) one medical professional experienced in veteran nursing home quality of care issues;

(d) three at-large members with an interest in the success of veterans nursing homes;
and

(e) one member each from:

- (i) the American Legion;
- (ii) Disabled American Veterans; and
- (iii) the Veterans of Foreign Wars.

(3) (a) (i) Members shall serve [for] four-year terms.

(ii) Except as required by Subsection (3)(b), as terms of current board members expire, the executive director shall appoint each new or reappointed member to a four-year term beginning on July 1.

(b) The executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.

(c) The executive director shall make final appointments to the board by June 30 of any year in which appointments are to be made under this chapter.

(4) Vacancies not including the Resident Council representative shall be filled by the executive director within 60 days of receiving notice of a vacancy, but only for the unexpired term of the vacated member.

(5) Members may not serve more than two consecutive terms.

(6) Each board shall elect a chair annually from among its members at its first meeting after July 1.

(7) Each board shall meet at least quarterly.

(8) A majority of the members of the board present constitute a quorum for the

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transaction of business.

(9) Each board shall provide copies of all minutes of each meeting to the [~~Department of Veterans and Military Affairs~~] department within 14 days of approval.

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

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Section ~~{37}~~38. Section **71A-6-106**, which is renumbered from Section 71-11-8 is renumbered and amended to read:

~~[71-11-8]~~. **71A-6-106. State Veterans Nursing Home Fund.**

(1) There is created an expendable special revenue fund entitled the "Utah State Veterans Nursing Home Fund" to be administered by the department for the benefit of each home and its residents.

(2) All cash donations, gifts, or bequests shall be deposited in the fund and used according to the wishes of the donor.

(3) All funds received by the homes from federal or state agencies, individual insurance reimbursement, or cash payments shall be deposited in the fund.

(4) Funds received that are designated for a specific home shall be accounted for separately within the fund.

Section ~~{38}~~39. Section **71A-6-107**, which is renumbered from Section 71-11-9 is renumbered and amended to read:

~~[71-11-9]~~. **71A-6-107. State veterans nursing home -- Disposition of deceased resident's property.**

(1) (a) All money or other personal property of a resident held by a home that is left on the premises of the home shall, upon the death of the resident, be held in trust to be paid or delivered to the spouse, children, grandchildren, or parent of the resident upon the presentation of proof of relationship.

(b) Any funds of a deceased resident may be disbursed for the payment of funeral expenses or any obligation owed to the home.

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(2) Property owned by a deceased resident of the home who dies without heirs or next-of-kin not disposed of by will shall become the property of the home and deposited in the fund, subject to the right of any heir to reclaim the property within five years after the resident's death upon the presentation of proof of relationship.

Section ~~{39}~~40. Section **71A-6-108**, which is renumbered from Section 71-11-10 is renumbered and amended to read:

~~[71-11-10].~~ **71A-6-108. State veterans nursing home -- Hobby promotion -- Sales of articles manufactured by residents -- Proceeds to residents.**

(1) Each home shall promote hobbies designed to improve the general welfare and mental condition of the residents.

(2) The home may provide limited funds to initiate a hobby program, but shall limit the program to those hobbies that, in its judgment, will be self sustaining.

(3) The department may enter into contracts with federal or state agencies or private concerns for the receipt of articles manufactured by residents of the homes.

(4) Proceeds generated by hobbies shall be used to pay for materials. Any excess proceeds shall be paid to the individual veterans who produced the articles.

Section ~~{40}~~41. Section **71A-7-101**, which is renumbered from Section 71-2-1 is renumbered and amended to read:

CHAPTER 7. VETERANS MEMORIALS AND CEMETERIES

Part 1. Memorials

~~[71-2-1].~~ **71A-7-101. Memorials by cities and towns.**

(1) The boards of city commissioners, city councils, and town boards, respectively, may appropriate from any fund of the city or town available for general purposes [~~such sums as they may deem~~] amounts considered expedient for the purpose of erecting or contributing to the erection of[;] a memorial to commemorate the achievements of [~~soldiers, sailors and marines~~] uniformed service members and veterans of the state [~~of Utah in the Great World War, where such memorial is erected~~] within their respective cities or towns.

