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COURT AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brady Brammer

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to courts.

Highlighted Provisions:

This bill:

▶ amends provisions related to civil actions, including the filing or bringing of a civil action, in the district court in the following titles:

- Title 3, Uniform Agricultural Cooperative Association Act;
- Title 7, Financial Institutions Act;
- Title 16, Corporations;
- Title 31A, Insurance Code;
- Title 35A, Utah Workforce Services Code;
- Title 48, Unincorporated Business Entity Act;
- Title 57, Real Estate;
- Title 61, Securities Division - Real Estate Division;
- Title 70, Trademarks and Trade Names;
- Title 70A, Uniform Commercial Code; and
- Title 78B, Judicial Code;

- ▶ enacts a venue provision for the Commissioner of Financial Institutions;
- ▶ enacts a venue provision for the Commissioner of the Insurance Department;
- ▶ enacts Title 78B, Chapter 3a, Venue for Civil Actions;



- 28 ▶ defines terms related to the venue of a civil action;
- 29 ▶ clarifies the applicability of Title 78B, Chapter 3a, Venue for Civil Actions;
- 30 ▶ addresses the transfer of venue for a civil action;
- 31 ▶ clarifies the residence of a business organization for purposes of venue;
- 32 ▶ amends venue provisions for various types of civil actions;
- 33 ▶ amends provisions related to judgments entered by the district court or justice court;
- 34 ▶ amends provisions related to a mileage allowance for a judgment debtor;
- 35 ▶ amends provisions related to contempt by a nonjudicial officer;
- 36 ▶ amends provisions related to the filing of a notice of lis pendens;
- 37 ▶ repeals statutes related to court venue, jurisdiction, and procedure;
- 38 ▶ repeals statutes related to a change of venue; and
- 39 ▶ makes technical and conforming changes.

40 **Money Appropriated in this Bill:**

41 None

42 **Other Special Clauses:**

43 This bill provides a special effective date.

44 **Utah Code Sections Affected:**

45 AMENDS:

- 46 **3-1-20**, as last amended by Laws of Utah 1994, Chapter 202
- 47 **3-1-20.1**, as enacted by Laws of Utah 2003, Chapter 70
- 48 **7-1-703**, as last amended by Laws of Utah 2017, Chapter 169
- 49 **7-2-2**, as last amended by Laws of Utah 2014, Chapter 189
- 50 **7-2-5**, as last amended by Laws of Utah 1983, Chapter 8
- 51 **7-2-6**, as last amended by Laws of Utah 2015, Chapter 258
- 52 **7-2-9**, as last amended by Laws of Utah 2010, Chapter 378
- 53 **7-2-10**, as last amended by Laws of Utah 2010, Chapter 378
- 54 **7-5-13**, as last amended by Laws of Utah 1989, Chapter 267
- 55 **7-23-401**, as last amended by Laws of Utah 2020, Chapter 121
- 56 **16-6a-117**, as enacted by Laws of Utah 2000, Chapter 300
- 57 **16-6a-703**, as last amended by Laws of Utah 2008, Chapter 364
- 58 **16-6a-710**, as last amended by Laws of Utah 2008, Chapter 364

59 [16-6a-809](#), as last amended by Laws of Utah 2001, Chapters 9, 127
60 [16-6a-1405](#), as last amended by Laws of Utah 2015, Chapter 240
61 [16-6a-1414](#), as enacted by Laws of Utah 2000, Chapter 300
62 [16-6a-1416](#), as enacted by Laws of Utah 2000, Chapter 300
63 [16-6a-1417](#), as enacted by Laws of Utah 2000, Chapter 300
64 [16-6a-1604](#), as last amended by Laws of Utah 2008, Chapter 364
65 [16-6a-1609](#), as last amended by Laws of Utah 2002, Chapter 197
66 [16-10a-126](#), as enacted by Laws of Utah 1992, Chapter 277
67 [16-10a-303](#), as enacted by Laws of Utah 1992, Chapter 277
68 [16-10a-703](#), as last amended by Laws of Utah 2008, Chapter 364
69 [16-10a-720](#), as last amended by Laws of Utah 2010, Chapter 378
70 [16-10a-1330](#), as last amended by Laws of Utah 2010, Chapter 378
71 [16-10a-1430](#), as enacted by Laws of Utah 1992, Chapter 277
72 [16-10a-1434](#), as last amended by Laws of Utah 2010, Chapter 378
73 [16-10a-1532](#), as last amended by Laws of Utah 2000, Chapter 131
74 [16-10a-1604](#), as last amended by Laws of Utah 2008, Chapter 364
75 [16-11-13](#), as last amended by Laws of Utah 2000, Chapter 261
76 [16-16-202](#), as enacted by Laws of Utah 2008, Chapter 363
77 [16-16-1203](#), as enacted by Laws of Utah 2008, Chapter 363
78 [16-16-1206](#), as enacted by Laws of Utah 2008, Chapter 363
79 [16-16-1210](#), as enacted by Laws of Utah 2008, Chapter 363
80 [24-1-103](#), as last amended by Laws of Utah 2021, Chapter 230
81 [31A-2-305](#), as last amended by Laws of Utah 1997, Chapter 296
82 [31A-5-414](#), as enacted by Laws of Utah 1985, Chapter 242
83 [31A-5-415](#), as last amended by Laws of Utah 2000, Chapter 300
84 [31A-15-211](#), as enacted by Laws of Utah 1992, Chapter 258
85 [31A-16-107.5](#), as renumbered and amended by Laws of Utah 2015, Chapter 244
86 [31A-16-110](#), as last amended by Laws of Utah 1986, Chapter 204
87 [31A-16-111](#), as last amended by Laws of Utah 2000, Chapter 114
88 [31A-16-112](#), as enacted by Laws of Utah 2015, Chapter 244
89 [31A-16-117](#), as enacted by Laws of Utah 2015, Chapter 244

- 90 **31A-17-610**, as last amended by Laws of Utah 2007, Chapter 309
- 91 **31A-27a-105**, as last amended by Laws of Utah 2020, Chapter 32
- 92 **31A-27a-201**, as last amended by Laws of Utah 2014, Chapters 290, 300
- 93 **31A-27a-206**, as enacted by Laws of Utah 2007, Chapter 309
- 94 **31A-27a-207**, as enacted by Laws of Utah 2007, Chapter 309
- 95 **31A-27a-209**, as enacted by Laws of Utah 2007, Chapter 309
- 96 **31A-44-501**, as enacted by Laws of Utah 2016, Chapter 270
- 97 **35A-4-308**, as renumbered and amended by Laws of Utah 1996, Chapter 240
- 98 **35A-4-314**, as enacted by Laws of Utah 2013, Chapter 473
- 99 **48-1d-111**, as enacted by Laws of Utah 2013, Chapter 412
- 100 **48-1d-116**, as enacted by Laws of Utah 2013, Chapter 412
- 101 **48-1d-901**, as enacted by Laws of Utah 2013, Chapter 412
- 102 **48-1d-902**, as enacted by Laws of Utah 2013, Chapter 412
- 103 **48-1d-903**, as enacted by Laws of Utah 2013, Chapter 412
- 104 **48-1d-909**, as enacted by Laws of Utah 2013, Chapter 412
- 105 **48-1d-1003**, as enacted by Laws of Utah 2013, Chapter 412
- 106 **48-1d-1310**, as enacted by Laws of Utah 2013, Chapter 412
- 107 **48-2e-204**, as enacted by Laws of Utah 2013, Chapter 412
- 108 **48-2e-209**, as enacted by Laws of Utah 2013, Chapter 412
- 109 **48-2e-801**, as enacted by Laws of Utah 2013, Chapter 412
- 110 **48-2e-802**, as enacted by Laws of Utah 2013, Chapter 412
- 111 **48-2e-803**, as enacted by Laws of Utah 2013, Chapter 412
- 112 **48-2e-808**, as enacted by Laws of Utah 2013, Chapter 412
- 113 **48-2e-1103**, as enacted by Laws of Utah 2013, Chapter 412
- 114 **48-3a-204**, as enacted by Laws of Utah 2013, Chapter 412
- 115 **48-3a-209**, as enacted by Laws of Utah 2013, Chapter 412
- 116 **48-3a-701**, as enacted by Laws of Utah 2013, Chapter 412
- 117 **48-3a-702**, as enacted by Laws of Utah 2013, Chapter 412
- 118 **48-3a-703**, as enacted by Laws of Utah 2013, Chapter 412
- 119 **48-3a-704**, as enacted by Laws of Utah 2013, Chapter 412
- 120 **48-3a-707**, as enacted by Laws of Utah 2013, Chapter 412

121 [48-3a-1003](#), as enacted by Laws of Utah 2013, Chapter 412
122 [48-3a-1111](#), as enacted by Laws of Utah 2013, Chapter 412
123 [57-8-44](#), as last amended by Laws of Utah 2014, Chapter 116
124 [57-8a-301](#), as last amended by Laws of Utah 2014, Chapter 116
125 [57-17-5](#), as last amended by Laws of Utah 2015, Chapter 258
126 [57-19-20](#), as last amended by Laws of Utah 2008, Chapter 382
127 [57-21-11](#), as last amended by Laws of Utah 1997, Chapter 375
128 [57-22-6](#), as last amended by Laws of Utah 2017, Chapter 203
129 [57-23-7](#), as enacted by Laws of Utah 1992, Chapter 169
130 [57-23-8](#), as last amended by Laws of Utah 2008, Chapter 382
131 [57-29-303](#), as enacted by Laws of Utah 2016, Chapter 381
132 [57-29-304](#), as enacted by Laws of Utah 2016, Chapter 381
133 [61-1-20](#), as last amended by Laws of Utah 2016, Chapter 401
134 [61-1-105](#), as enacted by Laws of Utah 2011, Chapter 318
135 [61-2-203](#), as last amended by Laws of Utah 2021, Chapter 259
136 [61-2c-403](#), as last amended by Laws of Utah 2009, Chapter 372
137 [61-2f-403](#), as last amended by Laws of Utah 2017, Chapter 182
138 [61-2f-407](#), as last amended by Laws of Utah 2018, Chapter 213
139 [61-2g-501](#), as last amended by Laws of Utah 2018, Chapter 213
140 [70-3a-309](#), as enacted by Laws of Utah 2010, Chapter 200
141 [70-3a-402](#), as last amended by Laws of Utah 2010, Chapter 200
142 [70-3a-405](#), as enacted by Laws of Utah 2002, Chapter 318
143 [70A-8-409.1](#), as last amended by Laws of Utah 2012, Chapter 386
144 [70A-9a-513.5](#), as enacted by Laws of Utah 2015, Chapter 228
145 [78A-6-350](#), as renumbered and amended by Laws of Utah 2021, Chapter 261
146 [78B-1-132](#), as renumbered and amended by Laws of Utah 2008, Chapter 3
147 [78B-5-201](#), as last amended by Laws of Utah 2014, Chapters 114, 151
148 [78B-5-202](#), as last amended by Laws of Utah 2014, Chapter 151
149 [78B-5-206](#), as renumbered and amended by Laws of Utah 2008, Chapter 3
150 [78B-6-110](#), as last amended by Laws of Utah 2019, Chapter 491
151 [78B-6-313](#), as enacted by Laws of Utah 2008, Chapter 3

152 **78B-6-1303**, as last amended by Laws of Utah 2016, Chapter 306

153 **78B-6-1904**, as last amended by Laws of Utah 2016, Chapter 222

154 **78B-6-1905**, as enacted by Laws of Utah 2014, Chapter 310

155 **78B-21-102**, as enacted by Laws of Utah 2017, Chapter 431

156 ENACTS:

157 **7-1-106**, Utah Code Annotated 1953

158 **31A-1-401**, Utah Code Annotated 1953

159 **78B-3a-101**, Utah Code Annotated 1953

160 **78B-3a-102**, Utah Code Annotated 1953

161 **78B-3a-103**, Utah Code Annotated 1953

162 **78B-3a-104**, Utah Code Annotated 1953

163 **78B-3a-206**, Utah Code Annotated 1953

164 RENUMBERS AND AMENDS:

165 **78B-3a-201**, (Renumbered from 78B-3-307, as renumbered and amended by Laws of
166 Utah 2008, Chapter 3)

167 **78B-3a-202**, (Renumbered from 78B-3-301, as renumbered and amended by Laws of
168 Utah 2008, Chapter 3)

169 **78B-3a-203**, (Renumbered from 78B-3-302, as renumbered and amended by Laws of
170 Utah 2008, Chapter 3)

171 **78B-3a-204**, (Renumbered from 78B-3-303, as renumbered and amended by Laws of
172 Utah 2008, Chapter 3)

173 **78B-3a-205**, (Renumbered from 78B-3-304, as renumbered and amended by Laws of
174 Utah 2008, Chapter 3)

175 REPEALS:

176 **3-1-20.2**, as enacted by Laws of Utah 2003, Chapter 70

177 **16-6a-1415**, as last amended by Laws of Utah 2008, Chapter 364

178 **16-10a-1431**, as last amended by Laws of Utah 2008, Chapter 364

179 **34-34-14**, as enacted by Laws of Utah 1969, Chapter 85

180 **78B-3-305**, as renumbered and amended by Laws of Utah 2008, Chapter 3

181 **78B-3-306**, as renumbered and amended by Laws of Utah 2008, Chapter 3

182 **78B-3-308**, as renumbered and amended by Laws of Utah 2008, Chapter 3

183 **78B-3-309**, as renumbered and amended by Laws of Utah 2008, Chapter 3
 184 **78B-3-310**, as renumbered and amended by Laws of Utah 2008, Chapter 3
 185 **78B-3-311**, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

188 Section 1. Section **3-1-20** is amended to read:

189 **3-1-20. Voluntary dissolution -- Distribution of assets -- Proceedings.**

190 (1) (a) An association may be dissolved:

191 (i) at a regular meeting, or a special meeting called for that purpose;

192 (ii) after 30 days advance notice of the time, place, and object of the meeting is served
 193 on the members of the association as prescribed in the bylaws; and

194 (iii) by a two-thirds vote of the members voting.

195 (b) (i) The members shall elect a committee of three members to act as trustees on
 196 behalf of the association, and the trustees shall liquidate and distribute the association's assets
 197 within the time fixed by the members.

198 (ii) The trustees may bring and defend actions necessary to protect and enforce the
 199 rights of the association.

200 (iii) Any vacancies in the trusteeship may be filled by the remaining trustees.

201 (2) (a) If an association dissolves pursuant to this section, the trustees, a creditor, a
 202 member, or the attorney general may bring an action [~~in the district court in the county where~~
 203 ~~the principal place of business of the association is located~~] against the association.

204 (b) [~~The~~] If an action is brought against an association under Subsection (2)(a), the
 205 court may specify:

206 (i) appropriate notice of the time and place for the submission of claims against the
 207 association, which notice may require creditors of and claimants against the association to
 208 submit accounts and demands in writing at the specified place by a specific day[~~, which date~~
 209 ~~shall be~~] that is at least 40 days from the date of service or first publication of the notice;

210 (ii) the payment or satisfaction of claims and demands against the association, or the
 211 retention of money for such purpose;

212 (iii) the administration of trusts or the disposition of the property held in trust by or for
 213 the association;

214 (iv) the sale and disposition of any remaining property of the association and the
215 distribution or division of the property or its proceeds among the members or persons entitled
216 to them; and

217 (v) other matters related to the dissolution.

218 (c) All orders and judgments ~~[shall be]~~ are binding upon the association, ~~[its]~~ the
219 association's property and assets, trustees, members, creditors, and all claimants against ~~[it]~~ the
220 association.

221 (3) On dissolution, the assets of the association ~~[shall be]~~ are distributed in the
222 following manner and order:

223 (a) to pay the association's debts and expenses;

224 (b) to return to any investors the par value of their capital;

225 (c) to pay patrons on a pro rata basis the amount of any patronage capital credited to
226 their accounts; and

227 (d) if there is a surplus, to distribute ~~[it]~~ the surplus among those patrons who have
228 been members of the association at any time during the last five years preceding dissolution or
229 for a longer period of time if determined by the board of directors to be practicable, on the
230 basis of patronage during that period.

231 (4) After the final settlement by the trustees, the association ~~[shall be]~~ is considered
232 dissolved and shall cease to exist.

233 (5) The trustees shall make a report in duplicate of the proceedings held under this
234 section, which shall be signed, acknowledged, and filed as required for the filing of the articles
235 of incorporation.

236 (6) This section shall apply to all associations incorporated in this state.

237 Section 2. Section **3-1-20.1** is amended to read:

238 **3-1-20.1. Grounds and procedure for judicial dissolution.**

239 (1) ~~[An association may be dissolved in a proceeding by the attorney general]~~ The
240 attorney general may bring an action to dissolve an association if it is established that the
241 association:

242 (a) obtained its articles of incorporation through fraud; or

243 (b) has continued to exceed or abuse the authority conferred upon ~~[it]~~ the association
244 by law.

245 (2) [~~An association may be dissolved in a proceeding brought by a shareholder~~] A
246 shareholder may bring an action to dissolve an association if it is established that:

247 (a) the directors are deadlocked in the management of the association affairs, the
248 members are unable to break the deadlock, irreparable injury to the association is threatened or
249 being suffered, or the business and affairs of the association can no longer be conducted to the
250 advantage of the members generally, because of the deadlock;

251 (b) the directors, or those in control of the association, have acted, are acting, or will
252 act in a manner that is illegal, oppressive, or fraudulent;

253 (c) the members are deadlocked in voting power and have failed, for a period that
254 includes at least two consecutive annual meeting dates, to elect successors to directors whose
255 terms have expired or would have expired on the election of their successors; or

256 (d) the association's assets are being misapplied or wasted.

257 (3) [~~An association may be dissolved in a proceeding by a creditor~~] A creditor may
258 bring an action to dissolve an association if it is established that:

259 (a) the creditor's claim has been reduced to a judgment, the execution on the judgment
260 has been returned unsatisfied, and the association is insolvent; or

261 (b) the association is insolvent and the association has admitted in writing that the
262 creditor's claim is due and owing.

263 (4) [~~An association may be dissolved in a proceeding by the association~~] An
264 association may bring an action to have its voluntary dissolution continued under court
265 supervision.

266 (5) If an action is brought under this section, it is not necessary to make members
267 parties to the action to dissolve the association unless relief is sought against the members
268 individually.

269 (6) In an action to dissolve an association, a court may:

270 (a) issue injunctions;

271 (b) appoint a receiver or a custodian pendente lite with all powers and duties the court
272 directs; or

273 (c) take other action required to preserve the association's assets wherever located and
274 carry on the business of the association until a full hearing can be held.

275 Section 3. Section **7-1-106** is enacted to read:

276 **7-1-106. Venue for action or petition brought by commissioner.**

277 If the commissioner brings an action, or files a petition, under this title in the district
278 court, the commissioner shall bring the action, or file the petition:

279 (1) in accordance with Title 78B, Chapter 3a, Venue for Civil Actions; or

280 (2) in the county where the office of the commissioner is located.

281 Section 4. Section **7-1-703** is amended to read:

282 **7-1-703. Restrictions on acquisition of institutions and holding companies --**
283 **Enforcement.**

284 (1) Unless the commissioner gives prior written approval under Section **7-1-705**, a
285 person may not:

286 (a) acquire, directly or indirectly, control of a depository institution or depository
287 institution holding company subject to the jurisdiction of the department;

288 (b) vote the stock of a depository institution or depository institution holding company
289 subject to the jurisdiction of the department acquired in violation of Section **7-1-705**;

290 (c) acquire all or a material portion of the assets of a depository institution or a
291 depository institution holding company subject to the jurisdiction of the department;

292 (d) assume all or a material portion of the deposit liabilities of a depository institution
293 subject to the jurisdiction of the department;

294 (e) take any action that causes a depository institution to become a subsidiary of a
295 depository institution holding company subject to the jurisdiction of the department;

296 (f) take any action that causes a person other than an individual to become a depository
297 institution holding company subject to the jurisdiction of the department;

298 (g) acquire, directly or indirectly, the voting or nonvoting securities of a depository
299 institution or a depository institution holding company subject to the jurisdiction of the
300 department if the acquisition would result in the person obtaining more than 20% of the
301 authorized voting securities of the institution if the nonvoting securities were converted into
302 voting securities; or

303 (h) merge or consolidate with a depository institution or depository institution holding
304 company subject to the jurisdiction of the department.

305 (2) (a) A person who willfully violates this section or a rule or order issued by the
306 department under this section is subject to a civil penalty of not more than \$1,000 per day

307 during which the violation continues.

308 (b) The commissioner may assess the civil penalty after giving notice and opportunity
309 for hearing.

310 (c) The commissioner shall collect the civil penalty by bringing an action [~~in the~~
311 ~~district court of the county in which the office of the commissioner is located.~~] in a court with
312 jurisdiction under Title 78A, Judiciary and Judicial Administration.

313 (d) An applicant for approval of an acquisition is considered to have consented to the
314 jurisdiction and venue of the court by filing an application for approval.

315 (3) The commissioner may secure injunctive relief to prevent a change in control or
316 impending violation of this section.

317 (4) The commissioner may lengthen or shorten any time period specified in Section
318 7-1-705 if the commissioner finds it necessary to protect the public interest.

319 (5) The commissioner may exempt a class of financial institutions from this section by
320 rule if the commissioner finds the exception to be in the public interest.

321 (6) The prior approval of the commissioner under Section 7-1-705 is not required for
322 the acquisition by a person other than an individual of voting securities or assets of a depository
323 institution or a depository institution holding company that are acquired by foreclosure or
324 otherwise in the ordinary course of collecting a debt previously contracted in good faith if these
325 voting securities or assets are divested within two years of acquisition. The commissioner may,
326 upon application, extend the two-year period of divestiture for up to three additional one-year
327 periods if, in the commissioner's judgment, the extension would not be detrimental to the
328 public interest. The commissioner may adopt rules to implement the intent of this Subsection
329 (6).

330 (7) (a) An out-of-state depository institution without a branch in Utah, or an
331 out-of-state depository institution holding company without a depository institution in Utah,
332 may acquire:

333 (i) a Utah depository institution only if it has been in existence for at least five years; or

334 (ii) a Utah branch of a depository institution only if the branch has been in existence
335 for at least five years.

336 (b) For purposes of Subsection (7)(a), a depository institution chartered solely for the
337 purpose of acquiring another depository institution is considered to have been in existence for

338 the same period as the depository institution to be acquired, so long as it does not open for
339 business at any time before the acquisition.

340 (c) The commissioner may waive the restriction in Subsection (7)(a) in the case of a
341 depository institution that is subject to, or is in danger of becoming subject to, supervisory
342 action under Chapter 2, Possession of Depository Institution by Commissioner, or Chapter 19,
343 Acquisition of Failing Depository Institutions or Holding Companies, or, if applicable, the
344 equivalent provisions of federal law or the law of the institution's home state.

345 (d) The restriction in Subsection (7)(a) does not apply to an acquisition of, or merger
346 transaction between, affiliate depository institutions.

347 Section 5. Section 7-2-2 is amended to read:

348 **7-2-2. Action to review the commissioner's actions -- Supervision of actions of**
349 **commissioner in possession -- Authority of commissioner and court.**

350 [~~(1) The district court for the county in which the principal office of the institution or~~
351 ~~other person is situated has jurisdiction in the liquidation or reorganization of the institution or~~
352 ~~other person of which the commissioner has taken possession under this chapter or Chapter 19,~~
353 ~~Acquisition of Failing Depository Institutions or Holding Companies. As used in this chapter,~~
354 ~~"court" means the court given jurisdiction by this provision.]~~

355 [(2)] (1) Before taking possession of an institution or other person under [his] the
356 commissioner's jurisdiction, or within a reasonable time after taking possession of an
357 institution or other person without court order, as provided in this chapter, the commissioner
358 shall [~~cause to be commenced in the appropriate district court, an action to provide the court~~
359 ~~supervisory jurisdiction]~~ bring an action in a court with jurisdiction under Title 78A, Judiciary
360 and Judicial Administration, to provide the court with supervisory jurisdiction to review the
361 actions of the commissioner.

362 [(3)] (2) (a) The actions of the commissioner are subject to review of the court.

363 (b) The court [~~has jurisdiction to hear all objections to the actions of the commissioner~~
364 ~~and]~~ may:

365 (i) hear all objections to the actions of the commissioner; and

366 (ii) rule upon all motions and actions coming before [it] the court.

367 (c) Standing to seek review of any action of the commissioner or any receiver or
368 liquidator appointed by [him] the commissioner is limited to persons whose rights, claims, or

369 interests in the institution would be adversely affected by the action.

370 ~~[(4)]~~ (3) (a) The authority of the commissioner under this chapter is of an
371 administrative and not judicial receivership.

372 (b) The court may not overrule a determination or decision of the commissioner if it is
373 not arbitrary, capricious, fraudulent, or contrary to law.

374 (c) If the court overrules an action of the commissioner, the matter shall be remanded
375 to the commissioner for a new determination by ~~[him]~~ the commissioner, and the new
376 determination shall be subject to court review.

377 Section 6. Section 7-2-5 is amended to read:

378 **7-2-5. Appointment of receiver or assignment for creditors -- Notice required --**
379 **Commissioner taking possession.**

380 ~~[No receiver may be]~~ (1) A receiver may not be appointed by any court and ~~[no]~~ a deed
381 or assignment for the benefit of creditors may not be filed in ~~[any district court]~~ a court within
382 this state for any institution or other person under the jurisdiction of the commissioner, except
383 upon notice to the commissioner, unless because of urgent necessity the court determines that it
384 is necessary to do so to preserve the assets of the institution.

385 (2) The commissioner may, within five days after service of the notice upon ~~[him]~~ the
386 commissioner, take possession of the institution, in which case no further proceedings shall be
387 had upon the application for the appointment of a receiver or under the deed of assignment, or,
388 if a receiver has been appointed or the assignee has entered upon the administration of his trust,
389 the appointment shall be vacated or the assignee shall be removed upon application of the
390 commissioner to the court by which the receiver was appointed or in which the assignment was
391 filed, and the commissioner shall proceed to administer the assets of the institution as provided
392 in this chapter.

393 Section 7. Section 7-2-6 is amended to read:

394 **7-2-6. Possession by commissioner -- Notice -- Presentation, allowance, and**
395 **disallowance of claims -- Objections to claims.**

396 (1) (a) Possession of an institution by the commissioner commences when notice of
397 taking possession is:

- 398 (i) posted in each office of the institution located in this state; or
399 (ii) delivered to a controlling person or officer of the institution.

400 (b) All notices, records, and other information regarding possession of an institution by
401 the commissioner may be kept confidential, and all court records and proceedings relating to
402 the commissioner's possession may be sealed from public access if:

403 (i) the commissioner finds it is in the best interests of the institution and its depositors
404 not to notify the public of the possession by the commissioner;

405 (ii) the deposit and withdrawal of funds and payment to creditors of the institution is
406 not suspended, restricted, or interrupted; and

407 (iii) the court approves.

408 (2) (a) (i) Within 15 days after taking possession of an institution or other person under
409 the jurisdiction of the department, the commissioner shall publish a notice to all persons who
410 may have claims against the institution or other person to file proof of their claims with the
411 commissioner before a date specified in the notice.

412 (ii) The filing date shall be at least 90 days after the date of the first publication of the
413 notice.

414 (iii) The notice shall be published:

415 (A) (I) in a newspaper of general circulation in each city or county in which the
416 institution or other person, or any subsidiary or service corporation of the institution, maintains
417 an office; and

418 (II) published again approximately 30 days and 60 days after the date of the first
419 publication; and

420 (B) as required in Section 45-1-101 for 60 days.

421 (b) (i) (A) Within 60 days of taking possession of a depository institution, the
422 commissioner shall send a similar notice to all persons whose identity is reflected in the books
423 or records of the institution as depositors or other creditors, secured or unsecured, parties to
424 litigation involving the institution pending at the date the commissioner takes possession of the
425 institution, and all other potential claimants against the institution whose identity is reasonably
426 ascertainable by the commissioner from examination of the books and records of the
427 institution.

428 (B) No notice is required in connection with accounts or other liabilities of the
429 institution that will be paid in full or be fully assumed by another depository institution or trust
430 company.

431 (C) The notice shall specify a filing date for claims against the institution not less than
432 60 days after the date of mailing.

433 (D) Claimants whose claims against the institution have been assumed by another
434 depository institution or trust company pursuant to a merger or purchase and assumption
435 agreement with the commissioner, or a federal deposit insurance agency appointed as receiver
436 or liquidator of the institution, shall be notified of the assumption of their claims and the name
437 and address of the assuming party within 60 days after the claim is assumed.

438 (E) Unless a purchase and assumption or merger agreement requires otherwise, the
439 assuming party shall give all required notices.

440 (F) Notice shall be mailed to the address appearing in the books and records of the
441 institution.

442 (ii) (A) Inadvertent or unintentional failure to mail a notice to any person entitled to
443 written notice under this paragraph does not impose any liability on the commissioner or any
444 receiver or liquidator appointed by ~~him~~ the commissioner beyond the amount the claimant
445 would be entitled to receive if the claim had been timely filed and allowed.

446 (B) The commissioner or any receiver or liquidator appointed by ~~him~~ the
447 commissioner are not liable for failure to mail notice unless the claimant establishes that ~~it~~
448 the claimant had no knowledge of the commissioner taking possession of the institution until
449 after all opportunity had passed for obtaining payment through filing a claim with the
450 commissioner, receiver, or liquidator.

451 (c) Upon good cause shown, the court ~~having~~ with supervisory jurisdiction may
452 extend the time in which the commissioner may serve any notice required by this chapter.

453 (d) (i) The commissioner has the sole power to adjudicate any claim against the
454 institution, its property or other assets, tangible or intangible, and to settle or compromise
455 claims within the priorities set forth in Section [7-2-15](#).

456 (ii) Any action of the commissioner is subject to judicial review as provided in
457 Subsection (9).

458 (e) (i) A receiver or liquidator of the institution appointed by the commissioner has all
459 the duties, powers, authority, and responsibilities of the commissioner under this section.

460 (ii) All claims against the institution shall be filed with the receiver or liquidator within
461 the applicable time specified in this section and the receiver or liquidator shall adjudicate the

462 claims as provided in Subsection (2)(d).

463 (f) The procedure established in this section is the sole remedy of claimants against an
464 institution or its assets in the possession of the commissioner.

465 (3) With respect to a claim which appears in the books and records of an institution or
466 other person in the possession of the commissioner as a secured claim, which, for purposes of
467 this section is a claim that constitutes an enforceable, perfected lien, evidenced in writing, on
468 the assets or other property of the institution:

469 (a) The commissioner shall allow or disallow each secured claim filed on or before the
470 filing date within 30 days after receipt of the claim and shall notify each secured claimant by
471 certified mail or in person of the basis for, and any conditions imposed on, the allowance or
472 disallowance.

473 (b) For all allowed secured claims, the commissioner shall be bound by the terms,
474 covenants, and conditions relating to the assets or other property subject to the claim, as set
475 forth in the note, bond, or other security agreement which evidences the secured claim, unless
476 the commissioner has given notice to the claimant of ~~[his]~~ the commissioner's intent to
477 abandon the assets or other property subject to the secured claim at the time the commissioner
478 gave the notice described in Subsection (3)(a).

479 (c) No petition for lifting the stay provided by Section 7-2-7 may be filed with respect
480 to a secured claim before the claim has been filed and allowed or disallowed by the
481 commissioner in accordance with Subsection (3)(a).

482 (4) With respect to all other claims other than secured claims:

483 (a) Each claim filed on or before the filing date shall be allowed or disallowed within
484 180 days after the final publication of notice.

485 (b) If notice of disallowance is not served upon the claimant by the commissioner
486 within 210 days after the date of final publication of notice, the claim is considered disallowed.

487 (c) (i) The rights of claimants and the amount of a claim shall be determined as of the
488 date the commissioner took possession of the institution under this chapter.

489 (ii) Claims based on contractual obligations of the institution in existence on the date
490 of possession may be allowed unless the obligation of the institution is dependent on events
491 occurring after the date of possession, or the amount or worth of the claim cannot be
492 determined before any distribution of assets of the institution is made to claimants having the

493 same priority under Section 7-2-15.

494 (d) (i) An unliquidated claim against the institution, including claims based on alleged
495 torts for which the institution would have been liable on the date the commissioner took
496 possession of the institution and any claims for a right to an equitable remedy for breach of
497 performance by the institution, may be filed in an estimated amount.

498 (ii) The commissioner may disallow or allow the claim in an amount determined by the
499 commissioner, settle the claim in an amount approved by the court, or, in ~~his~~ the
500 commissioner's discretion, refer the claim to the court ~~designated by Section 7-2-2~~ with
501 supervisory jurisdiction for determination in accordance with procedures designated by the
502 court.

503 (iii) If the institution held on the date of possession by the commissioner a policy of
504 insurance that would apply to the liability asserted by the claimant, the commissioner, or any
505 receiver appointed by ~~him~~ the commissioner may assign to the claimant all rights of the
506 institution under the insurance policy in full satisfaction of the claim.

507 ~~(iv)~~ (iv) If the commissioner finds there are or may be issues of fact or law as to the
508 validity of a claim, liquidated or unliquidated, or its proper allowance or disallowance under
509 the provisions of this chapter, ~~he~~ the commissioner may appoint a hearing examiner to
510 conduct a hearing and to prepare and submit recommended findings of fact and conclusions of
511 law for final consideration by the commissioner.

512 (v) The hearing shall be conducted as provided in rules or regulations issued by the
513 commissioner.

514 (vi) The decision of the commissioner shall be based on the record before the hearing
515 examiner and information the commissioner considers relevant and shall be subject to judicial
516 review as provided in Subsection (9).

517 (e) A claim may be disallowed if it is based on actions or documents intended to
518 deceive the commissioner or any receiver or liquidator appointed by ~~him~~ the commissioner.

519 (f) The commissioner may defer payment of any claim filed on behalf of a person who
520 was at any time in control of the institution within the meaning of Section 7-1-103, pending the
521 final determination of all claims of the institution against that person.

522 (g) The commissioner or any receiver appointed by ~~him~~ the commissioner may
523 disallow a claim that seeks a dollar amount if it is determined by the court ~~having~~ with

524 supervisory jurisdiction under Section 7-2-2 that the commissioner or receiver or conservator
525 will not have any assets with which to pay the claim under the priorities established by Section
526 7-2-15.

527 (h) The commissioner may adopt rules to establish such alternative dispute resolution
528 processes as may be appropriate for the resolution of claims filed against an institution under
529 this chapter.

530 (i) (i) In establishing alternative dispute resolution processes, the commissioner shall
531 strive for procedures that are expeditious, fair, independent, and low cost.

532 (ii) The commissioner shall seek to develop incentives for claimants to participate in
533 the alternative dispute resolution process.

534 (j) The commissioner may establish both binding and nonbinding processes, which
535 may be conducted by any government or private party, but all parties, including the claimant
536 and the commissioner or any receiver appointed by ~~[him]~~ the commissioner, must agree to the
537 use of the process in a particular case.

538 (5) (a) Claims filed after the filing date are disallowed, unless:

539 (i) the claimant who did not file ~~[his]~~ the claimant's claim timely demonstrates that ~~[he]~~
540 the claimant did not have notice or actual knowledge of the proceedings in time to file a timely
541 proof of claim; and

542 (ii) proof of the claim was filed prior to the last distribution of assets.

543 (b) ~~[For the purpose of this subsection only, late filed claims]~~ Claims filed late may be
544 allowed under Subsection (5)(a)(ii) if proof was filed before the final distribution of assets of
545 the institution to claimants of the same priority and are payable only out of the remaining assets
546 of the institution.

547 ~~[(b)]~~ (c) A late filed claim may be disallowed under any other provision of this section.

548 (6) Debts owing to the United States or to any state or its subdivisions as a penalty or
549 forfeiture are not allowed, except for the amount of the pecuniary loss sustained by the act,
550 transaction, or proceeding out of which the penalty or forfeiture arose.

551 (7) Except as otherwise provided in Subsection 7-2-15(1)(a), interest accruing on any
552 claim after the commissioner has taken possession of an institution or other person under this
553 chapter may be disallowed.

554 (8) (a) A claim against an institution or its assets based on a contract or agreement may

555 be disallowed unless the agreement:

556 (i) is in writing;

557 (ii) is otherwise a valid and enforceable contract; and

558 (iii) has continuously, from the time of its execution, been an official record of the
559 institution.

560 (b) The requirements of this Subsection (8) do not apply to claims for goods sold or
561 services rendered to an institution in the ordinary course of business by trade creditors who do
562 not customarily use written agreements or other documents.

563 (9) (a) (i) Objection to any claim allowed or disallowed may be made by any depositor
564 or other claimant by filing a written objection with the commissioner within 30 days after
565 service of the notice of allowance or disallowance.

566 (ii) The commissioner shall present the objection to the court for hearing and
567 determination upon written notice to the claimant and to the filing party.

568 (iii) The notice shall set forth the time and place of hearing.

569 (iv) After the 30-day period, no objection may be filed.

570 (v) This Subsection (9) does not apply to secured claims allowed under Subsection (3).

571 (b) The hearing shall be based on the record before the commissioner and any
572 additional evidence the court allowed to provide the parties due process of law.

573 (c) (i) The court may not reverse or otherwise modify the determination of the
574 commissioner with respect to the claim unless [it] the court finds the determination of the
575 commissioner to be arbitrary, capricious, or otherwise contrary to law.

576 (ii) The burden of proof is on the party objecting to the determination of the
577 commissioner.

578 (d) An appeal from any final judgment of the court with respect to a claim may be
579 taken as provided by law by the claimant, the commissioner, or any person having standing to
580 object to the allowance or disallowance of the claim.

581 (10) (a) If a claim against the institution has been asserted in any judicial,
582 administrative, or other proceeding pending at the time the commissioner took possession of
583 the institution under this chapter or under Chapter 19, Acquisition of Failing Depository
584 Institutions or Holding Companies, the claimant shall file copies of all documents of record in
585 the pending proceeding with the commissioner within the time for filing claims as provided in

586 Subsection (2).

587 (b) [~~Such a claim~~] A claim under Subsection (10)(a) shall be allowed or disallowed
588 within 90 days of the receipt of the complete record of the proceedings.

589 (c) No application to lift the stay of a pending proceeding shall be filed until the claim
590 has been allowed or disallowed.

591 (d) The commissioner may petition the court [~~designated by Section 7-2-2~~] with
592 supervisory jurisdiction to lift the stay to determine whether the claim should be allowed or
593 disallowed.

594 (11) (a) All claims allowed by the commissioner and not disallowed or otherwise
595 modified by the court under Subsection (9), if not paid within 30 days after allowance, shall be
596 evidenced by a certificate payable only out of the assets of the institution in the possession of
597 the commissioner, subject to the priorities set forth in Section 7-2-15.

598 (b) This provision does not apply to a secured claim allowed by the commissioner
599 under Subsection (3)(a).

600 Section 8. Section 7-2-9 is amended to read:

601 **7-2-9. Conservatorship, receivership, or liquidation of institution -- Appointment**
602 **of receiver -- Review of actions.**

603 (1) (a) Upon taking possession of the institution, the commissioner may appoint a
604 receiver to perform the duties of the commissioner.

605 (b) Subject to any limitations, conditions, or requirements specified by the
606 commissioner and approved by the court, a receiver shall have all the powers and duties of the
607 commissioner under this chapter and the laws of this state to act as a conservator, receiver, or
608 liquidator of the institution.

609 (c) Actions of the commissioner in appointing a receiver shall be subject to review only
610 as provided in Section 7-2-2.

611 (2) (a) (i) If the deposits of the institution are to any extent insured by a federal deposit
612 insurance agency, the commissioner may appoint that agency as receiver.

613 (ii) After receiving notice in writing of the acceptance of the appointment, the
614 commissioner shall file a certificate of appointment in the commissioner's office and with the
615 clerk of the [~~district~~] court.

616 (iii) After the filing of the certificate, the possession of all assets, business, and

617 property of the institution is considered transferred from the institution and the commissioner
618 to the agency, and title to all assets, business, and property of the institution is vested in the
619 agency without the execution of any instruments of conveyance, assignment, transfer, or
620 endorsement.

621 (b) (i) If a federal deposit insurance agency accepts an appointment as receiver, it has
622 all the powers and privileges provided by the laws of this state and the United States with
623 respect to the conservatorship, receivership, or liquidation of an institution and the rights of its
624 depositors, and other creditors, including authority to make an agreement for the purchase of
625 assets and assumption of deposit and other liabilities by another depository institution or take
626 other action authorized by Title 12 of the United States Code to maintain the stability of the
627 banking system.