(2) The city commissioners, city council, or town board may, when authorized by the qualified electors of [~~such~~] the city or town, issue general obligation bonds [~~of such city or town~~] and devote the proceeds [~~of the same~~] to the erection of [~~such memorial~~] memorials.

Section ~~{41}~~42. Section **71A-7-102**, which is renumbered from Section 71-2-2 is

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renumbered and amended to read:

~~[71-2-2].~~ **71A-7-102. Memorials by counties.**

(1) The county legislative body of the several counties may ~~[erect]~~ raise and maintain, appropriate money for, and contribute to the ~~[erection]~~ building and maintenance of, memorials to the memory of veterans of ~~[the several]~~ any wars in which the United States of America participated.

(2) Memorials may be in the form of grave adornments, public buildings, monuments, recreational areas and facilities, parks, and public places~~[, provided, that no]~~.

(3) A county legislative body may not erect and maintain, assist in, or contribute to, the erection or maintenance of any memorial which is outside of the boundaries of the county.

Section ~~{42}~~43. Section **71A-7-103**, which is renumbered from Section 71-2-3 is renumbered and amended to read:

~~[71-2-3].~~ **71A-7-103. County tax for memorials.**

~~[For the raising of funds with which to carry out the provisions of the next preceding section, and for such use only, the]~~ The county legislative body may levy and collect an annual tax upon ~~[the]~~ property ~~[situate]~~ situated within the county to raise funds for memorials under this part.

Section ~~{43}~~44. Section **71A-7-201**, which is renumbered from Section 71-7-1 is renumbered and amended to read:

Part 2. Veteran Burials

~~[71-7-1].~~ **71A-7-201. Veteran burials -- Veterans not to be buried in ground used for paupers.**

The body of ~~[a person]~~ an individual who dies while in the military service of the United States of America during any period of war, police action, or other period of national emergency, or the body of any veteran of the military service of the United States of America who served during any war, police action, or other period of national emergency, ~~[shall]~~ may not be buried in any portion of any cemetery or burial ground used for the burial of paupers.

Section ~~{44}~~45. Section **71A-7-202**, which is renumbered from Section 71-7-2 is renumbered and amended to read:

~~[71-7-2].~~ **71A-7-202. Veteran burials -- Political subdivisions may provide proper burial sites.**

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[For the purpose of giving effect to this act, cities] Municipalities, towns, counties, or other political subdivisions of the state [of Utah] may grant burial sites to chartered veterans organizations without financial consideration [therefor,] or may provide a proper site for the burial of any persons covered by this [act] chapter without financial consideration.

Section ~~{45}~~46. Section **71A-7-203**, which is renumbered from Section 71-7-5 is renumbered and amended to read:

~~[71-7-5].~~ **71A-7-203. Veteran burials -- Veterans Remains Organization -- Funeral service establishments -- Liability -- State agency -- Responsibilities.**

(1) As used in this section:

(a) "Remains facility" means the same as a funeral service establishment defined in Section 58-9-102.

(b) "Status information" means a veteran or a veteran's dependent's name, date of birth, place of birth, date of death, Social Security number, military service number, branch of service, and military rank on date of death.

(c) "Veterans Remains Organization" means an entity recognized and authorized by the United States Veterans Administration and the National Personnel Records Center to verify and inter the unclaimed cremated remains of United States military veterans or a veteran's dependents.

(2) A veterans remains organization may contact a remains facility for the purpose of identifying any unclaimed cremated remains of a military veteran or a veteran's dependent.

(a) Upon contact with the remains facility, the organization shall:

(i) provide identifying documentation to the remains facility; and

(ii) with the permission of the remains facility, inventory any unclaimed cremated remains in order to identify any remains of a veteran or a veteran's dependent.

(b) The organization shall contact the National Personnel Records Center to determine if any of the unclaimed cremated remains are:

(i) a veteran's or a veteran's dependent's remains; and

(ii) eligible for interment benefits.