628 (ii) Such action by a federal deposit insurance agency may be taken upon approval by
629 the court, with or without prior notice.

630 (iii) Such actions or agreements may be disapproved, amended, or rescinded only upon
631 a finding by the court that the decisions or actions of the receiver are arbitrary, capricious,
632 fraudulent, or contrary to law.

633 (iv) In the event of any conflict between state and federal law, including provisions for
634 adjudicating claims against the institution or receiver, the receiver shall comply with the federal
635 law and any resulting violation of state law does not by itself constitute grounds for the court to
636 disapprove the actions of the receiver or impose any penalty for such violation.

637 (c) (i) The commissioner or any receiver appointed by ~~him~~ the commissioner shall
638 possess all the rights and claims of the institution against any person whose breach of fiduciary
639 duty or violations of the laws of this state or the United States applicable to depository
640 institutions may have caused or contributed to a condition which resulted in any loss incurred
641 by the institution or to its assets in the possession of the commissioner or receiver.

642 (ii) As used in this Subsection (2)(c), fiduciary duty includes those duties and standards
643 applicable under statutes and laws of this state and the United States to a director, officer, or
644 other party employed by or rendering professional services to a depository institution whose
645 deposits are insured by a federal deposit insurance agency.

646 (iii) Upon taking possession of an institution, no person other than the commissioner or
647 receiver shall have standing to assert any such right or claim of the institution, including its

648 depositors, creditors, or shareholders unless the right or claim has been abandoned by the
649 commissioner or receiver with approval of the court.

650 (iv) Any judgment based on the rights and claims of the commissioner or receiver shall
651 have priority in payment from the assets of the judgment debtors.

652 (d) For the purposes of this section, the term "federal deposit insurance agency" shall
653 include the Federal Deposit Insurance Corporation, the National Credit Union Administration
654 and any departments thereof or successors thereto, and any other federal agency authorized by
655 federal law to act as a conservator, receiver, and liquidator of a federally insured depository
656 institution, including the Resolution Trust Corporation and any department thereof or successor
657 thereto.

658 (3) (a) The receiver may employ assistants, agents, accountants, and legal counsel.

659 (b) If the receiver is not a federal deposit insurance agency, the compensation to be
660 paid such assistants, agents, accountants, and legal counsel shall be approved by the
661 commissioner.

662 (c) All expenses incident to the receivership shall be paid out of the assets of the
663 institution.

664 (d) If a receiver is not a federal deposit insurance agency, the receiver and any
665 assistants and agents shall provide bond or other security specified by the commissioner and
666 approved by the court for the faithful discharge of all duties and responsibilities in connection
667 with the receivership including the accounting for money received and paid.

668 (e) The cost of the bond shall be paid from the assets of the institution.

669 (f) Suit may be maintained on the bond by the commissioner or by any person injured
670 by a breach of the condition of the bond.

671 (4) (a) Upon the appointment of a receiver for an institution in possession pursuant to
672 this chapter, the commissioner and the department are exempt from liability or damages for any
673 act or omission of any receiver appointed pursuant to this section.

674 (b) This section does not limit the right of the commissioner to prescribe and enforce
675 rules regulating a receiver in carrying out its duties with respect to an institution subject to the
676 jurisdiction of the department.

677 (c) Any act or omission of the commissioner or of any federal deposit insurance agency
678 as a receiver appointed by ~~him~~ the commissioner while acting pursuant to this chapter shall

679 be deemed to be the exercise of a discretionary function within the meaning of Section
 680 [63G-7-301](#) of the laws of this state or Section 28 U.S.C. 2680(a) of the laws of the United
 681 States.

682 (5) (a) Actions, decisions, or agreements of a receiver under this chapter, other than
 683 allowance or disallowance of claims under Section [7-2-6](#), ~~[shall be]~~ are subject to judicial
 684 review ~~[only as follows]~~ if:

685 ~~[(a)]~~ (i) ~~[A petition for review shall be filed with the court having jurisdiction under~~
 686 ~~Section [7-2-2](#) not more than 90 days after the date]~~ a petition is filed in a court with jurisdiction
 687 under Title 78A, Judiciary and Judicial Administration, within 90 days after the day on which
 688 the act, decision, or agreement became effective or its terms are filed with the court[-]; and

689 ~~[(b)]~~ (ii) ~~[The petition shall state]~~ the petition states in simple, concise, and direct terms
 690 the facts and principles of law upon which the petitioner claims the act, decision, or agreement
 691 of the receiver was or would be arbitrary, capricious, fraudulent, or contrary to law and how the
 692 petitioner is or may be damaged thereby.

693 (b) The court shall dismiss any petition which fails to allege that the petitioner would
 694 be directly injured or damaged by the act, decision, or agreement which is the subject of the
 695 petition.

696 (c) Rule 11 of the Utah Rules of Civil Procedure shall apply to all parties with respect
 697 to the allegations set forth in a petition or response.

698 ~~[(e)]~~ (d) The receiver shall have 30 days after ~~[service of the petition within which]~~ the
 699 day on which the petition is served to respond.

700 ~~[(f)]~~ (e) All further proceedings are to be conducted in accordance with the Utah Rules
 701 of Civil Procedure.

702 (6) All notices required under this section shall be made in accordance with the Utah
 703 Rules of Civil Procedure and served upon the attorney general of the state of Utah, the
 704 commissioner of financial institutions, the receiver of the institution appointed under this
 705 chapter, and upon the designated representative of any party in interest who requests in writing
 706 such notice.

707 Section 9. Section [7-2-10](#) is amended to read:

708 **[7-2-10. Inventory of assets -- Listings of claims -- Report of proceedings -- Filing](#)**
 709 **[-- Inspection.](#)**

710 (1) As soon as is practical after taking possession of an institution the commissioner, or
711 any receiver or liquidator appointed by ~~[him]~~ the commissioner, shall make or cause to be
712 made in duplicate an inventory of its assets, one copy to be filed in ~~[his]~~ the commissioner's
713 office and one with the clerk of the ~~[district]~~ court.

714 (2) Upon the expiration of the time fixed for presentation of claims the commissioner,
715 or any receiver or liquidator appointed by ~~[him]~~ the commissioner, shall make in duplicate a
716 full and complete list of the claims presented, including and specifying claims disallowed by
717 ~~[him]~~ the commissioner, of which one copy shall be filed in ~~[his]~~ the commissioner's office and
718 one copy in the office of the clerk of the ~~[district]~~ court.

719 (3) The commissioner, or any receiver or liquidator appointed by ~~[him]~~ the
720 commissioner, shall in like manner make and file supplemental lists showing all claims
721 presented after the filing of the first list.

722 (4) The supplemental lists shall be filed every six months and at least 15 days before
723 the declaration of any dividend.

724 (5) At the time of the order for final distribution the commissioner, or any receiver or
725 liquidator appointed by ~~[him]~~ the commissioner, shall make a report in duplicate of the
726 proceeding, showing the disposition of the assets and liabilities of the institution, one copy to
727 be filed in ~~[his]~~ the commissioner's office and one with the clerk of the ~~[district]~~ court.

728 (6) The accounting, inventory, and lists of claims shall be open at all reasonable times
729 for inspection.

730 (7) Any objection to any report or accounting shall be filed with the clerk of the
731 ~~[district]~~ court within 30 days after the report of accounting has been filed by the
732 commissioner, or any receiver or liquidator appointed by ~~[him,]~~ the commissioner, and shall be
733 subject to judicial review only as provided in Section 7-2-9.

734 Section 10. Section 7-5-13 is amended to read:

735 **7-5-13. Collective investment funds.**

736 (1) A person authorized to engage in the trust business in this state may:

737 (a) establish collective investment funds that authorize participation by fiduciary or
738 trust accounts of the trust company, its affiliates, or both; and

739 (b) participate in collective investment funds established by an affiliate of the trust
740 company, if:

741 (i) the affiliate is authorized under the laws of its chartering authority to establish a
742 collective investment fund in which its affiliates may participate; and

743 (ii) the plan establishing the collective investment fund specifically authorized the
744 participation.

745 (2) Funds held by a trust company may be invested collectively in a collective
746 investment fund in accordance with the rules prescribed by the appropriate governmental
747 regulatory agency or agencies, if this investment is not specifically prohibited under the
748 instrument, judgment, decree, or order creating the regulatory relationship.

749 (3) Unless ordered to do so by a court [~~of competent jurisdiction~~], a trust company
750 operating collective investment funds is not required to render a court accounting with regard
751 to those funds[~~; but it may, by application to the district court,~~] but the trust company may
752 bring a petition to a court with jurisdiction under the Title 78A, Judiciary and Judicial
753 Administration, to secure approval of such an accounting on such conditions as the court may
754 establish.

755 (4) This section applies to all relationships in existence on or after May 1, 1989.

756 Section 11. Section **7-23-401** is amended to read:

757 **7-23-401. Operational requirements for deferred deposit loans.**

758 (1) If a deferred deposit lender extends a deferred deposit loan, the deferred deposit
759 lender shall:

760 (a) post in a conspicuous location on its premises that can be viewed by a person
761 seeking a deferred deposit loan:

762 (i) a complete schedule of any interest or fees charged for a deferred deposit loan that
763 states the interest and fees using dollar amounts;

764 (ii) a number the person can call to make a complaint to the department regarding the
765 deferred deposit loan; and

766 (iii) a list of states where the deferred deposit lender is registered or authorized to offer
767 deferred deposit loans through the Internet or other electronic means;

768 (b) enter into a written contract for the deferred deposit loan;

769 (c) conspicuously disclose in the written contract:

770 (i) that under Subsection (3)(a), a person receiving a deferred deposit loan may make a
771 partial payment in increments of at least \$5 on the principal owed on the deferred deposit loan

772 without incurring additional charges above the charges provided in the written contract;

773 (ii) that under Subsection (3)(b), a person receiving a deferred deposit loan may rescind
774 the deferred deposit loan on or before 5 p.m. of the next business day without incurring any
775 charges;

776 (iii) that under Subsection (4)(b), the deferred deposit loan may not be rolled over
777 without the person receiving the deferred deposit loan requesting the rollover of the deferred
778 deposit loan;

779 (iv) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the
780 rollover requires the person to pay the amount owed by the person under the deferred deposit
781 loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is
782 executed; and

783 (v) (A) the name and address of a designated agent required to be provided the
784 department under Subsection 7-23-201(2)(d)(vi); and

785 (B) a statement that service of process may be made to the designated agent;

786 (d) provide the person seeking the deferred deposit loan:

787 (i) a copy of the written contract described in Subsection (1)(c); and

788 (ii) written notice that the person seeking the deferred deposit loan is eligible to enter
789 into an extended payment plan described in Section 7-23-403;

790 (e) orally review with the person seeking the deferred deposit loan the terms of the
791 deferred deposit loan including:

792 (i) the amount of any interest rate or fee;

793 (ii) the date on which the full amount of the deferred deposit loan is due;

794 (iii) that under Subsection (3)(a), a person receiving a deferred deposit loan may make
795 a partial payment in increments of at least \$5 on the principal owed on the deferred deposit
796 loan without incurring additional charges above the charges provided in the written contract;

797 (iv) that under Subsection (3)(b), a person receiving a deferred deposit loan may
798 rescind the deferred deposit loan on or before 5 p.m. of the next business day without incurring
799 any charges;

800 (v) that under Subsection (4)(b), the deferred deposit loan may not be rolled over
801 without the person receiving the deferred deposit loan requesting the rollover of the deferred
802 deposit loan; and

803 (vi) that under Subsection (4)(c), the deferred deposit loan may not be rolled over if the
804 rollover requires the person to pay the amount owed by the person under the deferred deposit
805 loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is
806 executed;

807 (f) comply with the following as in effect on the date the deferred deposit loan is
808 extended:

809 (i) Truth in Lending Act, 15 U.S.C. Sec. 1601 et seq., and its implementing federal
810 regulations;

811 (ii) Equal Credit Opportunity Act, 15 U.S.C. Sec. 1691, and its implementing federal
812 regulations;

813 (iii) Bank Secrecy Act, 12 U.S.C. Sec. 1829b, 12 U.S.C. Sec. 1951 through 1959, and
814 31 U.S.C. Sec. 5311 through 5332, and its implementing regulations; and

815 (iv) Title 70C, Utah Consumer Credit Code;

816 (g) in accordance with Subsection (6), make an inquiry to determine whether a person
817 attempting to receive a deferred deposit loan has the ability to repay the deferred deposit loan
818 in the ordinary course, which may include rollovers or extended payment plans as allowed
819 under this chapter;

820 (h) in accordance with Subsection (7), receive a signed acknowledgment from a person
821 attempting to receive a deferred deposit loan that the person has the ability to repay the
822 deferred deposit loan, which may include rollovers or extended payment plans as allowed by
823 this chapter; and

824 (i) report the original loan amount, payment in full, or default of a deferred deposit
825 loan to a consumer reporting agency, as defined in 15 U.S.C. Sec. 1681a, in accordance with
826 procedures established by the consumer reporting agency.

827 (2) If a deferred deposit lender extends a deferred deposit loan through the Internet or
828 other electronic means, the deferred deposit lender shall provide the information described in
829 Subsection (1)(a) to the person receiving the deferred deposit loan:

830 (a) in a conspicuous manner; and

831 (b) prior to the person entering into the deferred deposit loan.

832 (3) A deferred deposit lender that engages in a deferred deposit loan shall permit a
833 person receiving a deferred deposit loan to:

834 (a) make partial payments in increments of at least \$5 on the principal owed on the
835 deferred deposit loan at any time prior to maturity without incurring additional charges above
836 the charges provided in the written contract; and

837 (b) rescind the deferred deposit loan without incurring any charges by returning the
838 deferred deposit loan amount to the deferred deposit lender on or before 5 p.m. the next
839 business day following the deferred deposit loan transaction.

840 (4) A deferred deposit lender that engages in a deferred deposit loan may not:

841 (a) collect additional interest on a deferred deposit loan with an outstanding principal
842 balance 10 weeks after the day on which the deferred deposit loan is executed;

843 (b) roll over a deferred deposit loan without the person receiving the deferred deposit
844 loan requesting the rollover of the deferred deposit loan;

845 (c) roll over a deferred deposit loan if the rollover requires a person to pay the amount
846 owed by the person under a deferred deposit loan in whole or in part more than 10 weeks from
847 the day on which the deferred deposit loan is first executed;

848 (d) extend a new deferred deposit loan to a person on the same business day that the
849 person makes a payment on another deferred deposit loan if:

850 (i) the payment results in the principal of that deferred deposit loan being paid in full;
851 and

852 (ii) the combined terms of the original deferred deposit loan and the new deferred
853 deposit loan total more than 10 weeks of consecutive interest;

854 (e) avoid the limitations of Subsections (4)(a) and (4)(c) by extending a new deferred
855 deposit loan whose proceeds are used to satisfy or refinance any portion of an existing deferred
856 deposit loan;

857 (f) threaten to use or use the criminal process in any state to collect on the deferred
858 deposit loan;

859 (g) in connection with the collection of money owed on a deferred deposit loan,
860 communicate with a person who owes money on a deferred deposit loan at the person's place of
861 employment if the person or the person's employer communicates, orally or in writing, to the
862 deferred deposit lender that the person's employer prohibits the person from receiving these
863 communications;

864 (h) modify by contract the venue provisions in [~~Title 78B, Chapter 3, Actions and~~

865 ~~Venue~~] Title 78B, Chapter 3a, Venue for Civil Actions; or

866 (i) avoid the requirements of Subsection 7-23-403(1)(c) by extending an
867 interest-bearing loan within seven calendar days before the day on which the 10-week period
868 ends.

869 (5) Notwithstanding Subsections (4)(a) and (f), a deferred deposit lender that is the
870 holder of a check used to obtain a deferred deposit loan that is dishonored may use the
871 remedies and notice procedures provided in Chapter 15, Dishonored Instruments, except that
872 the issuer, as defined in Section 7-15-1, of the check may not be:

873 (a) asked by the holder to pay the amount described in Subsection 7-15-1(6)(a)(iii) as a
874 condition of the holder not filing a civil action; or

875 (b) held liable for the damages described in Subsection 7-15-1(7)(b)(vi).

876 (6) (a) The inquiry required by Subsection (1)(g) applies solely to the initial period of a
877 deferred deposit loan transaction with a person and does not apply to any rollover or extended
878 payment plan of a deferred deposit loan.

879 (b) Subject to Subsection (6)(c), a deferred deposit lender is in compliance with
880 Subsection (1)(g) if the deferred deposit lender, at the time of the initial period of the deferred
881 deposit loan transaction:

882 (i) obtains one of the following regarding the person seeking the deferred deposit loan:

883 (A) a consumer report, as defined in 15 U.S.C. Sec. 1681a, from a consumer reporting
884 agency, as defined in 15 U.S.C. Sec. 1681a; or

885 (B) written proof or verification of income from the person seeking the deferred
886 deposit loan; or

887 (ii) relies on the prior repayment history with the deferred deposit lender from the
888 records of the deferred deposit lender.

889 (c) If a person seeking a deferred deposit loan has not previously received a deferred
890 deposit loan from that deferred deposit lender, to be in compliance with Subsection (1)(g), the
891 deferred deposit lender, at the time of the initial period of the deferred deposit loan transaction,
892 shall obtain a consumer report, as defined in 15 U.S.C. Sec. 1681a, from a consumer reporting
893 agency, as defined in 15 U.S.C. Sec. 1681a.

894 (7) A deferred deposit lender is in compliance with Subsection (1)(h) if the deferred
895 deposit lender obtains from the person seeking the deferred deposit loan a signed

896 acknowledgment that is in 14-point bold font, that the person seeking the deferred deposit loan
897 has:

- 898 (a) reviewed the payment terms of the deferred deposit loan agreement;
- 899 (b) received a disclosure that a deferred deposit loan may not be rolled over if the
900 rollover requires the person to pay the amount owed by the person under the deferred deposit
901 loan in whole or in part more than 10 weeks after the day on which the deferred deposit loan is
902 first executed;
- 903 (c) received a disclosure explaining the extended payment plan options; and
- 904 (d) acknowledged the ability to repay the deferred deposit loan in the ordinary course,
905 which may include rollovers, or extended payment plans as allowed under this chapter.

906 (8) (a) Before initiating a civil action against a person who owes money on a deferred
907 deposit loan, a deferred deposit lender shall provide the person at least 30 days notice of
908 default, describing that:

- 909 (i) the person must remedy the default; and
- 910 (ii) the deferred deposit lender may initiate a civil action against the person if the
911 person fails to cure the default within the 30-day period or through an extended payment plan
912 meeting the requirements of Section 7-23-403.

913 (b) A deferred deposit lender may provide the notice required under this Subsection
914 (8):

- 915 (i) by sending written notice to the address provided by the person to the deferred
916 deposit lender;
- 917 (ii) by sending an electronic transmission to a person if electronic contact information
918 is provided to the deferred deposit lender; or
- 919 (iii) pursuant to the Utah Rules of Civil Procedure.

920 (c) A notice under this Subsection (8), in addition to complying with Subsection (8)(a),
921 shall:

- 922 (i) be in English, if the initial transaction is conducted in English;
- 923 (ii) state the date by which the person must act to enter into an extended payment plan;
- 924 (iii) explain the procedures the person must follow to enter into an extended payment
925 plan;
- 926 (iv) subject to Subsection 7-23-403(7), if the deferred deposit lender requires the

927 person to make an initial payment to enter into an extended payment plan:

928 (A) explain the requirement; and

929 (B) state the amount of the initial payment and the date the initial payment shall be
930 made;

931 (v) state that the person has the opportunity to enter into an extended payment plan for
932 a time period meeting the requirements of Subsection 7-23-403(2)(b); and

933 (vi) include the following amounts:

934 (A) the remaining balance on the original deferred deposit loan;

935 (B) the total payments made on the deferred deposit loan;

936 (C) any charges added to the deferred deposit loan amount allowed pursuant to this
937 chapter; and

938 (D) the total amount due if the person enters into an extended payment plan.

939 Section 12. Section 16-6a-117 is amended to read:

940 **16-6a-117. Judicial relief.**

941 (1) (a) A director, officer, delegate, or member [~~may petition the applicable district~~
942 ~~court to take an action provided in Subsection (1)(b)] of a nonprofit corporation may bring an
943 action against the nonprofit corporation if for any reason it is impractical or impossible for a
944 nonprofit corporation in the manner prescribed by this chapter[~~;~~~~its~~] or the nonprofit
945 corporation's articles of incorporation[;] or bylaws to:~~

946 (i) call or conduct a meeting of [~~its~~] the nonprofit corporation's members, delegates, or
947 directors; or

948 (ii) otherwise obtain the consent of [~~its~~] the nonprofit corporation's members,
949 delegates, or directors.

950 (b) If [~~a petition~~] an action is filed under Subsection (1)(a), the [~~applicable district~~]
951 court, in the manner [~~it~~] the court finds fair and equitable under the circumstances, may order
952 that:

953 (i) a meeting be called; or

954 (ii) a written consent or other form of obtaining the vote of members, delegates, or
955 directors be authorized.

956 [~~(c) For purposes of this section, the applicable district court is:~~]

957 [~~(i) the district court of the county in this state where the nonprofit corporation's~~]

958 ~~principal office is located; or]~~

959 ~~[(ii) if the nonprofit corporation has no principal office in this state:]~~

960 ~~[(A) the district court of the county in which the registered office is located; or]~~

961 ~~[(B) if the nonprofit corporation has no registered office in this state, the district court~~
962 ~~in and for Salt Lake County.]~~

963 (2) (a) A court specified in Subsection (1) shall, in an order issued pursuant to this
964 section, provide for a method of notice reasonably designed to give actual notice to all persons
965 who would be entitled to notice of a meeting held pursuant to this chapter, the articles of
966 incorporation, or bylaws.

967 (b) The method of notice described in Subsection (1) complies with this section
968 whether or not the method of notice:

969 (i) results in actual notice to all persons described in Subsection (2)(a); or

970 (ii) conforms to the notice requirements that would otherwise apply.

971 (c) In a proceeding under this section, the court may determine who are the members or
972 directors of a nonprofit corporation.

973 (3) An order issued pursuant to this section may dispense with any requirement relating
974 to the holding of or voting at meetings or obtaining votes that would otherwise be imposed by
975 this chapter~~[, the]~~ or the nonprofit corporation's articles of incorporation, or bylaws, including
976 any requirement as to:

977 (a) quorums; or

978 (b) the number or percentage of votes needed for approval.

979 (4) (a) Whenever practical, any order issued pursuant to this section shall limit the
980 subject matter of a meeting or other form of consent authorized to items the resolution of which
981 will or may enable the nonprofit corporation to continue managing ~~[its]~~ the nonprofit
982 corporation's affairs without further resort to this section, including amendments to the articles
983 of incorporation or bylaws.

984 (b) Notwithstanding Subsection (4)(a), an order under this section may authorize the
985 obtaining of whatever votes and approvals are necessary for the dissolution, merger, or sale of
986 assets of a nonprofit corporation.

987 (5) A meeting or other method of obtaining the vote of members, delegates, or
988 directors conducted pursuant to and that complies with an order issued under this section:

989 (a) is for all purposes a valid meeting or vote, as the case may be; and

990 (b) shall have the same force and effect as if it complied with every requirement
991 imposed by this chapter~~[, the]~~ or the nonprofit corporation's articles of incorporation~~[;]~~ or
992 bylaws.

993 (6) In addition to a meeting held under this section, a court-ordered meeting may be
994 held pursuant to Section 16-6a-703.

995 Section 13. Section **16-6a-703** is amended to read:

996 **16-6a-703. Court-ordered meeting.**

997 ~~[(1)(a) Upon an application described in Subsection (1)(b) the holding of a meeting of
998 the members may be summarily ordered by:]~~

999 ~~[(i) the district court of the county in this state where the nonprofit corporation's
1000 principal office is located; or]~~

1001 ~~[(ii) if the nonprofit corporation has no principal office in this state, the district court in
1002 and for Salt Lake County.]~~

1003 ~~[(b) (1) [Subsection (1)(a) applies to an application by:]~~

1004 ~~[(1) (a) [any] A voting member entitled to participate in an annual meeting may bring
1005 an action against a corporation if an annual meeting was required to be held and was not held
1006 within 15 months after:~~

1007 ~~[(A) (i) the corporation's last annual meeting; or~~

1008 ~~[(B) (ii) if there has been no annual meeting, the date of incorporation~~[; or]~~.~~

1009 ~~[(1) (b) [any] A person who participated in a call of or demand for a special meeting
1010 effective under Subsection 16-6a-702(1)~~[;]~~ may bring an action against a corporation if:~~

1011 ~~[(A) (i) notice of the special meeting was not given within 30 days after~~[;]~~~~

1012 ~~[(B) the date of the call~~[;]~~ or~~

1013 ~~[(C) the date the last of the demands necessary to require the calling of the meeting
1014 was received by the nonprofit corporation pursuant to Subsection 16-6a-702(1)(b); or~~

1015 ~~[(B) (ii) the special meeting was not held in accordance with the notice.~~

1016 ~~(2) If an action is brought under this section, a court may summarily order the holding
1017 of a meeting of the members.~~

1018 ~~[(2) (3) A court that orders a meeting under Subsection ~~[(1) (2)]~~ (2) may:~~

1019 (a) fix the time and place of the meeting;

- 1020 (b) determine the members entitled to participate in the meeting;
- 1021 (c) specify a record date for determining members entitled to notice of and to vote at
- 1022 the meeting;
- 1023 (d) prescribe the form and content of the notice of the meeting;
- 1024 (e) (i) fix the quorum required for specific matters to be considered at the meeting; or
- 1025 (ii) direct that the votes represented at the meeting constitute a quorum for action on
- 1026 the specific matters to be considered at the meeting; and
- 1027 (f) enter other orders necessary or appropriate to accomplish the holding of the
- 1028 meeting.

1029 Section 14. Section **16-6a-710** is amended to read:

1030 **16-6a-710. Members' list for meeting and action by written ballot.**

1031 (1) (a) Unless otherwise provided by the bylaws, after fixing a record date for a notice

1032 of a meeting or for determining the members entitled to take action by written ballot, a

1033 nonprofit corporation shall prepare a list of the names of all [its] the nonprofit corporation's

1034 members who are:

- 1035 (i) (A) entitled to notice of the meeting; and
- 1036 (B) to vote at the meeting; or
- 1037 (ii) to take the action by written ballot.
- 1038 (b) The list required by Subsection (1) shall:
- 1039 (i) be arranged by voting group;
- 1040 (ii) be alphabetical within each voting group;
- 1041 (iii) show the address of each member entitled to notice of, and to vote at, the meeting
- 1042 or to take such action by written ballot; and
- 1043 (iv) show the number of votes each member is entitled to vote at the meeting or by
- 1044 written ballot.

1045 (2) (a) If prepared in connection with a meeting of the members, the members' list

1046 required by Subsection (1) shall be available for inspection by any member entitled to vote at

1047 the meeting:

- 1048 (i) (A) beginning the earlier of:
- 1049 (I) 10 days before the meeting for which the list was prepared; or
- 1050 (II) two business days after notice of the meeting is given; and

1051 (B) continuing through the meeting, and any adjournment of the meeting; and
 1052 (ii) (A) at the nonprofit corporation's principal office; or
 1053 (B) at a place identified in the notice of the meeting in the city where the meeting will
 1054 be held.

1055 (b) (i) The nonprofit corporation shall make the members' list required by Subsection
 1056 (1) available at the meeting.

1057 (ii) Any member entitled to vote at the meeting or an agent or attorney of a member
 1058 entitled to vote at the meeting is entitled to inspect the members' list at any time during the
 1059 meeting or any adjournment.

1060 (c) A member entitled to vote at the meeting, or an agent or attorney of a member
 1061 entitled to vote at the meeting, is entitled on written demand to inspect and, subject to
 1062 Subsection 16-6a-1602(3) and Subsections 16-6a-1603(2) and (3), to copy a members' list
 1063 required by Subsection (1):

1064 (i) during:

1065 (A) regular business hours; and

1066 (B) the period it is available for inspection; and

1067 (ii) at the member's expense.

1068 (3) (a) ~~[On application of a]~~ A member of a nonprofit corporation~~[-, the applicable~~
 1069 ~~district court may take an action described in Subsection (3)(b)]~~ may bring an action against a
 1070 nonprofit corporation if the nonprofit corporation refuses to allow a member entitled to vote at
 1071 the meeting or by the written ballot, or an agent or attorney of a member entitled to vote at the
 1072 meeting or by the written ballot, to inspect or copy the members' list during the period [it] the
 1073 nonprofit corporation is required to be available for inspection under Subsection (2).

1074 (b) ~~[Under Subsection (3)(a), the applicable]~~ In an action under Subsection (3)(a), the
 1075 court may:

1076 (i) summarily order the inspection or copying of the members' list at the nonprofit
 1077 corporation's expense; and

1078 (ii) until the inspection or copying is complete:

1079 (A) postpone or adjourn the meeting for which the members' list was prepared; or

1080 (B) postpone the time when the nonprofit corporation must receive written ballots in
 1081 connection with which the members' list was prepared.

1082 ~~[(c) For purposes of this Subsection (3), the applicable court is:]~~
 1083 ~~[(i) the district court of the county in this state where the nonprofit corporation's~~
 1084 ~~principal office is located; or]~~
 1085 ~~[(ii) if the nonprofit corporation has no principal office in this state, the district court in~~
 1086 ~~and for Salt Lake County.]~~

1087 (4) If a court orders inspection or copying of a members' list pursuant to Subsection
 1088 (3), unless the nonprofit corporation proves that it refused inspection or copying of the list in
 1089 good faith because it had a reasonable basis for doubt about the right of the member or the
 1090 agent or attorney of the member to inspect or copy the members' list:

1091 (a) the court shall order the nonprofit corporation to pay the member's costs, including
 1092 reasonable counsel fees, incurred in obtaining the order;

1093 (b) the court may order the nonprofit corporation to pay the member for any damages
 1094 the member incurred; and

1095 (c) the court may grant the member any other remedy afforded the member by law.

1096 (5) If a court orders inspection or copying of a members' list pursuant to Subsection
 1097 (3), the court may impose reasonable restrictions on the use or distribution of the list by the
 1098 member.

1099 (6) Failure to prepare or make available the members' list does not affect the validity of
 1100 action taken at the meeting or by means of the written ballot.

1101 Section 15. Section **16-6a-809** is amended to read:

1102 **16-6a-809. Removal of directors by judicial proceeding.**

1103 (1) (a) ~~[The applicable]~~ A court may remove a director in ~~[a proceeding commenced~~
 1104 ~~either]~~ an action brought by the nonprofit corporation or by voting members holding at least
 1105 10% of the votes entitled to be cast in the election of the director's successor if the court finds
 1106 that:

1107 (i) the director engaged in:

1108 (A) fraudulent or dishonest conduct; or

1109 (B) gross abuse of authority or discretion with respect to the nonprofit corporation; or

1110 (ii) (A) a final judgment has been entered finding that the director has violated a duty
 1111 set forth in Section **16-6a-822**; and

1112 (B) removal is in the best interests of the nonprofit corporation.

- 1113 ~~[(b) For purposes of this Subsection (1), the applicable court is the:]~~
 1114 ~~[(i) district court of the county in this state where a nonprofit corporation's principal~~
 1115 ~~office is located; or]~~
 1116 ~~[(ii) if the nonprofit corporation has no principal office in this state:]~~
 1117 ~~[(A) the district court of the county in which its registered office is located; or]~~
 1118 ~~[(B) if the nonprofit corporation has no registered office, the district court for Salt Lake~~
 1119 ~~County.]~~
- 1120 (2) The court that removes a director may bar the director for a period prescribed by the
 1121 court from:
- 1122 (a) reelection;
 1123 (b) reappointment; or
 1124 (c) designation.
- 1125 (3) If voting members commence a proceeding under Subsection (1), the voting
 1126 members shall make the nonprofit corporation a party defendant.
- 1127 (4) A director who is removed pursuant to this section may deliver to the division for
 1128 filing a statement to that effect pursuant to Section [16-6a-1608](#).
- 1129 Section 16. Section **16-6a-1405** is amended to read:
- 1130 **16-6a-1405. Effect of dissolution.**
- 1131 (1) A dissolved nonprofit corporation continues its corporate existence but may not
 1132 carry on any activities except as is appropriate to wind up and liquidate its affairs, including:
- 1133 (a) collecting its assets;
 1134 (b) returning, transferring, or conveying assets held by the nonprofit corporation upon a
 1135 condition requiring return, transfer, or conveyance, which condition occurs by reason of the
 1136 dissolution, in accordance with the condition;
- 1137 (c) transferring, subject to any contractual or legal requirements, its assets as provided
 1138 in or authorized by its articles of incorporation or bylaws;
- 1139 (d) discharging or making provision for discharging its liabilities; and
 1140 (e) doing every other act necessary to wind up and liquidate its assets and affairs.
- 1141 (2) Dissolution of a nonprofit corporation does not:
- 1142 (a) transfer title to the nonprofit corporation's property including title to water rights,
 1143 water conveyance facilities, or other assets of a nonprofit corporation organized to divert or

1144 distribute water to its members;

1145 (b) subject its directors or officers to standards of conduct different from those
1146 prescribed in this chapter;

1147 (c) change quorum or voting requirements for its board of directors or members;

1148 (d) change provisions for selection, resignation, or removal of its directors or officers,
1149 or both;

1150 (e) change provisions for amending its bylaws or its articles of incorporation;

1151 (f) prevent commencement of a proceeding by or against the nonprofit corporation in
1152 its corporate name; or

1153 (g) abate or suspend a proceeding pending by or against the nonprofit corporation on
1154 the effective date of dissolution.

1155 (3) Nothing in this section may be applied in a manner inconsistent with a court's
1156 power of judicial dissolution exercised in accordance with Section 16-6a-1414 [~~or~~
1157 ~~16-6a-1415~~].

1158 Section 17. Section **16-6a-1414** is amended to read:

1159 **16-6a-1414. Grounds and procedure for judicial dissolution.**

1160 (1) [~~A nonprofit corporation may be dissolved in a proceeding by the~~] The attorney
1161 general or the division director may bring an action to dissolve a nonprofit corporation if it is
1162 established that:

1163 (a) the nonprofit corporation obtained [~~its~~] the nonprofit corporation's articles of
1164 incorporation through fraud; or

1165 (b) the nonprofit corporation has continued to exceed or abuse the authority conferred
1166 upon [~~it~~] the nonprofit corporation by law.

1167 (2) [~~A nonprofit corporation may be dissolved in a proceeding by a member or~~
1168 ~~director~~] A member or director of a nonprofit corporation may bring an action to dissolve the
1169 nonprofit corporation if it is established that:

1170 (a) (i) the directors are deadlocked in the management of the corporate affairs;

1171 (ii) the members, if any, are unable to break the deadlock; and

1172 (iii) irreparable injury to the nonprofit corporation is threatened or being suffered;

1173 (b) the directors or those in control of the nonprofit corporation have acted, are acting,
1174 or will act in a manner that is illegal, oppressive, or fraudulent;

1175 (c) the members are deadlocked in voting power and have failed, for a period that
 1176 includes at least two consecutive annual meeting dates, to elect successors to directors whose
 1177 terms have expired or would have expired upon the election of their successors; or

1178 (d) the corporate assets are being misapplied or wasted.

1179 (3) ~~[A nonprofit corporation may be dissolved in a proceeding by a creditor]~~ A creditor
 1180 may bring an action to dissolve a nonprofit corporation if it is established that:

1181 (a) (i) the creditor's claim has been reduced to judgment;

1182 (ii) the execution on the judgment has been returned unsatisfied; and

1183 (iii) the nonprofit corporation is insolvent; or

1184 (b) (i) the nonprofit corporation is insolvent; and

1185 (ii) the nonprofit corporation has admitted in writing that the creditor's claim is due and
 1186 owing.

1187 (4) If an action is brought under this section, it is not necessary to make directors or
 1188 members parties to the action to dissolve the nonprofit corporation unless relief is sought
 1189 against the members individually.

1190 (5) In an action under this section, the court may:

1191 (a) issue injunctions;

1192 (b) appoint a receiver or a custodian pendente lite with all powers and duties the court
 1193 directs; or

1194 (c) take other action required to preserve the nonprofit corporation's assets wherever
 1195 located and carry on the business of the nonprofit corporation until a full hearing can be held.

1196 ~~[(4)]~~ ~~(6)~~ ~~[(a)]~~ If a nonprofit corporation has been dissolved by voluntary or
 1197 administrative action taken under this part:

1198 ~~[(i)]~~ (a) the nonprofit corporation may bring a proceeding to wind up and liquidate its
 1199 business and affairs under judicial supervision in accordance with Section 16-6a-1405; and

1200 ~~[(ii)]~~ (b) the attorney general, a director, a member, or a creditor may bring a
 1201 proceeding to wind up and liquidate the affairs of the nonprofit corporation under judicial
 1202 supervision in accordance with Section 16-6a-1405, upon establishing the grounds set forth in
 1203 Subsections (1) through (3).

1204 ~~[(b) As used in Sections 16-6a-1415 through 16-6a-1417:]~~

1205 ~~[(i) a "judicial proceeding to dissolve the nonprofit corporation" includes a proceeding~~

1206 brought under this Subsection (4); and]
1207 [(ii) a "decree of dissolution" includes an order of a court entered in a proceeding under
1208 this Subsection (4) that directs that the affairs of a nonprofit corporation shall be wound up and
1209 liquidated under judicial supervision.]

1210 Section 18. Section **16-6a-1416** is amended to read:

1211 **16-6a-1416. Receivership or custodianship.**

1212 (1) As used in this section:

1213 (a) "Decree of dissolution" includes an order of a court entered in a proceeding under
1214 Subsection 16-6a-1414(4) that directs that the affairs of a nonprofit corporation be wound up
1215 and liquidated under judicial supervision.

1216 (b) "Judicial proceeding to dissolve the nonprofit corporation" includes a proceeding
1217 brought under Subsection 16-6a-1414(4).

1218 ~~(1)~~ (2) (a) A court in a judicial proceeding brought to dissolve a nonprofit corporation
1219 may appoint:

1220 (i) one or more receivers to wind up and liquidate the affairs of the nonprofit
1221 corporation; or

1222 (ii) one or more custodians to manage the affairs of the nonprofit corporation.

1223 (b) Before appointing a receiver or custodian, the court shall hold a hearing, after
1224 giving notice to:

1225 (i) all parties to the proceeding; and

1226 (ii) any interested persons designated by the court.

1227 (c) The court appointing a receiver or custodian has exclusive jurisdiction over the
1228 nonprofit corporation and all of its property, wherever located.

1229 (d) The court may appoint as a receiver or custodian:

1230 (i) an individual;

1231 (ii) a domestic or foreign corporation authorized to conduct affairs in this state; or

1232 (iii) a domestic or foreign nonprofit corporation authorized to conduct affairs in this
1233 state.

1234 (e) The court may require the receiver or custodian to post bond, with or without
1235 sureties, in an amount specified by the court.

1236 ~~(2)~~ (3) The court shall describe the powers and duties of the receiver or custodian in

1237 its appointing order that may be amended from time to time. Among other powers the receiver
1238 shall have the power to:

1239 (a) dispose of all or any part of the property of the nonprofit corporation, wherever
1240 located:

1241 (i) at a public or private sale; and

1242 (ii) if authorized by the court; and

1243 (b) sue and defend in the receiver's own name as receiver of the nonprofit corporation
1244 in all courts.

1245 ~~[(3)]~~ (4) The custodian may exercise all of the powers of the nonprofit corporation,
1246 through or in place of its board of directors or officers, to the extent necessary to manage the
1247 affairs of the nonprofit corporation in the best interests of its members and creditors.

1248 ~~[(4)]~~ (5) If doing so is in the best interests of the nonprofit corporation and its members
1249 and creditors, the court may:

1250 (a) during a receivership, redesignate the receiver as a custodian; and

1251 (b) during a custodianship, redesignate the custodian as a receiver.

1252 ~~[(5)]~~ (6) The court from time to time during the receivership or custodianship may
1253 order compensation paid and expense disbursements or reimbursements made from the assets
1254 of the nonprofit corporation or proceeds from the sale of the assets to:

1255 (a) the receiver;

1256 (b) the custodian; or

1257 (c) the receiver's or custodian's attorney.

1258 Section 19. Section **16-6a-1417** is amended to read:

1259 **16-6a-1417. Decree of dissolution.**

1260 (1) As used in this section:

1261 (a) "Decree of dissolution" includes an order of a court entered in a proceeding under
1262 Subsection 16-6a-1414(4) that directs that the affairs of a nonprofit corporation be wound up
1263 and liquidated under judicial supervision.

1264 (b) "Judicial proceeding to dissolve the nonprofit corporation" includes a proceeding
1265 brought under Subsection 16-6a-1414(4).

1266 ~~[(1)]~~ (2) If after a hearing the court determines that one or more grounds for judicial
1267 dissolution described in Section 16-6a-1414 exist:

- 1268 (a) the court may enter a decree:
- 1269 (i) dissolving the nonprofit corporation; and
- 1270 (ii) specifying the effective date of the dissolution; and
- 1271 (b) the clerk of the court shall deliver a certified copy of the decree to the division

1272 which shall file it accordingly.

1273 ~~[(2)]~~ (3) After entering the decree of dissolution, the court shall direct:

1274 (a) the winding up and liquidation of the nonprofit corporation's affairs in accordance
1275 with Section 16-6a-1405; and

1276 (b) the giving of notice to:

1277 (i) (A) the nonprofit corporation's registered agent; or

1278 (B) the division if it has no registered agent; and

1279 (ii) to claimants in accordance with Sections 16-6a-1406 and 16-6a-1407.

1280 ~~[(3)]~~ (4) The court's order or decision may be appealed as in other civil proceedings.

1281 Section 20. Section 16-6a-1604 is amended to read:

1282 **16-6a-1604. Court-ordered inspection of corporate records.**

1283 (1) (a) A director or member may ~~[petition the applicable court]~~ bring an action against
1284 a nonprofit corporation if:

1285 (i) ~~[a]~~ the nonprofit corporation refuses to allow a director or member, or the director's
1286 or member's agent or attorney, to inspect or copy any records that the director or member is
1287 entitled to inspect or copy under Subsection 16-6a-1602(1); and

1288 (ii) the director or member complies with Subsection 16-6a-1602(1).

1289 (b) If ~~[petitioned]~~ an action is brought under Subsection (1)(a), the court may
1290 summarily order the inspection or copying of the records demanded at the nonprofit
1291 corporation's expense on an expedited basis.

1292 (2) (a) A director or member may ~~[petition the applicable court]~~ bring an action against
1293 a nonprofit corporation if:

1294 (i) ~~[a]~~ the nonprofit corporation refuses to allow a director or member, or the director's
1295 or member's agent or attorney, to inspect or copy any records that the director or member is
1296 entitled to inspect or copy pursuant to Subsections 16-6a-1602(2) and (3) within a reasonable
1297 time following the director's or member's demand; and

1298 (ii) the director or member complies with Subsections 16-6a-1602(2) and (3).

1299 (b) ~~[If the court is petitioned]~~ If an action is brought under Subsection (2)(a), the court
1300 may summarily order the inspection or copying of the records demanded.

1301 (3) If a court orders inspection or copying of the records demanded under Subsection
1302 (1) or (2), unless the nonprofit corporation proves that ~~[it]~~ the nonprofit corporation refused
1303 inspection or copying in good faith because ~~[it]~~ the nonprofit corporation had a reasonable
1304 basis for doubt about the right of the director or member, or the director's or member's agent or
1305 attorney, to inspect or copy the records demanded:

1306 (a) the court shall also order the nonprofit corporation to pay the director's or member's
1307 costs, including reasonable counsel fees, incurred to obtain the order;

1308 (b) the court may order the nonprofit corporation to pay the director or member for any
1309 damages the member incurred;

1310 (c) if inspection or copying is ordered pursuant to Subsection (2), the court may order
1311 the nonprofit corporation to pay the director's or member's inspection and copying expenses;
1312 and

1313 (d) the court may grant the director or member any other remedy provided by law.

1314 (4) If a court orders inspection or copying of records demanded, ~~[it]~~ the court may
1315 impose reasonable restrictions on the use or distribution of the records by the demanding
1316 director or member.

1317 ~~[(5) For purposes of this section, the applicable court is:]~~

1318 ~~[(a) the district court of the county in this state where the nonprofit corporation's~~
1319 ~~principal office is located; or]~~

1320 ~~[(b) if the nonprofit corporation has no principal office in this state, the district court in~~
1321 ~~and for Salt Lake County.]~~

1322 Section 21. Section **16-6a-1609** is amended to read:

1323 **16-6a-1609. Interrogatories by division.**

1324 (1) (a) The division may give interrogatories reasonably necessary to ascertain whether
1325 a nonprofit corporation has complied with the provisions of this chapter applicable to the
1326 nonprofit corporation to:

1327 (i) any domestic or foreign nonprofit corporation subject to the provisions of this
1328 chapter; and

1329 (ii) to any officer or director of a nonprofit corporation described in Subsection

- 1330 (1)(a)(i).
- 1331 (b) The interrogatories described in this Subsection (1) shall be answered within:
- 1332 (i) 30 days after the mailing of the interrogatories; or
- 1333 (ii) additional time as fixed by the division.
- 1334 (c) The answers to the interrogatories shall be:
- 1335 (i) full and complete; and
- 1336 (ii) made in writing.
- 1337 (d) (i) If the interrogatories are directed to an individual, the interrogatories shall be
- 1338 answered by the individual.
- 1339 (ii) If directed to a nonprofit corporation, the interrogatories shall be answered by:
- 1340 (A) the chair of the board of directors of the nonprofit corporation;
- 1341 (B) all of the nonprofit corporation's directors;
- 1342 (C) one of the nonprofit corporation's officers; or
- 1343 (D) any other person authorized to answer the interrogatories as the nonprofit
- 1344 corporation's agent.
- 1345 (e) (i) The division need not file any document to which the interrogatories relate until
- 1346 the interrogatories are answered as provided in this section.
- 1347 (ii) Notwithstanding Subsection (1)(e)(i), the division need not file a document to
- 1348 which the interrogatory relates if the answers to the interrogatory disclose that the document is
- 1349 not in conformity with the provisions of this chapter.
- 1350 (f) The division shall certify to the attorney general, for such action as the attorney
- 1351 general considers appropriate, all interrogatories and answers to interrogatories that disclose a
- 1352 violation of this chapter.
- 1353 (2) (a) Interrogatories given by the division under Subsection (1), and the answers to
- 1354 interrogatories, may not be open to public inspection.
- 1355 (b) The division may not disclose any facts or information obtained from the
- 1356 interrogatories or answers to the interrogatories, except:
- 1357 (i) as the official duties of the division may require the facts or information to be made
- 1358 public; or
- 1359 (ii) in the event the interrogatories or the answers to the interrogatories are required for
- 1360 evidence in any criminal proceedings or in any other action by this state.

1361 (3) Each domestic or foreign nonprofit corporation that knowingly fails or refuses to
1362 answer truthfully and fully, within the time prescribed by Subsection (1), interrogatories given
1363 to the domestic or foreign nonprofit corporation by the division in accordance with Subsection
1364 (1) is guilty of a class C misdemeanor and, upon conviction, shall be punished by a fine of not
1365 more than \$500.

1366 (4) Each officer and director of a domestic or foreign nonprofit corporation who
1367 knowingly fails or refuses to answer truthfully and fully, within the time prescribed by
1368 Subsection (1), interrogatories given to the officer or director by the division in accordance
1369 with Subsection (1) is guilty of a class B misdemeanor and, upon conviction, shall be punished
1370 by a fine of not more than \$1,000.

1371 (5) The attorney general may enforce this section ~~[in an action brought in:]~~ by bringing
1372 an action in the district court in accordance with Title 78B, Chapter 3a, Venue for Civil
1373 Actions.

1374 ~~[(a) the district court of the county in this state where the nonprofit corporation's~~
1375 ~~principal office or registered office is located; or]~~

1376 ~~[(b) if the nonprofit corporation has no principal or registered office in this state, in the~~
1377 ~~district court in and for Salt Lake County.]~~

1378 Section 22. Section **16-10a-126** is amended to read:

1379 **16-10a-126. Appeal from division's refusal to file document.**

1380 (1) (a) If the division refuses to file a document delivered to ~~[it]~~ the division for filing,
1381 the domestic or foreign corporation for which the filing was requested, or its representative,
1382 within 30 days after the effective date of the notice of refusal given by the division pursuant to
1383 Subsection **16-10a-125**(3), may appeal the refusal to the district court ~~[of the county where the~~
1384 ~~corporation's principal office is or will be located, or if there is none in this state, the county~~
1385 ~~where its registered office is or will be located]~~ in accordance with Title 78B, Chapter 3a,
1386 Venue for Civil Actions.

1387 (b) The appeal is commenced by petitioning the court to compel the filing of the
1388 document and by attaching to the petition a copy of the document and the division's notice of
1389 refusal.

1390 (2) The court may summarily order the division to file the document or take other
1391 action the court considers appropriate.

1392 (3) The court's final decision may be appealed as in any other civil proceedings.

1393 Section 23. Section **16-10a-303** is amended to read:

1394 **16-10a-303. Ultra vires.**

1395 (1) Except as provided in Subsection (2), the validity of corporate action may not be
1396 challenged on the ground that the corporation lacks or lacked power to act.

1397 (2) A corporation's power to act may be challenged:

1398 (a) in [~~a proceeding~~] an action by a shareholder against the corporation to enjoin the
1399 act;

1400 (b) in [~~a proceeding~~] an action by the corporation, directly, derivatively, or through a
1401 receiver, trustee, or other legal representative, against an incumbent or former director, officer,
1402 employee, or agent of the corporation; or

1403 (c) in [~~a proceeding~~] an action by the attorney general under Section **16-10a-1430**.

1404 (3) In a shareholder's [~~proceeding~~] action under Subsection (2)(a) to enjoin an
1405 unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all
1406 affected persons are parties to the proceeding, and may award damages for loss, other than
1407 anticipated profits, suffered by the corporation or another party because of enjoining the
1408 unauthorized act.

1409 Section 24. Section **16-10a-703** is amended to read:

1410 **16-10a-703. Court-ordered meeting.**

1411 (1) [~~The district court of the county in this state where a corporation's principal office~~
1412 ~~is located or, if it has no principal office in this state, the district court for Salt Lake County]~~ A
1413 court may summarily order a meeting of shareholders to be held:

1414 (a) [~~on application of any~~] in an action brought by a shareholder of the corporation
1415 entitled to participate in an annual meeting or any director of the corporation if an annual
1416 meeting was not held within 15 months after its last annual meeting, or if there has been no
1417 annual meeting, the date of incorporation; or

1418 (b) [~~on application of any person~~] in an action brought by a person who participated in
1419 a call of or demand for a special meeting effective under Subsection **16-10a-702**(1) if:

1420 (i) notice of the special meeting was not given within 60 days after the date of the call
1421 or the date the last of the demands necessary to require the calling of the meeting was delivered
1422 to the corporation pursuant to Subsection **16-10a-702**(1)(b), as the case may be; or

1423 (ii) the special meeting was not held in accordance with the notice.

1424 (2) The court may fix the time and place of the meeting, state whether or not it is an
1425 annual or special meeting, determine the shares entitled to participate in the meeting, specify a
1426 record date for determining shareholders entitled to notice of and to vote at the meeting,
1427 prescribe the form and content of the meeting notice, fix the quorum required for specific
1428 matters to be considered at the meeting, or direct that the votes represented at the meeting
1429 constitute a quorum for action on those matters, and enter other orders necessary or appropriate
1430 to accomplish the purpose or purposes of holding the meeting.

1431 Section 25. Section **16-10a-720** is amended to read:

1432 **16-10a-720. Shareholders' list for meeting.**

1433 (1) (a) After fixing a record date for a shareholders' meeting, a corporation shall
1434 prepare a list of the names of all [its] the corporation's shareholders who are entitled to be
1435 given notice of the meeting.

1436 (b) The list shall be arranged by voting group, and within each voting group by class or
1437 series of shares.

1438 (c) The list shall be alphabetical within each class or series and shall show the address
1439 of, and the number of shares held by, each shareholder.

1440 (2) (a) The shareholders' list shall be available for inspection by any shareholder,
1441 beginning on the earlier of 10 days before the meeting for which the list was prepared or two
1442 business days after notice of the meeting is given and continuing through the meeting and any
1443 meeting adjournments, at the corporation's principal office or at a place identified in the
1444 meeting notice in the city where the meeting will be held.

1445 (b) A shareholder or a shareholder's agent or attorney is entitled on written demand to
1446 the corporation and, subject to the requirements of Subsections **16-10a-1602**(3) and (7), and the
1447 provisions of Subsections **16-10a-1603**(2) and (3), to inspect and copy the list, during regular
1448 business hours and during the period [it] the list is available for inspection.

1449 (3) The corporation shall make the shareholders' list available at the meeting, and any
1450 shareholder, or any shareholder's agent or attorney is entitled to inspect the list at any time
1451 during the meeting or any adjournment, for any purposes germane to the meeting.

1452 (4) If the corporation refuses to allow a shareholder, or the shareholder's agent or
1453 attorney, to inspect the shareholders' list before or at the meeting, or to copy the list as

1454 permitted by Subsection (2), [~~the district court of the county where a corporation's principal~~
1455 ~~office is located, or, if it has none in this state, the district court for Salt Lake County, on~~
1456 ~~application of the shareholder, may]~~ a shareholder may bring an action against the corporation
1457 for a court to:

1458 (a) summarily order the inspection or copying at the corporation's expense [~~and may~~];
1459 and

1460 (b) postpone the meeting for which the list was prepared until the inspection or copying
1461 is complete.

1462 (5) If a court orders inspection or copying of the shareholders' list pursuant to
1463 Subsection (4), unless the corporation proves that [~~it~~] the corporation refused inspection or
1464 copying of the list in good faith because [~~it~~] the corporation had a reasonable basis for doubt
1465 about the right of the shareholder or the shareholder's agent or attorney to inspect or copy the
1466 shareholders' list:

1467 (a) the court shall also order the corporation to pay the shareholder's costs, including
1468 reasonable counsel fees, incurred to obtain the order;

1469 (b) the court may order the corporation to pay the shareholder for any damages
1470 incurred; and

1471 (c) the court may grant the shareholder any other remedy afforded by law.

1472 (6) If a court orders inspection or copying of the shareholders' list pursuant to
1473 Subsection (4), the court may impose reasonable restrictions on the use or distribution of the
1474 list by the shareholder.

1475 (7) Refusal or failure to prepare or make available the shareholders' list does not affect
1476 the validity of action taken at the meeting.

1477 Section 26. Section **16-10a-1330** is amended to read:

1478 **16-10a-1330. Judicial appraisal of shares -- Court action.**

1479 (1) (a) If a demand for payment under Section **16-10a-1328** remains unresolved, the
1480 corporation shall [~~commence a proceeding~~] bring an action, within 60 days after receiving the
1481 payment demand contemplated by Section **16-10a-1328**, [~~and petition~~] for the court to
1482 determine the fair value of the shares and the amount of interest.

1483 (b) If the corporation does not [~~commence the proceeding~~] bring an action within the
1484 60-day period, [~~it~~] the corporation shall pay each dissenter whose demand remains unresolved

1485 the amount demanded.

1486 ~~[(2) The corporation shall commence the proceeding described in Subsection (1) in the~~
1487 ~~district court of the county in this state where the corporation's principal office, or if it has no~~
1488 ~~principal office in this state, Salt Lake County. If the corporation is a foreign corporation, it~~
1489 ~~shall commence the proceeding in the county in this state where the principal office of the~~
1490 ~~domestic corporation merged with, or whose shares were acquired by, the foreign corporation~~
1491 ~~was located, or, if the domestic corporation did not have its principal office in this state at the~~
1492 ~~time of the transaction, in Salt Lake County.]~~

1493 ~~[(3)]~~ (2) (a) The corporation shall make all dissenters who have satisfied the
1494 requirements of Sections 16-10a-1321, 16-10a-1323, and 16-10a-1328, whether or not they are
1495 residents of this state whose demands remain unresolved, parties to the ~~[proceeding~~
1496 ~~commenced]~~ action brought under Subsection ~~[(2)]~~ (1) as an action against their shares.

1497 (b) All such dissenters who are named as parties shall be served with a copy of the
1498 ~~[petition]~~ complaint.

1499 (c) (i) Service on each dissenter may be by registered or certified mail to the address
1500 stated in ~~[his]~~ the dissenter's payment demand made pursuant to Section 16-10a-1328.

1501 (ii) If no address is stated in the payment demand, service may be made at the address
1502 stated in the payment demand given pursuant to Section 16-10a-1323.

1503 (iii) If no address is stated in the payment demand, service may be made at the address
1504 shown on the corporation's current record of shareholders for the record shareholder holding
1505 the dissenter's shares.

1506 (iv) Service may also be made otherwise as provided by law.

1507 ~~[(4)]~~ (3) (a) The jurisdiction of the court in which the ~~[proceeding is commenced]~~
1508 action is brought under Subsection ~~[(2)]~~ (1) is plenary and exclusive.

1509 (b) The court may appoint one or more persons as appraisers to receive evidence and
1510 recommend decision on the question of fair value.

1511 (c) The appraisers have the powers described in the order appointing them, or in any
1512 amendment to it.

1513 (d) The dissenters are entitled to the same discovery rights as parties in other civil
1514 proceedings.

1515 ~~[(5)]~~ (4) Each dissenter made a party to the ~~[proceeding commenced]~~ action brought

1516 under Subsection [(2)] (1) is entitled to judgment:

1517 (a) for the amount, if any, by which the court finds that the fair value of [his] the
1518 dissenter's shares, plus interest, exceeds the amount paid by the corporation pursuant to Section
1519 16-10a-1325; or

1520 (b) for the fair value, plus interest, of the dissenter's after-acquired shares for which the
1521 corporation elected to withhold payment under Section 16-10a-1327.

1522 Section 27. Section **16-10a-1430** is amended to read:

1523 **16-10a-1430. Grounds and procedure for judicial dissolution.**

1524 (1) [~~A corporation may be dissolved in a proceeding by the attorney general or the~~
1525 ~~division director~~] The attorney general or the division director may bring an action to dissolve a
1526 corporation if it is established that:

1527 (a) the corporation obtained its articles of incorporation through fraud; or

1528 (b) the corporation has continued to exceed or abuse the authority conferred upon [it]
1529 the corporation by law.

1530 (2) [~~A corporation may be dissolved in a proceeding by a shareholder~~] A shareholder
1531 may bring an action to dissolve a corporation if it is established that:

1532 (a) the directors are deadlocked in the management of the corporate affairs, the
1533 shareholders are unable to break the deadlock, irreparable injury to the corporation is
1534 threatened or being suffered, or the business and affairs of the corporation can no longer be
1535 conducted to the advantage of the shareholders generally, because of the deadlock;

1536 (b) the directors or those in control of the corporation have acted, are acting, or will act
1537 in a manner that is illegal, oppressive, or fraudulent;

1538 (c) the shareholders are deadlocked in voting power and have failed, for a period that
1539 includes at least two consecutive annual meeting dates, to elect successors to directors whose
1540 terms have expired or would have expired upon the election of their successors; or

1541 (d) the corporate assets are being misapplied or wasted.

1542 (3) [~~A corporation may be dissolved in a proceeding by a creditor~~] A creditor may
1543 bring an action to dissolve a corporation if it is established that:

1544 (a) the creditor's claim has been reduced to judgment, the execution on the judgment
1545 has been returned unsatisfied, and the corporation is insolvent; or

1546 (b) the corporation is insolvent and the corporation has admitted in writing that the

1547 creditor's claim is due and owing.

1548 (4) ~~[A corporation may be dissolved in a proceeding by the corporation to have its]~~ A
1549 corporation may bring an action to dissolve the corporation by voluntary dissolution continued
1550 under court supervision.

1551 (5) If an action is brought under this section, it is not necessary to make shareholders
1552 parties to the action to dissolve a corporation unless relief is sought against them individually.

1553 (6) In a proceeding under this section, a court may:

1554 (a) issue injunctions;

1555 (b) appoint a receiver or custodian pendente lite with all powers and duties the court
1556 directs; or

1557 (c) take other action required to preserve the corporate assets wherever located and
1558 carry on the business of the corporation until a full hearing can be held.

1559 Section 28. Section **16-10a-1434** is amended to read:

1560 **16-10a-1434. Election to purchase in lieu of dissolution.**

1561 (1) In ~~[a proceeding]~~ an action under Subsection **16-10a-1430(2)** to dissolve a
1562 corporation that has no shares listed on a national securities exchange or regularly traded in a
1563 market maintained by one or more members of a national or affiliated securities association,
1564 the corporation may elect, or if it fails to elect, one or more shareholders may elect to purchase
1565 all shares of the corporation owned by the petitioning shareholder, at the fair value of the
1566 shares, determined as provided in this section. An election pursuant to this section is
1567 irrevocable unless the court determines that it is equitable to set aside or modify the election.

1568 (2) (a) An election to purchase pursuant to this section may be filed with the court at
1569 any time within 90 days after the filing of the ~~[petition]~~ action under Subsection
1570 **16-10a-1430(2)** or at any later time as the court in its discretion may allow. If the corporation
1571 files an election with the court within the 90-day period, or at any later time allowed by the
1572 court, to purchase all shares of the corporation owned by the petitioning shareholder, the
1573 corporation shall purchase the shares in the manner provided in this section.

1574 (b) If the corporation does not file an election with the court within the time period, but
1575 an election to purchase all shares of the corporation owned by the petitioning shareholder is
1576 filed by one or more shareholders within the time period, the corporation shall, within 10 days
1577 after the later of:

1578 (i) the end of the time period allowed for the filing of elections to purchase under this
1579 section; or

1580 (ii) notification from the court of an election by shareholders to purchase all shares of
1581 the corporation owned by the petitioning shareholder as provided in this section, give written
1582 notice of the election to purchase to all shareholders of the corporation, other than the
1583 petitioning shareholder. The notice shall state the name and number of shares owned by the
1584 petitioning shareholder and the name and number of shares owned by each electing
1585 shareholder. The notice shall advise any recipients who have not participated in the election of
1586 their right to join in the election to purchase shares in accordance with this section, and of the
1587 date by which any notice of intent to participate must be filed with the court.

1588 (c) Shareholders who wish to participate in the purchase of shares from the petitioning
1589 shareholder shall file notice of their intention to join in the purchase by the electing
1590 shareholders, no later than 30 days after the effective date of the corporation's notice of their
1591 right to join in the election to purchase.

1592 (d) All shareholders who have filed with the court an election or notice of their
1593 intention to participate in the election to purchase the shares of the corporation owned by the
1594 petitioning shareholder thereby become irrevocably obligated to participate in the purchase of
1595 shares from the petitioning shareholders upon the terms and conditions of this section, unless
1596 the court otherwise directs.

1597 (e) After an election has been filed by the corporation or one or more shareholders, the
1598 [proceedings] action under Subsection 16-10a-1430(2) may not be discontinued or settled, nor
1599 may the petitioning shareholder sell or otherwise dispose of any shares of the corporation,
1600 unless the court determines that it would be equitable to the corporation and the shareholders,
1601 other than the petitioning shareholders, to permit any discontinuance, settlement, sale, or other
1602 disposition.

1603 (3) If, within 60 days after the earlier of:

1604 (a) the corporation's filing of an election to purchase all shares of the corporation
1605 owned by the petitioning shareholder; or

1606 (b) the corporation's mailing of a notice to its shareholders of the filing of an election
1607 by the shareholders to purchase all shares of the corporation owned by the petitioning
1608 shareholder, the petitioning shareholder and electing corporation or shareholders reach

1609 agreement as to the fair value and terms of purchase of the petitioning shareholder's shares, the
1610 court shall enter an order directing the purchase of petitioner's shares, upon the terms and
1611 conditions agreed to by the parties.

1612 (4) If the parties are unable to reach an agreement as provided for in Subsection (3),
1613 upon application of any party the court shall stay the proceedings under Subsection
1614 16-10a-1430(2) and determine the fair value of the petitioning shareholder's shares as of the
1615 day before the date on which the [petition] action under Subsection 16-10a-1430(2) was filed
1616 or as of any other date the court determines to be appropriate under the circumstances and
1617 based on the factors the court determines to be appropriate.

1618 (5) (a) Upon determining the fair value of the shares of the corporation owned by the
1619 petitioning shareholder, the court shall enter an order directing the purchase of the shares upon
1620 terms and conditions the court determines to be appropriate. The terms and conditions may
1621 include payment of the purchase price in installments, where necessary in the interests of
1622 equity, provision for security to assure payment of the purchase price and any additional costs,
1623 fees, and expenses awarded by the court, and an allocation of shares among shareholders if the
1624 shares are to be purchased by shareholders.

1625 (b) In allocating the petitioning shareholders' shares among holders of different classes
1626 of shares, the court shall attempt to preserve the existing distribution of voting rights among
1627 holders of different share classes to the extent practicable. The court may direct that holders of
1628 a specific class or classes may not participate in the purchase. The court may not require any
1629 electing shareholder to purchase more of the shares of the corporation owned by the petitioning
1630 shareholder than the number of shares that the purchasing shareholder may have set forth in his
1631 election or notice of intent to participate filed with the court as the maximum number of shares
1632 he is willing to purchase.

1633 (c) Interest may be allowed at the rate and from the date determined by the court to be
1634 equitable. However, if the court finds that the refusal of the petitioning shareholder to accept
1635 an offer of payment was arbitrary or otherwise not in good faith, interest may not be allowed.

1636 (d) If the court finds that the petitioning shareholder had probable grounds for relief
1637 under Subsection 16-10a-1430(2)(b) or (d), it may award to the petitioning shareholder
1638 reasonable fees and expenses of counsel and experts employed by the petitioning shareholder.

1639 (6) Upon entry of an order under Subsection (3) or (5), the court shall dismiss the

1640 ~~[petition]~~ action to dissolve the corporation under Section 16-10a-1430, and the petitioning
1641 shareholder shall no longer have any rights or status as a shareholder of the corporation, except
1642 the right to receive the amounts awarded to him by the court. The award is enforceable in the
1643 same manner as any other judgment.

1644 (7) (a) The purchase ordered pursuant to Subsection (5) shall be made within 10 days
1645 after the date the order becomes final, unless before that time the corporation files with the
1646 court a notice of its intention to adopt articles of dissolution pursuant to Sections 16-10a-1402
1647 and 16-10a-1403. The articles of dissolution must then be adopted and filed within 50 days
1648 after notice.

1649 (b) Upon filing of the articles of dissolution, the corporation is dissolved in accordance
1650 with the provisions of Sections 16-10a-1405 through 16-10a-1408, and the order entered
1651 pursuant to Subsection (5) is no longer of any force or effect. However, the court may award
1652 the petitioning shareholder reasonable fees and expenses in accordance with the provisions of
1653 Subsection (5)(d). The petitioning shareholder may continue to pursue any claims previously
1654 asserted on behalf of the corporation.

1655 (8) Any payment by the corporation pursuant to an order under Subsection (3) or (5),
1656 other than an award of fees and expenses pursuant to Subsection (5)(d), is subject to the
1657 provisions of Section 16-10a-640.

1658 Section 29. Section 16-10a-1532 is amended to read:

1659 **16-10a-1532. Appeal from revocation.**

1660 (1) (a) A foreign corporation may appeal the division's revocation of ~~[its]~~ the foreign
1661 corporation's authority to transact business in this state to the district court ~~[of the county in this~~
1662 ~~state where the last registered or principal office of the corporation was located or in Salt Lake~~
1663 ~~County,]~~ within 30 days after the notice of revocation is mailed under Section 16-10a-1531.

1664 (b) The foreign corporation appeals by petitioning the court to set aside the revocation
1665 and attaching to the petition copies of the corporation's application for authority to transact
1666 business, and any amended applications, each as filed with the division, and the division's
1667 notice of revocation.

1668 (c) A foreign corporation shall file an appeal under this Subsection (1) in accordance
1669 with Title 78B, Chapter 3a, Venue for Civil Actions.

1670 (2) The court may summarily order the division to reinstate the authority of the foreign

1671 corporation to transact business in this state or [it] the court may take any other action [it] the
1672 court considers appropriate.

1673 (3) The court's final decision may be appealed as in other civil proceedings.

1674 Section 30. Section **16-10a-1604** is amended to read:

1675 **16-10a-1604. Court-ordered inspection.**

1676 (1) If a corporation does not allow a shareholder or director, or the shareholder's or
1677 director's agent or attorney, who complies with Subsection **16-10a-1602**(1) to inspect or copy
1678 any records required by that subsection to be available for inspection, [~~the district court of the~~
1679 ~~county in this state in which the corporation's principal office is located, or in Salt Lake County~~
1680 ~~if it has no principal office in this state, may]~~ the shareholder or director may bring an action
1681 against the corporation for a court to summarily order inspection and copying of the records
1682 demandated at the corporation's expense[~~, on application of the shareholder or director denied~~
1683 ~~access to the records~~].

1684 (2) (a) If a corporation does not within a reasonable time allow a shareholder or
1685 director, or the shareholder's or director's agent or attorney, who complies with Subsections
1686 **16-10a-1602**(2) and (3), to inspect and copy any records which [~~he~~] the shareholder or director
1687 is entitled to inspect or copy by this part, [~~then upon application of the shareholder or director~~
1688 ~~denied access to the records, the district court of the county in this state where the corporation's~~
1689 ~~principal office is located or, if it has no principal office in this state, the district court for Salt~~
1690 ~~Lake County, may]~~ the shareholder or director may bring an action against the corporation for a
1691 court to summarily order the inspection or copying of the records demanded.

1692 (b) The court shall dispose of [~~an application~~] an action under this subsection on an
1693 expedited basis.

1694 (3) If a court orders inspection or copying of records demanded, [it] the court shall also
1695 order the corporation to pay the shareholder's or director's costs incurred to obtain the order,
1696 including reasonable counsel fees, unless the corporation proves that it refused inspection in
1697 good faith because it had a reasonable basis for doubt about the right of the shareholder or
1698 director, or the shareholder's or director's agent or attorney, to inspect the records demanded.

1699 (4) If a court orders inspection or copying of records demanded, [it] the court may:

1700 (a) impose reasonable restrictions on the use or distribution of the records by the
1701 demanding shareholder or director;

1702 (b) order the corporation to pay the shareholder or director for any damages incurred as
1703 a result of the corporation's denial if the court determines that the corporation did not act in
1704 good faith in refusing to allow the inspection or copying;

1705 (c) if inspection or copying is ordered pursuant to Subsection (2), order the corporation
1706 to pay the expenses of inspection and copying if the court determines that the corporation did
1707 not act in good faith in refusing to allow the inspection or copying; and

1708 (d) grant the shareholder or director any other available legal remedy.

1709 Section 31. Section **16-11-13** is amended to read:

1710 **16-11-13. Purchase or redemption of shares of disqualified shareholder.**

1711 (1) (a) The articles of incorporation may provide for the purchase or redemption of the
1712 shares of any shareholder upon the failure to qualify or disqualification of that shareholder, or
1713 the same may be provided in the bylaws or by private agreement.

1714 (b) In the absence of such a provision in the articles of incorporation, the bylaws, or by
1715 private agreement, the professional corporation shall purchase the shares of a shareholder who
1716 is not qualified to own shares in the corporation within 90 days after the failure to qualify or
1717 disqualification of the shareholder.

1718 (2) The price for shares purchased under this section shall be their reasonable fair value
1719 as of the date of failure to qualify or disqualification of the shareholder.

1720 (3) (a) If the professional corporation fails to purchase shares as required by Subsection
1721 (1), any disqualified shareholder or personal representative of a disqualified shareholder may
1722 bring an action [~~in the district court of the county in which the principal office or place of~~
1723 ~~practice of the professional corporation is located for the enforcement of this section. The~~
1724 ~~court shall have power to~~] for the enforcement of this section.

1725 (b) In an action under Subsection (3)(a), the court may:

1726 (i) award the plaintiff the reasonable fair value of [his shares, or within its jurisdiction,]
1727 the plaintiff's shares; or

1728 (ii) [~~may order~~] within the court's jurisdiction, order the liquidation of the professional
1729 corporation.

1730 (c) [~~Further, if~~] If the plaintiff is successful in the action, [he shall be] the plaintiff is
1731 entitled to recover a reasonable attorney's fee and costs.

1732 (4) The professional corporation shall repurchase shares as required by this section

1733 without regard to restrictions upon the repurchase of shares provided by Title 16, Chapter 10a,
1734 Utah Revised Business Corporation Act.

1735 Section 32. Section **16-16-202** is amended to read:

1736 **16-16-202. Signing and filing of records pursuant to judicial order.**

1737 (1) If a person required by this chapter to sign or deliver a record to the division for
1738 filing does not [~~do so, the district court, upon petition of an aggrieved person, may order~~] sign
1739 or deliver the record to the division for filing, the court may order, upon the petition of an
1740 aggrieved person:

1741 (a) the person to sign the record and deliver [~~it~~] the record to the division for filing; or

1742 (b) delivery of the unsigned record to the division for filing.

1743 (2) An aggrieved person under Subsection (1), other than the limited cooperative
1744 association or foreign cooperative to which the record pertains, shall make the association or
1745 foreign cooperative a party to the action brought to obtain the order.

1746 (3) An unsigned record filed pursuant to this section is effective.

1747 Section 33. Section **16-16-1203** is amended to read:

1748 **16-16-1203. Judicial dissolution.**

1749 [~~The district court may dissolve a limited cooperative association or order any action~~
1750 ~~that under the circumstances is appropriate and equitable:]~~

1751 (1) [~~in a proceeding initiated by the attorney general,]~~ The attorney general may bring
1752 an action to dissolve a limited cooperative association if:

1753 (a) the association obtained [~~its~~] the association's articles of organization through
1754 fraud; or

1755 (b) the association has continued to exceed or abuse the authority conferred upon [~~it~~]
1756 the corporation by law[~~;~~ ~~or~~].

1757 (2) [~~in a proceeding initiated by a member,]~~ A member may bring an action to dissolve
1758 a limited cooperative association if:

1759 (a) the directors are deadlocked in the management of the association's affairs, the
1760 members are unable to break the deadlock, and irreparable injury to the association is occurring
1761 or is threatened because of the deadlock;

1762 (b) the directors or those in control of the association have acted, are acting, or will act
1763 in a manner that is illegal, oppressive, or fraudulent;

1764 (c) the members are deadlocked in voting power and have failed to elect successors to
1765 directors whose terms have expired for two consecutive periods during which annual members
1766 meetings were held or were to be held; or

1767 (d) the assets of the association are being misapplied or wasted.

1768 (3) If an action is brought under this section, a court may dissolve a limited cooperative
1769 association or order an action that under the circumstances is appropriate or equitable.

1770 Section 34. Section **16-16-1206** is amended to read:

1771 **16-16-1206. Winding up.**

1772 (1) A limited cooperative association continues after dissolution only for purposes of
1773 winding up ~~[its]~~ the association's activities.

1774 (2) In winding up a limited cooperative association's activities, the board of directors
1775 shall cause the association to:

1776 (a) discharge ~~[its]~~ the association's liabilities, settle and close ~~[its]~~ the association's
1777 activities, and marshal and distribute ~~[its]~~ the association's assets;

1778 (b) preserve the association or its property as a going concern for no more than a
1779 reasonable time;

1780 (c) prosecute and defend actions and proceedings;

1781 (d) transfer association property; and

1782 (e) perform other necessary acts.

1783 (3) After dissolution and upon application of a limited cooperative association, a
1784 member, or a holder of financial rights, ~~[the district court]~~ a court may order judicial
1785 supervision of the winding up of the association, including the appointment of a person to wind
1786 up the association's activities, if:

1787 (a) after a reasonable time, the association has not wound up ~~[its]~~ the association's
1788 activities; or

1789 (b) the applicant establishes other good cause.

1790 (4) If a person is appointed pursuant to Subsection (3) to wind up the activities of a
1791 limited cooperative association, the association shall promptly deliver to the division for filing
1792 an amendment to the articles of organization to reflect the appointment.

1793 Section 35. Section **16-16-1210** is amended to read:

1794 **16-16-1210. Court proceeding.**

1795 (1) [~~Upon application~~] Upon a petition by a dissolved limited cooperative association
 1796 that has published a notice under Section 16-16-1209, [~~the district court in the county where~~
 1797 ~~the association's principal office is located or, if the association does not have a principal office~~
 1798 ~~in this state where its designated office in this state is located,]~~ a court with jurisdiction under
 1799 Title 78A, Judiciary and Judicial Administration, may determine the amount and form of
 1800 security to be provided for payment of claims against the association that are contingent, have
 1801 not been made known to the association, or are based on an event occurring after the effective
 1802 date of dissolution but that, based on the facts known to the association, are reasonably
 1803 anticipated to arise after the effective date of dissolution.

1804 (2) Not later than 10 days after filing [~~an application~~] a petition under Subsection (1), a
 1805 dissolved limited cooperative association shall give notice of the proceeding to each known
 1806 claimant holding a contingent claim.

1807 (3) (a) The court may appoint a representative in a proceeding brought under this
 1808 section to represent all claimants whose identities are unknown.

1809 (b) The dissolved limited cooperative association shall pay reasonable fees and
 1810 expenses of the representative, including all reasonable attorney and expert witness fees.

1811 (4) Provision by the dissolved limited cooperative association for security in the
 1812 amount and the form ordered by the court satisfies the association's obligations with respect to
 1813 claims that are contingent, have not been made known to the association, or are based on an
 1814 event occurring after the effective date of dissolution, and the claims may not be enforced
 1815 against a member that received a distribution.

1816 Section 36. Section **24-1-103** is amended to read:

1817 **24-1-103. Venue.**

1818 [~~(1)~~] In addition to the venue provided for under [~~Title 78B, Chapter 3, Part 3, Place of~~
 1819 ~~Trial -- Venue~~] Title 78B, Chapter 3a, Venue for Civil Actions, or any other provisions of law,
 1820 a proceeding under this title may be maintained in the judicial district in which:

1821 [~~(a)~~] (1) the property is seized;

1822 [~~(b)~~] (2) any part of the property is found; or

1823 [~~(c)~~] (3) a civil or criminal action could be maintained against a claimant for the
 1824 offense subjecting the property to forfeiture under this title.

1825 [~~(2) A claimant may obtain a change of venue under Section 78B-3-309.;~~]

1826 Section 37. Section **31A-1-401** is enacted to read:

1827 **Part 4. Venue**

1828 **31A-1-401. Venue for action or petition filed by commissioner.**

1829 If the commissioner brings an action, or files a petition, under this title in the district
1830 court, the commissioner shall bring the action, or file the petition:

1831 (1) in accordance with Title 78B, Chapter 3a, Venue for Civil Actions; or

1832 (2) in Salt Lake County.

1833 Section 38. Section **31A-2-305** is amended to read:

1834 **31A-2-305. Immunity from prosecution.**

1835 (1) (a) If a natural person declines to appear, testify, or produce any record or document
1836 in any proceeding instituted by the commissioner or in obedience to the subpoena of the
1837 commissioner, the commissioner may [~~apply to a judge of the district court where the~~
1838 ~~proceeding is held~~] petition a court for an order to the person to attend, testify, or produce
1839 records or documents as requested by the commissioner.

1840 (b) In the event a witness asserts a privilege against self-incrimination, testimony and
1841 evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of
1842 Immunity.

1843 (2) If a person claims the privilege against self-incrimination and refuses to appear,
1844 testify, or produce documents in response to probative evidence against [~~him~~] the person in a
1845 proceeding to revoke or suspend [~~his~~] the person's license, and if the testimony or documents
1846 would have been admissible as evidence in a court of law except for the Fifth Amendment
1847 privilege, the refusal to appear, testify, or produce documents is, for noncriminal proceedings
1848 only, rebuttable evidence of the facts on which the proceeding is based.

1849 Section 39. Section **31A-5-414** is amended to read:

1850 **31A-5-414. Transactions in which directors and others are interested.**

1851 (1) Any material transaction between an insurance corporation and one or more of its
1852 directors or officers, or between an insurance corporation and any other person in which one or
1853 more of its directors or officers or any person controlling the corporation has a material
1854 interest, is voidable by the corporation unless all the following exist:

1855 (a) At the time the transaction is entered into it is fair to the interests of the corporation.

1856 (b) The transaction has, with full knowledge of its terms and of the interests involved,

1857 been approved in advance by the board or by the shareholders.

1858 (c) The transaction has been reported to the commissioner immediately after approval
1859 by the board or the shareholders.

1860 (2) A director, whose interest or status makes the transaction subject to this section,
1861 may be counted in determining a quorum for a board meeting approving a transaction under
1862 Subsection (1)(b), but may not vote. Approval requires the affirmative vote of a majority of
1863 those present.

1864 (3) (a) The commissioner may by rule exempt certain types of transactions from the
1865 reporting requirement of Subsection (1)(c).