(c) The organization shall claim any unclaimed cremated remains from a remains facility upon providing the facility with proof that the remains are those of a veteran or a veteran's dependent and are eligible for interment benefits.

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(d) The organization shall make arrangements to inter the remains.

(3) A remains facility:

(a) may allow a veterans remains organization, upon presentation of identification, to inventory unclaimed cremated remains;

(b) shall provide all status information in the remains facility's possession to a veterans remains organization;

(c) shall release any unclaimed cremated remains to a veterans remains organization upon presentation of documentation that the remains are of a veteran or a veteran's dependent who is eligible for burial in a state or national cemetery; and

(d) is not subject to civil liability for release of status information or release of the unclaimed cremated remains following the presentation of documentation indicating the remains are those of a veteran or a veteran's dependent and eligible for interment benefits.

(4) The [~~Department of Veterans and Military Affairs~~] department shall, upon presentation of documentation that certain cremated remains in the possession of a veterans remains organization are those of a veteran or a veteran's dependent and eligible for interment benefits:

(a) authorize the interment of the cremated remains in a state veterans cemetery; and

(b) provide assistance to the veterans remains organization in the interment process.

Section ~~{46}~~47. Section **71A-7-301**, which is renumbered from Section 71-7-3 is renumbered and amended to read:

Part 3. Veterans Cemeteries

~~[71-7-3].~~ **71A-7-301. Veterans cemeteries -- Development, operation, and maintenance -- Responsibilities of Department -- Costs.**

(1) The [~~Department of Veterans and Military Affairs~~] department shall develop, operate, and maintain [~~a~~] veterans [~~cemetery and memorial park~~] cemeteries.

(2) To help pay the costs of developing, constructing, operating, and maintaining [~~a~~] veterans [~~cemetery and memorial park~~] cemeteries, the [~~Department of Veterans and Military Affairs~~] department may:

(a) [~~by following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act,~~] receive federal funds[~~, and may~~] by following the procedures and requirements of Title 63J, Chapter 5, Federal Funds Procedures Act;

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(b) receive state funds, contributions from veterans organizations, and other private donations; and

~~(b)~~ (c) charge fees for at least the cost of the burial of a veteran's spouse and any other persons, ~~whom~~ who the department determines ~~are~~ is eligible to be buried in a veterans cemetery established by the state.

~~(3) "Veteran" has the same meaning as defined in Section 68-3-12.5.]~~

Section ~~(47)~~48. Section 71A-8-101, which is renumbered from Section 39-3-1 is renumbered and amended to read:

CHAPTER 8. EMPLOYEES IN MILITARY SERVICE

~~[39-3-1].~~ **71A-8-101. Public officers and employees in military service -- Not to be prejudiced thereby -- Refusal to reinstate -- Procedure -- Motion -- Hearing and determination.**

(1) As used in this chapter, "public officer" means the same as that term is defined in Section 67-16-3.

(2) A ~~[public employee,]~~ public officer~~[, or legislative employee, as defined in Section 67-16-3,]~~ who enters state or federal active service in any branch of the armed forces of this state or of the United States shall be granted a leave of absence not to exceed five years during that service.

~~(2)~~ (3) (a) A person entitled to a leave of absence under this section shall be restored to the same position, or to a position equivalent to the same position, which the person held immediately prior to the commencement of active military service.

(b) A request for restoration of employment under this section must be submitted within 40 days after release from active service.

(c) Restoration of employment shall be made within 20 days after submission of the request to the employer.

(d) A person returning from active military service may not, without cause, be discharged or subjected to reduction of compensation for a period of one year following a return to employment under this section.

~~(3)~~ (4) A person returning to employment under this section:

(a) shall retain all personal, sick, and other leave to which the person was entitled immediately prior to the commencement of active military service;

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(b) shall receive and earn benefits and compensation at a level not less than that to which the person would have been entitled had the officer or employee not been absent due to active military service; and

(c) may not be prejudiced, by the preservice employer or that employer's successor in interest, as to employment, appointment, reappointment, reemployment, or promotion by reason of the employee's active military service.