1866 (b) The commissioner has standing to bring an action on behalf of an insurer to have a
1867 contract in violation of Subsection (1) declared void. [~~Such an action shall be brought in the~~
1868 ~~Third Judicial District Court for Salt Lake County.~~]

1869 Section 40. Section **31A-5-415** is amended to read:

1870 **31A-5-415. Officers', directors', and employees' liability and indemnification.**

1871 (1) (a) Section **16-10a-841** applies to the liabilities of directors of a stock corporation.

1872 (b) Subsection **16-6a-825(3)** applies to loans to trustees and officers of a mutual.

1873 (c) A director who votes for or assents to a violation of Subsection **16-6a-825(3)** or
1874 Section **16-10a-842** is jointly and severally liable to the corporation for any loss on the
1875 distribution.

1876 (2) (a) Title 16, Chapter 10a, Part 9, Indemnification, applies to stock and mutual
1877 corporations, but no indemnification may be paid until 30 or more days after sending a notice
1878 to the commissioner of the full details of the proposed indemnification.

1879 (b) The commissioner may bring an action [~~in Third Judicial District Court for Salt~~
1880 ~~Lake County~~] to have such indemnification enjoined.

1881 (c) The court may enjoin the indemnification to the extent [it] the indemnification
1882 would render the insurer in a hazardous condition, or exacerbate an existing financially
1883 hazardous condition.

1884 Section 41. Section **31A-15-211** is amended to read:

1885 **31A-15-211. Enforcement authority.**

1886 (1) (a) The commissioner is authorized to use the powers established for the
1887 department under this title to enforce the laws of this state not specifically preempted by the

1888 Liability Risk Retention Act of 1986, including the commissioner's administrative authority to
1889 investigate, issue subpoena, conduct depositions and hearings, issue orders, impose monetary
1890 penalties and seek injunctive relief.

1891 (b) With regard to any investigation, administrative proceedings, or litigation, the
1892 commissioner shall rely on the procedural laws of this state.

1893 (2) (a) Whenever the commissioner determines that any person, risk retention group,
1894 purchasing group, or insurer of a purchasing group has violated, is violating, or is about to
1895 violate any provision of this part or any other insurance law of this state applicable to the
1896 person or entity, or that the person or entity has failed to comply with a lawful order of the
1897 commissioner, ~~[he] the commissioner~~ may, in addition to any other lawful remedies or
1898 penalties, ~~[file a complaint in the Third District Court of Salt Lake County]~~ bring an action to
1899 enjoin and restrain any person, risk retention group, purchasing group, or insurer from
1900 engaging in the violation, or to compel compliance with the order of the commissioner. ~~[The~~
1901 ~~court has jurisdiction of the proceeding and has the power to enter a judgment and order for~~
1902 ~~injunctive or other relief.]~~

1903 (b) ~~[In any action by the commissioner under this subsection]~~ In an action by the
1904 commissioner under Subsection (2)(a), service of process shall be made upon the director of
1905 the Division of Corporations and Commercial Code who shall forward the order, pleadings, or
1906 other process to the person, risk retention group, purchasing group, or insurer in accordance
1907 with the procedures specified in Section [31A-14-204](#).

1908 (c) Nothing in this section may be construed to limit or abridge the authority of the
1909 commissioner to seek injunctive relief in any district court of the United States as provided in
1910 Section [31A-15-213](#).

1911 (3) In an action under this section, a court has the power to enter a judgment and order
1912 for injunctive or other relief.

1913 Section 42. Section [31A-16-107.5](#) is amended to read:

1914 **[31A-16-107.5. Examination of registered insurers.](#)**

1915 (1) Subject to the limitation contained in this section and the powers which the
1916 commissioner has under Chapter 2, Administration of the Insurance Laws, relating to the
1917 examination of insurers, the commissioner has the power to examine an insurer registered
1918 under Section [31A-16-105](#) and its affiliates to ascertain the financial condition of the insurer,

1919 including the enterprise risk to the insurer by the ultimate controlling party, or by the insurance
1920 holding company system on a consolidated basis.

1921 (2) (a) The commissioner may order an insurer registered under Section 31A-16-105 to
1922 produce the records, books, or other information papers in the possession of the insurer or its
1923 affiliates as are reasonably necessary to determine compliance with this chapter.

1924 (b) To determine compliance with this chapter, the commissioner may order an insurer
1925 registered under Section 31A-16-105 to produce information not in the possession of the
1926 insurer if the insurer can obtain access to the information pursuant to contractual relationships,
1927 statutory obligations, or other methods.

1928 (c) If an insurer cannot obtain the information requested by the commissioner, the
1929 insurer shall provide the commissioner a detailed explanation of the reason that the insurer
1930 cannot obtain the information and the identity of the holder of the information.

1931 (d) Whenever it appears to the commissioner that the detailed explanation is without
1932 merit, the commissioner may require, after notice and hearing, the insurer to pay a penalty of
1933 \$5,000 for each day's delay, or may suspend or revoke the insurer's license.

1934 (3) The commissioner may retain, at the registered insurer's expense, attorneys,
1935 actuaries, accountants, and other experts not otherwise a part of the commissioner's staff, if
1936 they are necessary to assist in the conduct of the examination under Subsection (1). Any
1937 persons so retained are under the direction and control of the commissioner and shall act in a
1938 purely advisory capacity.

1939 (4) A registered insurer who produces records, books, and papers under Subsection
1940 [(+)] (2) for examination is liable for and shall pay the expense of the examination under
1941 Section 31A-2-205.

1942 (5) If an insurer fails to comply with an order issued under this section, the
1943 commissioner may:

1944 (a) examine the affiliates to obtain the information; or

1945 (b) issue subpoenas, administer oaths, and examine under oath any person for purposes
1946 of determining compliance with this section.

1947 (6) (a) Upon the failure or refusal of any person to obey a subpoena under Subsection
1948 (5), the commissioner may [~~petition the Third District Court of Salt Lake County~~] petition a
1949 court to enter an order compelling the witness to appear and testify or produce documentary

1950 evidence.

1951 (b) A person shall be obliged to attend as a witness at the place specified in the
1952 subpoena, when subpoenaed, anywhere within the state.

1953 (c) A person subpoenaed is entitled to the same fees and mileage[, if claimed, as a
1954 witness in the Third District Court of Salt Lake County, which fees,] as a witness under Section
1955 78B-1-119.

1956 (d) Fees, mileage, and actual expense, if any, necessarily incurred in securing the
1957 attendance of witnesses, and [their] the witness's testimony, shall be itemized and charged
1958 against, and be paid by, the company being examined.

1959 Section 43. Section **31A-16-110** is amended to read:

1960 **31A-16-110. Enjoining violations -- Voting securities acquired in violation of law**
1961 **or rule.**

1962 (1) (a) Whenever it appears to the commissioner that any insurer or any director,
1963 officer, employee, or agent of an insurer has committed or is about to commit a violation of this
1964 chapter or any rule or order issued by the commissioner under this chapter, the commissioner
1965 may [~~apply to the district court of the county in which the principal office of the insurer is~~
1966 ~~located, or if the insurer has no principal office in this state, then to the Third District Court of~~
1967 ~~Salt Lake County,~~] petition a court for an order enjoining the insurer or a director, officer,
1968 employee, or agent of the insurer from the violation.

1969 (b) The commissioner may also request other equitable relief which the nature of the
1970 case and the interest of the insurer's policyholders, creditors, and shareholders or the public
1971 require.

1972 (2) (a) No security which is the subject of any agreement or arrangement regarding
1973 acquisition, or which is acquired or to be acquired, in contravention of the provisions of this
1974 chapter or any rule or order issued by the commissioner under this chapter, may be voted at any
1975 shareholders' meeting, or may be counted for quorum purposes.

1976 (b) Any action of shareholders requiring the affirmative vote of a percentage of shares
1977 may be taken as though those securities were not issued and outstanding.

1978 (c) However, no action taken at that shareholders' meeting is invalidated by the voting
1979 of those securities, unless the action would materially affect control of the insurer or unless the
1980 [~~district~~] court has ordered that voting invalidates the action.

1981 (d) If an insurer or the commissioner has reason to believe that any security of the
 1982 insurer has been or is about to be acquired in contravention of the provisions of this chapter or
 1983 any rule or order issued by the commissioner under this chapter, the insurer or the
 1984 commissioner may [~~apply to the Third District Court of Salt Lake County or to the district~~
 1985 ~~court for the county in which the insurer has its principal place of business,]~~ petition a court to
 1986 enjoin any offer, request, invitation, or agreement of acquisition which is made in
 1987 contravention of Section 31A-16-103 or any rule or order issued by the commissioner under
 1988 this chapter to enjoin the voting of that acquired security.

1989 (e) [~~This court order may also~~] On a petition under Subsection (2)(d), a court may:

1990 (i) void any vote of that security if the vote has already been cast at any meeting of
 1991 shareholders[~~, and the court may~~]; and

1992 (ii) grant other equitable relief which the nature of the case and the interests of the
 1993 insurer's policyholders, creditors, and shareholders or the public require.

1994 [~~(3) Upon the application of the insurer or the commissioner, if a person has acquired~~
 1995 ~~or is proposing to acquire any voting securities in violation of this chapter or of any rule or~~
 1996 ~~order issued by the commissioner under this chapter, the Third District Court of Salt Lake~~
 1997 ~~County or the district court for the county in which the insurer has its principal place of~~
 1998 ~~business may, upon the notice which the court deems appropriate,]~~

1999 (3) (a) If a person has acquired or is proposing to acquire any voting securities in
 2000 violation of this chapter or in violation of a rule or order issued by the commissioner under this
 2001 chapter, the insurer or the commissioner may petition a court to:

2002 (i) seize or sequester any voting securities of the insurer owned directly or indirectly by
 2003 that person[~~, and~~]; and

2004 (ii) issue orders with respect to that person and those securities which the court
 2005 considers appropriate to effectuate the provisions of this chapter.

2006 (b) A petitioner under Subsection (3)(a) shall provide notice that the court deems
 2007 appropriate.

2008 (4) For the purposes of this chapter, the situs of the ownership of the securities of
 2009 domestic insurers is considered to be in this state.

2010 Section 44. Section **31A-16-111** is amended to read:

2011 **31A-16-111. Required sale of improperly acquired stock -- Penalties.**

2012 (1) If the commissioner finds that the acquiring person has not substantially complied
2013 with the requirements of this chapter in acquiring control of a domestic insurer, the
2014 commissioner may require the acquiring person to sell the acquiring person's stock of the
2015 domestic insurer in the manner specified in Subsection (2).

2016 (2) (a) The commissioner shall effect the sale required by Subsection (1) in the manner
2017 which, under the particular circumstances, appears most likely to result in the payment of the
2018 full market value for the stock by persons who have the collective competence, experience,
2019 financial resources, and integrity to obtain approval under Subsection 31A-16-103(8).

2020 (b) Sales made under this section are subject to approval by [~~the Third Judicial District~~
2021 ~~Court for Salt Lake County~~] a court with jurisdiction under Title 78A, Judiciary and Judicial
2022 Administration, which court has the authority to effect the terms of the sale.

2023 (3) The proceeds from sales made under this section shall be distributed first to the
2024 person required by this section to sell the stock, but only up to the amount originally paid by
2025 the person for the securities. Additional sale proceeds shall be paid to the General Fund.

2026 (4) The person required to sell and persons related to or affiliated with the seller may
2027 not purchase the stock at the sale conducted under this section.

2028 (5) (a) A director or officer of an insurance holding company system violates this
2029 chapter if the director or officer knowingly:

2030 (i) participates in or assents to a transaction or investment that:

2031 (A) has not been properly reported or submitted pursuant to:

2032 (I) Subsections 31A-16-105(1) and (2); or

2033 (II) Subsection 31A-16-106(1)(b); or

2034 (B) otherwise violates this chapter; or

2035 (ii) permits any of the officers or agents of the insurer to engage in a transaction or
2036 investment described in Subsection (5)(a)(i).

2037 (b) A director or officer in violation of Subsection (5)(a) shall pay, in the director's or
2038 officer's individual capacity, a civil penalty of not more than \$20,000 per violation:

2039 (i) upon a finding by the commissioner of a violation; and

2040 (ii) after notice and hearing before the commissioner.

2041 (c) In determining the amount of the civil penalty under Subsection (5)(b), the
2042 commissioner shall take into account:

- 2043 (i) the appropriateness of the penalty with respect to the gravity of the violation;
2044 (ii) the history of previous violations; and
2045 (iii) any other matters that justice requires.

2046 (6) (a) When it appears to the commissioner that any insurer or any director, officer,
2047 employee, or agent of the insurer, has committed a willful violation of this chapter, the
2048 commissioner may [~~cause criminal proceedings to be instituted:~~] refer the violation to the
2049 appropriate prosecutor.

2050 [~~(i) (A) in the district court for the county in this state in which the principal office of~~
2051 ~~the insurer is located; or]~~

2052 [~~(B) if the insurer has no principal office in this state, in the Third District Court for~~
2053 ~~Salt Lake County; and]~~

2054 [~~(ii) against the insurer or the responsible director, officer, employee, or agent of the~~
2055 ~~insurer.]~~

2056 (b) (i) An insurer that willfully violates this chapter may be fined not more than
2057 \$20,000.

2058 (ii) Any individual who willfully violates this chapter is guilty of a third degree felony,
2059 and upon conviction may be:

- 2060 (A) fined in that person's individual capacity not more than \$5,000;
2061 (B) imprisoned; or
2062 (C) both fined and imprisoned.

2063 (7) This section does not limit the other sanctions applicable to violations of this title
2064 under Section [31A-2-308](#).

2065 Section 45. Section **31A-16-112** is amended to read:

2066 **31A-16-112. Sanctions.**

2067 (1) (a) Notwithstanding Section [31A-2-308](#), the following sanctions apply:

2068 (i) An insurer failing, without just cause, to file a registration statement required by this
2069 chapter is required, after notice and hearing, to pay a penalty of \$10,000 for each day's delay, to
2070 be recovered by the commissioner and the penalty so recovered shall be paid into the General
2071 Fund.

2072 (ii) The maximum penalty under this section is \$250,000.

2073 (b) The commissioner may reduce the penalty if the insurer demonstrates to the

2074 commissioner that the imposition of the penalty would constitute a financial hardship to the
2075 insurer.

2076 (2) (a) A director or officer of an insurance holding company system who knowingly
2077 violates, participates in, or assents to, or who knowingly shall permit any of the officers or
2078 agents of the insurer to engage in transactions or make investments that have not been properly
2079 reported or submitted pursuant to Subsection 31A-16-105(1), 31A-16-106(1)(b), or
2080 31A-16-106(2), or that violates this chapter, shall pay, in the director's or officer's individual
2081 capacity, a civil forfeiture of not more than \$10,000 per violation, notwithstanding Section
2082 31A-2-308, after notice and hearing before the commissioner.

2083 (b) In determining the amount of the civil forfeiture, the commissioner shall take into
2084 account the appropriateness of the forfeiture with respect to the gravity of the violation, the
2085 history of previous violations, and such other matters as justice may require.

2086 (3) (a) Whenever it appears to the commissioner that any insurer subject to this chapter
2087 or a director, officer, employee, or agent of the insurer has engaged in any transaction or
2088 entered into a contract that is subject to Section 31A-16-106 and that would not have been
2089 approved had the approval been requested, the commissioner may order the insurer to cease
2090 and desist immediately any further activity under that transaction or contract.

2091 (b) After notice and hearing, the commissioner may also order the insurer to void any
2092 contract and restore the status quo if the action is in the best interest of the policyholders,
2093 creditors, or the public.

2094 (4) (a) Whenever it appears to the commissioner that an insurer or any director, officer,
2095 employee, or agent of the insurer has committed a willful violation of this chapter, the
2096 commissioner may refer the [case] violation to the appropriate prosecutor. [~~Venue for the
2097 criminal action shall be in the Third District Court of Salt Lake County, against the insurer or
2098 the responsible director, officer, employee, or agent of the insurer.~~]

2099 (b) An insurer that willfully violates this chapter may be fined not more than \$250,000
2100 notwithstanding Section 31A-2-308.

2101 (c) An individual who willfully violates this chapter may be fined in the individual's
2102 individual capacity not more than \$100,000 notwithstanding Section 31A-2-308 and is guilty of
2103 a third-degree felony.

2104 (5) (a) An officer, director, or employee of an insurance holding company system who

2105 willfully and knowingly subscribes to or makes or causes to be made any false statements, false
2106 reports, or false filings with the intent to deceive the commissioner in the performances of the
2107 commissioner's duties under this chapter, is guilty of a third-degree felony.

2108 (b) Any fines imposed shall be paid by the officer, director, or employee in the
2109 officer's, director's, or employee's individual capacity.

2110 (6) Whenever it appears to the commissioner that a person has committed a violation
2111 of Section 31A-16-103 and that prevents the full understanding of the enterprise risk to the
2112 insurer by affiliates or by the insurance holding company system, the violation may serve as an
2113 independent basis for disapproving dividends or distributions and for placing the insurer under
2114 an order of supervision in accordance with Section 31A-27-503.

2115 Section 46. Section 31A-16-117 is amended to read:

2116 **31A-16-117. Judicial review -- Mandamus.**

2117 (1) A person aggrieved by an act, determination, rule, or order or any other action of
2118 the commissioner pursuant to this chapter may seek judicial review in accordance with Title
2119 63G, Chapter 4, Administrative Procedures Act.

2120 (2) The filing of an appeal pursuant to this section shall stay the application of any rule,
2121 order, or other action of the commissioner to the appealing party unless the court, after giving
2122 party notice and an opportunity to be heard, determines that a stay would be detrimental to the
2123 interest of policyholders, shareholders, creditors, or the public.

2124 (3) A person aggrieved by a failure of the commissioner to act or make a determination
2125 required by this chapter may petition [~~the Third District Court of~~] a district court in Salt Lake
2126 County for writ in the nature of a mandamus or a peremptory mandamus directing the
2127 commissioner to act or make a determination.

2128 Section 47. Section 31A-17-610 is amended to read:

2129 **31A-17-610. Foreign insurers or health organizations.**

2130 (1) (a) Any foreign insurer or health organization shall, upon the written request of the
2131 commissioner, submit to the commissioner an RBC report as of the end of the most recent
2132 calendar year by the later of:

2133 (i) the date an RBC report would be required to be filed by a domestic insurer or health
2134 organization under this part; or

2135 (ii) 15 days after the request is received by the foreign insurer or health organization.

2136 (b) Any foreign insurer or health organization shall, at the written request of the
2137 commissioner, promptly submit to the commissioner a copy of any RBC plan that is filed with
2138 the insurance commissioner of any other state.

2139 (2) (a) The commissioner may require a foreign insurer or health organization to file an
2140 RBC plan with the commissioner if:

2141 (i) there is a company action level event, regulatory action level event, or authorized
2142 control level event with respect to the foreign insurer or health organization as determined
2143 under:

2144 (A) the RBC statute applicable in the state of domicile of the insurer or health
2145 organization; or

2146 (B) if no RBC statute is in force in that state, under this part; and

2147 (ii) the insurance commissioner of the state of domicile of the foreign insurer or health
2148 organization fails to require the foreign insurer or health organization to file an RBC plan in the
2149 manner specified under:

2150 (A) that state's RBC statute; or

2151 (B) if no RBC statute is in force in that state, under Section 31A-17-603.

2152 (b) If the commissioner requires a foreign insurer or health organization to file an RBC
2153 plan, the failure of the foreign insurer or health organization to file the RBC plan with the
2154 commissioner is grounds to order the insurer or health organization to cease and desist from
2155 writing new insurance business in this state.

2156 (3) The commissioner may [~~make application to the Third District Court for Salt Lake~~
2157 ~~County~~] petition a court as permitted under Section 31A-27a-901 with respect to the
2158 liquidation of property of a foreign insurer or health organization found in this state if:

2159 (a) a mandatory control level event occurs with respect to any foreign insurer or health
2160 organization; and

2161 (b) no domiciliary receiver has been appointed with respect to the foreign insurer or
2162 health organization under the rehabilitation and liquidation statute applicable in the state of
2163 domicile of the foreign insurer or health organization.

2164 Section 48. Section 31A-27a-105 is amended to read:

2165 **31A-27a-105. Jurisdiction.**

2166 (1) (a) A delinquency proceeding under this chapter may not be commenced by a

2167 person other than the commissioner of this state.

2168 (b) No court has jurisdiction to entertain, hear, or determine a delinquency proceeding
2169 commenced by any person other than the commissioner of this state.

2170 (2) Other than in accordance with this chapter, a court of this state has no jurisdiction
2171 to entertain, hear, or determine any complaint:

2172 (a) requesting the liquidation, rehabilitation, seizure, sequestration, or receivership of
2173 an insurer; or

2174 (b) requesting a stay, an injunction, a restraining order, or other relief preliminary to,
2175 incidental to, or relating to a delinquency proceeding.

2176 (3) (a) The receivership court, as of the commencement of a delinquency proceeding
2177 under this chapter, has exclusive jurisdiction of all property of the insurer, wherever located,
2178 including property located outside the territorial limits of the state.

2179 (b) The receivership court has original but not exclusive jurisdiction of all civil
2180 proceedings arising:

2181 (i) under this chapter; or

2182 (ii) in or related to a delinquency proceeding under this chapter.

2183 (4) In addition to other grounds for jurisdiction provided by the law of this state, a
2184 court of this state having jurisdiction of the subject matter has jurisdiction over a person served
2185 pursuant to the Utah Rules of Civil Procedure or other applicable provisions of law in an action
2186 brought by the receiver if the person served:

2187 (a) in an action resulting from or incident to a relationship with the insurer described in
2188 this Subsection (4)(a), is or has been an agent, broker, or other person who has at any time:

2189 (i) written a policy of insurance for an insurer against which a delinquency proceeding
2190 is instituted; or

2191 (ii) acted in any manner whatsoever on behalf of an insurer against which a
2192 delinquency proceeding is instituted;

2193 (b) in an action on or incident to a reinsurance contract described in this Subsection
2194 (4)(b):

2195 (i) is or has been an insurer or reinsurer who has at any time entered into the contract of
2196 reinsurance with an insurer against which a delinquency proceeding is instituted; or

2197 (ii) is an intermediary, agent, or broker of or for the reinsurer, or with respect to the

2198 contract;

2199 (c) in an action resulting from or incident to a relationship with the insurer described in
2200 this Subsection (4)(c), is or has been an officer, director, manager, trustee, organizer, promoter,
2201 or other person in a position of comparable authority or influence over an insurer against which
2202 a delinquency proceeding is instituted;

2203 (d) in an action concerning assets described in this Subsection (4)(d), is or was at the
2204 time of the institution of the delinquency proceeding against the insurer, holding assets in
2205 which the receiver claims an interest on behalf of the insurer; or

2206 (e) in any action on or incident to the obligation described in this Subsection (4)(e), is
2207 obligated to the insurer in any way whatsoever.

2208 (5) (a) Subject to Subsection (5)(b), service shall be made upon the person named in
2209 the petition in accordance with the Utah Rules of Civil Procedure.

2210 (b) In lieu of service under Subsection (5)(a), upon application to the receivership
2211 court, service may be made in such a manner as the receivership court directs whenever it is
2212 satisfactorily shown by the commissioner's affidavit:

2213 (i) in the case of a corporation, that the officers of the corporation cannot be served
2214 because they have departed from the state or have otherwise concealed themselves with intent
2215 to avoid service;

2216 (ii) in the case of an insurer whose business is conducted, at least in part, by an
2217 attorney-in-fact, managing general agent, or other similar entity including a reciprocal, Lloyd's
2218 association, or interinsurance exchange, that the individual attorney-in-fact, managing general
2219 agent, or other entity, or its officers of the corporate attorney-in-fact cannot be served because
2220 of the individual's departure or concealment; or

2221 (iii) in the case of a natural person, that the person cannot be served because of the
2222 person's departure or concealment.

2223 (6) If the receivership court on motion of any party finds that an action should as a
2224 matter of substantial justice be tried in a forum outside this state, the receivership court may
2225 enter an [appropriate] order to stay further proceedings on the action in this state.

2226 (7) (a) Nothing in this chapter deprives a reinsurer of any contractual right to pursue
2227 arbitration except:

2228 (i) as to a claim against the estate; and

2229 (ii) in regard to a contract rejected by the receiver under Section 31A-27a-113.
2230 (b) A party in arbitration may bring a claim or counterclaim against the estate, but the
2231 claim or counterclaim is subject to this chapter.
2232 [~~(8)~~] An action authorized by this chapter shall be brought in the Third District Court
2233 for Salt Lake County.]
2234 [~~(9)~~] (8) (a) At any time after an order is entered pursuant to Section 31A-27a-201,
2235 31A-27a-301, or 31A-27a-401, the commissioner or receiver may transfer the case to the
2236 county of the principal office of the person proceeded against.
2237 (b) In the event of a transfer under this Subsection [~~(9)~~] (8), the court in which the
2238 proceeding is commenced shall, upon application of the commissioner or receiver, direct its
2239 clerk to transmit the court's file to the clerk of the court to which the case is to be transferred.
2240 (c) After a transfer under this Subsection [~~(9)~~] (8), the proceeding shall be conducted in
2241 the same manner as if [~~it~~] the proceeding had been commenced in the court to which the matter
2242 is transferred.
2243 [~~(10)~~] (9) (a) Except as provided in Subsection [~~(10)(c)~~] (9)(c), a person may not
2244 intervene in a liquidation proceeding in this state for the purpose of seeking or obtaining
2245 payment of a judgment, lien, or other claim of any kind.
2246 (b) Except as provided in Subsection [~~(10)(c)~~] (9)(c), the claims procedure set for this
2247 chapter constitute the exclusive means for obtaining payment of claims from the liquidation
2248 estate.
2249 (c) (i) An affected guaranty association or the affected guaranty association's
2250 representative may intervene as a party as a matter of right and otherwise appear and participate
2251 in any court proceeding concerning a liquidation proceeding against an insurer.
2252 (ii) Intervention by an affected guaranty association or by an affected guaranty
2253 association's designated representative conferred by this Subsection [~~(10)(c)~~] (9)(c) may not
2254 constitute grounds to establish general personal jurisdiction by the courts of this state.
2255 (iii) An intervening affected guaranty association or the affected guaranty association's
2256 representative are subject to the receivership court's jurisdiction for the limited purpose for
2257 which the affected guaranty association intervenes.
2258 [~~(11)~~] (10) (a) Notwithstanding the other provisions of this section, this chapter does
2259 not confer jurisdiction on the receivership court to resolve coverage disputes between an

2260 affected guaranty association and those asserting claims against the affected guaranty
2261 association resulting from the initiation of a receivership proceeding under this chapter, except
2262 to the extent that the affected guaranty association otherwise expressly consents to the
2263 jurisdiction of the receivership court pursuant to a plan of rehabilitation or liquidation that
2264 resolves its obligations to covered policyholders.

2265 (b) The determination of a dispute with respect to the statutory coverage obligations of
2266 an affected guaranty association by a court or administrative agency or body with jurisdiction
2267 in the affected guaranty association's state of domicile is binding and conclusive as to the
2268 affected guaranty association's claim in the liquidation proceeding.

2269 [(12)] (11) Upon the request of the receiver, the receivership court or the presiding
2270 judge of the [~~Third District Court for Salt Lake County~~] court with jurisdiction under Title
2271 78A, Judiciary and Judicial Administration, may order that one judge hear all cases and
2272 controversies arising out of or related to the delinquency proceeding.

2273 [(13)] (12) A delinquency proceeding is exempt from any program maintained for the
2274 early closure of civil actions.

2275 [(14)] (13) In a proceeding, case, or controversy arising out of or related to a
2276 delinquency proceeding, to the extent there is a conflict between the Utah Rules of Civil
2277 Procedure and this chapter, the provisions of this chapter govern the proceeding, case, or
2278 controversy.

2279 Section 49. Section **31A-27a-201** is amended to read:

2280 **31A-27a-201. Receivership court's seizure order.**

2281 (1) The commissioner may file [~~in the Third District Court for Salt Lake County a~~
2282 ~~petition~~] a petition in a court with jurisdiction under Title 78A, Judiciary and Judicial
2283 Administration:

2284 (a) with respect to:

2285 (i) an insurer domiciled in this state;

2286 (ii) an unauthorized insurer; or

2287 (iii) pursuant to Section **31A-27a-901**, a foreign insurer;

2288 (b) alleging that:

2289 (i) there exists grounds that would justify a court order for a formal delinquency
2290 proceeding against the insurer under this chapter; and

2291 (ii) the interests of policyholders, creditors, or the public will be endangered by delay;

2292 and

2293 (c) setting forth the contents of a seizure order considered necessary by the
2294 commissioner.

2295 (2) (a) Upon a filing under Subsection (1), the receivership court may issue the
2296 requested seizure order:

2297 (i) immediately, ex parte, and without notice or hearing;

2298 (ii) that directs the commissioner to take possession and control of:

2299 (A) all or a part of the property, accounts, and records of an insurer; and

2300 (B) the premises occupied by the insurer for transaction of the insurer's business; and

2301 (iii) that until further order of the receivership court, enjoins the insurer and its officers,
2302 managers, agents, and employees from disposition of its property and from the transaction of
2303 its business except with the written consent of the commissioner.

2304 (b) A person having possession or control of and refusing to deliver any of the records
2305 or assets of a person against whom a seizure order is issued under this Subsection (2) is guilty
2306 of a class B misdemeanor.

2307 (3) (a) A petition that requests injunctive relief:

2308 (i) shall be verified by the commissioner or the commissioner's designee; and

2309 (ii) is not required to plead or prove irreparable harm or inadequate remedy at law.

2310 (b) The commissioner shall provide only the notice that the receivership court may
2311 require.

2312 (4) (a) The receivership court shall specify in the seizure order the duration of the
2313 seizure, which shall be the time the receivership court considers necessary for the
2314 commissioner to ascertain the condition of the insurer.

2315 (b) The receivership court may from time to time:

2316 (i) hold a hearing that the receivership court considers desirable:

2317 (A) (I) on motion of the commissioner;

2318 (II) on motion of the insurer; or

2319 (III) on its own motion; and

2320 (B) after the notice the receivership court considers appropriate; and

2321 (ii) extend, shorten, or modify the terms of the seizure order.

2322 (c) The receivership court shall vacate the seizure order if the commissioner fails to
2323 commence a formal proceeding under this chapter after having had a reasonable opportunity to
2324 commence a formal proceeding under this chapter.

2325 (d) An order of the receivership court pursuant to a formal proceeding under this
2326 chapter vacates the seizure order.

2327 (5) Entry of a seizure order under this section does not constitute a breach or an
2328 anticipatory breach of a contract of the insurer.

2329 (6) (a) An insurer subject to an ex parte seizure order under this section may petition
2330 the receivership court at any time after the issuance of a seizure order for a hearing and review
2331 of the basis for the seizure order.

2332 (b) The receivership court shall hold the hearing and review requested under this
2333 Subsection (6) not more than 15 days after the day on which the request is received or as soon
2334 thereafter as the court may allow.

2335 (c) A hearing under this Subsection (6):

2336 (i) may be held privately in chambers; and

2337 (ii) shall be held privately in chambers if the insurer proceeded against requests that [it]
2338 the hearing be private.

2339 (7) (a) If, at any time after the issuance of a seizure order, it appears to the receivership
2340 court that a person whose interest is or will be substantially affected by the seizure order did
2341 not appear at the hearing and has not been served, the receivership court may order that notice
2342 be given to the person.

2343 (b) An order under this Subsection (7) that notice be given may not stay the effect of a
2344 seizure order previously issued by the receivership court.

2345 (8) Whenever the commissioner makes a seizure as provided in Subsection (2), on the
2346 demand of the commissioner, it shall be the duty of the sheriff of a county of this state, and of
2347 the police department of a municipality in the state to furnish the commissioner with necessary
2348 deputies or officers to assist the commissioner in making and enforcing the seizure order.

2349 (9) The commissioner may appoint a receiver under this section. The insurer shall pay
2350 the costs and expenses of the receiver appointed.

2351 Section 50. Section **31A-27a-206** is amended to read:

2352 **31A-27a-206. Confidentiality.**

2353 (1) (a) Except as provided in Subsection (1)(b), in a delinquency proceeding or a
2354 judicial review under Section 31A-27a-201:

2355 (i) all records of the insurer, department files, court records and papers, and other
2356 documents, so far as they pertain to or are a part of the record of the proceedings, are
2357 confidential; and

2358 (ii) a clerk of the court shall hold a paper filed with the clerk in a confidential file as
2359 permitted by law.

2360 [~~(ii) a paper filed with the clerk of the Third District Court for Salt Lake County shall~~
2361 ~~be held by the clerk in a confidential file as permitted by law.]~~

2362 (b) The items listed in Subsection (1)(a) are subject to Subsection (1)(a):

2363 (i) except to the extent necessary to obtain compliance with an order entered in
2364 connection with the proceeding; and

2365 (ii) unless and until:

2366 (A) the [~~Third District Court for Salt Lake County~~] court, after hearing argument in
2367 chambers, orders otherwise;

2368 (B) the insurer requests that the matter be made public; or

2369 (C) the commissioner applies for an order under Section 31A-27a-207.

2370 (2) (a) If the recipient agrees to maintain the confidentiality of the document, material,
2371 or other information, the commissioner or rehabilitator may share a document, materials, or
2372 other information in the possession, custody, or control of the department, pertaining to an
2373 insurer that is the subject of a delinquency proceeding under this chapter with:

2374 (i) another state, federal, and international regulatory agency;

2375 (ii) the National Association of Insurance Commissioners and its affiliates or
2376 subsidiaries;

2377 (iii) a state, federal, and international law enforcement authority;

2378 (iv) an auditor appointed by the receivership court in accordance with Section
2379 31A-27a-805; or

2380 (v) a representative of an affected guaranty association.

2381 (b) If the domiciliary receiver believes that certain information is sensitive, the receiver
2382 may share that information subject to a continuation of the confidentiality obligations beyond
2383 the period allowed in Subsection (3).

2384 (c) This section does not limit the power of the commissioner to disclose information
2385 under other applicable law.

2386 (3) (a) A domiciliary receiver shall permit a commissioner or a guaranty association of
2387 another state to obtain a listing of policyholders and certificate holders residing in the
2388 requestor's state, including current addresses and summary policy information, if the
2389 commissioner or the guaranty association of another state agrees:

2390 (i) to maintain the confidentiality of the record; and

2391 (ii) that the record will be used only for regulatory or guaranty association purposes.

2392 (b) Access to a record under this Subsection (3) may be limited to normal business
2393 hours.

2394 (c) If the domiciliary receiver believes that certain information described in this
2395 Subsection (3) is sensitive and disclosure might cause a diminution in recovery, the receiver
2396 may apply for a protective order imposing additional restrictions on access.

2397 (4) (a) The confidentiality obligations imposed by this section shall end upon the entry
2398 of an order of liquidation against the insurer, unless:

2399 (i) otherwise agreed to by the parties; or

2400 (ii) pursuant to an order of the receivership court.

2401 (b) A continuation of confidentiality as provided in Subsection (2) does not apply to an
2402 insurer record necessary for a guaranty association to discharge its statutory responsibilities.

2403 (5) A waiver of an applicable privilege or claim of confidentiality does not occur as a
2404 result of a disclosure, or any sharing of documents, materials, or other information, made
2405 pursuant to this section.

2406 Section 51. Section ~~31A-27a-207~~ is amended to read:

2407 **31A-27a-207. Grounds for rehabilitation or liquidation.**

2408 (1) The commissioner may file [~~in the Third District Court for Salt Lake County a~~
2409 ~~petition~~] a petition in a court with jurisdiction under Title 78A, Judiciary and Judicial
2410 Administration, with respect to an insurer domiciled in this state or an unauthorized insurer for
2411 an order of rehabilitation or liquidation on any one or more of the following grounds:

2412 (a) the insurer is impaired;

2413 (b) the insurer is insolvent;

2414 (c) subject to Subsection (2), the insurer is about to become insolvent;

- 2415 (d) (i) the insurer neglects or refuses to comply with an order of the commissioner to
2416 make good within the time prescribed by law any deficiency;
- 2417 (ii) if a stock company, if its capital and minimum required surplus is impaired; or
2418 (iii) if a company other than a stock company, if its surplus is impaired;
- 2419 (e) the insurer, its parent company, its subsidiary, or its affiliate:
- 2420 (i) converts, wastes, or conceals property of the insurer; or
2421 (ii) otherwise improperly disposes of, dissipates, uses, releases, transfers, sells, assigns,
2422 hypothecates, or removes the property of the insurer;
- 2423 (f) the insurer is in such condition that the insurer could not meet the requirements for
2424 organization and authorization as required by law, except as to the amount of:
- 2425 (i) the original surplus required of a stock company under Sections 31A-5-211 and
2426 31A-8-209; and
- 2427 (ii) the surplus required of a company other than a stock company in excess of the
2428 minimum surplus required to be maintained;
- 2429 (g) the insurer, its parent company, its subsidiary, or its affiliate:
- 2430 (i) conceals, removes, alters, destroys, or fails to establish and maintain records and
2431 other pertinent material adequate for the determination of the financial condition of the insurer
2432 by examination under Section 31A-2-203; or
- 2433 (ii) fails to properly administer claims or maintain claims records that are adequate for
2434 the determination of its outstanding claims liability;
- 2435 (h) at any time after the issuance of an order under Subsection 31A-2-201(4), or at the
2436 time of instituting a proceeding under this chapter, it appears to the commissioner that upon
2437 good cause shown, it is not in the best interest of the policyholders, creditors, or the public to
2438 proceed with the conduct of the business of the insurer;
- 2439 (i) the insurer is in such condition that the further transaction of business would be
2440 hazardous financially, according to Subsection 31A-17-609(3) or otherwise, to its
2441 policyholders, creditors, or the public;
- 2442 (j) there is reasonable cause to believe that:
- 2443 (i) there has been:
- 2444 (A) embezzlement from the insurer;
- 2445 (B) wrongful sequestration or diversion of the insurer's property;

- 2446 (C) forgery or fraud affecting the insurer; or
- 2447 (D) other illegal conduct in, by, or with respect to the insurer; and
- 2448 (ii) the act described in Subsection (1)(j)(i) if established would endanger assets in an
- 2449 amount threatening the solvency of the insurer;
- 2450 (k) control of the insurer is in a person who is:
- 2451 (i) dishonest;
- 2452 (ii) untrustworthy; or
- 2453 (iii) so lacking in insurance company managerial experience or capability as to be
- 2454 hazardous to policyholders, creditors, or the public;
- 2455 (l) if:
- 2456 (i) a person who in fact has executive authority in the insurer, whether an officer,
- 2457 manager, general agent, director, trustee, employee, shareholder, or other person:
- 2458 (A) refuses to be examined under oath by the commissioner concerning the insurer's
- 2459 affairs, whether in this state or elsewhere; or
- 2460 (B) if examined under oath, refuses to divulge pertinent information reasonably known
- 2461 to the person; and
- 2462 (ii) after reasonable notice of the facts described in Subsection (1)(l)(i), the insurer fails
- 2463 promptly and effectively to terminate:
- 2464 (A) the employment or status of the person; and
- 2465 (B) all of the person's influence on management;
- 2466 (m) after demand by the commissioner under Section 31A-2-203 or under this chapter,
- 2467 the insurer fails to promptly make available for examination:
- 2468 (i) any of its own property, accounts, or records; or
- 2469 (ii) so far as it pertains to the insurer, property, accounts, or records of:
- 2470 (A) a subsidiary or related company within the control of the insurer; or
- 2471 (B) a person having executive authority in the insurer;
- 2472 (n) without first obtaining the written consent of the commissioner, the insurer:
- 2473 (i) transfers, or attempts to transfer, in a manner contrary to Section 31A-5-508 or
- 2474 31A-16-103, substantially its entire property or business; or
- 2475 (ii) enters into a transaction the effect of which is to merge, consolidate, or reinsure
- 2476 substantially its entire property or business in or with the property or business of any other

2477 person;

2478 (o) the insurer or its property has been or is the subject of an application for the

2479 appointment of a receiver, trustee, custodian, conservator, sequestrator, or similar fiduciary of

2480 the insurer or its property otherwise than as authorized under the insurance laws of this state;

2481 (p) within the previous five years the insurer willfully and continuously violates:

2482 (i) its charter or articles of incorporation;

2483 (ii) its bylaws;

2484 (iii) an insurance law of this state; or

2485 (iv) a valid order of the commissioner;

2486 (q) the insurer fails to pay within 60 days after the due date:

2487 (i) (A) an obligation to any state or any subdivision of a state; or

2488 (B) a judgment entered in any state, if the court in which the judgment is entered has

2489 jurisdiction over the subject matter; and

2490 (ii) except that nonpayment is not a ground until 60 days after a good faith effort by the

2491 insurer to contest the obligation has been terminated, whether it is before the commissioner or

2492 in the courts;

2493 (r) the insurer systematically:

2494 (i) engages in the practice of:

2495 (A) reaching settlements with and obtaining releases from claimants; and

2496 (B) unreasonably delaying payment, or failing to pay the agreed-upon settlements; or

2497 (ii) attempts to compromise with claimants or other creditors on the ground that it is

2498 financially unable to pay its claims or obligations in full;

2499 (s) the insurer fails to file its annual report or other financial report required by statute

2500 within the time allowed by law;

2501 (t) the board of directors or the holders of a majority of the shares entitled to vote, or a

2502 majority of those individuals entitled to the control of those entities specified in Section

2503 [31A-27a-104](#), request or consent to rehabilitation or liquidation under this chapter;

2504 (u) (i) the insurer does not comply with its domiciliary state's requirements for issuance

2505 to it of a certificate of authority; or

2506 (ii) the insurer's certificate of authority is revoked by its state of domicile; or

2507 (v) when authorized by Chapter 17, Part 6, Risk-Based Capital.

2508 (2) For purposes of this section, an insurer is about to become insolvent if it is
2509 reasonably anticipated that the insurer will not have liquid assets to meet its current obligations
2510 for the next 90 days.

2511 Section 52. Section **31A-27a-209** is amended to read:

2512 **31A-27a-209. Effect of order of rehabilitation or liquidation.**

2513 (1) The filing or recording of an order of receivership with the following imparts the
2514 same notice as a deed, bill of sale, or other evidence of title filed or recorded would have
2515 imparted:

2516 (a) the [~~Third District Court for Salt Lake County~~] court;

2517 (b) the recorder of deeds of the county in which the principal business of the insurer is
2518 conducted; or

2519 (c) in the case of real estate, with the recorder of deeds of the county where the
2520 property is located.

2521 (2) The filing of a petition commencing delinquency proceedings under this chapter or
2522 the entry of an order of seizure, rehabilitation, or liquidation does not constitute a breach or an
2523 anticipatory breach of any contract or lease of the insurer.

2524 (3) (a) The receiver may appoint one or more special deputies.

2525 (b) A special deputy:

2526 (i) has the powers and responsibilities of the receiver granted under this section, unless
2527 specifically limited by the receiver; and

2528 (ii) serves at the pleasure of the receiver.

2529 (c) The receiver may employ or contract with:

2530 (i) legal counsel;

2531 (ii) one or more actuaries;

2532 (iii) one or more accountants;

2533 (iv) one or more appraisers;

2534 (v) one or more consultants;

2535 (vi) one or more clerks;

2536 (vii) one or more assistants; and

2537 (viii) other personnel as may be considered necessary.

2538 (d) A special deputy or other person with whom the receiver contracts under this

2539 Subsection (3):

2540 (i) is considered to be an agent of the commissioner only in the commissioner's
2541 capacity as receiver; and

2542 (ii) is not considered an agent of the state.

2543 (e) The provisions of any law governing the procurement of goods and services by the
2544 state do not apply to a contract entered into by the commissioner as receiver.

2545 (f) The compensation of a special deputy, employee, or contractor and all expenses of
2546 taking possession of the insurer and of conducting the receivership shall be:

2547 (i) determined by the receiver, with the approval of the receivership court in
2548 accordance with Section 31A-27a-115; and

2549 (ii) paid out of the property of the insurer.

2550 (g) (i) If the receiver, in the receiver's sole discretion, considers it necessary to the
2551 proper performance of the receiver's duties under this chapter, the receiver may appoint an
2552 advisory committee of policyholders, claimants, or other creditors including guaranty
2553 associations.

2554 (ii) The committee described in this Subsection (3)(g) serves:

2555 (A) at the pleasure of the receiver; and

2556 (B) without compensation and without reimbursement for expenses.

2557 (iii) The receiver or the receivership court in proceedings conducted under this chapter
2558 may not appoint any other committee of any nature.

2559 Section 53. Section 31A-44-501 is amended to read:

2560 **31A-44-501. Application for court order for rehabilitation or liquidation.**

2561 (1) The department may request that the attorney general petition [~~a district court in the~~
2562 ~~state~~] a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, or a
2563 federal bankruptcy court that has exercised jurisdiction over a provider's facility, for an order
2564 that appoints a trustee to rehabilitate or liquidate the facility if:

2565 (a) the department determines that:

2566 (i) the provider is financially unsound or is unable to meet the income or available cash
2567 projections described in the provider's disclosure statement; and

2568 (ii) the provider's ability to fully perform the provider's obligations under a continuing
2569 care contract is endangered; or

2570 (b) the provider is bankrupt, insolvent, or has filed for protection from creditors under
2571 a federal or state reorganization, bankruptcy, or insolvency law.

2572 (2) A court that evaluates a petition filed under Subsection (1) regarding a provider:

2573 (a) shall evaluate the best interests of a person that has contracted with the provider;

2574 and

2575 (b) may require the proceeds of a lien imposed under Section 31A-44-601 to be used to
2576 pay an entrance fee to another facility on behalf of a resident of the provider's facility.

2577 Section 54. Section 35A-4-308 is amended to read:

2578 **35A-4-308. Bonds to ensure compliance.**

2579 (1) (a) The division, whenever [it] the division considers it necessary to ensure
2580 compliance with this chapter, may require any employer, subject to the contribution imposed
2581 hereunder, to deposit with [it] the division any bond or security as the division shall determine.

2582 (b) The bond or security may be sold by the division at public sale, if it becomes
2583 necessary, in order to recover any tax, interest, or penalty due.

2584 (c) Notice of the sale may be served upon the employer who deposited the securities
2585 personally or by mail. If by mail, notice sent to the last-known address as the same appears in
2586 the records of the division is sufficient for purposes of this requirement.

2587 (d) Upon the sale, the surplus, if any, above the amounts due, shall be returned to the
2588 employer who deposited the security.

2589 (2) (a) If an employer fails to comply with Subsection (1), [~~the district court of the~~
2590 ~~county in which the employer resides or in which the employer employs workers~~] a court shall,
2591 upon the commencement of a suit by the division for that purpose, enjoin the employer from
2592 further employing workers in this state or continuing in business until the employer has
2593 complied with Subsection (1).

2594 (b) Upon filing of a suit for such purpose by the division, the court shall set a date for
2595 hearing and cause notice to be served upon the employer. The hearing shall be not less than
2596 five nor more than 15 days from the service of the notice.

2597 Section 55. Section 35A-4-314 is amended to read:

2598 **35A-4-314. Disclosure of information for debt collection -- Court order --**

2599 **Procedures -- Use of information restrictions -- Penalties.**

2600 (1) The division shall disclose to a creditor who has obtained judgment against a debtor

2601 the name and address of the last known employer of the debtor if:

2602 (a) the judgment creditor obtains a court order requiring disclosure of the information
2603 as described in Subsection (2); and

2604 (b) the judgment creditor completes the requirements described in Subsection (3),
2605 including entering into a written agreement with the division.

2606 (2) (a) A court shall grant an order to disclose the information described in Subsection
2607 (1) if, under the applicable Utah Rules of Civil Procedure:

2608 (i) the judgment creditor files a motion with the court, which includes a copy of the
2609 judgment, and serves a copy of the motion to the judgment debtor and the division;

2610 (ii) the judgment debtor and the division have the opportunity to respond to the motion;
2611 and

2612 (iii) the court denies or overrules any objection to disclosure in the judgment debtor's
2613 and the division's response.

2614 (b) A court may not grant an order to disclose the information described in Subsection
2615 (1), if the court finds that the division has established that disclosure will have a negative effect
2616 on:

2617 (i) the willingness of employers to report wage and employment information; or

2618 (ii) the willingness of individuals to file claims for unemployment benefits.

2619 (c) The requirements of Subsection 63G-2-202(7) and Section 63G-2-207 do not apply
2620 to information sought through a court order as described in this section.

2621 (3) If a court order is granted in accordance with this section, a judgment creditor shall:

2622 (a) provide to the division a copy of the order requiring the disclosure;

2623 (b) enter into a written agreement with the division, in a form approved by the division;

2624 (c) pay the division a reasonable fee that reflects the cost for processing the request as
2625 established by department rule; and

2626 (d) comply with the data safeguard and security measures described in 20 C.F.R. Sec.
2627 603.9 with respect to information received from the division under this section.

2628 (4) If a judgment creditor complies with Subsection (3), the division shall provide the
2629 information to the judgment creditor within 14 business days after the day on which the
2630 creditor complies with Subsection (3).

2631 (5) A judgment creditor may not:

2632 (a) use the information obtained under this section for a purpose other than satisfying
2633 the judgment between the creditor and debtor; or

2634 (b) disclose or share the information with any other person.

2635 (6) The division may audit a judgment creditor or other party receiving information
2636 under this section for compliance with the data safeguard and security measures described in 20
2637 C.F.R. Sec. 603.9.

2638 (7) If a judgment creditor or other party fails to comply with the data safeguard and
2639 security measures under 20 C.F.R. Sec. 603.9, the judgment creditor or other party is subject to
2640 a civil penalty of no more than \$10,000 enforceable by the Utah Office of the Attorney General
2641 as follows:

2642 (a) the attorney general, on the attorney general's own behalf or on behalf of the
2643 division, [~~may file an action in district court~~] may bring an action to enforce the civil penalty;
2644 and

2645 (b) if the attorney general prevails in enforcing the civil penalty against the judgment
2646 creditor or other party:

2647 (i) the attorney general is entitled to an award for reasonable attorney fees, court costs,
2648 and investigative expenses; and

2649 (ii) the civil penalty shall be deposited into the special administrative expense account
2650 described in Subsection [35A-4-506\(1\)](#).

2651 Section 56. Section **48-1d-111** is amended to read:

2652 **48-1d-111. Signing and filing pursuant to judicial order.**

2653 (1) If a person required by this chapter to sign a record or deliver a record to the
2654 division for filing under this chapter does not do so, any other person that is aggrieved may
2655 petition [~~the district court~~] a court with jurisdiction under Title 78A, Judiciary and Judicial
2656 Administration, to order:

2657 (a) the person to sign the record;

2658 (b) the person to deliver the record to the division for filing; or

2659 (c) the division to file the record unsigned.

2660 (2) If a petitioner under Subsection (1) is not the partnership or foreign limited liability
2661 partnership to which the record pertains, the petitioner shall make the partnership or foreign
2662 limited liability partnership a party to the action.

2663 (3) A record filed under Subsection (1)(c) is effective without being signed.

2664 Section 57. Section **48-1d-116** is amended to read:

2665 **48-1d-116. Duty of division to file -- Review of refusal to file -- Transmission of**
2666 **information by division.**

2667 (1) The division shall file a record delivered to the division for filing which satisfies
2668 this chapter. The duty of the division under this section is ministerial.

2669 (2) When the division files a record, the division shall record it as filed on the date and
2670 at the time of its delivery. After filing a record, the division shall deliver to the person that
2671 submitted the record a copy of the record with an acknowledgment of the date and time of
2672 filing and, in the case of a statement of denial, also to the partnership to which the statement
2673 pertains.

2674 (3) If the division refuses to file a record, the division, not later than 15 business days
2675 after the record is delivered, shall:

2676 (a) return the record or notify the person that submitted the record of the refusal; and

2677 (b) provide a brief explanation in a record of the reason for the refusal.

2678 (4) (a) If the division refuses to file a record, the person that submitted the record may
2679 petition [~~the district court~~] a court with jurisdiction under Title 78A, Judiciary and Judicial
2680 Administration, to compel filing of the record.

2681 (b) The record and the explanation of the division of the refusal to file must be attached
2682 to the petition.

2683 (c) The court may decide the matter in a summary proceeding.

2684 (5) The filing of or refusal to file a record does not create a presumption that the
2685 information contained in the record is correct or incorrect.

2686 (6) Except as otherwise provided by Section 16-17-301 or by law other than this
2687 chapter, the division may deliver any record to a person by delivering it:

2688 (a) in person to the person that submitted it;

2689 (b) to the address of the person's registered agent;

2690 (c) to the principal office of the person; or

2691 (d) to another address the person provides to the division for delivery.

2692 Section 58. Section **48-1d-901** is amended to read:

2693 **48-1d-901. Events causing dissolution.**

2694 A partnership is dissolved, and [its] the partnership's activities and affairs must be
2695 wound up, upon the occurrence of any of the following:

2696 (1) in a partnership at will, the partnership has notice of a person's express will to
2697 withdraw as a partner, other than a partner that has dissociated under Subsections 48-1d-701(2)
2698 through (10), but, if the person specifies a withdrawal date later than the date the partnership
2699 had notice, on the later date;

2700 (2) in a partnership for a definite term or particular undertaking:

2701 (a) within 90 days after a person's dissociation by death or otherwise under Subsections
2702 48-1d-701(6) through (10) or wrongful dissociation under Subsection 48-1d-702(2), the
2703 affirmative vote or consent of at least half of the remaining partners to wind up the
2704 partnership's activities and affairs, for which purpose a person's rightful dissociation pursuant
2705 to Subsection 48-1d-702(2)(b)(i) constitutes the expression of that partner's consent to wind up
2706 the partnership's activities and affairs;

2707 (b) the express consent of all the partners to wind up the partnership's activities and
2708 affairs; or

2709 (c) the expiration of the term or the completion of the undertaking;

2710 (3) an event or circumstance that the partnership agreement states causes dissolution;

2711 (4) [~~on application~~] in an action brought by a partner, the entry [~~by the district court of~~
2712 ~~an order~~] of a court order dissolving the partnership on the ground that:

2713 (a) the conduct of all or substantially all the partnership's activities and affairs is
2714 unlawful;

2715 (b) the economic purpose of the partnership is likely to be unreasonably frustrated;

2716 (c) another partner has engaged in conduct relating to the partnership's activities and
2717 affairs which makes it not reasonably practicable to carry on the business in partnership with
2718 that partner; or

2719 (d) it is not otherwise reasonably practicable to carry on the partnership's activities and
2720 affairs in conformity with the partnership agreement;

2721 (5) [~~on application~~] in an action brought by a transferee, the entry [~~by the district court~~
2722 ~~of an order~~] of a court order dissolving the partnership on the ground that it is equitable to wind
2723 up the partnership's activities and affairs:

2724 (a) after the expiration of the term or completion of the undertaking, if the partnership

2725 was for a definite term or particular undertaking at the time of the transfer or entry of the
2726 charging order that gave rise to the transfer; or

2727 (b) at any time, if the partnership was a partnership at will at the time of the transfer or
2728 entry of the charging order that gave rise to the transfer; or

2729 (6) the passage of 90 consecutive days during which the partnership does not have at
2730 least two partners.

2731 Section 59. Section **48-1d-902** is amended to read:

2732 **48-1d-902. Winding up.**

2733 (1) (a) A dissolved partnership shall wind up [~~its~~] the partnership's activities and affairs
2734 [~~and, except~~].

2735 (b) Except as otherwise provided in Section **48-1d-903**, [~~the partnership~~] a partnership
2736 only continues after dissolution [~~only~~] for the purpose of winding up.

2737 (2) In winding up [~~its~~] a partnership's activities and affairs, the partnership:

2738 (a) shall discharge the partnership's debts, obligations, and other liabilities, settle and
2739 close the partnership's activities and affairs, and marshal and distribute the assets of the
2740 partnership; and

2741 (b) may:

2742 (i) deliver to the division for filing a statement of dissolution stating the name of the
2743 partnership and that the partnership is dissolved;

2744 (ii) preserve the partnership's activities and affairs and property as a going concern for
2745 a reasonable time;

2746 (iii) prosecute and defend actions and proceedings, whether civil, criminal, or
2747 administrative;

2748 (iv) transfer the partnership's property;

2749 (v) settle disputes by mediation or arbitration;

2750 (vi) deliver to the division for filing a statement of termination stating the name of the
2751 partnership and that the partnership is terminated; and

2752 (vii) perform other acts necessary or appropriate to the winding up.

2753 (3) A person whose dissociation as a partner resulted in dissolution may participate in
2754 winding up as if still a partner, unless the dissociation was wrongful.

2755 (4) If a dissolved partnership does not have a partner and no person has the right to

2756 participate in winding up under Subsection (3), the personal or legal representative of the last
2757 person to have been a partner may wind up the partnership's activities and affairs. If the
2758 representative does not exercise that right, a person to wind up the partnership's activities and
2759 affairs may be appointed by the consent of transferees owning a majority of the rights to
2760 receive distributions at the time the consent is to be effective. A person appointed under this
2761 Subsection (4) has the powers of a partner under Section 48-1d-904 but is not liable for the
2762 debts, obligations, and other liabilities of the partnership solely by reason of having or
2763 exercising those powers or otherwise acting to wind up the partnership's activities and affairs.

2764 (5) ~~On the application of~~ In an action brought by any partner or person entitled under
2765 Subsection (3) to participate in winding up, ~~the district~~ a court may order judicial supervision
2766 of the winding up of a dissolved partnership, including the appointment of a person to wind up
2767 the partnership's activities and affairs, if:

2768 (a) the partnership does not have a partner, and within a reasonable time following the
2769 dissolution no person has been appointed under Subsection (4); or

2770 (b) the applicant establishes other good cause.

2771 Section 60. Section 48-1d-903 is amended to read:

2772 **48-1d-903. Rescinding dissolution.**

2773 (1) A partnership may rescind ~~its~~ the partnership's dissolution, unless a statement of
2774 termination applicable to the partnership is effective or ~~the district~~ the court has entered an
2775 order under Subsection 48-1d-901(4) or (5) dissolving the partnership.

2776 (2) Rescinding dissolution under this section requires:

2777 (a) the affirmative vote or consent of each partner;

2778 (b) if a statement of dissolution applicable to the partnership has been filed by the
2779 division but has not become effective, delivery to the division for filing of a statement of
2780 withdrawal under Section 48-1d-114 applicable to the statement of dissolution; and

2781 (c) if a statement of dissolution applicable to the partnership is effective, the delivery to
2782 the division for filing of a statement of correction under Section 48-1d-115 stating that
2783 dissolution has been rescinded under this section.

2784 (3) If a partnership rescinds ~~its~~ the partnership's dissolution:

2785 (a) the partnership resumes carrying on its activities and affairs as if dissolution had
2786 never occurred;

2787 (b) subject to Subsection (3)(c), any liability incurred by the partnership after the
2788 dissolution and before the rescission is effective is determined as if dissolution had never
2789 occurred; and

2790 (c) the rights of a third party arising out of conduct in reliance on the dissolution before
2791 the third party knew or had notice of the rescission may not be adversely affected.

2792 Section 61. Section ~~48-1d-909~~ is amended to read:

2793 **48-1d-909. Court proceedings.**

2794 (1) (a) A dissolved limited liability partnership that has published a notice under
2795 Section ~~48-1d-908~~ may [~~file an application with the district court in the county where the~~
2796 ~~dissolved limited liability partnership's principal office is located or, if the principal office is~~
2797 ~~not located in this state, where the office of its registered agent is located,] file a petition in a
2798 court with jurisdiction under Title 78A, Judiciary and Judicial Administration, for a
2799 determination of the amount and form of security to be provided for payment of claims that are
2800 contingent, have not been made known to the dissolved limited liability partnership, or are
2801 based on an event occurring after the effective date of dissolution but which, based on the facts
2802 known to the dissolved limited liability partnership, are reasonably expected to arise after the
2803 effective date of dissolution.~~

2804 (b) Security is not required for any claim that is or is reasonably anticipated to be
2805 barred under Subsection ~~48-1d-907~~(3).

2806 (2) [~~Not~~] No later than 10 days after the filing of an application under Subsection (1),
2807 the dissolved limited liability partnership shall give notice of the proceeding to each claimant
2808 holding a contingent claim known to the dissolved limited liability partnership.

2809 (3) (a) In any proceeding under this section, the [~~district~~] court may appoint a guardian
2810 ad litem to represent all claimants whose identities are unknown.

2811 (b) The reasonable fees and expenses of the guardian, including all reasonable expert
2812 witness fees, must be paid by the dissolved limited liability partnership.

2813 (4) A dissolved limited liability partnership that provides security in the amount and
2814 form ordered by the [~~district~~] court under Subsection (1) satisfies the dissolved limited liability
2815 partnership's obligations with respect to claims that are contingent, have not been made known
2816 to the dissolved limited liability partnership, or are based on an event occurring after the
2817 effective date of dissolution, and the claims may not be enforced against a partner or transferee

2818 who receives assets in liquidation.

2819 (5) This section applies only to a debt, obligation, or other liability incurred while a
2820 partnership was a limited liability partnership.

2821 Section 62. Section **48-1d-1003** is amended to read:

2822 **48-1d-1003. Required notice or approval.**

2823 (1) A domestic or foreign entity that is required to give notice to, or obtain the approval
2824 of, a governmental agency or officer of this state to be a party to a merger must give the notice
2825 or obtain the approval to be a party to an interest exchange, conversion, or domestication.

2826 (2) Property held for a charitable purpose under the law of this state by a domestic or
2827 foreign entity immediately before a transaction under this part becomes effective may not, as a
2828 result of the transaction, be diverted from the objects for which it was donated, granted,
2829 devised, or otherwise transferred unless, to the extent required by or pursuant to the law of this
2830 state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity
2831 obtains [~~an appropriate order of the district court~~] a court order specifying the disposition of the
2832 property.

2833 (3) A bequest, devise, gift, grant, or promise contained in a will or other instrument of
2834 donation, subscription, or conveyance that is made to a merging entity that is not the surviving
2835 entity and that takes effect or remains payable after the merger inures to the surviving entity. A
2836 trust obligation that would govern property if transferred to the nonsurviving entity applies to
2837 property that is transferred to the surviving entity under this section.

2838 Section 63. Section **48-1d-1310** is amended to read:

2839 **48-1d-1310. Purchase of interest upon death, incapacity, or disqualification of**
2840 **member.**

2841 (1) Subject to this part, one or more of the following may provide for the purchase of a
2842 partner's interest in a professional services partnership upon the death, incapacity, or
2843 disqualification of the partner:

2844 (a) the partnership agreement; or

2845 (b) a private agreement.

2846 (2) In the absence of a provision described in Subsection (1), a professional services
2847 partnership shall purchase the interest of a partner who is deceased, incapacitated, or no longer
2848 qualified to own an interest in the professional services partnership within 90 days after the day

2849 on which the professional services partnership is notified of the death, incapacity, or
2850 disqualification.

2851 (3) If a professional services partnership purchases a partner's interest under Subsection
2852 (2), the professional services company shall purchase the interest at a price that is the
2853 reasonable fair market value as of the date of death, incapacity, or disqualification.

2854 (4) If a professional services partnership fails to purchase a partner's interest as
2855 required by Subsection (2) at the end of the 90-day period described in Subsection (2), [~~one of~~
2856 ~~the following may bring an action in the district court of the county in which the principal~~
2857 ~~office or place of practice of the professional services partnership is located]~~ the following
2858 persons may bring an action to enforce Subsection (2):

- 2859 (a) the personal representative of a deceased partner;
- 2860 (b) the guardian or conservator of an incapacitated partner; or
- 2861 (c) the disqualified partner.

2862 (5) A court in which an action is brought under Subsection (4) may:

- 2863 (a) award the person bringing the action the reasonable fair market value of the
2864 interest; or

- 2865 (b) within [~~its~~] the court's jurisdiction, order the liquidation of the professional services
2866 partnership.

2867 (6) If a person described in Subsections (4)(a) through (c) is successful in an action
2868 under Subsection (4), the court shall award the person reasonable attorney's fees and costs.

2869 Section 64. Section **48-2e-204** is amended to read:

2870 **48-2e-204. Signing and filing pursuant to judicial order.**

2871 (1) If a person required by this chapter to sign a record or deliver a record to the
2872 division for filing under this chapter does not do so, any other person that is aggrieved may
2873 petition [~~the district court~~] a court with jurisdiction under Title 78A, Judiciary and Judicial
2874 Administration, to order:

- 2875 (a) the person to sign the record;
- 2876 (b) the person to deliver the record to the division for filing; or
- 2877 (c) the division to file the record unsigned.

2878 (2) If the petitioner under Subsection (1) is not the limited partnership or foreign
2879 limited partnership to which the record pertains, the petitioner shall make the limited

2880 partnership or foreign limited partnership a party to the action.

2881 (3) A record filed under Subsection (1)(c) is effective without being signed.

2882 Section 65. Section **48-2e-209** is amended to read:

2883 **48-2e-209. Duty of division to file -- Review of refusal to file -- Transmission of**
2884 **information by the division.**

2885 (1) The division shall file a record delivered to the division for filing which satisfies
2886 this chapter. The duty of the division under this section is ministerial.

2887 (2) When the division files a record, the division shall record it as filed on the date and
2888 at the time of its delivery. After filing a record, the division shall deliver to the person that
2889 submitted the record a copy of the record with an acknowledgment of the date and time of
2890 filing.

2891 (3) If the division refuses to file a record, the division, not later than 15 business days
2892 after the record is delivered, shall:

2893 (a) return the record or notify the person that submitted the record of the refusal; and

2894 (b) provide a brief explanation in a record of the reason for the refusal.

2895 (4) (a) If the division refuses to file a record, the person that submitted the record may
2896 petition [~~the district court~~] a court with jurisdiction under Title 78A, Judiciary and Judicial
2897 Administration, to compel filing of the record.

2898 (b) The record and the explanation of the division of the refusal to file must be attached
2899 to the petition.

2900 (c) The court may decide the matter in a summary proceeding.

2901 (5) The filing of or refusal to file a record does not create a presumption that the
2902 information contained in the filing is correct or incorrect.

2903 (6) Except as otherwise provided by Section 16-17-301 or by law other than this
2904 chapter, the division may deliver any record to a person by delivering it:

2905 (a) in person to the person that submitted it;

2906 (b) to the address of the person's registered agent;

2907 (c) to the principal office of the person; or

2908 (d) to another address the person provides to the division for delivery.

2909 Section 66. Section **48-2e-801** is amended to read:

2910 **48-2e-801. Events causing dissolution.**

2911 (1) A limited partnership is dissolved, and [its] the limited partnership's activities and
2912 affairs must be wound up, upon the occurrence of any of the following:

2913 (a) an event or circumstance that the partnership agreement states causes dissolution;
2914 (b) the affirmative vote or consent of all general partners and of limited partners
2915 owning a majority of the rights to receive distributions as limited partners at the time the vote
2916 or consent is to be effective;

2917 (c) after the dissociation of a person as a general partner:

2918 (i) if the limited partnership has at least one remaining general partner, the vote or
2919 consent to dissolve the limited partnership not later than 90 days after the dissociation by
2920 partners owning a majority of the rights to receive distributions as partners at the time the vote
2921 or consent is to be effective; or

2922 (ii) if the limited partnership does not have a remaining general partner, the passage of
2923 90 days after the dissociation, unless before the end of the period:

2924 (A) consent to continue the activities and affairs of the limited partnership and admit at
2925 least one general partner is given by limited partners owning a majority of the rights to receive
2926 distributions as limited partners at the time the consent is to be effective; and

2927 (B) at least one person is admitted as a general partner in accordance with the consent;

2928 (d) the passage of 90 consecutive days after the dissociation of the limited partnership's
2929 last limited partner, unless before the end of the period the limited partnership admits at least
2930 one limited partner;

2931 (e) the passage of 90 consecutive days during which the limited partnership has only
2932 one partner, unless before the end of the period:

2933 (i) the limited partnership admits at least one person as a partner;

2934 (ii) if the previously sole remaining partner is only a general partner, the limited
2935 partnership admits the person as a limited partner; and

2936 (iii) if the previously sole remaining partner is only a limited partner, the limited
2937 partnership admits a person as a general partner;

2938 (f) ~~[on application]~~ in an action brought by a partner, the entry ~~[by the district court of~~
2939 ~~an order]~~ of a court order dissolving the limited partnership on the grounds that:

2940 (i) the conduct of all or substantially all the limited partnership's activities and affairs is
2941 unlawful; or

2942 (ii) it is not reasonably practicable to carry on the limited partnership's activities and
2943 affairs in conformity with the partnership agreement; or

2944 (g) the signing and filing of a statement of administrative dissolution by the division
2945 under Section 48-2e-810.

2946 (2) If an event occurs that imposes a deadline on a limited partnership under
2947 Subsection (1) and before the limited partnership has met the requirements of the deadline,
2948 another event occurs that imposes a different deadline on the limited partnership under
2949 Subsection (1):

2950 (a) the occurrence of the second event does not affect the deadline caused by the first
2951 event; and

2952 (b) the limited partnership's meeting of the requirements of the first deadline does not
2953 extend the second deadline.

2954 Section 67. Section 48-2e-802 is amended to read:

2955 **48-2e-802. Winding up.**

2956 (1) (a) A dissolved limited partnership shall wind up [~~its~~] the limited partnership's
2957 activities and affairs[~~, and, except~~].

2958 (b) Except as otherwise provided in Section 48-2e-803, the limited partnership only
2959 continues after dissolution [~~only~~] for the purpose of winding up.

2960 (2) In winding up [~~its~~] the limited partnership's activities and affairs, the limited
2961 partnership:

2962 (a) shall discharge the limited partnership's debts, obligations, and other liabilities,
2963 settle and close the limited partnership's activities and affairs, and marshal and distribute the
2964 assets of the limited partnership; and

2965 (b) may:

2966 (i) amend its certificate of limited partnership to state that the limited partnership is
2967 dissolved;

2968 (ii) preserve the limited partnership activities, affairs, and property as a going concern
2969 for a reasonable time;

2970 (iii) prosecute and defend actions and proceedings, whether civil, criminal, or
2971 administrative;

2972 (iv) transfer the limited partnership's property;

2973 (v) settle disputes by mediation or arbitration;

2974 (vi) deliver to the division for filing a statement of termination stating the name of the
 2975 limited partnership and that the limited partnership is terminated; and

2976 (vii) perform other acts necessary or appropriate to the winding up.

2977 (3) (a) If a dissolved limited partnership does not have a general partner, a person to
 2978 wind up the dissolved limited partnership's activities and affairs may be appointed by the
 2979 affirmative vote or consent of limited partners owning a majority of the rights to receive
 2980 distributions as limited partners at the time the vote or consent is to be effective.

2981 (b) A person appointed under this Subsection (3):

2982 [(a)] (i) has the powers of a general partner under Section 48-2e-804 but is not liable
 2983 for the debts, obligations, and other liabilities of the limited partnership solely by reason of
 2984 having or exercising those powers or otherwise acting to wind up the dissolved limited
 2985 partnership's activities and affairs; and

2986 [(b)] (ii) shall deliver promptly to the division for filing an amendment to the
 2987 certificate of limited partnership stating:

2988 [(i)] (A) that the limited partnership does not have a general partner;

2989 [(ii)] (B) the name and street and mailing addresses of the person; and

2990 [(iii)] (C) that the person has been appointed pursuant to this subsection to wind up the
 2991 limited partnership.

2992 [(4) On the application of any]

2993 (4) In an action brought by a partner, [the district] a court may order judicial
 2994 supervision of the winding up of a dissolved limited partnership, including the appointment of
 2995 a person to wind up the limited partnership's activities and affairs, if:

2996 (a) the limited partnership does not have a general partner and within a reasonable time
 2997 following the dissolution no person has been appointed pursuant to Subsection (3); or

2998 (b) the applicant establishes other good cause.

2999 Section 68. Section 48-2e-803 is amended to read:

3000 **48-2e-803. Rescinding dissolution.**

3001 (1) A limited partnership may rescind [its] the limited partnership's dissolution, unless
 3002 a statement of termination applicable to the limited partnership is effective, [the district] a court
 3003 has entered an order under Subsection 48-2e-801(1)(f) dissolving the limited partnership, or the

3004 division has dissolved the limited partnership under Section 48-2e-810.

3005 (2) Rescinding dissolution under this section requires:

3006 (a) the affirmative vote or consent of each partner; and

3007 (b) if the limited partnership has delivered to the division for filing an amendment to
3008 the certificate of limited partnership stating that the partnership is dissolved and if:

3009 (i) the amendment is not effective, the filing by the limited partnership of a statement
3010 of withdrawal under Section 48-2e-207 applicable to the amendment; or

3011 (ii) the amendment is effective, the delivery by the limited partnership to the division
3012 for filing of an amendment to the certificate of limited partnership stating that the dissolution
3013 has been rescinded under this section.

3014 (3) If a limited partnership rescinds [its] the limited partnership's dissolution:

3015 (a) the limited partnership resumes carrying on [its] the limited partnership's activities
3016 and affairs as if dissolution had never occurred;

3017 (b) subject to Subsection (3)(c), any liability incurred by the limited partnership after
3018 the dissolution and before the rescission is effective is determined as if dissolution had never
3019 occurred; and

3020 (c) the rights of a third party arising out of conduct in reliance on the dissolution before
3021 the third party knew or had notice of the rescission may not be adversely affected.

3022 Section 69. Section 48-2e-808 is amended to read:

3023 **48-2e-808. Court proceedings.**

3024 (1) (a) A dissolved limited partnership that has published a notice under Section
3025 48-2e-807 may file [~~an application with the district court in the county where the dissolved~~
3026 ~~limited partnership's principal office is located, or, if the principal office is not located in this~~
3027 ~~state, where the office of its registered agent is located,] a petition in a court with jurisdiction
3028 under Title 78A, Judiciary and Judicial Administration, for a determination of the amount and
3029 form of security to be provided for payment of claims that are contingent, have not been made
3030 known to the dissolved limited partnership, or are based on an event occurring after the
3031 effective date of dissolution but which, based on the facts known to the dissolved limited
3032 partnership, are reasonably expected to arise after the effective date of dissolution.~~

3033 (b) Security is not required for any claim that is or is reasonably anticipated to be
3034 barred under Subsection 48-2e-807(3).

3035 (2) ~~[Not]~~ No later than 10 days after the filing of an application under Subsection (1),
3036 the dissolved limited partnership shall give notice of the proceeding to each claimant holding a
3037 contingent claim known to the dissolved limited partnership.

3038 (3) (a) In a proceeding brought under this section, the court may appoint a guardian ad
3039 litem to represent all claimants whose identities are unknown.

3040 (b) The reasonable fees and expenses of the guardian, including all reasonable expert
3041 witness fees, must be paid by the dissolved limited partnership.

3042 (4) A dissolved limited partnership that provides security in the amount and form
3043 ordered by the court under Subsection (1) satisfies the dissolved limited partnership's
3044 obligations with respect to claims that are contingent, have not been made known to the
3045 dissolved limited partnership, or are based on an event occurring after the effective date of
3046 dissolution, and such claims may not be enforced against a partner or transferee that received
3047 assets in liquidation.

3048 Section 70. Section **48-2e-1103** is amended to read:

3049 **48-2e-1103. Required notice or approval.**

3050 (1) A domestic or foreign entity that is required to give notice to, or obtain the approval
3051 of, a governmental agency or officer of this state to be a party to a merger must give the notice
3052 or obtain the approval to be a party to an interest exchange, conversion, or domestication.

3053 (2) Property held for a charitable purpose under the law of this state by a domestic or
3054 foreign entity immediately before a transaction under this part becomes effective may not, as a
3055 result of the transaction, be diverted from the objects for which it was donated, granted,
3056 devised, or otherwise transferred unless, to the extent required by or pursuant to the law of this
3057 state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity
3058 obtains ~~[an appropriate order of the district court]~~ a court order specifying the disposition of the
3059 property.

3060 (3) A bequest, devise, gift, grant, or promise contained in a will or other instrument of
3061 donation, subscription, or conveyance that is made to a merging entity that is not the surviving
3062 entity and that takes effect or remains payable after the merger inures to the surviving entity. A
3063 trust obligation that would govern property if transferred to the nonsurviving entity applies to
3064 property that is transferred to the surviving entity under this section.

3065 Section 71. Section **48-3a-204** is amended to read:

3066 **48-3a-204. Signing and filing pursuant to judicial order.**

3067 (1) If a person required by this chapter to sign a record or deliver a record to the
3068 division for filing under this chapter does not do so, any other person that is aggrieved may
3069 petition [~~the district court~~] a court with jurisdiction under Title 78A, Judiciary and Judicial
3070 Administration, to order:

- 3071 (a) the person to sign the record;
3072 (b) the person to deliver the record to the division for filing; or
3073 (c) the division to file the record unsigned.

3074 (2) If a petitioner under Subsection (1) is not the limited liability company or foreign
3075 limited liability company to which the record pertains, the petitioner shall make the limited
3076 liability company or foreign limited liability company a party to the action.

3077 (3) A record filed under Subsection (1)(c) is effective without being signed.

3078 Section 72. Section **48-3a-209** is amended to read:

3079 **48-3a-209. Duty of division to file -- Review of refusal to file -- Transmission of**
3080 **information by division.**

3081 (1) The division shall file a record delivered to the division for filing which satisfies
3082 this chapter. The duty of the division under this section is ministerial.

3083 (2) When the division files a record, the division shall record it as filed on the date and
3084 at the time of its delivery. After filing a record, the division shall deliver to the person that
3085 submitted the record a copy of the record with an acknowledgment of the date and time of
3086 filing and, in the case of a statement of denial, also to the limited liability company to which
3087 the statement pertains.

3088 (3) If the division refuses to file a record, the division shall, not later than 15 business
3089 days after the record is delivered:

- 3090 (a) return the record or notify the person that submitted the record of the refusal; and
3091 (b) provide a brief explanation in a record of the reason for the refusal.

3092 (4) (a) If the division refuses to file a record, the person that submitted the record may
3093 petition [~~the district court~~] a court with jurisdiction under Title 78A, Judiciary and Judicial
3094 Administration, to compel filing of the record.

3095 (b) The record and the explanation of the division of the refusal to file must be attached
3096 to the petition.

3097 (c) The court may decide the matter in a summary proceeding.

3098 (5) The filing of or refusal to file a record does not create a presumption that the
3099 information contained in the record is correct or incorrect.

3100 (6) Except as otherwise provided by Section 16-17-301 or by law other than this
3101 chapter, the division may deliver any record to a person by delivering it:

3102 (a) in person to the person that submitted it;

3103 (b) to the address of the person's registered agent;

3104 (c) to the principal office of the person; or

3105 (d) to another address the person provides to the division for delivery.

3106 Section 73. Section 48-3a-701 is amended to read:

3107 **48-3a-701. Events causing dissolution.**

3108 A limited liability company is dissolved, and its activities and affairs must be wound
3109 up, upon the occurrence of any of the following:

3110 (1) an event or circumstance that the operating agreement states causes dissolution;

3111 (2) the consent of all the members;

3112 (3) the passage of 90 consecutive days during which the limited liability company has
3113 no members unless:

3114 (a) consent to admit at least one specified person as a member is given by transferees
3115 owning the rights to receive a majority of distributions as transferees at the time the consent is
3116 to be effective; and

3117 (b) at least one person becomes a member in accordance with the consent;

3118 (4) ~~[on application by]~~ in an action brought by a member, the entry ~~[by the district~~
3119 ~~court of an order]~~ of a court order dissolving the limited liability company on the grounds that:

3120 (a) the conduct of all or substantially all of the limited liability company's activities and
3121 affairs is unlawful; or

3122 (b) it is not reasonably practicable to carry on the limited liability company's activities
3123 and affairs in conformity with the certificate of organization and the operating agreement;

3124 (5) ~~[on application by]~~ in an action brought by a member, the entry ~~[by the district~~
3125 ~~court of an order]~~ of a court order dissolving the limited liability company on the grounds that
3126 the managers or those members in control of the limited liability company:

3127 (a) have acted, are acting, or will act in a manner that is illegal or fraudulent; or

3128 (b) have acted, are acting, or will act in a manner that is oppressive and was, is, or will
3129 be directly harmful to the applicant; or

3130 (6) the signing and filing of a statement of administrative dissolution by the division
3131 under Subsection 48-3a-708(3).

3132 Section 74. Section 48-3a-702 is amended to read:

3133 **48-3a-702. Election to purchase in lieu of dissolution.**

3134 (1) (a) In a proceeding under Subsection 48-3a-701(5) to dissolve a limited liability
3135 company, the limited liability company may elect or, if ~~it~~ the limited liability company fails to
3136 elect, one or more members may elect to purchase the interest in the limited liability company
3137 owned by the applicant member at the fair market value of the interest, determined as provided
3138 in this section.

3139 (b) An election pursuant to this Subsection (1) is irrevocable unless ~~the district~~ a
3140 court determines that it is equitable to set aside or modify the election.