~~[(4)]~~ (5) (a) ~~[No public employee,]~~ A public officer~~[-or legislative employee]~~ may not be required to resign from, vacate, or forfeit a governmental office or position as a consequence of entering into active military service.

(b) A person in active military service is not considered to be holding an office or position of trust or employment under the United States government for purposes of determining whether that person is disqualified or prohibited from retaining a position or serving as a ~~[public employee,]~~ public officer~~[-or legislative employee]~~.

(c) Nothing in this section shall serve to extend a period of employment or term of office beyond that to which the affected person was elected or appointed. A person who is a legislator or public officer for a specific term by virtue of election or appointment is entitled to a leave of absence under this section for a period not to exceed the applicable term.

~~[(5)]~~ (6) A person denied restoration of employment or benefits given under this ~~[section]~~ chapter may petition the district court of the county in which the person resides, or in which the denial occurs, to require the public employer to comply with the provisions of this section without delay. Fees or court costs may not be assessed against the petitioner. The court shall order a speedy hearing in the case and advance it on the calendar so far as reasonably possible. If the court determines that the petitioner is entitled to relief, the court shall order all appropriate relief, to include compensation for loss of wages and benefits and an award of attorneys' fees and costs.

Section ~~{48}~~49. Section **71A-8-102**, which is renumbered from Section 39-3-2 is renumbered and amended to read:

~~[39-3-2]~~. **71A-8-102. Employees in military service -- Government employees in United States armed forces or National Guard -- Pay allowance for time spent on duty -- Deduction of vacation time prohibited.**

(1) All state employees who are members of the organized reserve of the United States

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armed forces, including the National Guard of this state, shall be allowed full pay for all time not in excess of 15 days per year spent [~~on duty at annual encampment or rifle competition or other duties in connection with the reserve training and instruction~~] fulfilling the service requirements of the armed forces of the United States, including the National Guard of this state. This leave shall be in addition to any annual vacation leave with pay to which an employee may be entitled.

(2) County and municipal employees who are members of the organized reserve of the United States armed forces, including the National Guard of this state, may be allowed up to full pay for all time not in excess of 15 days per year spent [~~on duty at annual encampment or rifle competition or other duties in connection with the reserve training and instruction~~] fulfilling the service requirements of the armed forces of the United States, including the National Guard of this state. This leave is at the discretion of the employing county or municipality and, if granted, shall be in addition to annual vacation leave with pay.

(3) The governor, counties, and municipal agencies may adopt ordinances, exceptions, rules, or policies that:

(a) provide more than 15 days of paid military leave;

(b) provide for differential pay that compensates the difference, if any, between the service member's civilian pay and military pay, not to include allowances; and

(c) extend health, dental, vision, disability, and life insurance benefits to members of the National Guard and reserves activated for more than 30 days.

Section ~~{49}~~50. Section **71A-8-103**, which is renumbered from Section 39-1-64 is renumbered and amended to read:

[39-1-64]. 71A-8-103. Employees in military service -- Extension of licenses for members of National Guard and reservists ordered to active duty.

(1) As used in this section, "license" means any license issued under:

(a) Title 58, Occupations and Professions; and

(b) Section 26-8a-302.

(2) Any license held by a member of the National Guard or reserve component of the armed forces that expires while the member is on state or federal active duty shall be extended until 90 days after the member is discharged from active duty status.

(3) The licensing agency shall renew a license extended under Subsection (2) until the

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next date that the license expires or for the period that the license is normally issued, at no cost to the member of the National Guard or reserve component of the armed forces if all of the following conditions are met:

(a) the National Guard member or reservist requests renewal of the license within 90 days after being discharged;

(b) the National Guard member or reservist provides the licensing agency with a copy of the member's or reservist's official orders calling the member or reservist to active duty, and official orders discharging the member or reservist from active duty; and

(c) the National Guard member or reservist meets all the requirements necessary for the renewal of the license, except the member or reservist need not meet the requirements, if any, that relate to continuing education or training.