3141 (2) (a) An election to purchase pursuant to this section may be filed with ~~the district~~ a
3142 court at any time within 90 days after the filing of the petition in a proceeding under Subsection
3143 48-3a-701(5) or at any later time as the ~~district~~ court in ~~its~~ the court's discretion may allow.

3144 (b) If the limited liability company files an election with ~~the district~~ a court within the
3145 90-day period, or at any later time allowed by the ~~district~~ court, to purchase the interest in the
3146 limited liability company owned by the applicant member, the limited liability company shall
3147 purchase the interest in the manner provided in this section.

3148 (3) (a) If the limited liability company does not file an election with ~~the district~~ a
3149 court within the time period, but an election to purchase the interest in the limited liability
3150 company owned by the applicant member is filed by one or more members within the time
3151 period, the limited liability company shall, within 10 days after the later of the end of the time
3152 period allowed for the filing of elections to purchase under this section or notification from the
3153 ~~district~~ court of an election by members to purchase the interest in the limited liability
3154 company owned by the applicant member as provided in this section, give written notice of the
3155 election to purchase to all members of the limited liability company, other than the applicant
3156 member.

3157 (b) The notice shall state the name and the percentage interest in the limited liability
3158 company owned by the applicant member and the name and the percentage interest in the

3159 limited liability company owned by each electing member.

3160 (c) The notice shall advise any recipients who have not participated in the election of
3161 their right to join in the election to purchase the interest in the limited liability company in
3162 accordance with this section and of the date by which any notice of intent to participate must be
3163 filed with the [district] court.

3164 (4) Members who wish to participate in the purchase of the interest in the limited
3165 liability company of the applicant member must file notice of their intention to join in the
3166 purchase by electing members no later than 30 days after the effective date of the limited
3167 liability company's notice of their right to join in the election to purchase.

3168 (5) All members who have filed with the [district] court an election or notice of their
3169 intention to participate in the election to purchase the interest in the limited liability company
3170 of the applicant member thereby become irrevocably obligated to participate in the purchase of
3171 the interest from the applicant member upon the terms and conditions of this section, unless the
3172 [district] court otherwise directs.

3173 (6) After an election has been filed by the limited liability company or one or more
3174 members, the proceedings under Subsection 48-3a-701(5) may not be discontinued or settled,
3175 nor may the applicant member sell or otherwise dispose of the applicant member's interest in
3176 the limited liability company, unless the [district] court determines that it would be equitable to
3177 the limited liability company and the members, other than the applicant member, to permit any
3178 discontinuance, settlement, sale, or other disposition.

3179 (7) If, within 60 days after the earlier of the limited liability company filing of an
3180 election to purchase the interest in the limited liability company of the applicant member or the
3181 limited liability company's mailing of a notice to its members of the filing of an election by the
3182 members to purchase the interest in the limited liability company of the applicant member, the
3183 applicant member and electing limited liability company or members reach agreement as to the
3184 fair market value and terms of the purchase of the applicant member's interest, the [district]
3185 court shall enter an order directing the purchase of the applicant member's interest, upon the
3186 terms and conditions agreed to by the parties.

3187 (8) If the parties are unable to reach an agreement as provided for in Subsection (7),
3188 upon application of any party, the [district] court shall stay the proceedings under Subsection
3189 48-3a-701(5) and determine the fair market value of the applicant member's interest in the

3190 limited liability company as of the day before the date on which the petition under Subsection
3191 48-3a-701(5) was filed or as of any other date the [district] court determines to be appropriate
3192 under the circumstances and based on the factors the [district] court determines to be
3193 appropriate.

3194 (9) (a) Upon determining the fair market value of the interest in the limited liability
3195 company of the applicant member, the [district] court shall enter an order directing the
3196 purchase of the interest in the limited liability company upon terms and conditions the [district]
3197 court determines to be appropriate.

3198 (b) The terms and conditions may include payment of the purchase price in
3199 installments, where necessary in the interest of equity, provision for security to assure payment
3200 of the purchase price and any additional costs, fees, and expenses awarded by the [district]
3201 court, and an allocation of the interest in the limited liability company among members if the
3202 interest in the limited liability company is to be purchased by members.

3203 (10) (a) In allocating the applicant member's interest in the limited liability company
3204 among holders of different classes of members, the [district] court shall attempt to preserve the
3205 existing distribution of voting rights among member classes to the extent practicable.

3206 (b) The [district] court may direct that holders of a specific class or classes may not
3207 participate in the purchase.

3208 (c) The [district] court may not require any electing member to purchase more of the
3209 interest in the limited liability company owned by the applicant member than the percentage
3210 interest that the purchasing member may have set forth in the purchasing member's election or
3211 notice of intent to participate filed with the [district] court.

3212 (11) (a) Interest may be allowed at the rate and from the date determined by the
3213 [district] court to be equitable.

3214 (b) However, if the [district] court finds that the refusal of the applicant member to
3215 accept an offer of payment was arbitrary or otherwise not in good faith, interest may not be
3216 allowed.

3217 (12) If the [district] court finds that the applicant member had probable ground for
3218 relief under Subsection 48-3a-701(5), the [district] court may award to the applicant member
3219 reasonable fees and expenses of counsel and experts employed by the applicant member.

3220 (13) (a) Upon entry of an order under Subsection (7) or (9), the [district] court shall

3221 dismiss the petition to dissolve the limited liability company under Subsection 48-3a-701(5)
3222 and the applicant member shall no longer have any rights or status as a member of the limited
3223 liability company, except the right to receive the amounts awarded to the applicant member by
3224 the [district] court.

3225 (b) The award is enforceable in the same manner as any other judgment.

3226 (14) (a) The purchase ordered pursuant to Subsection (9) shall be made within 10 days
3227 after the date the order becomes final, unless before that time the limited liability company files
3228 with the [district] court a notice of [its] the limited liability company's intention to file a
3229 statement of dissolution.

3230 (b) The statement of dissolution must then be adopted and filed within 60 days after
3231 notice.

3232 (15) (a) Upon filing of a statement of dissolution, the limited liability company is
3233 dissolved and shall be wound up pursuant to Section 48-3a-703, and the order entered pursuant
3234 to Subsection (9) is no longer of any force or effect.

3235 (b) However, the [district] court may award the applicant member reasonable fees and
3236 expenses in accordance with Subsection (12).

3237 (c) The applicant member may continue to pursue any claims previously asserted on
3238 behalf of the limited liability company.

3239 (16) Any payment by the limited liability company pursuant to an order under
3240 Subsection (7) or (9), other than an award of fees and expenses pursuant to Subsection (12), is
3241 subject to the provisions of Sections 48-3a-405 and 48-3a-406.

3242 Section 75. Section 48-3a-703 is amended to read:

3243 **48-3a-703. Winding up.**

3244 (1) (a) A dissolved limited liability company shall wind up [its] the limited liability
3245 company's activities and affairs [~~and, except~~].

3246 (b) Except as otherwise provided in Section 48-3a-704, the limited liability company
3247 only continues after dissolution [~~only~~] for the purpose of winding up.

3248 (2) In winding up [its] the limited liability company's activities and affairs, a limited
3249 liability company:

3250 (a) shall discharge the limited liability company's debts, obligations, and other
3251 liabilities, settle and close the limited liability company's activities and affairs, and marshal and

3252 distribute the assets of the limited liability company; and
3253 (b) may:
3254 (i) deliver to the division for filing a statement of dissolution stating the name of the
3255 limited liability company and that the limited liability company is dissolved;
3256 (ii) preserve the limited liability company activities, affairs, and property as a going
3257 concern for a reasonable time;
3258 (iii) prosecute and defend actions and proceedings, whether civil, criminal, or
3259 administrative;
3260 (iv) transfer the limited liability company's property;
3261 (v) settle disputes by mediation or arbitration;
3262 (vi) deliver to the division for filing a statement of termination stating the name of the
3263 limited liability company and that the limited liability company is terminated; and
3264 (vii) perform other acts necessary or appropriate to the winding up.
3265 (3) (a) If a dissolved limited liability company has no members, the legal representative
3266 of the last person to have been a member may wind up the activities and affairs of the limited
3267 liability company.
3268 (b) If the person does so, the person has the powers of a sole manager under Subsection
3269 48-3a-407(3) and is deemed to be a manager for the purposes of Subsection 48-3a-304(1).
3270 (4) If the legal representative under Subsection (3) declines or fails to wind up the
3271 limited liability company's activities and affairs, a person may be appointed to do so by the
3272 consent of transferees owning a majority of the rights to receive distributions as transferees at
3273 the time the consent is to be effective. A person appointed under this Subsection (4):
3274 (a) has the powers of a sole manager under Subsection 48-3a-407(3) and is deemed to
3275 be a manager for the purposes of Subsection 48-3a-304(1); and
3276 (b) shall promptly deliver to the division for filing an amendment to the limited
3277 liability company's certificate of organization stating:
3278 (i) that the limited liability company has no members;
3279 (ii) the name and street and mailing addresses of the person; and
3280 (iii) that the person has been appointed pursuant to this subsection to wind up the
3281 limited liability company.
3282 (5) A [district] court may order judicial supervision of the winding up of a dissolved

3283 limited liability company, including the appointment of a person to wind up the limited liability
3284 company's activities and affairs:

3285 (a) [~~on application of a member, if the applicant~~] in an action brought by a member if
3286 the member establishes good cause;

3287 (b) [~~on the application of a transferee,~~] in an action brought by a transferee if:

3288 (i) the company does not have any members;

3289 (ii) the legal representative of the last person to have been a member declines or fails to
3290 wind up the limited liability company's activities; and

3291 (iii) within a reasonable time following the dissolution a person has not been appointed
3292 pursuant to Subsection (4); or

3293 (c) in connection with a proceeding under Subsection 48-3a-701(4) or (5).

3294 Section 76. Section 48-3a-704 is amended to read:

3295 **48-3a-704. Rescinding dissolution.**

3296 (1) A limited liability company may rescind [~~its~~] the limited liability company's
3297 dissolution, unless a statement of termination applicable to the limited liability company is
3298 effective, [~~the district court~~] a court has entered an order under Subsection 48-3a-701(4) or (5)
3299 dissolving the limited liability company, or the division has dissolved the limited liability
3300 company under Section 48-3a-708.

3301 (2) Rescinding dissolution under this section requires:

3302 (a) the consent of each member;

3303 (b) if a statement of dissolution applicable to the limited liability company has been
3304 filed by the division but has not become effective, the delivery to the division for filing of a
3305 statement of withdrawal under Section 48-3a-207 applicable to the statement of dissolution;
3306 and

3307 (c) if a statement of dissolution applicable to the limited liability company is effective,
3308 the delivery to the division for filing of a statement of correction under Section 48-3a-208
3309 stating that dissolution has been rescinded under this section.

3310 (3) If a limited liability company rescinds its dissolution:

3311 (a) the limited liability company resumes carrying on its activities and affairs as if
3312 dissolution had never occurred;

3313 (b) subject to Subsection (3)(c), any liability incurred by the limited liability company

3314 after the dissolution and before the rescission is effective is determined as if dissolution had
3315 never occurred; and

3316 (c) the rights of a third party arising out of conduct in reliance on the dissolution before
3317 the third party knew or had notice of the rescission may not be adversely affected.

3318 Section 77. Section **48-3a-707** is amended to read:

3319 **48-3a-707. Court proceedings.**

3320 (1) (a) A dissolved limited liability company that has published a notice under Section
3321 ~~48-3a-706~~ may [~~file an application with district court in the county where the dissolved limited~~
3322 ~~liability company's principal office is located, or, if the principal office is not located in this~~
3323 ~~state, where the office of its registered agent is located,]~~ file a petition in a court with
3324 jurisdiction under Title 78A Judiciary and Judicial Administration, for a determination of the
3325 amount and form of security to be provided for payment of claims that are contingent, have not
3326 been made known to the limited liability company, or are based on an event occurring after the
3327 effective date of dissolution but which, based on the facts known to the dissolved limited
3328 liability company, are reasonably expected to arise after the effective date of dissolution.

3329 (b) Security is not required for any claim that is or is reasonably anticipated to be
3330 barred under Subsection ~~48-3a-706~~(3).

3331 (2) [~~Not~~] No later than 10 days after the filing of an application under Subsection (1),
3332 the dissolved limited liability company shall give notice of the proceeding to each claimant
3333 holding a contingent claim known to the limited liability company.

3334 (3) (a) In any proceeding under this section, the court may appoint a guardian ad litem
3335 to represent all claimants whose identities are unknown.

3336 (b) The reasonable fees and expenses of the guardian, including all reasonable expert
3337 witness fees, must be paid by the dissolved limited liability company.

3338 (4) A dissolved limited liability company that provides security in the amount and form
3339 ordered by the court under Subsection (1) satisfies the limited liability company's obligations
3340 with respect to claims that are contingent, have not been made known to the limited liability
3341 company, or are based on an event occurring after the effective date of dissolution, and such
3342 claims may not be enforced against a member or transferee that received assets in liquidation.

3343 Section 78. Section **48-3a-1003** is amended to read:

3344 **48-3a-1003. Required notice or approval.**

3345 (1) A domestic or foreign entity that is required to give notice to, or obtain the approval
3346 of, a governmental agency or officer of this state to be a party to a merger must give the notice
3347 or obtain the approval to be a party to an interest exchange, conversion, or domestication.

3348 (2) Property held for a charitable purpose under the law of this state by a domestic or
3349 foreign entity immediately before a transaction under this part becomes effective may not, as a
3350 result of the transaction, be diverted from the objects for which it was donated, granted,
3351 devised, or otherwise transferred unless, to the extent required by or pursuant to the law of this
3352 state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity
3353 obtains [~~an appropriate order of the district court~~] a court order specifying the disposition of the
3354 property.

3355 (3) A bequest, devise, gift, grant, or promise contained in a will or other instrument of
3356 donation, subscription, or conveyance that is made to a merging entity that is not the surviving
3357 entity and that takes effect or remains payable after the merger inures to the surviving entity. A
3358 trust obligation that would govern property if transferred to the nonsurviving entity applies to
3359 property that is transferred to the surviving entity under this section.

3360 Section 79. Section **48-3a-1111** is amended to read:

3361 **48-3a-1111. Purchase of interest upon death, incapacity, or disqualification of**
3362 **member.**

3363 (1) Subject to this part, one or more of the following may provide for the purchase of a
3364 member's interest in a professional services company upon the death, incapacity, or
3365 disqualification of the member:

- 3366 (a) the certificate of organization;
3367 (b) the operating agreement; or
3368 (c) a private agreement.

3369 (2) In the absence of a provision described in Subsection (1), a professional services
3370 company shall purchase the interest of a member who is deceased, incapacitated, or no longer
3371 qualified to own an interest in the professional services company within 90 days after the day
3372 on which the professional services company is notified of the death, incapacity, or
3373 disqualification.

3374 (3) If a professional services company purchases a member's interest under Subsection
3375 (2), the professional services company shall purchase the interest at a price that is the

3376 reasonable fair market value as of the date of death, incapacity, or disqualification.

3377 (4) If a professional services company fails to purchase a member's interest as required
3378 by Subsection (2) at the end of the 90-day period described in Subsection (2), [~~one of the~~
3379 ~~following may bring an action in the district court of the county in which the principal office or~~
3380 ~~place of practice of the professional services company is located]~~ the following persons may
3381 bring an action to enforce Subsection (2):

3382 (a) the personal representative of a deceased member;

3383 (b) the guardian or conservator of an incapacitated member; or

3384 (c) the disqualified member.

3385 (5) A court in which an action is brought under Subsection (4) may:

3386 (a) award the person bringing the action the reasonable fair market value of the
3387 interest; or

3388 (b) within [~~its~~] the court's jurisdiction, order the liquidation of the professional services
3389 company.

3390 (6) If a person described in Subsections (4)(a) through (c) is successful in an action
3391 under Subsection (4), the court shall award the person reasonable attorney's fees and costs.

3392 Section 80. Section ~~57-8-44~~ is amended to read:

3393 **57-8-44. Lien in favor of association of unit owners for assessments and costs of**
3394 **collection.**

3395 (1) (a) Except as provided in Section ~~57-8-13.1~~, an association of unit owners has a
3396 lien on a unit for:

3397 (i) an assessment;

3398 (ii) except as provided in the declaration, fees, charges, and costs associated with
3399 collecting an unpaid assessment, including:

3400 (A) court costs and reasonable attorney fees;

3401 (B) late charges;

3402 (C) interest; and

3403 (D) any other amount that the association of unit owners is entitled to recover under the
3404 declaration, this chapter, or an administrative or judicial decision; and

3405 (iii) a fine that the association of unit owners imposes against a unit owner in
3406 accordance with Section ~~57-8-37~~, if:

- 3407 (A) the time for appeal described in Subsection 57-8-37(5) has expired and the unit
3408 owner did not file an appeal; or
- 3409 (B) the unit owner timely filed an appeal under Subsection 57-8-37(5) and [the district]
3410 a court issued a final order upholding a fine imposed under Subsection 57-8-37(1).
- 3411 (b) The recording of a declaration constitutes record notice and perfection of a lien
3412 described in Subsection (1)(a).
- 3413 (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i)
3414 is for the full amount of the assessment from the time the first installment is due, unless the
3415 association of unit owners otherwise provides in a notice of assessment.
- 3416 (3) An unpaid assessment or fine accrues interest at the rate provided:
3417 (a) in Subsection 15-1-1(2); or
3418 (b) in the governing documents, if the governing documents provide for a different
3419 interest rate.
- 3420 (4) A lien under this section has priority over each other lien and encumbrance on a
3421 unit except:
3422 (a) a lien or encumbrance recorded before the declaration is recorded;
3423 (b) a first or second security interest on the unit secured by a mortgage or deed of trust
3424 that is recorded before a recorded notice of lien by or on behalf of the association of unit
3425 owners; or
3426 (c) a lien for real estate taxes or other governmental assessments or charges against the
3427 unit.
- 3428 (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah
3429 Exemptions Act.
- 3430 (6) Unless the declaration provides otherwise, if two or more associations of unit
3431 owners have liens for assessments on the same unit, the liens have equal priority, regardless of
3432 when the liens are created.
- 3433 Section 81. Section **57-8a-301** is amended to read:
3434 **57-8a-301. Lien in favor of association for assessments and costs of collection.**
3435 (1) (a) Except as provided in Section 57-8a-105, an association has a lien on a lot for:
3436 (i) an assessment;
3437 (ii) except as provided in the declaration, fees, charges, and costs associated with

3438 collecting an unpaid assessment, including:

3439 (A) court costs and reasonable attorney fees;

3440 (B) late charges;

3441 (C) interest; and

3442 (D) any other amount that the association is entitled to recover under the declaration,
3443 this chapter, or an administrative or judicial decision; and

3444 (iii) a fine that the association imposes against a lot owner in accordance with Section
3445 57-8a-208, if:

3446 (A) the time for appeal described in Subsection 57-8a-208(5) has expired and the lot
3447 owner did not file an appeal; or

3448 (B) the lot owner timely filed an appeal under Subsection 57-8a-208(5) and [~~the~~
3449 ~~district]~~ a court issued a final order upholding a fine imposed under Subsection 57-8a-208(1).

3450 (b) The recording of a declaration constitutes record notice and perfection of a lien
3451 described in Subsection (1)(a).

3452 (2) If an assessment is payable in installments, a lien described in Subsection (1)(a)(i)
3453 is for the full amount of the assessment from the time the first installment is due, unless the
3454 association otherwise provides in a notice of assessment.

3455 (3) An unpaid assessment or fine accrues interest at the rate provided:

3456 (a) in Subsection 15-1-1(2); or

3457 (b) in the declaration, if the declaration provides for a different interest rate.

3458 (4) A lien under this section has priority over each other lien and encumbrance on a lot
3459 except:

3460 (a) a lien or encumbrance recorded before the declaration is recorded;

3461 (b) a first or second security interest on the lot secured by a mortgage or trust deed that
3462 is recorded before a recorded notice of lien by or on behalf of the association; or

3463 (c) a lien for real estate taxes or other governmental assessments or charges against the
3464 lot.

3465 (5) A lien under this section is not subject to Title 78B, Chapter 5, Part 5, Utah
3466 Exemptions Act.

3467 (6) Unless the declaration provides otherwise, if two or more associations have liens
3468 for assessments on the same lot, the liens have equal priority, regardless of when the liens are

3469 created.

3470 Section 82. Section **57-17-5** is amended to read:

3471 **57-17-5. Failure to return deposit or prepaid rent or to give required notice --**

3472 **Recovery of deposit, penalty, costs, and attorney fees.**

3473 (1) If an owner or the owner's agent fails to comply with the requirements described in
3474 Subsection **57-17-3(5)**, the renter may:

3475 (a) recover from the owner:

3476 (i) if the owner or the owner's agent failed to timely return the balance of the renter's
3477 deposit, the full deposit;

3478 (ii) if the owner or the owner's agent failed to timely return the balance of the renter's
3479 prepaid rent, the full amount of the prepaid rent; and

3480 (iii) a civil penalty of \$100; and

3481 (b) file an action [~~in district court~~] to enforce compliance with the provisions of this
3482 section.

3483 (2) In an action under Subsection (1)(b), the court shall award costs and attorney fees
3484 to the prevailing party if the court determines that the opposing party acted in bad faith.

3485 (3) A renter is not entitled to relief under this section if the renter fails to serve a notice
3486 in accordance with Subsection **57-17-3(3)**.

3487 (4) This section does not preclude an owner or a renter from recovering other damages
3488 to which the owner or the renter is entitled.

3489 Section 83. Section **57-19-20** is amended to read:

3490 **57-19-20. Injunctive relief -- Cease and desist order.**

3491 (1) Whenever it appears to the director that any person has engaged or is about to
3492 engage in any act or practice constituting a violation of any provision of this chapter, and that it
3493 would be in the public interest to stop those acts or practices, the director may either:

3494 (a) seek injunctive relief as provided in Rule 65A, Utah Rules of Civil Procedure; or

3495 (b) issue an administrative cease and desist order.

3496 (2) If an administrative cease and desist order is issued pursuant to Subsection (1), the
3497 person upon whom the order is served may, within 10 days after receiving the order, request
3498 that a hearing be held before an administrative law judge. If a request for a hearing is made,
3499 the division shall follow the procedures and requirements of Title 63G, Chapter 4,

3500 Administrative Procedures Act. Pending the hearing, the order remains in effect.

3501 (3) (a) If, at the hearing, a finding is made that there has been a violation of this
3502 chapter, the director, with the concurrence of the executive director, may issue an order making
3503 the cease and desist order permanent.

3504 (b) If no hearing is requested, and if the person fails to cease the act or practice, or after
3505 discontinuing the act or practice again commences ~~[it] the act or practice~~, the director shall ~~[file~~
3506 ~~suit in the district court of the county in which the act or practice occurred, or where the person~~
3507 ~~resides or carries on business,] bring an action to enjoin and restrain the person from violating
3508 this chapter.~~

3509 (4) (a) Whether or not the director has issued a cease and desist order, the attorney
3510 general, in the name of the state or of the director, may bring an action ~~[in any court of~~
3511 ~~competent jurisdiction]~~ to enjoin any act or practice constituting a violation of any provision of
3512 this chapter, and to enforce compliance with this chapter or any rule or order under this chapter.

3513 (b) Upon a proper showing, a permanent or temporary injunction, restraining order, or
3514 writ of mandamus shall be granted.

3515 Section 84. Section **57-21-11** is amended to read:

3516 **57-21-11. Relief granted -- Civil penalties -- Enforcement of final order.**

3517 (1) Under Sections **57-21-9** and **57-21-10**, if the director, presiding officer,
3518 commissioner, Appeals Board, or court finds reasonable cause to believe that a discriminatory
3519 housing practice has occurred or is about to occur, the director, presiding officer,
3520 commissioner, Appeals Board, or court may order, as considered appropriate:

- 3521 (a) the respondent to cease any discriminatory housing practice;
- 3522 (b) actual damages, reasonable attorneys' fees and costs to the aggrieved person; and
- 3523 (c) any permanent or temporary injunction, temporary restraining order, or other
3524 appropriate order.

3525 (2) In addition to the relief granted to an aggrieved person under Subsection (1), in
3526 order to vindicate the public interest, the director, presiding officer, or court may also assess
3527 civil penalties against the respondent in an amount not exceeding:

3528 (a) \$10,000 if the respondent has not been adjudged to have committed any prior
3529 discriminatory housing practice;

3530 (b) \$25,000 if the respondent has been adjudged to have committed one other

3531 discriminatory housing practice during the five-year period ending on the date of the filing of
3532 the complaint; or

3533 (c) \$50,000 if the respondent has been adjudged to have committed two or more
3534 discriminatory housing practices during the seven-year period ending on the date of the filing
3535 of this complaint.

3536 (3) The time periods in Subsections (2)(b) and (c) may be disregarded if the acts
3537 constituting the discriminatory housing practice are committed by the same natural person who
3538 has previously been adjudged to have committed a discriminatory housing practice.

3539 (4) The division may file a petition [~~in a district court of competent jurisdiction~~] in a
3540 court with jurisdiction under Title 78A, Judiciary and Judicial Administration, for:

3541 (a) the enforcement of a final department order; and

3542 (b) for any appropriate temporary relief or restraining order necessary for the
3543 enforcement of a final commission order.

3544 Section 85. Section **57-22-6** is amended to read:

3545 **57-22-6. Renter remedies for deficient condition of residential rental unit.**

3546 (1) As used in this section:

3547 (a) "Corrective period" means:

3548 (i) for a standard of habitability, three calendar days; and

3549 (ii) for a requirement imposed by a rental agreement, 10 calendar days.

3550 (b) "Deficient condition" means a condition of a residential rental unit that:

3551 (i) violates a standard of habitability or a requirement of the rental agreement; and

3552 (ii) is not caused by:

3553 (A) the renter, the renter's family, or the renter's guest or invitee; and

3554 (B) a use that would violate:

3555 (I) the rental agreement; or

3556 (II) a law applicable to the renter's use of the residential rental unit.

3557 (c) "Notice of deficient condition" means the notice described in Subsection (2).

3558 (d) "Rent abatement remedy" means the remedy described in Subsection (4)(a)(i).

3559 (e) "Renter remedy" means:

3560 (i) a rent abatement remedy; or

3561 (ii) a repair and deduct remedy.

3562 (f) "Repair and deduct remedy" means the remedy described in Subsection (4)(a)(ii).

3563 (g) "Standard of habitability" means a standard:

3564 (i) relating to the condition of a residential rental unit; and

3565 (ii) that an owner is required to ensure that the residential rental unit meets as required

3566 under Subsection 57-22-3(1) or Subsection 57-22-4(1)(a) or (b)(i), (ii), or (iii).

3567 (2) (a) If a renter believes that the renter's residential rental unit has a deficient
3568 condition, the renter may give the owner written notice as provided in Subsection (2)(b).

3569 (b) A notice under Subsection (2)(a) shall:

3570 (i) describe each deficient condition;

3571 (ii) state that the owner has the corrective period, stated in terms of the applicable
3572 number of days, to correct each deficient condition;

3573 (iii) state the renter remedy that the renter has chosen if the owner does not, within the
3574 corrective period, take substantial action toward correcting each deficient condition;

3575 (iv) provide the owner permission to enter the residential rental unit to make corrective
3576 action; and

3577 (v) be served on the owner as provided in:

3578 (A) Section 78B-6-805; or

3579 (B) the rental agreement.

3580 (3) (a) As used in this Subsection (3), "dangerous condition" means a deficient
3581 condition that poses a substantial risk of:

3582 (i) imminent loss of life; or

3583 (ii) significant physical harm.

3584 (b) If a renter believes that the renter's residential rental unit has a dangerous condition,
3585 the renter may notify the owner of the dangerous condition by any means that is reasonable
3586 under the circumstances.

3587 (c) An owner shall:

3588 (i) within 24 hours after receiving notice under Subsection (3)(b) of a dangerous
3589 condition, commence remedial action to correct the dangerous condition; and

3590 (ii) diligently pursue remedial action to completion.

3591 (d) Notice under Subsection (3)(b) of a dangerous condition does not constitute a
3592 notice of deficient condition, unless the notice also meets the requirements of Subsection (2).

3593 (4) (a) Subject to Subsection (4)(b), if an owner fails to take substantial action, before
3594 the end of the corrective period, toward correcting a deficient condition described in a notice of
3595 deficient condition:

3596 (i) if the renter chose the rent abatement remedy in the notice of deficient condition:

3597 (A) the renter's rent is abated as of the date of the notice of deficient condition to the
3598 owner;

3599 (B) the rental agreement is terminated;

3600 (C) the owner shall immediately pay to the renter:

3601 (I) the entire security deposit that the renter paid under the rental agreement; and

3602 (II) a prorated refund for any prepaid rent, including any rent the renter paid for the
3603 period after the date on which the renter gave the owner the notice of deficient condition; and

3604 (D) the renter shall vacate the residential rental unit within 10 calendar days after the
3605 expiration of the corrective period; or

3606 (ii) if the renter chose the repair and deduct remedy in the notice of deficient condition,
3607 and subject to Subsection (4)(c), the renter:

3608 (A) may:

3609 (I) correct the deficient condition described in the notice of deficient condition; and

3610 (II) deduct from future rent the amount the renter paid to correct the deficient

3611 condition, not to exceed an amount equal to two months' rent; and

3612 (B) shall:

3613 (I) maintain all receipts documenting the amount the renter paid to correct the deficient
3614 condition; and

3615 (II) provide a copy of those receipts to the owner within five calendar days after the
3616 beginning of the next rental period.

3617 (b) A renter is not entitled to a renter remedy if the renter is not in compliance with all
3618 requirements under Section [57-22-5](#).

3619 (c) (i) If a residential rental unit is not fit for occupancy, an owner may:

3620 (A) determine not to correct a deficient condition described in a notice of deficient
3621 condition; and

3622 (B) terminate the rental agreement.

3623 (ii) If an owner determines not to correct a deficient condition and terminates the rental

3624 agreement under Subsection (4)(c)(i):

3625 (A) the owner shall:

3626 (I) notify the renter in writing no later than the end of the corrective period; and

3627 (II) within 10 calendar days after the owner terminates the rental agreement, pay to the
3628 renter:

3629 (Aa) any prepaid rent, prorated as provided in Subsection (4)(c)(ii)(B); and

3630 (Bb) any deposit due the renter;

3631 (B) the rent shall be prorated to the date the owner terminates the rental agreement
3632 under Subsection (4)(c)(i); and

3633 (C) the renter may not be required to vacate the residential rental unit sooner than 10
3634 calendar days after the owner notifies the renter under Subsection (4)(c)(ii)(A)(I).

3635 (5) (a) After the corrective period expires, a renter may bring [~~an action in district~~
3636 ~~court~~] an action to enforce the renter remedy that the renter chose in the notice of deficient
3637 condition.

3638 (b) In an action under Subsection (5)(a), the court shall endorse on the summons that
3639 the owner is required to appear and defend the action within three business days.

3640 (c) If, in an action under Subsection (5)(a), the court finds that the owner unjustifiably
3641 refused to correct a deficient condition or failed to use due diligence to correct a deficient
3642 condition, the renter is entitled to any damages, in addition to the applicable renter remedy.

3643 (d) An owner who disputes that a condition of the residential rental unit violates a
3644 requirement of the rental agreement may file a counterclaim in an action brought against the
3645 owner under Subsection (5)(a).

3646 (6) An owner may not be held liable under this chapter for a claim for mental suffering
3647 or anguish.

3648 (7) In an action under this chapter, the court may award costs and reasonable attorney
3649 fees to the prevailing party.

3650 Section 86. Section ~~57-23-7~~ is amended to read:

3651 **57-23-7. Investigatory powers and proceedings of division.**

3652 (1) The division may:

3653 (a) make necessary public or private investigations within or outside of this state to
3654 determine whether any person has violated or is about to violate this chapter or any rule or

3655 order made by the division under this chapter; and

3656 (b) require or permit any person to file a statement in writing, under oath or otherwise
3657 as the division determines, as to all the facts and circumstances concerning the matter to be
3658 investigated.

3659 (2) For the purpose of any investigation or proceeding under this chapter:

3660 (a) the division may administer oaths or affirmations; and

3661 (b) upon its own motion or upon the request of any party, the division may:

3662 (i) subpoena witnesses;

3663 (ii) compel their attendance;

3664 (iii) take evidence; and

3665 (iv) require the production of any matter which is relevant to the investigation,
3666 including:

3667 (A) the existence, description, nature, custody, condition and location of any books,
3668 documents, or other tangible records;

3669 (B) the identity and location of persons having knowledge of relevant facts; or

3670 (C) any other matter reasonably calculated to lead to the discovery of material
3671 evidence.

3672 (3) Upon failure of any person to obey a subpoena or to answer questions propounded
3673 by the investigating officer and upon reasonable notice to all persons affected by the subpoena
3674 or information sought to be discovered under the subpoena, the division may [~~apply to the~~
3675 ~~district court~~] petition a court with jurisdiction under Title 78A, Judiciary and Judicial
3676 Administration, for an order compelling compliance.

3677 Section 87. Section **57-23-8** is amended to read:

3678 **57-23-8. Enforcement powers of division -- Cease and desist orders.**

3679 (1) (a) If the director has reason to believe that any person has been or is engaging in
3680 conduct violating this chapter, or has violated any lawful order or rule of the division, the
3681 director shall issue and serve upon the person a cease and desist order. The director may also
3682 order the person to take whatever affirmative actions the director determines to be necessary to
3683 carry out the purposes of this chapter.

3684 (b) The person served with an order under Subsection (1)(a) may request an
3685 adjudicative proceeding within 10 days after receiving the order. The cease and desist order

3686 remains in effect pending the hearing.

3687 (c) The division shall follow the procedures and requirements of Title 63G, Chapter 4,
3688 Administrative Procedures Act, if the person served requests a hearing.

3689 (2) (a) After the hearing the director may issue a final order making the cease and
3690 desist order permanent if the director finds there has been a violation of this chapter.

3691 (b) If no hearing is requested and the person served does not obey the director's order,
3692 the director may [~~file suit~~] bring an action in the name of the Department of Commerce and the
3693 Division of Real Estate to enjoin the person from violating this chapter. [~~The action shall be~~
3694 ~~filed in the district court in the county in which the conduct occurred, where the person served~~
3695 ~~with the cease and desist order either resides or carries on business.~~]

3696 (3) The remedies and action provided in this section are not exclusive but are in
3697 addition to any other remedies or actions available under Section [57-23-10](#).

3698 Section 88. Section **57-29-303** is amended to read:

3699 **57-29-303. Investigatory powers and proceedings of division.**

3700 (1) The division may:

3701 (a) conduct a public or private investigation to determine whether a person has violated
3702 or is about to violate a provision of this chapter; and

3703 (b) require or allow a person to file a written statement with the division that relates to
3704 the facts and circumstances concerning a matter to be investigated.

3705 (2) For the purpose of an investigation or proceeding under this chapter, the division
3706 may:

3707 (a) administer oaths or affirmations; and

3708 (b) upon the division's own initiative or upon the request of any party:

3709 (i) subpoena a witness;

3710 (ii) compel a witness's attendance;

3711 (iii) take evidence; or

3712 (iv) require the production, within 10 business days, of any information or item that is
3713 relevant to the investigation, including:

3714 (A) the existence, description, nature, custody, condition, and location of any books,
3715 electronic records, documents, or other tangible records;

3716 (B) the identity and location of any person who has knowledge of relevant facts; or

3717 (C) any other information or item that is reasonably calculated to lead to the discovery
3718 of material evidence.

3719 (3) If a person fails to obey a subpoena or other request made in accordance with this
3720 section, the division may [~~file an action in district court~~] file a petition in a court with
3721 jurisdiction under Title 78A, Judiciary and Judicial Administration, for an order compelling
3722 compliance.

3723 Section 89. Section **57-29-304** is amended to read:

3724 **57-29-304. Enforcement.**

3725 (1) (a) If the director believes that a person has been or is engaging in conduct that
3726 violates this chapter, the director:

3727 (i) shall issue and serve upon the person a cease and desist order; and

3728 (ii) may order the person to take any action necessary to carry out the purposes of this
3729 chapter.

3730 (b) (i) A person served with an order under Subsection (1)(a) may request a hearing
3731 within 10 days after the day on which the person is served.

3732 (ii) (A) If a person requests a hearing in accordance with Subsection (1)(b)(i), the
3733 director shall schedule a hearing to take place no more than 30 days after the day on which the
3734 director receives the request.

3735 (B) The cease and desist order remains in effect pending the hearing.

3736 (iii) If the director fails to schedule a hearing in accordance with Subsection

3737 (1)(b)(ii)(A), the cease and desist order is vacated.

3738 (c) The division shall conduct a hearing described in Subsection (1)(b) in accordance
3739 with Title 63G, Chapter 4, Administrative Procedures Act.

3740 (2) After a hearing described in Subsection (1)(b):

3741 (a) if the director finds that the person violated this chapter, the director may issue a
3742 final order making the cease and desist order permanent; or

3743 (b) if the director finds that the person did not violate this chapter, the director shall
3744 vacate the cease and desist order.

3745 (3) If a person served with an order under Subsection (1)(a) does not request a hearing
3746 and the person fails to comply with the director's order, the director may [~~file suit in district~~
3747 ~~court~~] bring an action in the name of the Department of Commerce and the Division of Real

3748 Estate to enjoin the person from violating this chapter.

3749 (4) The remedies and action provided in this section are not exclusive but are in
3750 addition to any other remedies or actions available under Section 57-29-305.

3751 Section 90. Section 61-1-20 is amended to read:

3752 **61-1-20. Enforcement.**

3753 (1) Whenever it appears to the director that a person has engaged, is engaging, or is
3754 about to engage in an act or practice constituting a violation of this chapter or a rule or order
3755 under this chapter, in addition to specific powers granted in this chapter:

3756 (a) the director may issue an order directing the person to appear before the
3757 commission and show cause why an order should not be issued directing the person to cease
3758 and desist from engaging in the act or practice, or doing an act in furtherance of the activity;

3759 (b) the order to show cause shall state the reasons for the order and the date of the
3760 hearing;

3761 (c) the director shall promptly serve a copy of the order to show cause upon a person
3762 named in the order;

3763 (d) the commission shall hold a hearing on the order to show cause no sooner than 10
3764 business days after the order is issued;

3765 (e) after a hearing, the commission may:

3766 (i) issue an order to cease and desist from engaging in an act or practice constituting a
3767 violation of this chapter or a rule or order under this chapter;

3768 (ii) impose a fine in an amount determined after considering the factors set forth in
3769 Section 61-1-31;

3770 (iii) order disgorgement;

3771 (iv) order restitution;

3772 (v) order rescission;

3773 (vi) bar or suspend that person from associating with a licensed broker-dealer or
3774 investment adviser in this state; and

3775 (vii) impose a combination of sanctions in this Subsection (1)(e).

3776 (2) (a) The director may bring an action in the appropriate [district] court of this state
3777 or the appropriate court of another state to enjoin an act or practice and to enforce compliance
3778 with this chapter or a rule or order under this chapter.

- 3779 (b) Upon a proper showing in an action brought under this section, the court may:
- 3780 (i) issue a permanent or temporary, prohibitory or mandatory injunction;
- 3781 (ii) issue a restraining order or writ of mandamus;
- 3782 (iii) enter a declaratory judgment;
- 3783 (iv) appoint a receiver or conservator for the defendant or the defendant's assets;
- 3784 (v) order disgorgement;
- 3785 (vi) order rescission;
- 3786 (vii) order restitution;
- 3787 (viii) impose a fine in an amount determined after considering the factors set forth in
- 3788 Section 61-1-31; and
- 3789 (ix) enter any other relief the court considers just.
- 3790 (c) The court may not require the division to post a bond in an action brought under
- 3791 this Subsection (2).
- 3792 (3) An order issued under Subsection (1) shall be accompanied by written findings of
- 3793 fact and conclusions of law.
- 3794 (4) When determining the severity of a sanction to be imposed under this section, the
- 3795 commission or court shall consider whether:
- 3796 (a) the person against whom the sanction is to be imposed exercised undue influence;
- 3797 or
- 3798 (b) the person against whom the sanction is imposed under this section knows or
- 3799 should know that an investor in the investment that is the grounds for the sanction is a
- 3800 vulnerable adult.
- 3801 Section 91. Section **61-1-105** is amended to read:
- 3802 **61-1-105. Remedies for employee bringing action.**
- 3803 (1) As used in this section, "actual damages" means damages for injury or loss caused
- 3804 by a violation of Section 61-1-104.
- 3805 (2) (a) An employee who alleges a violation of Section 61-1-104 may bring [~~a-civil~~] an
- 3806 action for injunctive relief, actual damages, or both.
- 3807 (b) An employee may not bring [~~a-civil~~] an action under this section more than:
- 3808 (i) four years after the day on which the violation of Section 61-1-104 occurs; or
- 3809 (ii) two years after the date when facts material to the right of action are known or

3810 reasonably should be known by the employee alleging a violation of Section 61-1-104.

3811 ~~[(3) An employee may bring an action under this section in the district court for the~~
3812 ~~county where:]~~

3813 ~~[(a) the alleged violation occurs;]~~

3814 ~~[(b) the employee resides; or]~~

3815 ~~[(c) the person against whom the civil complaint is filed resides or has a principal place~~
3816 ~~of business.]]~~

3817 ~~[(4)]~~ (3) To prevail in an action brought under this section, an employee shall establish,
3818 by a preponderance of the evidence, that the employee has suffered an adverse action because
3819 the employee, or a person acting on the employee's behalf, engaged or intended to engage in an
3820 activity protected under Section 61-1-104.

3821 ~~[(5)]~~ (4) A court may award as relief for an employee prevailing in an action brought
3822 under this section:

3823 (a) reinstatement with the same fringe benefits and seniority status that the individual
3824 would have had, but for the adverse action;

3825 (b) two times the amount of back pay otherwise owed to the individual, with interest;

3826 (c) compensation for litigation costs, expert witness fees, and reasonable attorney fees;

3827 (d) actual damages; or

3828 (e) any combination of the remedies listed in this Subsection ~~[(5)]~~ (4).

3829 ~~[(6)]~~ (5) (a) An employer may file a counter claim against an employee who files a
3830 civil action under this section seeking attorney fees and costs incurred by the employer related
3831 to the action filed by the employee and the counter claim.

3832 (b) The court may award an employer who files a counter claim under this Subsection
3833 ~~[(6)]~~ (5) attorney fees and costs if the court finds that:

3834 (i) there is no reasonable basis for the civil action filed by the employee; or

3835 (ii) the employee is not protected under Section 61-1-104 because:

3836 (A) the employee engaged in an act described in Subsections 61-1-104(2)(a) through
3837 (c); or

3838 (B) Subsection 61-1-104(2)(d) applies.

3839 Section 92. Section 61-2-203 is amended to read:

3840 **61-2-203. Adjudicative proceedings -- Citation authority.**

- 3841 (1) The division shall comply with Title 63G, Chapter 4, Administrative Procedures
3842 Act, in an adjudicative proceeding under a chapter the division administers.
- 3843 (2) The division may initiate an adjudicative proceeding through:
3844 (a) a notice of agency action; or
3845 (b) a notice of formal or informal proceeding.
- 3846 (3) The provisions of Title 63G, Chapter 4, Administrative Procedures Act, do not
3847 apply to the issuance of a citation under Subsection (4), unless a licensee or another person
3848 authorized by law to contest the validity or correctness of a citation commences an adjudicative
3849 proceeding contesting the citation.
- 3850 (4) In addition to any other statutory penalty for a violation related to an occupation or
3851 profession regulated under this title, the division may issue a citation to a person who, upon
3852 inspection or investigation, the division concludes to have violated:
- 3853 (a) Subsection 61-2c-201(1), which requires licensure;
3854 (b) Subsection 61-2c-201(4), which requires licensure;
3855 (c) Subsection 61-2c-205(3), which requires notification of a change in specified
3856 information regarding a licensee;
3857 (d) Subsection 61-2c-205(4), which requires notification of a specified legal action;
3858 (e) Subsection 61-2c-301(1)(g), which prohibits failing to respond to the division
3859 within the required time period;
3860 (f) Subsection 61-2c-301(1)(h), which prohibits making a false representation to the
3861 division;
3862 (g) Subsection 61-2c-301(1)(i), which prohibits taking a dual role in a transaction;
3863 (h) Subsection 61-2c-301(1)(l), which prohibits engaging in false or misleading
3864 advertising;
3865 (i) Subsection 61-2c-301(1)(t), which prohibits advertising the ability to do licensed
3866 work if unlicensed;
3867 (j) Subsection 61-2c-302(5), which requires a mortgage entity to create and file a
3868 quarterly report of condition;
3869 (k) Subsection 61-2e-201(1), which requires registration;
3870 (l) Subsection 61-2e-203(4), which requires a notification of a change in ownership;
3871 (m) Subsection 61-2e-307(1)(c), which prohibits use of an unregistered fictitious name;

- 3872 (n) Subsection 61-2e-401(1)(c), which prohibits failure to respond to a division
3873 request;
- 3874 (o) Subsection 61-2f-201(1), which requires licensure;
- 3875 (p) Subsection 61-2f-206(1), which requires registration;
- 3876 (q) Subsection 61-2f-301(1), which requires notification of a specified legal action;
- 3877 (r) Subsection 61-2f-401(1)(a), which prohibits making a substantial misrepresentation;
- 3878 (s) Subsection 61-2f-401(3), which prohibits undertaking real estate while not affiliated
3879 with a principal broker;
- 3880 (t) Subsection 61-2f-401(9), which prohibits failing to keep specified records and
3881 prohibits failing to make the specified records available for division inspection;
- 3882 (u) Subsection 61-2f-401(12), which prohibits false, misleading, or deceptive
3883 advertising;
- 3884 (v) Subsection 61-2f-401(18), which prohibits failing to respond to a division request;
- 3885 (w) Subsection 61-2g-301(1), which requires licensure;
- 3886 (x) Subsection 61-2g-405(3), which requires making records required to be maintained
3887 available to the division;
- 3888 (y) Subsection 61-2g-501(2)(c), which requires a person to respond to a division
3889 request in an investigation within 10 days after the day on which the request is served;
- 3890 (z) Subsection 61-2g-502(2)(f), which prohibits using a nonregistered fictitious name;
- 3891 (aa) a rule made pursuant to any Subsection listed in this Subsection (4);
- 3892 (bb) an order of the division; or
- 3893 (cc) an order of the commission or board that oversees the person's profession.
- 3894 (5) (a) In accordance with Subsection (10), the division may assess a fine against a
3895 person for a violation of a provision listed in Subsection (4), as evidenced by:
- 3896 (i) an uncontested citation;
- 3897 (ii) a stipulated settlement; or
- 3898 (iii) a finding of a violation in an adjudicative proceeding.
- 3899 (b) The division may, in addition to or in lieu of a fine under Subsection (5)(a), order
3900 the person to cease and desist from an activity that violates a provision listed in Subsection (4).
- 3901 (6) Except as provided in Subsection (8)(d), the division may not use a citation to
3902 effect a license:

- 3903 (a) denial;
- 3904 (b) probation;
- 3905 (c) suspension; or
- 3906 (d) revocation.
- 3907 (7) (a) A citation issued by the division shall:
- 3908 (i) be in writing;
- 3909 (ii) describe with particularity the nature of the violation, including a reference to the
- 3910 provision of the statute, rule, or order alleged to have been violated;
- 3911 (iii) clearly state that the recipient must notify the division in writing within 20
- 3912 calendar days after the day on which the citation is served if the recipient wishes to contest the
- 3913 citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act; and
- 3914 (iv) clearly explain the consequences of failure to timely contest the citation or to make
- 3915 payment of a fine assessed by the citation within the time period specified in the citation.
- 3916 (b) The division may issue a notice in lieu of a citation.
- 3917 (8) (a) A citation becomes final:
- 3918 (i) if within 20 calendar days after the day on which the citation is served, the person to
- 3919 whom the citation was issued fails to request a hearing to contest the citation; or
- 3920 (ii) if the director or the director's designee conducts a hearing pursuant to a timely
- 3921 request for a hearing and issues an order finding that a violation has occurred.
- 3922 (b) The division may extend, for cause, the 20-day period to contest a citation.
- 3923 (c) A citation that becomes the final order of the division due to a person's failure to
- 3924 timely request a hearing is not subject to further agency review.
- 3925 (d) (i) The division may refuse to issue, refuse to renew, suspend, revoke, or place on
- 3926 probation the license of a licensee who fails to comply with a citation after the citation
- 3927 becomes final.
- 3928 (ii) The failure of a license applicant to comply with a citation after the citation
- 3929 becomes final is a ground for denial of the license application.
- 3930 (9) (a) The division may not issue a citation under this section after the expiration of
- 3931 one year after the day on which the violation occurs.
- 3932 (b) The division may issue a notice to address a violation that is outside of the one-year
- 3933 citation period.

3934 (10) The director or the director's designee shall assess a fine with a citation in an
3935 amount that is no more than:

- 3936 (a) for a first offense, \$1,000;
- 3937 (b) for a second offense, \$2,000; and
- 3938 (c) for each offense subsequent to a second offense, \$2,000 for each day of continued
3939 offense.

3940 (11) (a) An action for a first or second offense for which the division has not issued a
3941 final order does not preclude the division from initiating a subsequent action for a second or
3942 subsequent offense while the preceding action is pending.

3943 (b) The final order on a subsequent action is considered a second or subsequent
3944 offense, respectively, provided the preceding action resulted in a first or second offense,
3945 respectively.

3946 (12) (a) If a person does not pay a penalty, the director may collect the unpaid penalty
3947 by:

- 3948 (i) referring the matter to a collection agency; or
- 3949 (ii) bringing [~~an action in the district court of the county: (A) where the person resides;~~
3950 ~~or (B) where the office of the director is located]~~ an action in a court with jurisdiction under
3951 Title 78A, Judiciary and Judicial Administration.

3952 (b) A county attorney or the attorney general of the state shall provide legal services to
3953 the director in an action to collect the penalty.

3954 (c) A court may award reasonable attorney fees and costs to the division in an action
3955 the division brings to enforce the provisions of this section.

3956 Section 93. Section **61-2c-403** is amended to read:

3957 **61-2c-403. Cease and desist orders.**

3958 (1) (a) The director may issue and serve by certified mail, or by personal service, on a
3959 person an order to cease and desist from an act if:

3960 (i) the director has reason to believe that the person has been engaged, is engaging in,
3961 or is about to engage in the act constituting a violation of this chapter; and

3962 (ii) it appears to the director that it would be in the public interest to stop the act.

3963 (b) Within 10 days after service of the order, the party named in the order may request
3964 a hearing to be held in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

3965 (c) Pending a hearing requested under Subsection (1)(b), a cease and desist order shall
3966 remain in effect.

3967 (2) (a) After the hearing described in Subsection (1), if the director finds that an act of
3968 the person violates this chapter, the director:

3969 (i) shall issue an order making the cease and desist order permanent; and

3970 (ii) may impose another disciplinary action under Section 61-2c-402.

3971 (b) ~~[(f)]~~ The director may ~~[file suit]~~ bring an action in the name of the division to
3972 enjoin and restrain a person on whom an order is served under this section from violating this
3973 chapter if:

3974 ~~[(A)]~~ (i) ~~[(f)]~~ (A) the person does not request a hearing under Subsection (1); or

3975 ~~[(f)]~~ (B) a permanent cease and desist order is issued against the person following a
3976 hearing or stipulation; and

3977 ~~[(B)]~~ (ii) ~~[(f)]~~ (A) the person fails to cease the act; or

3978 ~~[(f)]~~ (B) after discontinuing the act, the person again commences the act.

3979 ~~[(ii) The suit described in Subsection (2)(b)(i) shall be filed in the district court in the
3980 county:]~~

3981 ~~[(A) in which the act occurs;]~~

3982 ~~[(B) where the individual resides; or]~~

3983 ~~[(C) where the individual or entity carries on business.]~~

3984 (3) The cease and desist order issued under this section may not interfere with or
3985 prevent the prosecution of a remedy or action enforcement under this chapter.

3986 (4) An individual who violates a cease and desist order issued under this section is
3987 guilty of a class A misdemeanor.

3988 Section 94. Section **61-2f-403** is amended to read:

3989 **61-2f-403. Mishandling of trust money.**

3990 (1) The division may audit principal brokers' trust accounts or other accounts in which
3991 a licensee maintains trust money under this chapter. If the division's audit shows, in the
3992 opinion of the division, gross mismanagement, commingling, or misuse of money, the division,
3993 with the concurrence of the commission, may order at the division's expense a complete audit
3994 of the account by a certified public accountant, or take other action in accordance with Section
3995 61-2f-404.

3996 (2) If the commission finds under Subsection (1) that gross mismanagement,
3997 comingling, or misuse of money occurred, the commission, with concurrence of the division,
3998 may then order the licensee to reimburse the division for the cost of the audit described in
3999 Subsection (1).

4000 (3) The licensee may obtain agency review by the executive director or judicial review
4001 of any division order.

4002 (4) (a) If it appears that a person has grossly mismanaged, commingled, or otherwise
4003 misused trust money, the division, with or without prior administrative proceedings, may bring
4004 an action[~~:(i) in the district court of the district where: (A) the person resides; (B) the person~~
4005 ~~maintains a place of business; or (C) the act or practice occurred or is about to occur; and (ii)]
4006 to enjoin the act or practice and to enforce compliance with this chapter or any rule or order
4007 under this chapter.~~

4008 (b) Upon a proper showing, a court shall grant injunctive relief or a temporary
4009 restraining order, and may appoint a receiver or conservator. The division is not required to
4010 post a bond in any court proceeding.

4011 Section 95. Section ~~61-2f-407~~ is amended to read:

4012 **61-2f-407. Remedies and action for violations.**

4013 (1) (a) The director shall issue and serve upon a person an order directing that person to
4014 cease and desist from an act if:

4015 (i) the director has reason to believe that the person has been engaging, is about to
4016 engage, or is engaging in the act constituting a violation of this chapter; and

4017 (ii) it appears to the director that it would be in the public interest to stop the act.

4018 (b) Within 10 days after the day on which the order is served, the person upon whom
4019 the order is served may request a hearing.

4020 (c) Pending a hearing requested under Subsection (1)(b), a cease and desist order shall
4021 remain in effect.

4022 (d) If a request for a hearing is made, the division shall follow the procedures and
4023 requirements of Title 63G, Chapter 4, Administrative Procedures Act.

4024 (2) (a) After a hearing requested under Subsection (1), if the commission and the
4025 director agree that an act of the person violates this chapter, the director:

4026 (i) shall issue an order making the order issued under Subsection (1) permanent; and

4027 (ii) may impose another disciplinary action under Section 61-2f-404.

4028 (b) The director shall ~~[file suit]~~ bring an action in the name of the Department of
4029 Commerce and the Division of Real Estate~~[, in the district court in the county in which an act~~
4030 ~~described in Subsection (1) occurs or where the person resides or carries on business;]~~ to enjoin
4031 and restrain the person from violating this chapter if:

4032 (i) (A) a hearing is not requested under Subsection (1); and

4033 (B) the person fails to cease the act described in Subsection (1); or

4034 (ii) after discontinuing the act described in Subsection (1), the person again

4035 commences the act.

4036 ~~[(c) A district court of this state has jurisdiction of an action brought under this~~
4037 ~~section.]~~

4038 ~~[(d)]~~ (c) Upon a proper showing in an action brought under this section or upon a
4039 conviction under Section 76-6-1203, the court may:

4040 (i) issue a permanent or temporary, prohibitory or mandatory injunction;

4041 (ii) issue a restraining order or writ of mandamus;

4042 (iii) enter a declaratory judgment;

4043 (iv) appoint a receiver or conservator for the defendant or the defendant's assets;

4044 (v) order disgorgement;

4045 (vi) order rescission;

4046 (vii) impose a civil penalty not to exceed the greater of:

4047 (A) \$5,000 for each violation; or

4048 (B) the amount of any gain or economic benefit derived from a violation; and

4049 (viii) enter any other relief the court considers just.

4050 ~~[(e)]~~ (d) The court may not require the division to post a bond in an action brought
4051 under this Subsection (2).

4052 (3) A license, certificate, or registration issued by the division to any person convicted
4053 of a violation of Section 76-6-1203 is automatically revoked.

4054 (4) A remedy or action provided in this section does not limit, interfere with, or prevent
4055 the prosecution of another remedy or action, including a criminal proceeding.

4056 Section 96. Section 61-2g-501 is amended to read:

4057 **61-2g-501. Enforcement -- Investigation -- Orders -- Hearings.**

- 4058 (1) (a) The division may conduct a public or private investigation of the actions of:
4059 (i) a person registered, licensed, or certified under this chapter;
4060 (ii) an applicant for registration, licensure, or certification;
4061 (iii) an applicant for renewal of registration, licensure, or certification; or
4062 (iv) a person required to be registered, licensed, or certified under this chapter.
4063 (b) The division may initiate an agency action against a person described in Subsection
4064 (1)(a) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to:
4065 (i) impose disciplinary action;
4066 (ii) deny issuance to an applicant of:
4067 (A) an original registration, license, or certification; or
4068 (B) a renewal of a registration, license, or certification; or
4069 (iii) issue a cease and desist order as provided in Subsection (3).
4070 (2) (a) The division may:
4071 (i) administer an oath or affirmation;
4072 (ii) issue a subpoena that requires:
4073 (A) the attendance and testimony of a witness; or
4074 (B) the production of evidence;
4075 (iii) take evidence; and
4076 (iv) require the production of a book, paper, contract, record, document, information,
4077 or evidence relevant to the investigation described in Subsection (1).
4078 (b) The division may serve a subpoena by certified mail.
4079 (c) A failure to respond to a request by the division in an investigation authorized
4080 under this chapter within 10 days after the day on which the request is served is considered to
4081 be a separate violation of this chapter, including:
4082 (i) failing to respond to a subpoena as a witness;
4083 (ii) withholding evidence; or
4084 (iii) failing to produce a book, paper, contract, document, information, or record.
4085 (d) (i) A court of competent jurisdiction shall enforce, according to the practice and
4086 procedure of the court, a subpoena issued by the division.
4087 (ii) The division shall pay any witness fee, travel expense, mileage, or any other fee
4088 required by the service statutes of the state where the witness or evidence is located.

4089 (e) (i) If a person is found to have violated this chapter or a rule made under this
4090 chapter, the person shall pay the costs incurred by the division to copy a book, paper, contract,
4091 document, information, or record required under this chapter, including the costs incurred to
4092 copy an electronic book, paper, contract, document, information, or record in a universally
4093 readable format.

4094 (ii) If a person fails to pay the costs described in Subsection (2)(e)(i) when due, the
4095 person's license, certification, or registration is automatically suspended:

4096 (A) beginning the day on which the payment of costs is due; and

4097 (B) ending the day on which the costs are paid.

4098 (3) (a) The director shall issue and serve upon a person an order directing that person to
4099 cease and desist from an act if:

4100 (i) the director has reason to believe that the person has been engaging, is about to
4101 engage, or is engaging in the act constituting a violation of this chapter; and

4102 (ii) it appears to the director that it would be in the public interest to stop the act.

4103 (b) Within 10 days after the day on which the order is served, the person upon whom
4104 the order is served may request a hearing.

4105 (c) Pending a hearing requested under Subsection (3)(b), a cease and desist order shall
4106 remain in effect.

4107 (d) If a request for hearing is made, the division shall follow the procedures and
4108 requirements of Title 63G, Chapter 4, Administrative Procedures Act.

4109 (4) (a) After a hearing requested under Subsection (3), if the board and division concur
4110 that an act of the person violates this chapter, the board, with the concurrence of the division:

4111 (i) shall issue an order making the cease and desist order permanent; and

4112 (ii) may impose another disciplinary action under Section [61-2g-502](#).

4113 (b) The director shall [~~commence an action~~] bring an action in the name of the
4114 Department of Commerce and Division of Real Estate[~~, in the district court in the county in~~
4115 ~~which an act described in Subsection (3) occurs or where the individual resides or carries on~~
4116 ~~business,~~] to enjoin and restrain the individual from violating this chapter if:

4117 (i) (A) a hearing is not requested under Subsection (3); and

4118 (B) the individual fails to cease the act described in Subsection (3); or

4119 (ii) after discontinuing the act described in Subsection (3), the individual again

4120 commences the act.

4121 (5) A remedy or action provided in this section does not limit, interfere with, or prevent
4122 the prosecution of another remedy or action, including a criminal proceeding.

4123 (6) (a) Except as provided in Subsection (6)(b), the division shall commence a
4124 disciplinary action under this chapter no later than the earlier of the following:

4125 (i) four years after the day on which the violation is reported to the division; or

4126 (ii) 10 years after the day on which the violation occurred.

4127 (b) The division may commence a disciplinary action under this chapter after the time
4128 period described in Subsection (6)(a) expires if:

4129 (i) (A) the disciplinary action is in response to a civil or criminal judgment or
4130 settlement; and

4131 (B) the division initiates the disciplinary action no later than one year after the day on
4132 which the judgment is issued or the settlement is final; or

4133 (ii) the division and the individual subject to a disciplinary action enter into a written
4134 stipulation to extend the time period described in Subsection (6)(a).

4135 Section 97. Section **70-3a-309** is amended to read:

4136 **70-3a-309. Cybersquatting.**

4137 (1) (a) A person is liable in a civil action by the owner of a mark, including a personal
4138 name, which is a mark for purposes of this section, if, without regard to the goods or services
4139 of the person or the mark's owner, the person:

4140 (i) has a bad faith intent to profit from the mark, including a personal name; and

4141 (ii) for any length of time registers, acquires, traffics in, or uses a domain name in, or
4142 belonging to any person in, this state that:

4143 (A) in the case of a mark that is distinctive at the time of registration of the domain
4144 name, is identical or confusingly similar to the mark;

4145 (B) in the case of a famous mark that is famous at the time of registration of the
4146 domain name, is identical or confusingly similar to or dilutive of the mark; or

4147 (C) is a trademark, word, or name protected by reason of 18 U.S.C. Sec. 706 or 36
4148 U.S.C. Sec. 220506.

4149 (b) (i) In determining whether a person has a bad faith intent described in Subsection
4150 (1)(a), a court may consider all relevant factors, including:

4151 (A) the trademark or other intellectual property rights of the person, if any, in the
4152 domain name;

4153 (B) the extent to which the domain name consists of the legal name of the person or a
4154 name that is otherwise commonly used to identify that person;

4155 (C) the person's prior use, if any, of the domain name in connection with the bona fide
4156 offering of any goods or services;

4157 (D) the person's bona fide noncommercial or fair use of the mark in a site accessible
4158 under the domain name;

4159 (E) the person's intent to divert consumers from the mark owner's online location to a
4160 site accessible under the domain name that could harm the goodwill represented by the mark,
4161 either for commercial gain or with the intent to tarnish or disparage the mark, by creating a
4162 likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the site;

4163 (F) the person's offer to transfer, sell, or otherwise assign, or solicitation of the
4164 purchase, transfer, or assignment of the domain name to the mark owner or any third party for
4165 financial gain without having used, or having an intent to use, the domain name in the bona
4166 fide offering of any goods or services, or the person's prior conduct indicating a pattern of such
4167 conduct;

4168 (G) the person's provision of material and misleading false contact information when
4169 applying for the registration of the domain name, the person's intentional failure to maintain
4170 accurate contact information, or the person's prior conduct indicating a pattern of such conduct;

4171 (H) the person's registration or acquisition of multiple domain names that the person
4172 knows are identical or confusingly similar to another's mark that is distinctive at the time of
4173 registration of the domain names, or is dilutive of another's famous mark that is famous at the
4174 time of registration of the domain names, without regard to the goods or services of the person
4175 or the mark owner; and

4176 (I) the extent to which the mark incorporated in the person's domain name registration
4177 is or is not distinctive and famous.

4178 (ii) Bad faith intent described in Subsection (1)(a) may not be found in any case in
4179 which the court determines that the person believed and had reasonable grounds to believe that
4180 the use of the domain name was a fair use or otherwise lawful.

4181 (c) In a civil action involving the registration, trafficking, or use of a domain name

4182 under this section, a court may order the forfeiture or cancellation of the domain name or the
4183 transfer of the domain name to the owner of the mark.

4184 (d) (i) A person is liable for using a domain name under Subsection (1)(a) only if that
4185 person is the domain name registrant or that registrant's authorized licensee, affiliate, domain
4186 name registrar, domain name registry, or other domain name registration authority that
4187 knowingly assists a violation of this chapter by the registrant.

4188 (ii) A person may not be held liable under this section absent a showing of bad faith
4189 intent to profit from the registration or maintenance of the domain name.

4190 (iii) For purposes of this section, a "showing of bad faith intent to profit" shall be
4191 interpreted in the same manner as under 15 U.S.C. Sec. 1114(2)(D)(iii).

4192 (e) As used in this section, the term "traffics in" refers to transactions that include
4193 sales, purchases, loans, pledges, licenses, exchanges of currency, and any other transfer for
4194 consideration or receipt in exchange for consideration.

4195 (2) (a) The owner of a mark registered with the U.S. Patent and Trademark Office or
4196 under this chapter may file an in rem civil action against a domain name [~~in the district court~~] if
4197 the owner is located in the state and if:

4198 (i) the domain name violates any right of the owner of a mark registered in the Patent
4199 and Trademark Office or registered under this chapter; and

4200 (ii) the court finds that the owner:

4201 (A) is not able to obtain personal jurisdiction over a person who would be a defendant
4202 in a civil action under Subsection (1); or

4203 (B) through due diligence was not able to find a person who would be a defendant in a
4204 civil action under Subsection (1) by:

4205 (I) sending a notice of the alleged violation and intent to proceed under this Subsection
4206 (2)(a) to the registrant of the domain name at the postal and e-mail address provided by the
4207 registrant to the registrar; and

4208 (II) publishing notice of the action as the court may direct promptly after filing the
4209 action.

4210 (b) Completion of the actions required by Subsection (2)(a)(ii) constitutes service of
4211 process.

4212 (c) In an in rem action under this Subsection (2), a domain name is considered to be

4213 located in the judicial district in which:

4214 (i) the domain name registrar, registry, or other domain name authority that registered
4215 or assigned the domain name is located; or

4216 (ii) documents sufficient to establish control and authority regarding the disposition of
4217 the registration and use of the domain name are deposited with the court.

4218 (d) (i) The remedies in an in rem action under this Subsection (2) are limited to a court
4219 order for the forfeiture or cancellation of the domain name or the transfer of the domain name
4220 to the owner of the mark.

4221 (ii) Upon receipt of written notification of a filed, stamped copy of a complaint filed by
4222 the owner of a mark in the [district] court under this Subsection (2), the domain name registrar,
4223 domain name registry, or other domain name authority shall:

4224 (A) expeditiously deposit with the court documents sufficient to establish the court's
4225 control and authority regarding the disposition of the registration and use of the domain name
4226 to the court; and

4227 (B) not transfer, suspend, or otherwise modify the domain name during the pendency
4228 of the action, except upon order of the court.

4229 (iii) The domain name registrar or registry or other domain name authority is not liable
4230 for injunctive or monetary relief under this section, except in the case of bad faith or reckless
4231 disregard, which includes a willful failure to comply with a court order.

4232 (3) The civil actions and remedies established by Subsection (1) and the in rem action
4233 established in Subsection (2) do not preclude any other applicable civil action or remedy.

4234 (4) The in rem jurisdiction established under Subsection (2) does not preclude any
4235 other jurisdiction, whether in rem or personal.

4236 Section 98. Section **70-3a-402** is amended to read:

4237 **70-3a-402. Infringement.**

4238 (1) Subject to Section **70-3a-104** and Subsection (2), any person is liable in a civil
4239 action brought by the registrant for any and all of the remedies provided in Section **70-3a-404**,
4240 if that person:

4241 (a) uses a reproduction, counterfeit, copy, or colorable imitation of a mark registered
4242 under this chapter:

4243 (i) without the consent of the registrant; and

4244 (ii) in connection with the sale, distribution, offering for sale, or advertising of any
4245 goods or services on or in connection with which that use is likely to cause confusion, mistake,
4246 or to deceive as to the source of origin, nature, or quality of those goods or services; or

4247 (b) reproduces, counterfeits, copies, or colorably imitates any mark and applies the
4248 reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages,
4249 wrappers, receptacles, or advertisements intended to be used upon or in connection with the
4250 sale or other distribution in this state of goods or services.

4251 (2) Under Subsection (1)(b), the registrant is not entitled to recover profits or damages
4252 unless the act described in Subsection (1)(b) has been committed with the intent:

4253 (a) to cause confusion or mistake; or

4254 (b) to deceive.

4255 (3) In a civil action for a violation of Section 70-3a-309:

4256 (a) the plaintiff may recover court costs and reasonable attorney fees; and

4257 (b) the plaintiff may elect, at any time before final judgment is entered by the [district]
4258 court, to recover, instead of actual damages and profits, an award of statutory damages in the
4259 amount of not less than \$1,000 and not more than \$100,000 per domain name, as the court
4260 considers just.

4261 (4) Statutory damages awarded under Subsection (3)(b) are presumed to be \$100,000
4262 per domain name if there is a pattern and practice of infringements committed willfully for
4263 commercial gain.

4264 Section 99. Section 70-3a-405 is amended to read:

4265 **70-3a-405. Forum for actions regarding registration -- Service on out-of-state**
4266 **registrants.**

4267 [~~(1) (a) An action to require the cancellation of a mark registered under this chapter~~
4268 ~~shall be brought in a district court of this state.~~]

4269 [~~(b)~~] (1) (a) A person may bring an action to require the cancellation of a mark
4270 registered under this chapter.

4271 (b) The division may not be made a party to an action filed under Subsection (1)(a),
4272 except that the division may intervene in an action filed under Subsection (1)(a).

4273 (2) In any action brought against a nonresident registrant, service may be effected upon
4274 the nonresident registrant in accordance with the procedures established for service upon

4275 nonresident corporations and business entities under Section 16-10a-1511.

4276 Section 100. Section 70A-8-409.1 is amended to read:

4277 **70A-8-409.1. Replacement of lost, destroyed, or wrongfully taken share**
4278 **certificate of a land company or a water company.**

4279 (1) [~~For purposes of~~] As used in this section:

4280 (a) "Affected share" means the share represented by a share certificate that is lost,
4281 destroyed, or wrongfully taken.

4282 (b) "Company" means a land company or a water company.

4283 (c) "Distribution area" means:

4284 (i) for a water company, the geographic area where the water company distributes
4285 water; or

4286 (ii) for a land company, the geographic area owned by the land company.

4287 (d) "Original share certificate" means a share certificate that is alleged to be lost,
4288 destroyed, or wrongfully taken.

4289 (e) "Person" means:

4290 (i) an individual;

4291 (ii) a corporation;

4292 (iii) a business entity;

4293 (iv) a political subdivision of the state, including a municipality;

4294 (v) an agency of the state; or

4295 (vi) an agency of the federal government.

4296 (f) "Replacement share certificate" means a share certificate issued to replace a share
4297 certificate that is lost, destroyed, or wrongfully taken.

4298 (g) "Share certificate" means a certificated share of stock in a company.

4299 (2) (a) This section applies to the replacement of a lost, destroyed, or wrongfully taken
4300 share certificate.

4301 (b) Unless the articles of incorporation or bylaws of a company address the
4302 replacement of a lost, destroyed, or wrongfully taken share certificate, this section governs the
4303 replacement of a lost, destroyed, or wrongfully taken share certificate.

4304 (3) A company shall issue a replacement share certificate to a person claiming to be the
4305 owner of a share certificate that is lost, destroyed, or wrongfully taken, and cancel the original

4306 share certificate on the records of the company, if:

4307 (a) the person represents to the company that the original share certificate is lost,
4308 destroyed, or wrongfully taken;

4309 (b) (i) (A) the person is the registered owner of the affected share; and

4310 (B) before the company receives notice that the share certificate has been acquired by a
4311 protected purchaser, the person requests that a replacement share certificate be issued; or

4312 (ii) (A) the person is not the registered owner of the affected share; and

4313 (B) the person establishes ownership of the affected share, including by presenting to
4314 the company written documentation that demonstrates to the reasonable satisfaction of the
4315 company that the person is the rightful owner of the affected share through purchase, gift,
4316 inheritance, foreclosure, bankruptcy, or reorganization;

4317 (c) the assessments to which the affected share is subject are paid current;

4318 (d) except as provided in Subsection (5), the person files with the company a sufficient
4319 indemnity bond or other security acceptable to the company; and

4320 (e) the person satisfies any other reasonable requirement imposed by the company,
4321 including the payment of a reasonable transfer fee.

4322 (4) (a) If after a replacement share certificate is issued a protected purchaser of the
4323 original share certificate presents the original share certificate for registration of transfer, the
4324 company shall register the transfer unless an overissue would result.

4325 (b) If an overissue would result when there is a registration of transfer of an original
4326 share certificate, a company may recover the replacement share certificate from the person to
4327 whom it is issued, or any person taking under that person, except a protected purchaser.

4328 (c) If a company elects to follow the procedures of Subsection (5), to assert an
4329 ownership interest in the affected share, a protected purchaser shall file a written notice of
4330 objection within the 60-day period described in Subsection (5)(d). A protected purchaser's
4331 failure to file a written notice of objection within the 60-day period eliminates any claim of the
4332 protected purchaser.

4333 (5) As an alternative to requiring an indemnity bond or other acceptable security under
4334 Subsection (3)(d), a company is considered to have followed a fair and reasonable procedure
4335 without the necessity of a written policy or bylaw otherwise required by Section 16-6a-609, if
4336 the company follows the following procedure:

4337 (a) The company shall publish written notice at least once a week for three consecutive
4338 weeks:

4339 (i) (A) in a newspaper of general circulation in the area that reasonably includes the
4340 distribution area of the company; and

4341 (B) as required in Section 45-1-101;

4342 (ii) with at least seven days between each publication date under Subsection
4343 (5)(a)(i)(A); and

4344 (iii) beginning no later than 20 days after submission of the request to issue the
4345 replacement share certificate.

4346 (b) The company shall post written notice in at least three conspicuous places within
4347 the distribution area of the company.

4348 (c) No later than 20 days after the day on which the company receives a request to issue
4349 a replacement share certificate, the company shall mail written notice:

4350 (i) to the last known address of the owner of the affected share shown on the records of
4351 the company;

4352 (ii) if a company maintains a record of who pays annual assessments, to any person
4353 who, within the five-year period immediately preceding the day the written notice is mailed,
4354 pays an assessment levied against the affected share; and

4355 (iii) to any person that has notified the company in writing of an interest in the affected
4356 share, including a financial institution.

4357 (d) A notice required under Subsections (5)(a) through (c) shall:

4358 (i) identify the person who is requesting that a replacement share certificate be issued;

4359 (ii) state that an interested person may file a written notice of objection with the
4360 company; and

4361 (iii) state that unless a written notice of objection to the issuance of a replacement share
4362 certificate is filed within 60 days after the last day of publication under Subsection (5)(a)(i)(A),
4363 including a written notice of objection from a protected purchaser:

4364 (A) a replacement share certificate will be issued to the person requesting that the
4365 replacement share certificate be issued; and

4366 (B) the original share certificate will be permanently canceled on the records of the
4367 company.

- 4368 (e) A notice of objection under Subsection (5)(d) shall:
- 4369 (i) state the basis for objecting to the claim of ownership of the affected share;
- 4370 (ii) identify a person that the objecting person believes has a stronger claim of
- 4371 ownership to the affected share; and
- 4372 (iii) be accompanied by written evidence that reasonably documents the basis of the
- 4373 objection to the claim of ownership.
- 4374 (f) If the company receives a notice of objection within the 60-day period described in
- 4375 Subsection (5)(d), the company may review the disputed claim and:
- 4376 (i) deny in writing the objection to the claim of ownership and issue a replacement
- 4377 share certificate to the person requesting the replacement share certificate;
- 4378 (ii) accept in writing a claim of ownership asserted by a notice of objection and issue a
- 4379 replacement share certificate to the person the objecting person asserts owns the affected share;
- 4380 (iii) file an interpleader action in accordance with Utah Rules of Civil Procedure, Rule
- 4381 22, joining the persons claiming an interest in the affected share and depositing a replacement
- 4382 share certificate with the court; or
- 4383 (iv) require the persons claiming an interest in the affected share to resolve the
- 4384 ownership dispute.
- 4385 (g) Upon receipt, the company shall act in accordance with:
- 4386 (i) a written agreement acceptable to the company among the persons who claim
- 4387 interest in the affected share; or
- 4388 (ii) a court order declaring ownership in the affected share.
- 4389 (h) The following are entitled to receive from a nonprevailing person the costs for
- 4390 resolution of a dispute under this Subsection (5), including reasonable attorney fees when
- 4391 attorney fees are necessary:
- 4392 (i) a prevailing person; and
- 4393 (ii) the company, if the company acts in good faith.
- 4394 (i) The person requesting that a replacement share certificate be issued shall reimburse
- 4395 the company for the costs reasonably incurred by the company under this Subsection (5) that
- 4396 are not paid under this Subsection (5)(i) including:
- 4397 (i) legal and other professional fees; and
- 4398 (ii) costs incurred by the company in response to a notice of objection.

4399 (j) A company shall comply with this Subsection (5) before issuance of a replacement
4400 share certificate:

4401 (i) upon request from the person requesting a replacement share certificate be issued;
4402 and

4403 (ii) if the person requesting the replacement share certificate provides indemnification
4404 satisfactory to the company against liability and costs of proceeding under this Subsection (5).

4405 (k) A determination made under this Subsection (5) is considered to be a final and
4406 conclusive determination of ownership of a disputed replacement share certificate.

4407 (6) (a) A company shall:

4408 (i) make a decision to approve or deny the issuance of a replacement share certificate in
4409 writing; and

4410 (ii) deliver the written decision to:

4411 (A) the person requesting a replacement share certificate be issued;

4412 (B) a person who files a notice of objection under Subsection (5); and

4413 (C) any other person the company determines is involved in the request for a
4414 replacement share certificate.

4415 (b) A person may bring an action against a company for judicial review of a decision
4416 by the company under Subsection (6)(a).

4417 ~~[(b) A decision of a company described in Subsection (6)(a) is subject to de novo~~
4418 ~~judicial review in the district court in which the company has its principal place of business.]~~

4419 (c) (i) A person may not seek judicial review under Subsection (6)(b) more than 30
4420 days after the day on which the written decision is delivered under Subsection (6)(a).

4421 (ii) If no action for judicial review is filed within the 30-day period, absent fraud, the
4422 issuance of a replacement share certificate or the decision to not issue a replacement share
4423 certificate is final and conclusive evidence of ownership of the affected share.

4424 (d) (i) In a judicial action brought under this Subsection (6), the prevailing person as
4425 determined by court order, is entitled to payment by a nonprevailing person of:

4426 (A) the costs of successfully defending its ownership claim; and

4427 (B) reasonable attorney fees.

4428 (ii) Notwithstanding Subsection (6)(d)(i), an award of costs or attorney fees may not be
4429 granted against a company if the company acts in good faith.

4430 Section 101. Section **70A-9a-513.5** is amended to read:

4431 **70A-9a-513.5. Termination of wrongfully filed financing statement --**

4432 **Reinstatement.**

4433 (1) As used in this section:

4434 (a) "Established filer" means a person that:

4435 (i) regularly causes records to be communicated to the filing office for filing and has
4436 provided the filing office with current contact information and information sufficient to
4437 establish its identity; or

4438 (ii) satisfies either of the following conditions:

4439 (A) the filing office has issued the person credentials for access to online filing
4440 services; or

4441 (B) the person has established an account for payment of filing fees, regardless of
4442 whether the account is used in a particular transaction.

4443 (b) "Filing office" means the same as that term is defined in Section [70A-9a-102](#),
4444 except that it does not include a county recorder office.

4445 (2) A person identified as debtor in a filed financing statement may deliver to the filing
4446 office the debtor's notarized affidavit, signed under penalty of perjury, that identifies the
4447 financing statement by file number, indicates the affiant's mailing address, and states that the
4448 affiant believes that the filed record identifying the affiant as debtor was not authorized and
4449 was caused to be communicated to the filing office with the intent to harass or defraud the
4450 affiant. The filing office shall adopt a form of affidavit for use under this section. The filing
4451 office may reject an affidavit described in this Subsection (2) if:

4452 (a) the affidavit is incomplete; or

4453 (b) the filing office reasonably believes that the affidavit was communicated to the
4454 filing office with the intent to harass or defraud, or for any other unlawful purpose.

4455 (3) Subject to Subsection (10), if an affidavit is delivered to the filing office under
4456 Subsection (2), the filing office shall promptly file a termination statement with respect to the
4457 financing statement identified in the affidavit. The termination statement must identify by its
4458 file number the initial financing statement to which it relates and must indicate that it was filed
4459 pursuant to this section. A termination statement filed under this Subsection (3) is not effective
4460 until 14 days after it is filed.