(4) The provisions of this section do not apply to:

(a) regularly scheduled annual training;

(b) in-state active National Guard and reserve orders; or

(c) orders that do not require the service member to relocate outside of this state.

Section ~~50~~51. Section **71A-8-104**, which is renumbered from Section 39-7-118 is renumbered and amended to read:

~~[39-7-118]. 71A-8-104. Employees in military service -- Professional liability protection for certain persons ordered to active duty in the armed forces.~~

(1) This section applies to a person who:

(a) is ordered to state or federal military service, other than training; and

(b) immediately before receiving the order to military service:

(i) was engaged in the furnishing of health-care services or other services determined by rule to be professional services; and

(ii) had in effect a professional liability insurance policy that does not continue to cover claims filed with respect to the service member during the period of the service member's active duty unless the premiums are paid for coverage for that period.

(2) Coverage of a person referred to in Subsection (1) by a professional liability insurance policy shall be suspended by the insurance carrier in accordance with Subsection (3) upon receipt of a written request by the service member.

(3) A professional liability insurance carrier:

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(a) may not require that premiums be paid by or on behalf of a service member for any professional liability insurance coverage suspended pursuant to Subsection (2); and

(b) shall refund any amount paid for coverage for the period of the suspension or, upon the election of the service member, apply the amount for the payment of any premium becoming due upon the reinstatement of the coverage.

(4) A professional liability insurance carrier is not liable with respect to any claim that is based on professional conduct, including any failure to take any action in a professional capacity of a person that occurs during a period of suspension of that person's professional liability insurance under this section. For the purposes of the preceding sentence, a claim based upon the failure of a professional to make adequate provision for patients to be cared for during the period of the professional's military service is considered an action or failure to take action before the beginning of the period of suspension of professional liability insurance under this section, except in a case in which professional services were provided after the date of the beginning of the period.

(5) (a) Professional liability insurance coverage suspended in the case of any service member pursuant to Subsection (2) shall be reinstated by the insurance carrier on the date on which the service member transmits to the insurance carrier a written request for reinstatement.

(b) The request of a service member for reinstatement shall be effective only if the service member transmits the request to the insurance carrier within 30 days after the date on which the service member's military service is terminated. The insurance carrier shall notify the person of the due date for payment of the insurance premium. The premium shall be paid by the person within 30 days after receipt of the notice.

(6) The period for which professional liability insurance coverage shall be reinstated for a service member under this section may not be less than the balance of the period for which coverage would have continued under the policy if the coverage had not been suspended.

(7) An insurance carrier may not increase the amount of the premium charged for professional liability insurance coverage of any service member for the minimum period of the reinstatement of coverage required under Subsection (5) to an amount greater than the amount chargeable for the coverage for the period before the suspension, except to the extent of any general increase in the premium amounts charged by that carrier for the same professional liability coverage for other persons similarly covered by the same insurance during the period

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of the suspension.

(8) This section does not:

(a) require a suspension of professional liability insurance coverage for any person who is not a person referred to in Subsection (1) and who is covered by the same professional liability insurance as a person referred to in Subsection (1); or

(b) relieve any person of the obligation to pay premiums for the coverage not required to be suspended.

(9) A civil or administrative action for damages on the basis of the alleged professional negligence or other professional liability of a person whose professional liability insurance coverage has been suspended under Subsection (2) shall be stayed until the end of the period of the suspension if:

(a) the action was commenced during the period or suspension;

(b) the action is based on an act or omission that occurred before the date on which the suspension became effective; and

(c) the suspended professional liability insurance would, except for the suspension, on its face cover the alleged professional negligence or other professional liability negligence or other professional liability of the person.

Section ~~51~~52. Section **76-5-102.4** is amended to read:

76-5-102.4. Assault against peace officer or a military service member in uniform -- Penalties.

(1) (a) As used in this section:

(i) "Assault" means an offense under Section 76-5-102.