4461 (4) The filing office may not charge a fee for the filing of an affidavit under Subsection
4462 (2) or a termination statement under Subsection (3). The filing office may not return any fee
4463 paid for filing the financing statement identified in the affidavit, whether or not the financing
4464 statement is reinstated under Subsection (7).

4465 (5) On the same day that a filing office files a termination statement under Subsection
4466 (3), it shall send to the secured party of record for the financing statement to which the
4467 termination statement relates a notice stating that the termination statement has been filed and
4468 will become effective 14 days after filing. The notice shall be sent by mail to the address
4469 provided for the secured party of record in the financing statement or by electronic mail to the
4470 electronic mail address provided by the secured party of record, if any.

4471 (6) (a) A secured party that believes in good faith that the filed record identified in an
4472 affidavit delivered to the filing office under Subsection (2) was authorized and was not caused
4473 to be communicated to the filing office with the intent to harass or defraud the affiant may:

4474 (i) before the termination statement takes effect under Subsection (3), request the filing
4475 office to review the filed record concerning whether the filed record was filed with the intent to
4476 harass or defraud; or

4477 (ii) regardless of whether the affiant seeks a review under Subsection (6)(a)(i), file an
4478 action against the filing office seeking reinstatement of the financing statement to which the
4479 filed record relates.

4480 (b) Within 10 days after being served with process in an action under this Subsection
4481 (6), the filing office shall file a notice indicating that the action has been commenced. The
4482 notice shall indicate the file number of the initial financing statement to which it relates.

4483 (c) If the affiant is not named as a defendant in the action described in Subsection
4484 (6)(a)(ii), the secured party shall send a copy of the complaint to the affiant at the address
4485 indicated in the affidavit. ~~[The exclusive venue for the action shall be in the Third District~~
4486 ~~Court.]~~ A party may petition the court to consider the matter on an expedited basis.

4487 (d) An action under this Subsection (6) must be filed before the expiration of six
4488 months after the date on which the termination statement filed under Subsection (3) becomes
4489 effective.

4490 (7) If, in an action under Subsection (6), the court determines that the financing
4491 statement should be reinstated, the filing office shall promptly file a record that identifies by its

4492 file number the initial financing statement to which the record relates and indicates that the
4493 financing statement has been reinstated.

4494 (8) Upon the filing of a record reinstating a financing statement under Subsection (7),
4495 the effectiveness of the financing statement is reinstated and the financing statement shall be
4496 considered never to have been terminated under this section. A continuation statement filed as
4497 provided in Subsection 70A-9a-515(4) after the effective date of a termination statement filed
4498 under Subsection (3) or (10) becomes effective if the financing statement is reinstated.

4499 (9) If, in an action under Subsection (6), the court determines that the filed record
4500 identified in an affidavit delivered to the filing office under Subsection (2) was unauthorized
4501 and was caused to be communicated to the filing office with the intent to harass or defraud the
4502 affiant, the filing office and the affiant may recover from the secured party that filed the action
4503 the costs and expenses, including reasonable attorney fees, that the filing office and the affiant
4504 incurred in the action. This recovery is in addition to any recovery to which the affiant is
4505 entitled under Section 70A-9a-625.

4506 (10) If an affidavit delivered to a filing office under Subsection (2) relates to a filed
4507 record communicated to the filing office by an established filer, the filing office shall promptly
4508 send to the secured party of record a notice stating that the affidavit has been delivered to the
4509 filing office and that the filing office is conducting an administrative review to determine
4510 whether the record was unauthorized and was caused to be communicated with the intent to
4511 harass or defraud the affiant. The notice shall be sent by mail to the address provided for the
4512 secured party in the financing statement or sent by electronic mail to the electronic mail address
4513 provided by the secured party of record, if any, and a copy shall be sent in the same manner to
4514 the affiant. The administrative review shall be conducted on an expedited basis and the filing
4515 office may require the affiant and the secured party of record to provide any additional
4516 information that the filing office considers appropriate. If the filing office concludes that the
4517 record was not authorized and was caused to be communicated with the intent to harass or
4518 defraud the affiant, the filing office shall promptly file a termination statement under
4519 Subsection (3) that will be effective immediately and send to the secured party of record the
4520 notice required by Subsection (5). The secured party may thereafter file an action for
4521 reinstatement under Subsection (6), and Subsections (7) through (9) are applicable.

4522 Section 102. Section 78A-6-350 is amended to read:

4523 **78A-6-350. Venue -- Dismissal without adjudication on merits.**

4524 (1) Notwithstanding [~~Title 78B, Chapter 3, Part 3, Place of Trial -- Venue~~] Title 78B,
 4525 Chapter 3a, Venue for Civil Actions, a proceeding for a minor's case in the juvenile court shall
 4526 be commenced in the court of the district in which:

4527 (a) for a proceeding under Title 80, Chapter 6, Juvenile Justice:

4528 (i) the minor is living or found; or

4529 (ii) the alleged offense occurred; or

4530 (b) for all other proceedings, the minor is living or found.

4531 (2) If a party seeks to transfer a case to another district after a petition has been filed in
 4532 the juvenile court, the juvenile court may transfer the case in accordance with the Utah Rules of
 4533 Juvenile Procedure.

4534 (3) The dismissal of a petition in one district where the dismissal is without prejudice
 4535 and where there has been no adjudication upon the merits may not preclude refiling within the
 4536 same district or another district where there is venue for the case.

4537 Section 103. Section **78B-1-132** is amended to read:

4538 **78B-1-132. Employer not to discharge or threaten employee for responding to**
 4539 **subpoena -- Criminal penalty -- Civil action by employee.**

4540 (1) An employer may not deprive an employee of employment or threaten or otherwise
 4541 coerce the employee regarding employment because the employee attends a deposition or
 4542 hearing in response to a subpoena.

4543 (2) Any employer who violates this section is guilty of criminal contempt and upon
 4544 conviction may be fined not more than \$500 or imprisoned not more than six months or both.

4545 (3) (a) If an employer violates this section, in addition to any other remedy, the
 4546 employee may bring [~~a civil action in district court~~] an action for recovery of wages lost as a
 4547 result of the violation and for an order requiring the reinstatement of the employee.

4548 (b) Damages recoverable may not exceed lost wages for six weeks.

4549 (c) If the employee prevails, the employee shall be allowed reasonable attorney fees.

4550 Section 104. Section **78B-3a-101** is enacted to read:

4551 **CHAPTER 3a. VENUE FOR CIVIL ACTIONS**

4552 **Part 1. General Provisions**

4553 **78B-3a-101. Definitions.**

4554 As used in this chapter:

4555 (1) "Action" means any action that is not a criminal action as defined in Section

4556 77-1-3.

4557 (2) "Business organization" means:

4558 (a) an association;

4559 (b) a corporation;

4560 (c) an institution, as that term is defined in Section 7-1-103;

4561 (d) a joint stock company;

4562 (e) a joint venture;

4563 (f) a limited liability company;

4564 (g) a mutual fund trust;

4565 (h) a partnership; or

4566 (i) any other similar form of organization described in Subsections (2)(a) through (g).

4567 (3) "Principal place of business" means the place where the business organization's

4568 officers direct, control, and coordinate the business organization's activities regardless of

4569 whether the place is located in this state.

4570 (4) "Registered office" means the place within this state that the business organization

4571 designated as the business organization's registered office in the most recent document on file

4572 with the Division of Corporations and Commercial Code.

4573 Section 105. Section **78B-3a-102** is enacted to read:

4574 **78B-3a-102. Applicability of this chapter -- Venue for the Business and Chancery**
4575 **Court.**

4576 (1) Except as otherwise provided by another provision of the Utah Code, a plaintiff
4577 shall bring an action in accordance with the requirements of this chapter.

4578 (2) The requirements of this chapter do not apply to an action brought in the Business
4579 and Chancery Court.

4580 Section 106. Section **78B-3a-103** is enacted to read:

4581 **78B-3a-103. Transfer of venue.**

4582 (1) A court may transfer venue in accordance with Rule 42 of the Utah Rules of Civil
4583 Procedure.

4584 (2) A court to which an action is transferred has the same jurisdiction as if the action

4585 had been originally brought in that court.

4586 Section 107. Section **78B-3a-104** is enacted to read:

4587 **78B-3a-104. Residence of a business organization.**

4588 For purposes of this chapter, the residence of a business organization is:

4589 (1) the county where the business organization's principal place of business is located;

4590 (2) the county where the business organization's registered office is located if the

4591 business organization does not have a principal place of business in the state; or

4592 (3) Salt Lake County if the business organization does not have a principal place of

4593 business or a registered office in the state.

4594 Section 108. Section **78B-3a-201**, which is renumbered from Section 78B-3-307 is
4595 renumbered and amended to read:

4596 **Part 2. Venue Requirements**

4597 ~~[78B-3-307].~~ **78B-3a-201. All actions -- Exceptions.**

4598 (1) ~~[In all other cases an action shall be tried]~~ Except as otherwise provided by this
4599 chapter or another provision of the Utah Code, a plaintiff shall bring an action in the county in
4600 which:

4601 (a) ~~the [cause of]~~ action arises; or

4602 (b) any defendant resides at the commencement of the action.

4603 ~~[(2) If the defendant is a corporation, any county in which the corporation has its~~
4604 ~~principal office or a place of business shall be considered the county in which the corporation~~
4605 ~~resides.]~~

4606 ~~[(3)]~~ (2) If none of the defendants ~~[resides]~~ reside in this state, ~~[the action may be~~
4607 ~~commenced and tried]~~ the plaintiff may bring the action in any county designated by the
4608 plaintiff in the complaint.

4609 ~~[(4)]~~ (3) If the defendant is about to depart from the state, ~~[the action may be tried]~~ the
4610 plaintiff may bring the action in any county where any of the parties resides or service is had.

4611 Section 109. Section **78B-3a-202**, which is renumbered from Section 78B-3-301 is
4612 renumbered and amended to read:

4613 ~~[78B-3-301].~~ **78B-3a-202. Actions involving real property.**

4614 (1) ~~[Actions for the following causes involving real property shall be tried in the~~
4615 ~~county in which the subject of the action, or some part,]~~ A plaintiff shall bring the following

4616 actions involving real property in the county in which the real property, or some part of the real
4617 property, is situated:

- 4618 (a) for the recovery of real property[;] or of an estate or interest in the property;
4619 (b) for the determination, in any form, of the right or interest in the real property;
4620 (c) for injuries to real property;
4621 (d) for the partition of real property; and
4622 (e) for the foreclosure of all liens and mortgages on real property.

4623 (2) If the real property is situated [~~partly in one county and partly in another, the~~
4624 ~~plaintiff may select either of the counties, and the county selected is the proper county for the~~
4625 ~~trial of the action] in more than one county, the plaintiff may bring the action in any county in
4626 which the real property is situated.~~

4627 Section 110. Section **78B-3a-203**, which is renumbered from Section 78B-3-302 is
4628 renumbered and amended to read:

4629 ~~[78B-3-302].~~ **78B-3a-203. Actions to recover fines or penalties -- Actions**
4630 **against public officers.**

4631 (1) [~~Actions to recover fines or penalties shall be tried]~~ A plaintiff shall bring an action
4632 to recover a fine or penalty in the county where the [cause] action, or some part of the [cause]
4633 action, arose.

4634 (2) If a fine, penalty, or forfeiture imposed by statute is imposed for an offense
4635 committed on a lake, river, or other stream of water situated in two or more counties, [~~the~~
4636 ~~action may be brought]~~ the plaintiff may bring the action in any county bordering on the lake,
4637 river, or stream opposite to the place where the offense was committed.

4638 (3) Except as otherwise provided by law, a plaintiff shall bring an action against a
4639 public officer, or the public officer's designee [~~shall be tried]~~, in the county where the cause
4640 arose.

4641 Section 111. Section **78B-3a-204**, which is renumbered from Section 78B-3-303 is
4642 renumbered and amended to read:

4643 ~~[78B-3-303].~~ **78B-3a-204. Actions against a county.**

4644 (1) [~~An action against a county may be commenced and tried]~~ Except as otherwise
4645 provided in Subsection (2), a plaintiff shall bring an action against a county in the county.

4646 (2) If the action is brought by another county, [~~the action may be commenced and tried~~

4647 ~~in~~] the county may bring the action in any county not a party to the action.

4648 Section 112. Section **78B-3a-205**, which is renumbered from Section 78B-3-304 is
4649 renumbered and amended to read:

4650 ~~[78B-3-304].~~ **78B-3a-205. Actions on written contracts.**

4651 ~~[An action]~~ A plaintiff shall bring an action on a contract signed in this state to perform
4652 an obligation ~~[may be commenced and tried in the following venues]~~ in:

4653 (1) ~~[If]~~ if the action is to enforce an interest in real property securing a consumer's
4654 obligation, ~~[the action may be brought only in]~~ the county where the real property is located or
4655 where the defendant resides~~[-]; or~~

4656 (2) ~~[An action]~~ if the action is to enforce an interest other than under Subsection (1)
4657 ~~[may be brought in]~~, the county where the obligation is to be performed, the contract was
4658 signed, or in which the defendant resides.

4659 Section 113. Section **78B-3a-206** is enacted to read:

4660 **78B-3a-206. Transitory actions.**

4661 (1) Except for a transitory action under Subsection (2), a plaintiff shall bring a
4662 transitory action arising outside the state in the county where the defendant resides if the action
4663 is brought in this state.

4664 (2) A plaintiff shall bring a transitory action arising outside the state in favor of
4665 residents of this state in the county where:

4666 (a) the plaintiff resides; or

4667 (b) the principal defendant resides.

4668 Section 114. Section **78B-5-201** is amended to read:

4669 **78B-5-201. Definitions -- Judgment recorded in Registry of Judgments.**

4670 (1) ~~[For purposes of this part]~~ As used in this part, "Registry of Judgments" means the
4671 index where a judgment is filed and searchable by the name of the judgment debtor through
4672 electronic means or by tangible document.

4673 (2) On or after July 1, 1997, a judgment entered ~~[in a district court]~~ by a court of this
4674 state does not create a lien upon or affect the title to real property unless the judgment is filed
4675 in the Registry of Judgments of the office of the clerk of the district court of the county in
4676 which the property is located.

4677 (3) (a) On or after July 1, 2002, except as provided in Subsection (3)(b), a judgment

4678 entered [~~in a district court~~] by a court of this state does not create a lien upon or affect the title
4679 to real property unless the judgment or an abstract of judgment is recorded in the office of the
4680 county recorder in which the real property of the judgment debtor is located.

4681 (b) State agencies are exempt from the recording requirement of Subsection (3)(a).

4682 (4) In addition to the requirements of Subsections (2) and (3)(a), any judgment that is
4683 filed in the Registry of Judgments on or after September 1, 1998, or any judgment or abstract
4684 of judgment that is recorded in the office of a county recorder after July 1, 2002, shall include:

4685 (a) the information identifying the judgment debtor as required under Subsection (4)(b)
4686 on the judgment or abstract of judgment; or

4687 (b) a copy of the separate information statement of the judgment creditor that contains:

4688 (i) the correct name and last-known address of each judgment debtor and the address at
4689 which each judgment debtor received service of process;

4690 (ii) the name and address of the judgment creditor;

4691 (iii) the amount of the judgment as filed in the Registry of Judgments;

4692 (iv) if known, the judgment debtor's Social Security number, date of birth, and driver's
4693 license number if a natural person; and

4694 (v) whether or not a stay of enforcement has been ordered by the court and the date the
4695 stay expires.

4696 (5) For the information required in Subsection (4), the judgment creditor shall:

4697 (a) provide the information on the separate information statement if known or available
4698 to the judgment creditor from its records, its attorney's records, or the court records in the
4699 action in which the judgment was entered; or

4700 (b) state on the separate information statement that the information is unknown or
4701 unavailable.

4702 (6) (a) Any judgment that requires payment of money and is entered [~~in a district court~~]
4703 by a court of this state on or after September 1, 1998, or any judgment or abstract of judgment
4704 recorded in the office of a county recorder after July 1, 2002, that does not include the debtor
4705 identifying information as required in Subsection (4) is not a lien until a separate information
4706 statement of the judgment creditor is recorded in the office of a county recorder in compliance
4707 with Subsections (4) and (5).

4708 (b) The separate information statement of the judgment creditor referred to in

4709 Subsection (6)(a) shall include:

4710 (i) the name of any judgment creditor, debtor, assignor, or assignee;

4711 (ii) the date on which the judgment was recorded in the office of the county recorder as
4712 described in Subsection (4); and

4713 (iii) the county recorder's entry number and book and page of the recorded judgment.

4714 (7) A judgment that requires payment of money recorded on or after September 1,
4715 1998, but prior to July 1, 2002, has as its priority the date of entry, except as to parties with
4716 actual or constructive knowledge of the judgment.

4717 (8) A judgment or notice of judgment wrongfully filed against real property is subject
4718 to Title 38, Chapter 9, Wrongful Lien Act.

4719 (9) (a) To release, assign, renew, or extend a lien created by a judgment recorded in the
4720 office of a county recorder, a person shall, in the office of the county recorder of each county in
4721 which an instrument creating the lien is recorded, record a document releasing, assigning,
4722 renewing, or extending the lien.

4723 (b) The document described in Subsection (9)(a) shall include:

4724 (i) the date of the release, assignment, renewal, or extension;

4725 (ii) the name of any judgment creditor, debtor, assignor, or assignee; and

4726 (iii) for the county in which the document is recorded in accordance with Subsection
4727 (9)(a):

4728 (A) the date on which the instrument creating the lien was recorded in that county's
4729 office of the county recorder; and

4730 (B) in accordance with Section 57-3-106, that county recorder's entry number and book
4731 and page of the recorded instrument creating the judgment lien.

4732 Section 115. Section 78B-5-202 is amended to read:

4733 **78B-5-202. Duration of judgment -- Judgment as a lien upon real property --**
4734 **Abstract of judgment -- Small claims judgment not a lien -- Appeal of judgment -- Child**
4735 **support orders.**

4736 (1) Judgments shall continue for eight years from the date of entry in a court unless
4737 previously satisfied or unless enforcement of the judgment is stayed in accordance with law.

4738 (2) Prior to July 1, 1997, except as limited by Subsections (4) and (5), the entry of
4739 judgment by a district court creates a lien upon the real property of the judgment debtor, not

4740 exempt from execution, owned or acquired during the existence of the judgment, located in the
4741 county in which the judgment is entered.

4742 (3) An abstract of judgment issued by the court in which the judgment is entered may
4743 be filed in any court of this state and shall have the same force and effect as a judgment entered
4744 in that court.

4745 (4) Prior to July 1, 1997, and after May 15, 1998, a judgment entered in [~~the small~~
4746 ~~claims division of any court~~] a small claims action may not qualify as a lien upon real property
4747 unless abstracted to [~~the civil division of~~] the district court and recorded in accordance with
4748 Subsection (3).

4749 (5) (a) If any judgment is appealed, upon deposit with the court where the notice of
4750 appeal is filed of cash or other security in a form and amount considered sufficient by the court
4751 that rendered the judgment to secure the full amount of the judgment, together with ongoing
4752 interest and any other anticipated damages or costs, including attorney fees and costs on appeal,
4753 the lien created by the judgment shall be terminated as provided in Subsection (5)(b).

4754 (b) Upon the deposit of sufficient security as provided in Subsection (5)(a), the court
4755 shall enter an order terminating the lien created by the judgment and granting the judgment
4756 creditor a perfected lien in the deposited security as of the date of the original judgment.

4757 (6) (a) A child support order or a sum certain judgment for past due support may be
4758 enforced:

- 4759 (i) within four years after the date the youngest child reaches majority; or
4760 (ii) eight years from the date of entry of the sum certain judgment entered by a tribunal.
4761 (b) The longer period of duration shall apply in every order.

4762 (c) A sum certain judgment may be renewed to extend the duration.

4763 (7) (a) After July 1, 2002, a judgment entered by [~~a district court or a justice court in~~
4764 ~~the state~~] a court of this state becomes a lien upon real property if:

4765 (i) the judgment or an abstract of the judgment containing the information identifying
4766 the judgment debtor as described in Subsection 78B-5-201(4)(b) is recorded in the office of the
4767 county recorder; or

4768 (ii) the judgment or an abstract of the judgment and a separate information statement of
4769 the judgment creditor as described in Subsection 78B-5-201(5) is recorded in the office of the
4770 county recorder.

4771 (b) The judgment shall run from the date of entry by the [~~district court or justice~~] court.

4772 (c) The real property subject to the lien includes all the real property of the judgment

4773 debtor:

4774 (i) in the county in which the recording under Subsection (7)(a)(i) or (ii) occurs; and

4775 (ii) owned or acquired at any time by the judgment debtor during the time the judgment
4776 is effective.

4777 (d) State agencies are exempt from the recording requirement of Subsection (7)(a).

4778 (8) (a) A judgment referred to in Subsection (7) shall be entered under the name of the

4779 judgment debtor in the judgment index in the office of the county recorder as required in

4780 Section [17-21-6](#).

4781 (b) A judgment containing a legal description shall also be abstracted in the appropriate
4782 tract index in the office of the county recorder.

4783 (9) (a) To release, assign, renew, or extend a lien created by a judgment recorded in the
4784 office of a county recorder, a person shall, in the office of the county recorder of each county in
4785 which an instrument creating the lien is recorded, record a document releasing, assigning,
4786 renewing, or extending the lien.

4787 (b) The document described in Subsection (9)(a) shall include:

4788 (i) the date of the release, assignment, renewal, or extension;

4789 (ii) the name of any judgment creditor, debtor, assignor, or assignee; and

4790 (iii) for the county in which the document is recorded in accordance with Subsection

4791 (9)(a):

4792 (A) the date on which the instrument creating the lien was recorded in that county's
4793 office of the county recorder; and

4794 (B) in accordance with Section [57-3-106](#), that county recorder's entry number and book
4795 and page of the recorded instrument creating the judgment lien.

4796 Section 116. Section **78B-5-206** is amended to read:

4797 **78B-5-206. Mileage allowance for judgment debtor required to appear.**

4798 (1) A judgment debtor legally required to appear before [~~a district court or a master to~~
4799 ~~answer concerning~~] a court or a master regarding the debtor's property is entitled, on a
4800 sufficient showing of need, to mileage of 15 cents per mile for each mile actually and
4801 necessarily traveled in going only, to be paid by the judgment creditor at whose instance the

4802 judgment debtor was required to appear.

4803 (2) The judgment creditor is not required to make any payment for such mileage until
4804 the judgment debtor has actually appeared before the court or master.

4805 Section 117. Section **78B-6-110** is amended to read:

4806 **78B-6-110. Notice of adoption proceedings.**

4807 (1) (a) An unmarried biological father, by virtue of the fact that he has engaged in a
4808 sexual relationship with a woman:

4809 (i) is considered to be on notice that a pregnancy and an adoption proceeding regarding
4810 the child may occur; and

4811 (ii) has a duty to protect his own rights and interests.

4812 (b) An unmarried biological father is entitled to actual notice of a birth or an adoption
4813 proceeding with regard to his child only as provided in this section or Section **78B-6-110.5**.

4814 (2) Notice of an adoption proceeding shall be served on each of the following persons:

4815 (a) any person or agency whose consent or relinquishment is required under Section
4816 **78B-6-120** or **78B-6-121**, unless that right has been terminated by:

4817 (i) waiver;

4818 (ii) relinquishment;

4819 (iii) actual or implied consent; or

4820 (iv) judicial action;

4821 (b) any person who has initiated a paternity proceeding and filed notice of that action
4822 with the state registrar of vital statistics within the Department of Health and Human Services,
4823 in accordance with Subsection (3);

4824 (c) any legally appointed custodian or guardian of the adoptee;

4825 (d) the petitioner's spouse, if any, only if the petitioner's spouse has not joined in the
4826 petition;

4827 (e) the adoptee's spouse, if any;

4828 (f) any person who, prior to the time the mother executes her consent for adoption or
4829 relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with
4830 the knowledge and consent of the mother;

4831 (g) a person who is:

4832 (i) openly living in the same household with the child at the time the consent is

- 4833 executed or relinquishment made; and
- 4834 (ii) holding himself out to be the child's father; and
- 4835 (h) any person who is married to the child's mother at the time she executes her consent
- 4836 to the adoption or relinquishes the child for adoption, unless the court finds that the mother's
- 4837 spouse is not the child's father under Section [78B-15-607](#).
- 4838 (3) (a) In order to preserve any right to notice, an unmarried biological father shall,
- 4839 consistent with Subsection (3)(d):
- 4840 (i) initiate proceedings in a district court of Utah to establish paternity under Title 78B,
- 4841 Chapter 15, Utah Uniform Parentage Act; and
- 4842 (ii) file a notice of commencement of the proceedings described in Subsection (3)(a)(i)
- 4843 with the office of vital statistics within the Department of Health and Human Services.
- 4844 (b) If the unmarried, biological father does not know the county in which the birth
- 4845 mother resides, he may initiate his action in any county, subject to a change in trial pursuant to
- 4846 Section [~~78B-3-307~~] [78B-3a-201](#).
- 4847 (c) The Department of Health and Human Services shall provide forms for the purpose
- 4848 of filing the notice described in Subsection (3)(a)(ii), and make those forms available in the
- 4849 office of the county health department in each county.
- 4850 (d) When the state registrar of vital statistics receives a completed form, the registrar
- 4851 shall:
- 4852 (i) record the date and time the form was received; and
- 4853 (ii) immediately enter the information provided by the unmarried biological father in
- 4854 the confidential registry established by Subsection [78B-6-121](#)(3)(c).
- 4855 (e) The action and notice described in Subsection (3)(a):
- 4856 (i) may be filed before or after the child's birth; and
- 4857 (ii) shall be filed prior to the mother's:
- 4858 (A) execution of consent to adoption of the child; or
- 4859 (B) relinquishment of the child for adoption.
- 4860 (4) Notice provided in accordance with this section need not disclose the name of the
- 4861 mother of the child who is the subject of an adoption proceeding.
- 4862 (5) The notice required by this section:
- 4863 (a) may be served at any time after the petition for adoption is filed, but may not be

4864 served on a birth mother before she has given birth to the child who is the subject of the
4865 petition for adoption;

4866 (b) shall be served at least 30 days prior to the final dispositional hearing;

4867 (c) shall specifically state that the person served shall fulfill the requirements of
4868 Subsection (6)(a) within 30 days after the day on which the person receives service if the
4869 person intends to intervene in or contest the adoption;

4870 (d) shall state the consequences, described in Subsection (6)(b), for failure of a person
4871 to file a motion for relief within 30 days after the day on which the person is served with notice
4872 of an adoption proceeding;

4873 (e) is not required to include, nor be accompanied by, a summons or a copy of the
4874 petition for adoption;

4875 (f) shall state where the person may obtain a copy of the petition for adoption; and

4876 (g) shall indicate the right to the appointment of counsel for a party whom the court
4877 determines is indigent and at risk of losing the party's parental rights.

4878 (6) (a) A person who has been served with notice of an adoption proceeding and who
4879 wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:

4880 (i) within 30 days after the day on which the person was served with notice of the
4881 adoption proceeding;

4882 (ii) setting forth specific relief sought; and

4883 (iii) accompanied by a memorandum specifying the factual and legal grounds upon
4884 which the motion is based.

4885 (b) A person who fails to fully and strictly comply with all of the requirements
4886 described in Subsection (6)(a) within 30 days after the day on which the person was served
4887 with notice of the adoption proceeding:

4888 (i) waives any right to further notice in connection with the adoption;

4889 (ii) forfeits all rights in relation to the adoptee; and

4890 (iii) is barred from thereafter bringing or maintaining any action to assert any interest in
4891 the adoptee.

4892 (7) Service of notice under this section shall be made as follows:

4893 (a) (i) Subject to Subsection (5)(e), service on a person whose consent is necessary
4894 under Section [78B-6-120](#) or [78B-6-121](#) shall be in accordance with the provisions of the Utah

4895 Rules of Civil Procedure.

4896 (ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court
4897 shall designate the content of the notice regarding the identity of the parties.

4898 (iii) The notice described in this Subsection (7)(a) may not include the name of a
4899 person seeking to adopt the adoptee.

4900 (b) (i) Except as provided in Subsection (7)(b)(ii) to any other person for whom notice
4901 is required under this section, service by certified mail, return receipt requested, is sufficient.

4902 (ii) If the service described in Subsection (7)(b)(i) cannot be completed after two
4903 attempts, the court may issue an order providing for service by publication, posting, or by any
4904 other manner of service.

4905 (c) Notice to a person who has initiated a paternity proceeding and filed notice of that
4906 action with the state registrar of vital statistics in the Department of Health and Human
4907 Services in accordance with the requirements of Subsection (3), shall be served by certified
4908 mail, return receipt requested, at the last address filed with the registrar.

4909 (8) The notice required by this section may be waived in writing by the person entitled
4910 to receive notice.

4911 (9) Proof of service of notice on all persons for whom notice is required by this section
4912 shall be filed with the court before the final dispositional hearing on the adoption.

4913 (10) Notwithstanding any other provision of law, neither the notice of an adoption
4914 proceeding nor any process in that proceeding is required to contain the name of the person or
4915 persons seeking to adopt the adoptee.

4916 (11) Except as to those persons whose consent to an adoption is required under Section
4917 [78B-6-120](#) or [78B-6-121](#), the sole purpose of notice under this section is to enable the person
4918 served to:

4919 (a) intervene in the adoption; and

4920 (b) present evidence to the court relevant to the best interest of the child.

4921 Section 118. Section **78B-6-313** is amended to read:

4922 **78B-6-313. Contempt of process of nonjudicial officer -- Procedure.**

4923 (1) If a person, officer, referee, arbitrator, board, or committee with the authority to
4924 compel the attendance of witnesses or the production of documents issues a subpoena and the
4925 person to whom the subpoena is issued refuses to appear or produce the documents ordered, the

4926 person shall be considered in contempt.

4927 (2) (a) The person, officer, referee, arbitrator, board, or committee may report the
4928 person to whom the subpoena is issued to the ~~[judge of the district]~~ court.

4929 (b) The court may then issue a warrant of attachment or order to show cause to compel
4930 the person's appearance.

4931 (3) When a person charged has been brought up or has appeared, the person's contempt
4932 may be purged in the same manner as other contempts mentioned in this part.

4933 Section 119. Section **78B-6-1303** is amended to read:

4934 **78B-6-1303. Lis pendens -- Notice.**

4935 (1) (a) Any party to an action filed in the United States District Court for the District of
4936 Utah, the United States Bankruptcy Court for the District of Utah, or a ~~[Utah district court]~~ trial
4937 court of this state that affects the title to, or the right of possession of, real property may file a
4938 notice of pendency of action.

4939 (b) A party that chooses to file a notice of pendency of action shall:

4940 (i) first, file the notice with the court that has jurisdiction of the action; and

4941 (ii) second, record a copy of the notice filed with the court with the county recorder in
4942 the county where the property or any portion of the property is located.

4943 (c) A person may not file a notice of pendency of action unless a case has been filed
4944 and is pending in ~~[a United States or Utah district court]~~ the United States District Court for the
4945 District of Utah, the United States Bankruptcy Court for the District of Utah, or a trial court of
4946 this state.

4947 (2) The notice shall contain:

4948 (a) the caption of the case, with the names of the parties and the case number;

4949 (b) the object of the action or defense; and

4950 (c) the specific legal description of only the property affected.

4951 (3) From the time of filing the notice, a purchaser, an encumbrancer of the property, or
4952 any other party in interest that may be affected by the action is considered to have constructive
4953 notice of pendency of action.

4954 Section 120. Section **78B-6-1904** is amended to read:

4955 **78B-6-1904. Action -- Enforcement -- Remedies -- Damages.**

4956 (1) (a) A target who has received a demand letter asserting patent infringement in bad

4957 faith, or a person aggrieved by a violation of this part, may bring an action [~~in district court~~] in
4958 a court with jurisdiction under Title 78A, Judiciary and Judicial Administration.

4959 (b) The court may award the following remedies to a target who prevails in an action
4960 brought pursuant to this part:

4961 [~~(a)~~] (i) equitable relief;

4962 [~~(b)~~] (ii) actual damages;

4963 [~~(c)~~] (iii) costs and fees, including reasonable attorney fees; and

4964 [~~(d)~~] (iv) punitive damages in an amount to be established by the court, of not more
4965 than the greater of \$50,000 or three times the total of damages, costs, and fees.

4966 (2) (a) The attorney general may conduct civil investigations and bring civil actions
4967 pursuant to this part.

4968 (b) In an action brought by the attorney general under this part, the court may award or
4969 impose any relief [~~it~~] the court considers prudent, including the following:

4970 [~~(a)~~] (i) equitable relief;

4971 [~~(b)~~] (ii) statutory damages of not less than \$750 per demand letter distributed in bad
4972 faith; and

4973 [~~(c)~~] (iii) costs and fees, including reasonable attorney fees, to the attorney general.

4974 (3) This part may not be construed to limit other rights and remedies available to the
4975 state or to any person under any other law.

4976 (4) A demand letter or assertion of a patent infringement that includes a claim for relief
4977 arising under 35 U.S.C. Sec. 271(e)(2) is not subject to the provisions of this part.

4978 (5) The attorney general shall annually provide an electronic report to the Executive
4979 Appropriations Committee regarding the number of investigations and actions brought under
4980 this part. The report shall include:

4981 (a) the number of investigations commenced;

4982 (b) the number of actions brought under the provisions of this part;

4983 (c) the current status of actions brought under Subsection (5)(b); and

4984 (d) final resolution of actions brought under this part, including any recovery under
4985 Subsection (2).

4986 Section 121. Section **78B-6-1905** is amended to read:

4987 **78B-6-1905. Bond.**

4988 (1) Upon motion by a target and a finding by the court that a target has established a
4989 reasonable likelihood that a sponsor has made a bad faith assertion of patent infringement in a
4990 demand letter in violation of this part, the court shall require the sponsor to post a bond in an
4991 amount equal to a good faith estimate of the target's costs to litigate the claim under this part
4992 and amounts reasonably likely to be recovered under Subsections [~~78B-6-1904(1)(b) and (c)~~]
4993 78B-6-1904(1)(b)(ii) and (iii), conditioned upon payment of any amounts finally determined to
4994 be due to the target.

4995 (2) A hearing on the appropriateness and amount of a bond under this section shall be
4996 held if either party requests it.

4997 (3) A bond ordered pursuant to this section may not exceed \$250,000. The court may
4998 waive the bond requirement if it finds the sponsor has available assets equal to the amount of
4999 the proposed bond or for other good cause shown.

5000 Section 122. Section **78B-21-102** is amended to read:

5001 **78B-21-102. Definitions.**

5002 As used in this chapter:

5003 (1) "Affiliate" means:

5004 (a) with respect to an individual:

5005 (i) a companion of the individual;

5006 (ii) a lineal ancestor or descendant, whether by blood or adoption, of:

5007 (A) the individual; or

5008 (B) a companion of the individual;

5009 (iii) a companion of an ancestor or descendant described in Subsection (1)(a)(ii);

5010 (iv) a sibling, aunt, uncle, great aunt, great uncle, first cousin, niece, nephew,

5011 grandniece, or grandnephew of the individual, whether related by the whole or the half blood or

5012 adoption, or a companion of a sibling, aunt, uncle, great aunt, great uncle, first cousin, niece,

5013 nephew, grandniece, or grandnephew of the individual; or

5014 (v) any other individual occupying the residence of the individual; and

5015 (b) with respect to a person other than an individual:

5016 (i) another person that directly or indirectly controls, is controlled by, or is under
5017 common control with the person;

5018 (ii) an officer, director, manager, member, partner, employee, or trustee or other

5019 fiduciary of the person; or

5020 (iii) a companion of, or an individual occupying the residence of, an individual
5021 described in Subsection (1)(b)(i) or (ii).

5022 (2) "Companion" means:

5023 (a) the spouse of an individual;

5024 (b) the domestic partner of an individual; or

5025 (c) another individual in a civil union with an individual.

5026 (3) "Court" means a [~~district court in the state~~] court of this state with jurisdiction over
5027 the action under Title 78A, Judiciary and Judicial Administration.

5028 (4) "Executory contract" means a contract, including a lease, under which each party
5029 has an unperformed obligation and the failure of a party to complete performance would
5030 constitute a material breach.

5031 (5) "Governmental unit" means an office, department, division, bureau, board,
5032 commission, or other agency of this state or a subdivision of this state.

5033 (6) "Lien" means an interest in property that secures payment or performance of an
5034 obligation.

5035 (7) "Mortgage" means a record, however denominated, that creates or provides for a
5036 consensual lien on real property or rents, even if the mortgage also creates or provides for a lien
5037 on personal property.

5038 (8) "Mortgagee" means a person entitled to enforce an obligation secured by a
5039 mortgage.

5040 (9) "Mortgagor" means a person that grants a mortgage or a successor in ownership of
5041 the real property described in the mortgage.

5042 (10) "Owner" means the person for whose property a receiver is appointed.

5043 (11) "Person" means an individual, estate, business or nonprofit entity, public
5044 corporation, government or governmental subdivision, agency, or instrumentality, or other
5045 legal entity.

5046 (12) "Proceeds" means the following property:

5047 (a) whatever is acquired on the sale, lease, license, exchange, or other disposition of
5048 receivership property;

5049 (b) whatever is collected on, or distributed on account of, receivership property;

5050 (c) rights arising out of receivership property;

5051 (d) to the extent of the value of receivership property, claims arising out of the loss,
5052 nonconformity, or interference with the use of, defects or infringement of rights in, or damage
5053 to the property; or

5054 (e) to the extent of the value of receivership property and to the extent payable to the
5055 owner or mortgagee, insurance payable by reason of the loss or nonconformity of, defects or
5056 infringement of rights in, or damage to the property.

5057 (13) "Property" means all of a person's right, title, and interest, both legal and
5058 equitable, in real and personal property, tangible and intangible, wherever located and however
5059 acquired. The term includes proceeds, products, offspring, rents, or profits of or from the
5060 property.

5061 (14) "Receiver" means a person appointed by the court as the court's agent, and subject
5062 to the court's direction, to take possession of, manage, and, if authorized by this chapter or
5063 court order, transfer, sell, lease, license, exchange, collect, or otherwise dispose of receivership
5064 property.

5065 (15) "Receivership" means a proceeding in which a receiver is appointed.

5066 (16) "Receivership property" means the property of an owner that is described in the
5067 order appointing a receiver or a subsequent order. The term includes any proceeds, products,
5068 offspring, rents, or profits of or from the property.

5069 (17) "Record" means, when used as a noun, information that is inscribed on a tangible
5070 medium or that is stored on an electronic or other medium and is retrievable in perceivable
5071 form.

5072 (18) "Rents" means:

5073 (a) sums payable for the right to possess or occupy, or for the actual possession or
5074 occupation of, real property of another person;

5075 (b) sums payable to a mortgagor under a policy of rental-interruption insurance
5076 covering real property;

5077 (c) claims arising out of a default in the payment of sums payable for the right to
5078 possess or occupy real property of another person;

5079 (d) sums payable to terminate an agreement to possess or occupy real property of
5080 another person;

5081 (e) sums payable to a mortgagor for payment or reimbursement of expenses incurred in
5082 owning, operating, and maintaining real property or constructing or installing improvements on
5083 real property; or

5084 (f) other sums payable under an agreement relating to the real property of another
5085 person which constitute rents under law of the state other than this chapter.

5086 (19) "Secured obligation" means an obligation the payment or performance of which is
5087 secured by a security agreement.

5088 (20) "Security agreement" means an agreement that creates or provides for a lien.

5089 (21) "Sign" means, with present intent to authenticate or adopt a record:

5090 (a) to execute or adopt a tangible symbol; or

5091 (b) to attach to or logically associate with the record an electronic sound, symbol, or
5092 process.

5093 Section 123. **Repealer.**

5094 This bill repeals:

5095 Section **3-1-20.2, Procedure for judicial dissolution.**

5096 Section **16-6a-1415, Procedure for judicial dissolution.**

5097 Section **16-10a-1431, Procedure for judicial dissolution.**

5098 Section **34-34-14, Jurisdiction.**

5099 Section **78B-3-305, Transitory actions -- Residence of corporations.**

5100 Section **78B-3-306, Arising without this state in favor of resident.**

5101 Section **78B-3-308, Change of venue -- Conditions precedent.**

5102 Section **78B-3-309, Grounds.**

5103 Section **78B-3-310, Court to which transfer is to be made.**

5104 Section **78B-3-311, Duty of clerk -- Fees and costs -- Effect on jurisdiction.**

5105 Section 124. **Effective date.**

5106 This bill takes effect on July 1, 2024.