(ii) "Military [~~servicemember~~] service member in uniform" means:

(A) a member of any branch of the United States military who is wearing a uniform as authorized by the member's branch of service; or

(B) a member of the National Guard serving as provided in Section 39A-3-103.

(iii) "Peace officer" means:

(A) a law enforcement officer certified under Section 53-13-103;

(B) a correctional officer under Section 53-13-104;

(C) a special function officer under Section 53-13-105; or

(D) a federal officer under Section 53-13-106.

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(iv) "Threat of violence" means an offense under Section 76-5-107.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) (a) An actor commits assault against a peace officer if:

(i) the actor commits an assault or threat of violence against a peace officer, with knowledge that the peace officer is a peace officer; and

(ii) at the time of the assault or threat of violence, the peace officer was acting within the scope of authority as a peace officer.

(b) An actor commits an assault or threat of violence against a military [~~servicemember~~] service member in uniform if:

(i) the actor commits an assault or threat of violence against a military [~~servicemember~~] service member in uniform; and

(ii) at the time of the assault or threat of violence, the [~~servicemember~~] service member was on orders and acting within the scope of authority granted to the military [~~servicemember~~] service member in uniform.

(3) (a) A violation of Subsection (2) is a class A misdemeanor.

(b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a third degree felony if the actor:

(i) has been previously convicted of a class A misdemeanor or a felony violation of this section; or

(ii) causes substantial bodily injury.

(c) Notwithstanding Subsection (3)(a) or (b), a violation of Subsection (2) is a second degree felony if the actor uses:

(i) a dangerous weapon; or

(ii) other means or force likely to produce death or serious bodily injury.

(4) This section does not affect or limit any individual's constitutional right to the lawful expression of free speech, the right of assembly, or any other recognized rights secured by the [~~Constitution or laws of Utah or by the Constitution or laws of the United States~~] Utah Constitution or laws, or by the United States Constitution or federal law.

(5) An actor who violates this section shall serve, in jail or another correctional facility, a minimum of:

(a) 90 consecutive days for a second offense; and

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(b) 180 consecutive days for each subsequent offense.

(6) The court may suspend the imposition or execution of the sentence required under Subsection (5) if the court finds that the interests of justice would be best served by the suspension and the court makes specific findings concerning the disposition on the record.

Section ~~{52}~~53. Section **78A-5-302** is amended to read:

78A-5-302. Definitions.

As used in this part:

(1) "Defendant" means a veteran charged with a criminal offense.

(2) "Domestic violence" means the same as that term is defined in Section 77-36-1.

(3) (a) "Participant agreement" means the record, required by Subsection 78A-5-304(1), of the policies and procedures of a veterans treatment court and any specific terms and conditions applicable to the defendant.

(b) "Participant agreement" includes a modification under Section 78A-5-310.

(4) "Record," except as otherwise provided in Subsection 78A-5-307(1)(c), means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(5) "~~Service member~~ Service member" means:

(a) a member of the active or reserve components of the armed forces as defined in Section 68-3-12.5; or

(b) a member of the National Guard of the United States.

(6) (a) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(b) "State" includes a federally recognized Indian tribe.

(7) "Veteran" means a former ~~service member~~ service member who qualifies for health care benefits from the Veterans Administration.

(8) "Veterans treatment court" means a veterans treatment court program administered under this part by a court of this state.

Section ~~{53}~~54. Section **78B-20-102** is amended to read:

78B-20-102. Definitions.

As used in this chapter:

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(1) "Adult" means an individual who has attained 18 years [~~of age~~] old or is an emancipated minor.

(2) (a) "Caretaking authority" means the right to live with and care for a child on a day-to-day basis.

(b) "Caretaking authority" includes physical custody, parent-time, right to access, and visitation.

(3) "Child" means:

(a) an unemancipated individual who has not attained 18 years [~~of age~~] old; or

(b) an adult son or daughter by birth or adoption, or under law of this state other than this chapter, who is the subject of a court order concerning custodial responsibility.

(4) "Court" means a tribunal, including an administrative agency, authorized under the law of this state other than this chapter to make, enforce, or modify a decision regarding custodial responsibility.

(5) "Custodial responsibility" includes all powers and duties relating to caretaking authority and decision-making authority for a child. The term includes physical custody, legal custody, parent-time, right to access, visitation, and authority to grant limited contact with a child.

(6) "Decision-making authority" means the power to make important decisions regarding a child, including decisions regarding the child's education, religious training, health care, extracurricular activities, and travel. The term does not include the power to make decisions that necessarily accompany a grant of caretaking authority.

(7) "Deploying parent" means a [~~servicemember~~] service member who is deployed or has been notified of impending deployment and is:

(a) a parent of a child under the law of this state other than this chapter; or

(b) an individual who has custodial responsibility for a child under the law of this state other than this chapter.

(8) "Deployment" means the movement or mobilization of a [~~servicemember~~] service member for more than 90 days but less than 18 months pursuant to uniformed service orders that:

(a) are designated as unaccompanied;

(b) do not authorize dependent travel; or

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(c) otherwise do not permit the movement of family members to the location to which the [~~servicemember~~] service member is deployed.

(9) "Family care plan" means a formal written contingency plan mandated by regulation of the various departments and components of the uniformed service that requires certain [~~servicemember~~] service member parents of minor children to plan in advance for the smooth, rapid transfer of parental responsibilities to designees during the absence of the [~~servicemember~~] service member due to death, incapacity, short-term absences, long-term absences, including deployments, or noncombatant evacuation operations.

(10) "Family member" means a sibling, aunt, uncle, cousin, stepparent, or grandparent of a child, or an individual recognized to be in a familial relationship with a child under the law of this state other than this chapter.

(11) (a) "Limited contact" means the authority of a nonparent to visit a child for a limited time.

(b) "Limited contact" includes authority to take the child to a place other than the residence of the child.

(12) "Nonparent" means an individual other than a deploying parent or other parent.

(13) "Other parent" means an individual who, in common with a deploying parent, is:

(a) a parent of a child under the law of this state other than this chapter; or

(b) an individual who has custodial responsibility for a child under the law of this state other than this chapter.

(14) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) "Return from deployment" means the conclusion of a [~~servicemember's~~] service member's deployment as specified in uniformed service orders.

(16) "[~~Service~~member] Service member" means a member of a uniformed service.

(17) "Sign" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic symbol, sound, or process.

(18) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction

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of the United States.

(19) "Uniformed service" means:

(a) active and reserve components of the United States armed forces;

(b) the United States Merchant Marine;

(c) the commissioned corps of the United States Public Health Service;

(d) the commissioned corps of the National Oceanic and Atmospheric Administration

of the United States; or

(e) the [~~national guard~~] National Guard of a state.

Section ~~{54}~~55. Section **78B-20-107** is amended to read:

78B-20-107. General consideration in custody proceeding of parent's military service.

In a proceeding for custodial responsibility of a child of a [~~servicemember~~] service member, a court may not consider a parent's past deployment or possible future deployment in itself in determining the best interest of the child but may consider any significant impact on the best interest of the child of the parent's past or possible future deployment.

Section ~~{55}~~56. **Repealer.**

This bill repeals:

Section 39-1-36, Reserve member of armed forces -- Leave of absence from employment -- Liability of employers.

Section 71-3-1, Use of armories by veterans organizations permitted.

Section 71-8-2, Department of Veterans and Military Affairs created -- Appointment of executive director -- Department responsibilities.

Section 71-8-3, Duties of executive director -- Services to veterans.

Section 71-8-5, Veterans services coordinator qualifications -- Duties.

Section 71-8-6, Government entity participation.

Section 71-8-7, Government entity veterans affairs specialist -- Duties -- Training.

Section 71-8-8, Entity that provides no services -- Referral to department.

Section 71-11-1, Title.

Section 71-11-4, Administration by department.

Section 71-12-101, Title.

Section 71-13-101, Title.

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